13R-55

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 13R-55 by accepting the attached Substitute Attachment “A” West Haymarket Redevelopment Agreement (P Street and Canopy Street Project) to replace the previously provided Attachment “A” to Bill No. 13R-55.

Introduced by:

_____

Approved as to Form and Legality:

_____
City Attorney

Requested by: Urban Development Department, Law Department, Bond Counsel, and Redeveloper

Reason for Request:

1. To amend Section 403 (Use Restrictions) to eliminate the erroneous prohibition against ground floor residential dwellings on the project site.

2. To amend the Access Easement (Exhibit C) to provide that the easement is subject to the utility easement on the south 10 feet of Lot 2 (Property Site) and Lot 3, West Haymarket 1st Addition, as Lincoln Electric System has determined that the utility easement may not be released.

3. To amend the Plaza License Agreement (Exhibit I) to add City insurance and indemnification requirements during City Sponsored Events.

4. To amend the Memorandum of Redevelopment Agreement and Use Restrictions to make the change described in 1 above and to avoid taxable private activity bond issues by deleting the Energy Use Restriction requiring Redeveloper to permanently agree to obtain its heating and cooling services from the JPA.

**WEST HAYMARKET**
**REDEVELOPMENT AGREEMENT**
**(P Street and Canopy Street Project)**

THIS WEST HAYMARKET REDEVELOPMENT AGREEMENT (P Street and Canopy Street Project) ("**Redevelopment Agreement**") is entered into as of the ____ day of _____ 2013, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "**City**"), the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska (hereinafter referred to as "**JPA**"), and PROJECT OSCAR, LLC, a Nebraska limited liability company (hereinafter referred to as "**Redeveloper**").

**RECITALS**

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan, as amended (the "**Redevelopment Plan**"), pursuant to the Community Development Law of the State of Nebraska, Chapter 18, Article 21, Sections 18-2101-18-2144, as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended as may be amended from time to time ("**Community Redevelopment Law**"). The Redevelopment Plan provides for the West Haymarket Redevelopment Project in an area generally bounded on the west by the BNSF and UP railroad lines, by approximately 7th Street on the east, the south interior roadway of Haymarket Park and the Bereuter Pedestrian Bridge on the north, and "M" Street on the south ("**West Haymarket Redevelopment Area**") as shown on Exhibit A. A copy

of the Redevelopment Plan, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the "**City Clerk**").

B. Redeveloper has submitted a proposal for Redeveloper Improvements (defined below) designated as the "**P Street and Canopy Street Project**" to acquire property owned by the JPA located in the West Haymarket Redevelopment Area and legally described as the east 215.05 feet of Lot 2, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, and to construct certain Redeveloper Improvements (defined below) thereon ("**Project Site**"). The Project Site and the east 215.05 feet of Lot 3, Block 7, West Haymarket Addition are to be replatted as Lots 2 and 3, West Haymarket 1st Addition.

C. The Project Site is located immediately east of the site ("Deck 3 Site") for the Deck 3 JPA Parking Garage ("**Deck 3**"), which is shown on Exhibit B and legally described as Lot 1, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska. The Deck 3 Site and the west 10 feet of Lots 2 and 3, Block 7, West Haymarket Addition are to be replatted as Lot 1, West Haymarket 1st Addition.

D. The Redeveloper's P Street and Canopy Street Project provides for the JPA to provide secondary access to the Project Site through a twenty (20) foot wide public access easement permitting two way vehicular access and pedestrian access ("**Access Easement**") as described on Exhibit "C.

E. The Redevelopment Project area for the P Street and Canopy Street Project ("**Redevelopment Project Area**") is shown on Exhibit D.

F. The Redeveloper undertakings ("**Redeveloper Undertakings**") for the P Street and Canopy Street Project consist of the following activities:

(1) Land acquisition of the Project Site;

(2) Demolition and removal of hard surface areas and improvements, site grading and environmental site remediation and improvements (collectively "**Site Preparation**");

(3) Design and construction of a five-story building containing approximately 80,000 square feet of office space; approximately 9,900 square feet of retail and related exterior improvements, including, but not limited to, ten (10) surface parking stalls and trash receptacles and storage areas on the Project Site abutting the Access Easement that have a screen wall as shown on Exhibit E and an outdoor plaza ("**Plaza**") and outdoor courtyard ("**Courtyard**") as shown on Exhibit M (collectively "**New Building**").

(4) Design and construction of a skywalk bridge over the Access Easement connecting the New Building and Deck 3 ("**Skywalk Bridge**").

(5) Design and construction and installation of certain upgraded improvements to the New Building and Project Site to the greater good of the community, which are beyond the requirements of City standards, regulations or codes consisting of Plaza Enhancements, Façade Enhancements and Energy Enhancements (collectively "**Public Enhancements**") as defined in Section 302.B below.

The New Building, Skywalk Bridge, and the Public Enhancements are hereinafter collectively referred to as the "**Private Improvements**." The Private Improvements are sometimes collectively referred to as the "**Redeveloper Improvements.**"

G. City Public Improvements. The City public improvements ("**City Public Improvements**") shall consist of the City's purchase and/or installation of such redevelopment project improvements (as defined in Section 18-2103(12) of the Community Development Law) which the City determines to be beneficial for the elimination of substandard and blighted

conditions during the Tax Increment Period (defined below) to be located in the Redevelopment Project Area.

H. Streetscape. JPA public improvements shall consist of the JPA's design and construction of certain streetscape improvements to P Street and Canopy Street that abut the Project Site including but not limited to decorative hardscape, landscaping, and pedestrian lighting ("**Streetscape**").

I. The JPA and the District Energy Corporation (**"DEC"**) have entered into an Energy Services Agreement dated October 1, 2011 wherein the JPA and DEC agreed for the DEC to construct a district energy plant and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other buildings and facilities in the West Haymarket Redevelopment Area, including the New Building.

J. Under the Energy Services Agreement, the JPA is and will remain the DEC's sole customer and it is the JPA's responsibility to split off the proportional cost of the DEC bill to the Arena and the other buildings and facilities, including the New Building receiving heating and cooling from the Energy Services provided by the DEC to the JPA.

K. This Redevelopment Agreement implements the P Street and Canopy Street Project and sets forth the terms and conditions for the Project.

L. *Neb. Rev. Stat.* §18-2107 (Reissue 2007) 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.

M. The City and JPA are willing to support the above described redevelopment of the Project Site provided Redeveloper is willing to (1) restrict the use of the Project Site to certain approved uses, (2) agree to covenants and conditions regarding compulsory maintenance and

upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions, and (3) agree to covenants and conditions regarding environmental use restrictions.

N. Pursuant to *Neb. Rev. Stat.* §18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the P Street and Canopy Street Project for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the Effective Date as identified herein as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project Area valuation as of January 1 of the year prior to the year that the ad valorem taxes are to be divided shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

- That portion of the ad valorem tax on real property as provided in the redevelopment contract or bond resolution in the Redevelopment Project Area in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle and the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority ("**TIF Indebtedness**") for financing or refinancing in whole or in part, the P Street and Canopy Street Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in the Redevelopment Project Area shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the "**Ad Valorem Tax Provision**" or the "**Tax Increment Provision**."

O. The Redeveloper is willing to enter into this agreement provided TIF Proceeds (defined below) are available to be used to pay for or reimburse the Redeveloper for Redeveloper Priority Expenses which are more particularly described Section 703.A below and summarized on Exhibit L, Sources and Uses of TIF. In order to pay for or reimburse Redeveloper for Redeveloper Priority Expenses, the City intends to issue tax increment financing indebtedness to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision.

P. The parties mutually agree that the redevelopment of the 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, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## ARTICLE I.

## EVIDENCE OF REDEVELOPER'S ABILITY

**Section 101. Evidence of Redeveloper's Ability.**

A. Evidence of Redeveloper's Financial Ability to Construct Private Improvements. Redeveloper shall, within sixty (60) days following the date of this Agreement, state the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, 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.

B. Timely Submittal of Evidence. Timely submittal of financial information required in subsection A above 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 Redevelopment Agreement.

**Section 102. Evidence of Redeveloper's Ability to Timely Commence Construction of the Private Improvements**. Redeveloper shall, prior to Closing (defined below) of the Project Site, provide satisfactory documentation to the JPA that Redeveloper has entered into a construction contract and is ready, willing and able to timely commence construction of the Private Improvements as provided in Section 302.D.1 below. Submittal of such information and documentation in a form satisfactory to the City shall be a condition precedent to the requirement of the JPA to proceed with its obligation to convey the Redevelopment Project Area to Redeveloper under this Redevelopment Agreement.

## ARTICLE II

## CLOSING

**Section 201. Conveyance of Project Site.** The JPA agrees to sell and Redeveloper agrees to buy the Project Site prior to the start of construction of the Private Improvements. The purchase price for the Project Site shall be the sum arrived at by multiplying the square footage of the Project Site times $15.00/square foot ("**Purchase Price**"). The City agrees to assist in such acquisition of the Project Site by providing a grant of TIF Proceeds (defined below) to the Redeveloper to be used to buy down the purchase price ("**Land Purchase Assistance**") which assistance is essential to implementation of the Redevelopment Project.

A. Administrative Plat. Redeveloper shall cause Olsson Associates ("**Engineer**") to prepare and obtain the necessary final approval of an administrative final plat ("West Haymarket 1st Addition) which replats (i) Lot 1, Block 7 and the west 10 feet of Lots 2 and 3, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska as Lot 1, West Haymarket 1st Addition with an east-west dimension of 206.00 feet, and replats the east 215.05 feet of Lots 2 and 3, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska as Lots 2 and 3, West Haymarket 1st Addition, respectively. In the event the City places any conditions to the

approval of the administrative plat, then JPA, at its expense, shall be required to comply with such administrative plat conditions. At Closing, JPA will reimburse the Redeveloper one half (1/2) of the Engineer's cost to prepare and obtain the City's approval of the administrative plat.

**Section 202. Closing.**

A. Closing Date. The conveyance and delivery of the Project Site by the JPA to the Redeveloper shall occur at closing ("**Closing**") which shall be as soon as possible after the date of this Agreement but shall not be later than April 1, 2013, unless the parties mutually agree to another Closing date ("**Closing Date**"). If the Closing on the Project Site does not occur by the Closing Date, neither party shall have any further obligations with respect to the P Street and Canopy Street Project.

B. Closing Contingencies.

1. Redeveloper Closing Contingencies. Redeveloper's obligation to close shall be contingent upon the following:

(i) Receipt of the written indemnification from JPA described in Section 404 (C) below;

(ii) Redeveloper's acceptance of the "clean" fill confirmation, environmental covenants, and Operations and Maintenance Plan regarding the Project Site as described in Section 404 A. (1), (2) and (3);

(iii) Execution and delivery of the Redeveloper Energy Services Agreement between the Redeveloper and JPA pursuant to Section 302 A. 2 (c);

(iv) City approval of the Administrative Final Plat of West Haymarket 1st Addition which in part replats the Project Site as Lot 2, West Haymarket 1st Addition;

(v) Execution and delivery of the Access Easement between the JPA and Redeveloper pursuant to Section 309 B; and

(vi) Execution and delivery of the Skywalk Bridge Easement between the JPA and Redeveloper pursuant to Section 309 D.

(vii) Availability of city water, city sanitary sewer, city storm sewer, electrical, cable/data and natural gas utilities within the public right-of-way and/or within the Access Easement or other Easement abutting the Project Site.

2. JPA Closing Contingencies. The JPA's obligation to close shall be contingent upon the following:

(i) In order to construct Deck 3 as provided in Section 501 below, it will be necessary for the JPA to issue bonds or other evidence of indebtedness (**"JPA Parking Garage Bond"**) as provided for in Article VI of the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency ("**JPA Creation Agreement**") entered into as of April 1, 2010 between the City and the Board of Regents of the University of Nebraska. The JPA's obligation to close and the JPA's obligation to issue the JPA Parking Garage Bonds and to construct Deck 3 is contingent upon the question of whether the JPA should issue such bonds or indebtedness first being presented to and approved by the Mayor and City Council of the City of Lincoln as provided in Article VI of the JPA Creation Agreement.

(ii) Execution and delivery of the Redeveloper Service Agreement between the Redeveloper and the JPA pursuant to Section 302A.2.(c).

C. Closing Documents.

1. Deliveries at Closing by the JPA. At Closing, the JPA shall deliver to Redeveloper, and Redeveloper shall accept from the JPA, the following:

(a) A Special Warranty Deed conveying to Redeveloper fee simple title to the Project Site, subject to the Permitted Exceptions. JPA shall pay Nebraska Documentary Stamp taxes, if not exempt, relating to the transfer of the Project Site. For purposes hereof,

"**Permitted Exceptions"** shall mean (i) covenants, conditions and restrictions of record which shall be approved by Redeveloper if they do not unreasonably interfere with Redeveloper's intended use of the Project Site; (ii) taxes not yet due and payable; (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which JPA is willing to and does so remove at Closing; (iv) title exceptions caused by the acts or omissions of Redeveloper; (v) easements, licenses and use restrictions granted under this Redevelopment Agreement; and (vi) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by Redeveloper. Risk of loss or damage to the Project Site shall rest with the JPA until the time of delivery of possession at Closing.

(b) Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper's Title Commitment, including the JPA executing at Closing an affidavit on the title insurance company's form which will remove all standard exceptions to Buyer's title insurance policy, including without limitations (i) representing that there are no unpaid special assessments levied against the Property as of the Closing, except as provided in Section 203 below, (ii) representing that there are no outstanding unpaid bills for labor, material, or utilities furnished to the Project Site as of the Closing, and (iii) agreeing to indemnify and hold harmless the Redeveloper and title insurance company against all payments and expenses, including court costs and attorney's fees, if the above representations prove inaccurate in whole or in part.

2. Documents to be Delivered by Redeveloper. At Closing, Redeveloper shall deliver to the JPA, and the JPA shall accept from Redeveloper such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper's Title Commitment.

3. Evidence of Title. The Redeveloper shall obtain (i) a title commitment (the "**Title Commitment**") from Nebraska Land Title & Abstract for an ALTA owner's title insurance policy issued by Old Republic National Title Insurance Company, or another title insurance company duly authorized to do business in Nebraska acceptable to Redeveloper (the "**Title Company**") covering title to the Project Site and showing fee simple title in the JPA and (ii) an ALTA Survey of the Project Site by the Engineer to be coordinated with the Title Commitment. A copy of the Title Commitment and ALTA Survey shall be delivered to the City Attorney's Office no later than thirty (30) days prior to Closing and shall include copies of the underlying exception documents which affect the Project Site. Redeveloper agrees to review the Title Commitment and ALTA Survey and advise the JPA whether the Title Commitment and ALTA Survey discloses exceptions to title, title matters or encroachments other than Permitted Exceptions or discloses matters that render title to the Project Site unmarketable. Redeveloper shall notify JPA of such title defects within fifteen (15) days after receipt of the Title Commitment and Survey. JPA shall have ten (10) days after written notice of such defects from Redeveloper to have the exceptions removed from the Title Commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or defects. Provided, however, in the event that JPA shall be unable or unwilling to correct such title defects within the ten (10) day period, Redeveloper shall have the option, by written notice delivered to JPA and the City to either (i) terminate this Redevelopment Agreement or (ii) take title to the Project Site subject to such exceptions or defects. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event Redeveloper elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions.

JPA will reimburse the Redeveloper the cost of the ALTA Survey. Redeveloper and the JPA shall each pay one-half of the cost of the owner's title insurance policy.

C. Inspection and Testing. The JPA, prior to acquiring title to the Project Site, conducted ASTM Phase I and any necessary ASTM Phase II Environmental Site Assessments in order to satisfy the "**All Appropriate Inquiry**" requirement under CERCLA Section 9601(40)(B)(i) for qualification as a bona fide prospective purchaser pursuant to 42 USC § 9601(40). These Site Assessment reports are available at: *http://www.haymarketnow.com/ documents/reports/environmental_reports*.

1. Environmental Tests. The Redeveloper by a separate agreement has been granted the right prior to the Closing, at its own expense, to enter the Project Site to undertake an environmental audit, testing, samplings, clean-up soil tests, core drillings, engineering tests and studies, and floodplain analysis (collectively "**Tests**") of and affecting Project Site. A copy of the results of the Tests shall be provided to the JPA and City as soon as such Test results are reasonably available. Prior to the Closing, the Redeveloper shall have the right to notify JPA and City that based upon the results of the Tests, the Redeveloper has determined, in its sole discretion, that the condition of the Project Site is not suitable for its intended uses. In the event of such notice from the Redeveloper to the JPA and the City on or before the Closing, Redeveloper shall have the option, by written notice delivered to JPA and the City to terminate this Redevelopment Agreement. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another.

**Section 203. Property Taxes and Assessments.** All real and personal property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years' taxes, interest and other charges, if any, shall either be exempt or paid in full by

the JPA at or prior to Closing. If no tax values have been established by the Lancaster County Assessor for the Project Site created by the West Haymarket subdivision, the tax proration shall be based on the Purchase Price for the Project Site and the most recent Lancaster County tax levy. Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement; provided that, the special assessments of the type described in Section 306 below that are not exempt shall be prorated, if any, for the year in which Closing occurs shall, and all prior years' assessments, if any, shall either be exempt or paid in full by the JPA at or prior to Closing.

**Section 204. Title and Possession of Project Site.** At the Closing, title to and possession of the Project Site shall be conveyed by the JPA to Redeveloper under the terms and conditions set forth herein.

**Section 205. JPA's Option to Purchase Project Site.** In the event Redeveloper fails to timely commence construction of the Private Improvements in accordance with Section 302.D, the JPA, subject to the Redeveloper's right to cure in Section 1001 and/or for delay of performance for cause beyond the control of the Redeveloper pursuant to Section 1003, shall be entitled, at its option, to purchase the Project Site upon payment to the Redeveloper the Purchase Price set forth in Section 201.

**Section 206. Full Disclosure.** The parties represent that no party was used as an agent or finder to bring about this sale. JPA and the City acknowledge that Zachary Wiegert of Wiegert Properties, LLC is a licensed Real Estate Broker in the State of Nebraska and is a principal of the managing partner of the Redeveloper. Joshua J Berger and Jordan J. Berger are licensed Real Estate Brokers in the State of Nebraska and are employees of the managing partners of the Redeveloper.

**Section 207. Right to Effectuate Exchange**. JPA and the City acknowledge that the Redeveloper may undertake an Internal Revenue Code Section 1031 tax deferred exchange of their interest in the all or any portion of the Project Site. The Redeveloper's rights and obligations under this Agreement may be assigned to facilitate such exchange(s) under an assignment and assumption agreement approved and consented to by the JPA and the City. Each party agrees to cooperate with the other party and any assignee of the other party to enable the Redeveloper to qualify for such exchange(s); provided that such cooperation shall not require the JPA or the City to incur any additional costs or liability and the JPA and the City shall be able to realize all intended benefits of this Redevelopment Agreement.

## ARTICLE III

## CONSTRUCTION OF REDEVELOPER IMPROVEMENTS

**Section 301. Private Improvements - Schematic Drawings; Exterior Drawings & Specifications; Final Exterior Construction Documents; Approval; Changes.**

A. Conceptual Plans and Drawings. Overall conceptual plans and drawings ("**Project Schematic Drawings**") shall be based upon the West Haymarket Integrated Development Plan - July 30, 2009 ("**IDP**"), a copy of which is on file in the office of the City's Director of Planning. The Project Schematic Drawings shall serve as the basis for development of the plans and specifications for the Private Improvements. The Project Schematic Drawings attached as Exhibit E have been reviewed and approved by the Mayor.

B. Design Development Plans. Design development plans and specifications ("**Design Development Plans**") will be prepared by Redeveloper for the Private Improvements to be constructed by Redeveloper on the Project Site. Such Design Development Plans shall be based upon the Project Schematic Drawings and shall show all the exterior of the Private Improvements to be constructed by Redeveloper as part of the P Street and Canopy Street Project

and shall also include a site plan (**"Site Plan"**) and elevation views of the exterior of the Private Improvements ("**Exterior Drawings**") and the construction materials to be used for such exterior walls.

The Exterior Drawings shall be submitted to the Historic Preservation Commission and the Urban Design Committee, in accordance with the submittal requirements in Section 4.36.040 of the Lincoln Municipal Code, for their joint review and submittal of their recommendation to the City no later than thirty (30) days following Redeveloper's submittal of the Exterior Drawings. The Exterior Drawings shall be approved if they are in substantial conformity with the Project Schematic Drawings and this Redevelopment Agreement.

In addition, ingress and egress to and from the Project Site from the public streets as shown on the Site Plan shall be subject to City approval based upon Chapter 14.75 of the Lincoln Municipal Code and the City's Access Management Policy. The Site Plan and the Exterior Drawings shall be submitted to the Mayor for his review and approval, which will not be unreasonably withheld.

C. Exterior Construction Documents. Upon approval of the Exterior Drawings by the City, taking into account the recommendations of the Historic Preservation Commission and the Urban Design Committee, Redeveloper shall prepare or have prepared the exterior construction documents ("**Exterior Construction Documents**") which shall be submitted to the Mayor for his review and approval, which will not be unreasonably withheld. The Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Exterior Drawings, and in substantial conformity with this Redevelopment Agreement.

D. Historic Preservation Commission/Urban Design Committee Failure to Act. In the event the Historic Preservation Commission and/or the Urban Design Committee fail to

submit their recommendation to the City as provided for in subparagraph B above within forty-five (45) days after receipt of the submittal, then Redeveloper may submit such documents directly to the City for its review and approval.

E. Approval. City, acting through the Mayor, shall so approve or reject the Exterior Drawings and Exterior Construction Documents within fourteen (14) days after receipt of the applicable documents and/or any report and recommendation of the Historic Preservation Commission and/or Urban Design Committee. Such Exterior Drawings and Exterior 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 in substantial conformity with this Redevelopment Agreement. Failure of the City to reject the applicable documents within said fourteen (14) days shall be deemed as approval. 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 based on the standards for this P Street and Canopy Street Project. If rejected, Redeveloper shall work with the Architect to submit corrected Exterior Drawings and Exterior Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Exterior Drawings and Exterior Construction Documents shall be approved or rejected as provided above for original submittals.

F. Approval Limitation. Approval of the Exterior Drawings and Exterior Construction Documents is not a substitute for and does not eliminate the requirement that Redeveloper apply for and receive necessary building permits for construction of the Private Improvements.

G. Changes. If the Site Plan, Exterior Drawings, or Exterior Construction Documents are substantially and materially modified after City approval, any such modification shall be resubmitted to the City in accordance with this Section 301.

**Section 302. Construction of Private Improvements.**

A. Construction. Redeveloper at its own cost and expense shall, through a minimum investment of Fourteen Million and No/100 Dollars ($14,000,000.00), construct the Private Improvements as described in Recital F above in conformity with the approved Exterior Construction Documents, building permits and this Redevelopment Agreement.

1. Architecture. All Private Improvements shall have consistent architectural features, detailing, and design elements in accordance with the Project Schematic Drawings and the IDP. All accessory building walls, screening walls or fences shall use the same primary material, color, and detailing as on the main building.

2. Energy Efficiency.

(a) General. Construction of the Private Improvements shall utilize energy efficient building practices. Redeveloper shall use 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.

(b) Heating and Cooling. JPA, at its expense, (i) will cause the DEC to extend the DEC heating and cooling piping from the DEC Plant under the Access Easement area to the point where the DEC piping is joined with the Redeveloper's service piping ("**Point of Delivery**") at the New Building, including DEC making the service tap connection, to the New Building and (ii) will cause DEC to design and install all other DEC equipment and controls needed in order for the DEC to deliver energy services to the New Building, on or before

October 1, 2013 and in accordance with DEC requirements. The Point of Delivery, including service tap location and location of the meter shall be in a reasonable location as determined by DEC in coordination with the Redeveloper.

(c) Redeveloper Energy Services Agreement. Redeveloper agrees to purchase all Energy Services as defined in the Energy Services Agreement for the Private Improvements from the JPA, subject to the terms and conditions of a Redeveloper Energy Services Agreement between JPA and the Redeveloper, which shall be prepared and negotiated with terms and conditions reasonably acceptable to JPA and the Redeveloper as soon as reasonably possible and entered into between JPA and the Redeveloper prior to Closing Date (defined below), provided, however, Redeveloper understands and acknowledges that such terms and conditions shall include Redeveloper agreeing to pay Redeveloper's allocated share of the Demand Charge – Facilities Financing, the Demand Charge – Other, and the Commodity Charge the DEC will charge the JPA on a monthly basis for Energy Services under the Energy Services Agreement between DEC and the JPA.

3. Height of Private Improvements. Private Improvements constructed in the Redevelopment Project Area shall have a maximum height of 75 feet. The minimum height of the Private Improvements shall be of a sufficient height to adequately screen the adjacent JPA Garage, but in no event less than 65 feet.

4. Landscaping. All mechanical units and condensing units shall be visually screened from public view. Large trash receptacles for business use and any outside storage areas shall be screened on three sides with a masonry screen wall. Redeveloper shall submit a landscape plan to the Mayor for his review and approval which will not be unreasonably withheld.

5. Staging. Redeveloper, City, and JPA agree to assist and cooperate to provide adequate staging for all JPA Projects and other Redevelopment Projects within the West Haymarket Redevelopment Area. The ~~current~~ staging plan showing the staging area for the P Street and Canopy Street Project and the other JPA and West Haymarket Redevelopment Projects as a whole is reflected on Exhibit K. The Redeveloper and its contractor, subcontractors and material suppliers, shall have a right of entry subject to the terms and conditions of Exhibit K to exclusively use the surface and air right space of the Staging Areas 1, 2 and 3 during the construction of the Private Improvements, without additional consideration. Staging Area 4 shall not be available for staging, without the prior written permission of PC Sports or JPA, which permission shall not be unreasonably withheld.

B. Construction of Public Enhancements. Redeveloper shall, at its own cost and expense, subject to reimbursement with available TIF Proceeds as set forth in this Redevelopment Agreement, construct the Plaza Enhancements, Façade Enhancements and Energy Enhancements. The City shall not have any obligation to reimburse Redeveloper for the cost of the Plaza Enhancements, Façade Enhancements and Energy Enhancements in excess of available TIF Proceeds as provided for in this Redevelopment Agreement. Redeveloper shall use its own funds to fund any Plaza Enhancements, Façade Enhancements and Energy Enhancements costs that exceed the TIF Proceeds that are lawfully available and granted to Redeveloper under this Redevelopment Agreement. To the extent required by law, the Public Enhancements shall be competitively bid, subject to Section 1121.

1. For the purposes of this Redevelopment Agreement, the "**Plaza Enhancements**" shall consist of and include all the common areas and amenities located within the Plaza including, but not limited to, the landscaping, hardscape, permanent seating, permanent

furnishings, canopies, and related improvements and equipment, subject to the Plaza License described in Exhibit I.

2. For the purpose of this Redevelopment Agreement, "**Façade Enhancements**" shall be the vertical exterior façade of the New Building as shown on Exhibit E, excluding signage.

3. For the purpose of this Redevelopment Agreement, "**Energy Enhancements**" shall consist of the following: Redeveloper aid to construction payment ("Aid to Construction Project") made to the JPA on or before April 30, 2013, or another date mutually acceptable to the parties, for the capital costs of the DEC plant and related piping improvements on the DEC side of the Point of Delivery to serve the Private Improvements and Redeveloper construction and/or upgrade to the energy, cooling, heating, lighting, insulation, controls, equipment, hardware and/or software improvements and systems made to the Private Improvements for the greater good of the community and which are beyond the requirements of City standards, regulations, or codes.

C. Permits and Approvals. Redeveloper agrees to secure all permits and licenses necessary for construction of the Private Improvements and its intended use of the Project Site including, but not limited to, necessary building permits and inspections.

D. Commencement and Completion Deadline for Private Improvements. The Redeveloper anticipates the commencement of the Private Improvements on or before April 1, 2013. The Redeveloper shall commence the Private Improvements on the Project Site within ninety (90) days following Closing of the Project Site and shall use its best efforts to substantially complete the Private Improvements on or before August 1, 2014 ("**Estimated Completion Date**") and will substantially complete the Private Improvements on or before August 31, 2014 ("**Completion Date**").

**Section 303. Payment of Costs for Private Improvements.** Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Redevelopment Agreement, 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 in accordance with all the provisions of this Redevelopment 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.

**Section 304. Redeveloper's Certificate of Completion of Improvements.**

A. Promptly upon substantial completion by Redeveloper of the Private Improvements in accordance with all provisions of the this Redevelopment Agreement, and promptly after the Redeveloper provides the City with the proper documentation that

Redeveloper's contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Private Improvements have been properly paid, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements. If the work has been completed in conformance with this Redevelopment Agreement, the City shall execute and deliver to Redeveloper the City's acceptance to the Redeveloper's Certificate of Completion of Improvements, the form of which is attached hereto as Exhibit F. The acceptance to the Redeveloper's Certificate of Completion of Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Redevelopment Agreement with respect to the obligations of Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term "completion" shall mean substantial completion of the required Private Improvements. Substantial completion is the stage in the construction progress of the Private Improvements when they are sufficiently complete in accordance with the Exterior Construction Documents and when the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the Private Improvements for their intended use. With respect to the retail and office components of the Private Improvements, substantial completion need not include the tenant finish improvements required for occupancy by such tenants.

B. The Redeveloper's Certificate of Completion of Improvements shall be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska against the Project Site. If the City shall refuse or fail to execute the acceptance to a Redeveloper's Certificate of Completion of Improvements after a final inspection has been requested and performed, the City shall, within fourteen (14) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Redevelopment Agreement or is

otherwise in default, 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 acceptance.

**Section 305. <u>Duty to Maintain</u>.** Redeveloper at its own cost and expense shall, following construction of the Private 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 the buildings including the routine and reasonable preventive maintenance of the buildings and their service facilities such as the 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 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, and parking areas, 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. With regard to the Façade Enhancements and the Plaza Enhancements, the Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any material change to the Façade Enhancements and the Plaza Enhancements 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 Enhancements and the Plaza Enhancements that alters their state from the Construction Documents, wear and tear excepted.

**Section 306. <u>Business Improvement District</u>.** Redeveloper understands and acknowledges that the City intends to create, pursuant to Neb. Rev. Stat. §§ 19-4015 to 19-4038 (Business Improvement District Act), one or more business improvement districts, similar to the Downtown Maintenance District and Downtown Business Improvement District and the Core

Business Improvement District Overlay (i.e. Management Districts) approved by Ordinance Nos. 17271, 18684 and 18683, respectively, within the West Haymarket Redevelopment Area, the boundaries of which include the Project Site. Redeveloper is supportive of the City's intention and as an inducement for the City to proceed with creation of said business improvement district(s), 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 the Downtown Maintenance District and the Downtown Business Improvement District and the Core Business Improvement District Overlay.

**Section 307. Construction Administration**. Redeveloper shall be responsible for all components of the Private Improvements constructed by Redeveloper including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper and its contractor(s) shall reasonably cooperate with other JPA contractors performing work in the West Haymarket Redevelopment Area including, but not limited to, Redeveloper's scheduling of its work to provide for a smooth sequence of operations. The JPA shall insert a similar duty of cooperation in its contracts for construction of the JPA's West Haymarket Project improvements. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements. With the City's consent and approval, which shall not be unreasonably withheld, Redeveloper and its general contractor shall be entitled, subject to the terms and conditions of the Staging Plan (Exhibit K), to make use of the designated West Haymarket Redevelopment Areas not needed for the staging or construction of other JPA West Haymarket Projects and/or JPA/City Public Improvements as staging areas for construction of the Private Improvements.

**Section 308. Cost Certification**. Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to reimbursement for the cost to construct the Redeveloper Priority Expenses. Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for reimbursement of Redeveloper Priority Expenses. The City shall approve or reject the request for reimbursement with reasons stated, based on the review within ten (10) days of receipt of the same; provided, however, the City shall generally approve requests for reimbursement made by Redeveloper that are consistent with Section 601 of this Redevelopment Agreement. Once the Redeveloper Priority Expense evidence or invoices have been approved by the City, the City shall pay such expense to Redeveloper within two (2) business days from the Project Account (defined below) established by the City for the Project.

**Section 309. Grant of Easements, Licenses and Consents.**

A. Construction Easements. Redeveloper will grant or convey to the City without additional consideration any necessary permanent and/or temporary construction easements on, over or across the Project Site as may be required to construct any of the City Public Improvements being constructed by the JPA and/or City.

B. Access Easement**.** JPA will grant to the Redeveloper on or before the Closing Date a twenty (20) foot wide non-exclusive public Access Easement, without additional consideration in the form attached hereto as Exhibit C. Redeveloper shall cause the Engineer to prepare the legal descriptions of the Access Easement Premises as generally shown on Exhibit C. JPA will reimburse the Redeveloper one-half (1/2) of the Engineer's cost to prepare said legal descriptions.

C. Façade Easement. Redeveloper shall grant to the City a Façade Easement in the form attached hereto as Exhibit G related to certain Façade Enhancements.

D. Skywalk Bridge Easement. The JPA agrees to convey to Redeveloper a Skywalk Bridge Easement over portions of Lots 1 and 2, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, to be replatted as Lot 1, West Haymarket 1st Addition for the Skywalk Bridge connecting the New Building to the JPA Parking Garage (Deck 3). The Skywalk Bridge Easement shall be in the form attached hereto as Exhibit H. JPA, at its expense, will cause the design and construction of the Deck 3's footings, foundation and exterior walls to permit the connection of the Skywalk Bridge to Deck 3. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Skywalk Bridge Easement Premises as generally shown on Exhibit H.

E. Plaza License. Redeveloper will grant the City a license to use the Plaza and the Plaza Enhancements in the form attached hereto as Exhibit I. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Plaza License Premises as generally shown on Exhibit I.

F. Consent. Except as the same may otherwise be prohibited by the City's building codes, the City hereby consents without additional consideration to the placement, improvements and usage of the following activities or improvements over or across the platted utility easement located on the south ten (10) feet of the Project Site ("**South Utility Easement**"): (i) the door swing onto said South Utility Easement for the first floor doors of the New Building to permit ingress and egress to and from the New Building; (ii) a minimum of a five feet wide sidewalk between all or a portion of the length of said area to permit ingress and egress between the New Building and "Canopy Street right of way and/or the Access Easement area; (iii) placement of trash and recycling storage containers, (iv) electric transformers and related building equipment and appurtenances, (v) bicycle storage, and/or (vi) outdoor dining within said area (collectively "Permitted Uses and Activities"). .

**Section 310. South Utility Easement Release.** The parties will use their best efforts to explore the future need for and possibility of releasing the South Utility Easement. In the event, the City determines that the South Utility Easement is not necessary, then the City agrees to release said South Utility Easement, without additional consideration and file said release with the Register of Deeds Office at the expense of the Redeveloper; provided that, the New Building exterior wall face (except for footings and Permitted Uses and Activities) will be subject to a ten (10) foot setback from the south side of the Project Site property line.

**Section 311. Design and Construction of Streetscape.** JPA, subject to reimbursement as provided in Section 703 B. (Use of TIF Proceeds) below shall (1) design or cause the Streetscape to be designed in accordance with the City's Standard Specifications, (2) submit or cause final construction documents to be submitted to the Director of the Public Works and Utilities Department for review and approval, (3) install and construct or cause the Streetscape to be competitively bid, installed and constructed pursuant to the City's executive order construction process, and (4) pay for or cause to be paid construction inspection, staking and testing of the Streetscape as part of the construction and inspection process.

## ARTICLE IV.

## SECURITY AND RESTRICTIONS

**Section 401. Penal Bond.**

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. The form of the Penal Bond is attached hereto as Exhibit J. Such penal bond shall stay in place until the City executes the Certificate of Completion of Improvements for the Private Improvements and shall be conditioned upon Redeveloper or Redeveloper's contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper's contractor, or his or her subcontractors with labor or materials performed or used in the prosecution of the Private Improvements. Proof of such penal bond shall be supplied to the City prior to the construction of the Private Improvements.

B. Payment and Performance Bond Alternative. The City shall accept, in lieu of the requirements in Section 401.A. 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 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 401.A. or B. above, a letter of credit, escrow, or other security agreement in the amount of $2,500,000 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 applicable Private Improvements.

**Section 402. Indemnification**. Redeveloper agrees to indemnify and hold the City harmless to the extent of any payments in connection with carrying out construction of the Private Improvements the City may be required to make for failure of Redeveloper or Redeveloper's contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper's contractor or his or her subcontractors with labor or materials performed or used in construction of Private Improvements.

**Section 403. Use Restrictions.** Redeveloper hereby represents and agrees that neither all nor any portion of the Redevelopment Project Area shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00

p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(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 business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(d) any business operated or held out to the public as a sexually oriented business including any business 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; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

(g) at least 50% of the leasable retail square footage on any block face will have users whose minimum normal hours of operation, six days a week, are from 11:00 a.m. to 8:00 p.m.;

(h) no freestanding cell towers, excluding a cell antenna on top of the New Building located on the Project Site.

**Section 404**. **Environmental.**

A. Environmental Site Preparation. The City and/or the JPA, at its expense, shall complete all site improvements necessary to provide Redeveloper with a pad site on the Project Site on or before the Closing Date that is environmentally ready for construction in accordance with the below Environmental Use Restrictions ("**Environmental Site Improvements**"). Said Environmental Site Improvements shall be limited to conducting all agreed upon remedial actions for the East Flank of the West Haymarket Redevelopment Site North ("**WHRSN"**) (which includes Lot 2, Block 7 West Haymarket Addition) identified in the Investigation Report/Remedial Action Plan prepared by the Alfred Benesh Company which was submitted to and approved by NDEQ. Said Environmental Site Improvements shall be performed in compliance with the NDEQ's Voluntary Cleanup Program in order to insure that the U.S. Environmental Protection Agency (EPA) is barred from any administrative or judicial enforcement action under CERCLA Sections 106 and 107. *See* 42 USC Chapter 103 §9628(b). Remedial actions for the East Flank include:

(1) Receive confirmation following substantial completion of all grading, roadway and utility work in the East Flank that the final grade in the East Flank achieved a minimum of three feet of "clean" fill cover over the original grade at the site and/or original grade has a hard surface final cover (roadway, building pad site/parking, etc.).

(2) Record a deed restriction or environmental covenant over this area prohibiting use of groundwater as a drinking water source (essentially preventing any entity from installing a drinking water well at the site). Since some residual soil contamination will remain in place below the clean fill and hard surfaces which serve as an engineered control, the restriction or covenant must include maintaining the integrity of the engineered controls. This

restriction/covenant will be established in accordance with the Nebraska Uniform Environmental Covenants Act (Neb. Rev. Stat. §§76-2601 to 76-2613 (or UECA)).

(3) Establish an Operations and Maintenance (O&M) Plan to ensure compliance with the covenants and to prescribe routine inspection, maintenance, and documentation requirements to be performed by the City/JPA to protect the integrity of all engineering controls.

B. Redeveloper Bona Fide Prospective Purchaser Status. Notwithstanding Paragraph A above, Redeveloper understands, acknowledges and agrees that in order to qualify as a bona fide prospective purchaser for the purposes of CERCLA and other environmental laws, Redeveloper must perform the CERCLA "all appropriate inquiry" before acquiring the Project Site and thereafter comply with the post-acquisition due diligence requirements in 42 USC § 9601(40) including, but not limited to, the following land use restrictions and institutional controls:

(1) The Project Site shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes as set forth in the Investigation Report/Remedial Action Plan prepared by Alfred Benesch Company on behalf of the JPA.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) Prior to beginning vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use, will require the approval of NDEQ (collectively "**Environmental Use Restrictions**").

C. Indemnification. The JPA shall, from and after the conveyance of the Project Site to Redeveloper, indemnify and hold Redeveloper harmless from and against any claim, demand, cost or liability arising out of or attributable to the environmental condition of the Project Site conveyed to Redeveloper by the JPA, except to the extent such claim, demand, cost or liability arises out of, or is attributable to the Redeveloper's failure to comply with the post-acquisition due diligence requirements in 42 USC § 9601(40) and/or the above Environmental Use Restrictions.

D. No Further Action Letter. JPA is in the process of obtaining a "**No Further Action Letter**" by the Nebraska Department of Environmental Quality ("**NDEQ**") verifying that based upon NDEQ's investigation and required remediation, the area of concern or areas of concern at that Project Site, as applicable, and at any other site to which a discharge originating at the Project Site has migrated, or that any contaminants present at the Project Site or that have migrated from the Project Site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations. JPA expects to receive the No Further Action Letter upon completion of certain roadway and infrastructure work in the West Haymarket Redevelopment Area. JPA will use its best efforts to complete such work and

obtain the No Further Action Letter from NDEQ as soon as reasonably possible and provide the Redeveloper an original or certified copy of the No Further Action Letter.

**Section 405. Article IV - Run with the Land.** It is intended that each of the restrictions set forth in Section 403 and Section 404 shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Project Site, 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. At Closing, the Redeveloper shall record permanent covenants against the Project Site with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit N.

## ARTICLE V.

## JPA RESPONSIBILITIES

**Section 501. Construction of Parking Garage Improvements.** The JPA, at its own cost and expense, shall construct Deck 3 as a six (6) story high public parking garage with approximately 947 parking stalls to help satisfy the parking needs of the West Haymarket Redevelopment Area and the Private Improvements. JPA shall use its commercially reasonable efforts to substantially complete Deck 3 on or before the Estimated Completion Date of the Private Improvements and will substantially complete Deck 3 on or before the Completion Date. In the event JPA does not substantially complete Deck 3 on or before the Completion Date, the City and JPA agree that the City will provide alternate parking at market rates to the Redeveloper for the parking as described in Section 601 through the use of surface parking lots in the West Haymarket Redevelopment Area until Deck 3 is substantially completed. The JPA shall cause the number of stalls it deems necessary in Deck 3 to be devoted to accommodate short-term parkers for retail and office uses in the area.

**Section 502.** Operation of Deck 3. The City, acting through its parking garage operator, shall operate Deck 3 on behalf of JPA. The City shall cause the number of stalls its deems necessary in Deck 3 to be devoted to accommodate short-term parkers for retail and commercial uses in the area.

## ARTICLE VI

## PARKING RIGHTS

**Section 601. Office & Retail Monthly Parking; Redeveloper's Right to Lease.** Upon opening of Deck 3 and after completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Deck 3:

A. Reserved Parking Stalls. For office and retail uses, up to ten (10) fully reserved parking stalls ("**Reserved Parking**").

(1) The Reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, including all Husker football games, Husker basketball games, Husker baseball/softball games, Haymarket Park events, and West Haymarket Arena events (collectively "**Events**"). The Reserve Parking shall be signed and located on the north end of the first floor gated and nested area (west bay).

(2) The Reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other reserved parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the reserved parking rights granted to reserved parkers in similar City garages and in particular shall be subject to regular and timely payment of the reserved parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that

Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the reserved rate paid by the Redeveloper.

B. Monthly Parking Stalls. For office and retail uses, up to three hundred fifty (350) parking stalls ("**Monthly Parking**").

(1) Two hundred sixty (260) of the Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Deck 3 parking stalls allocated for monthly parkers.

(2) Approximately sixty-three (63) of the Monthly Parking stalls will be signed and located within the third floor gated and nested area (west bay).

(3) The balance of the three hundred fifty (350) Monthly Parking stalls (approximately twenty-seven (27)) will be signed and located on the north end of the first floor gated and nested area (west bay).

(4) The first and third floor nested areas will be gated from 7:00 a.m. to 5:00 p.m. during the weekday; but the gate will be open for transient and Event parking after 5:00 p.m. The JPA shall cause its parking garage operator to take reasonable efforts to ensure that the first and third floor nested areas are cleared of transient and Event parkers by 7:00 a.m. the next morning.

(5) The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that

Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

(6) Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Deck 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

C. Football & Events Parking. Up to ninety (90) of the Monthly Parking permits may include the right to park in Deck 3 for Nebraska home football games and Arena events ("**Football & Events Parking**") at the Football & Event Parking Rate (defined below). The Football & Events Parking will not be in assigned stalls. Rather, stalls will be occupied on a first come, first serve basis; provided that an eligible Monthly Parking parker who is already parked for their employment, shall not be required to re-park for the Football & Events Parking.

(1) The City projects that Deck 3, in addition to Nebraska football games, will be totally filled for the largest 20 Arena Events per year. To be sure the City does not lose parking revenues, the Football & Event Parking Rate will be the sum of (i) the twenty (20) largest Arena events per year (subject to adjustment as provided below), times the City's published Deck 3 Arena Event parking rate per Arena event for the upcoming year and (ii) the City's published Deck 3 Nebraska Football Game season parking rate for all games for the upcoming year. The pre-paid Deck 3 Football & Events Parking will be paid to the City on a

monthly basis amortized over a twelve (12) month period ("**Football & Event Parking Rate**"). Each party reserves the right on the fifth anniversary of the Football & Events Parking and every five years thereafter, to request an increase or decrease in the projected number of Arena Events in which Deck 3 will be totally filled based upon the average number of per year Arena Events in which Deck 3 was totally filled during the prior five (5) years and to increase or decrease the Football & Event Parking Rate accordingly.

D. Duration. The parking rights outlined in this Section 601 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

**Section 602. Failure to Exercise Parking Rights.** If Redeveloper does not exercise any or all of the above rights to lease parking stalls upon opening of Deck 3, Redeveloper shall have the following continuing right to lease parking stalls:

> If Reserved Parking, Monthly Parking and Event Parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for permits at the head of the applicable Reserved Parking, Monthly Parking and Event Parking waiting list to be compiled by the City or its agent operating the Deck 3 (collectively "**Waiting Lists**"). Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing Reserved Parking, Monthly Parking and Event Parking permit to accommodate Redeveloper's request for parking permits.

## ARTICLE VII.

## TAX AGREEMENT

**Section 701. Valuation of Project Site**. The City intends to use the Tax Increment Provision to generate a tax increment in the estimated amount of Two Million Two Hundred and

Six Thousand Six Hundred Sixty-Two and No/l00 Dollars ($2,206,662.00) which tax increment revenues ("**TIF Tax Revenues**") when collected shall be used to pay debt service of the TIF Indebtedness to be incurred as provided below. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Law which will be attributable to the construction of the Private Improvements and redevelopment contemplated under this Redevelopment Agreement. The TIF Tax Revenues which are to be used to pay debt service for the TIF Indebtedness will be derived from the increased valuation from redeveloping the Project Site as provided in this Redevelopment Agreement.

Redeveloper further agrees not to contest any taxable valuation assessed for the Project Site which does not exceed Ten Million Eight Hundred and Eighteen Thousand One Hundred and Sixty and No/100 Dollars ($10,818,160.00) commencing the first tax year following the completion of the Private Improvements and continuing for a period of not to exceed fifteen (15) years after the Effective Date or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter.

**Section 702. TIF.** Issuance of TIF Indebtedness. Not earlier than thirty (30) days following the later date of the approval and execution of this Redevelopment Agreement or the date the issuance of the TIF Bond (defined below) has been authorized, which date is after the remonstrative period in Neb. Rev. Stat § 18-2142.01 or as soon thereafter as is practicable, the City shall issue TIF Indebtedness as follows: (i) "**TIF Bond A**" in the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) to be purchased by the City or other purchaser ("**TIF Bond Purchaser A**") and receive TIF Proceeds from the TIF Bond Purchaser A to be deposited into a City or Lender fund account (the "**Project Account A**") for payment of the City's TIF Bond A cost of issuance and to fund the City Public Improvements set forth in the

Second Priority in Section 703 A. below and (ii) "**TIF Bond B**" in the sum of One Million Nine Hundred and Forty-Eight Thousand Three Hundred Forty-Seven and No/l00 Dollars ($1,948,347.00) to be purchased by the Redeveloper or Redeveloper's Lender ("**TIF Bond Purchaser B**") and receive TIF Proceeds from the TIF Bond Purchaser to be deposited into a City or Lender fund account (the "**Project Account B**") for payment of the City's TIF Bond B cost of issuance and the Eligible Project Costs in the Second Priority and Third Priority set forth in Section 703 B. below. TIF Bond A and TIF Bond B are individually and collectively referred to herein as "**TIF Bond**" and TIF Bond Purchaser A and TIF Bond Purchaser B are individually and collectively referred to herein as "**TIF Bond Purchaser**". The total dollar amount of the TIF Bond is the estimated amount of the tax increment to be generated on the Project Site and Private Improvements based upon an estimated taxable valuation of $10,818,160.00 after completion of the Private Improvements. The Redeveloper or Redeveloper's Lender, shall have the option to buy TIF Bond A and be the TIF Bond Purchaser A as a separate TIF Bond or recombine TIF Bond A and TIF Bond B into one TIF Bond.

**Section 703. Use of TIF Proceeds.**

A. TIF Bond A. TIF Proceeds from the sale of the TIF Bond A shall be expended in the following priority in accordance with those cost estimates listed on Exhibit L. Only costs incurred after the execution of this Redevelopment Agreement by all parties hereto shall be eligible for payment.

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Fund the Project Account A for the City Public Improvements.

B. TIF Bond B. TIF Proceeds from the sale of the TIF Bond B shall be expended in the following priority in accordance with those cost estimates listed on Exhibit "L". Only costs incurred after the execution of this Redevelopment Agreement by all parties hereto shall be eligible for payment.

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Reimburse JPA for the Streetscape; and

THIRD PRIORITY: Reimburse the Redeveloper for the costs of the Land Purchase Assistance, Plaza Enhancements; Façade Enhancements for the use of those materials which exceed the requirements of the IDP and applicable Downtown Design Standards and for Energy Enhancements.

The Third Priority Items are hereinafter referred to as the "**Redeveloper Priority Expenses**." The cost for the Uses items in Exhibit "L" are estimates and reimbursement will be based upon the actual design, inspections, project administration, construction and implementation costs. The Redeveloper is authorized to reduce or increase the scope, scale, size or phasing of a Third Priority item or items so long as the overall available Total TIF Uses amount is not exceeded. In the event there is not enough available Grant Funds (defined below) from TIF Proceeds to complete the Third Priority item(s) as shown above, then the Redeveloper is authorized to reduce the scope, scale, size or phasing of a Third Priority item or items or eliminate a Third Priority item or items.

C. Authority of City Finance Director. Subject to the terms of this Redevelopment Agreement, the City Finance Director on behalf of the City shall have the authority to determine the timing of issuance of the TIF Indebtedness and all other details of the TIF Indebtedness, TIF

Bond, TIF Tax Revenues, Project Account and Grant of Funds for the eligible TIF Cost of the Redeveloper Undertakings; provided that, the semi-annual TIF Tax Revenues shall first be applied toward payment of the annual debt service of the TIF Bond A and then applied toward payment of the annual debt service on the TIF Bond B. Thereafter, any remaining unencumbered TIF Tax Revenues shall be allocated between the debt service of the TIF Bond A and the TIF Bond B based upon the prorated principal amount of the TIF Bond A and TIF Bond B.

**Section 704. 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 Bond with interest as provided in the TIF Bond Ordinance(s) with interest at a rate not to exceed nine percent (9.0%) per annum. Any unpaid debt service on the TIF Indebtedness (including interest) is not payable from any other source whatsoever and shall not constitute a general obligation or debt of the City.

A. Redeveloper Purchased TIF Bond; Deferral/Forgiveness of Tax Increment Deficiency. If the Redeveloper purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site which impedes the City's ability to pay debt service on the TIF Bond, shall be borne entirely by the Redeveloper without recourse of any kind against the City. Specifically, in the event of and to the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond, the Redeveloper agrees to defer payment of the same for each year that there exists a deficiency in such TIF Tax Revenues during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse Redeveloper for 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 from the Ad Valorem Tax Provision to meet current debt service. In the event the TIF Bond is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness on such Bond shall be forgiven.

B. Lender Purchased TIF Bond; Redeveloper Payment of Tax Increment Deficiency. If Redeveloper's Lender purchases the TIF Bond, the Redeveloper shall be liable to cover any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and Private 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, Redeveloper agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request for such payment from the City. If Redeveloper is required to pay any such deficiency, the City shall reimburse Redeveloper for all sums paid by 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 Tax Increment Period (defined below) 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 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.

C. Adjustments for any Payments of Tax Increment Deficiency. If Redeveloper makes one or more payments to cover a deficiency in the required debt service payments on the TIF Bond as provided in paragraph A and paragraph B of Section 704, the City shall maintain a record of the aggregate amount of said payments, which shall include interest (at the same

interest rate of the then outstanding TIF Bond) ("**Redeveloper's Aggregate Deficiency Payments**"). If the TIF Tax Revenues from the Tax Increment Provision for any year exceeds the amount necessary to meet current debt service of the TIF Indebtedness, then the excess TIF Tax Revenues shall be paid to Redeveloper and deducted from the Redeveloper's Aggregate Deficiency Payments until Redeveloper's Aggregate Deficiency Payments have been fully reimbursed.

**Section 705. Grant of Funds.**

A. Grant of Funds. In order to support redevelopment of this P Street and Canopy Street Project and as an inducement for Redeveloper to construct the Private Improvements and JPA to construct the Streetscape, the City agrees to the extent allowed by law and then only to the extent funds are lawfully available from issuance of the TIF Indebtedness from TIF Bond B ("**TIF Proceeds B**"), to pay on behalf of or make a grant of funds ("**Grant Funds B**") first to JPA in the total amount of the Streetscape and then to the Redeveloper up to the total amount of the remaining TIF Proceeds, less the amounts expended on the First Priority Item, to pay the Land Purchase Assistance and reimburse Redeveloper for the cost of the other Redeveloper Priority Expenses. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the Private Improvements have been substantially completed and that the expenditures were made for eligible Redeveloper Priority Expenses. The City shall maintain a record of all expenditures of the TIF Proceeds to determine the total amount of TIF Proceeds expended on Redeveloper Priority Expenses.

B. Reimbursement of Grants. Subject to Section 1001 (Remedies) below, Redeveloper agrees to repay the City for the aid to construction and any grant or grants of funds

to Redeveloper as provided for in Section 703 B (Use of TIF Proceeds) and Section 705A (Grant of Funds) above in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 302.D (Commencement and Completion Deadline for Private Improvements) above and, upon such repayment of the of the grant funds, this Redevelopment Agreement shall be null and void in regards to Redeveloper's obligation to construct the Private Improvements located upon the Project Site. Subject to Section 1001 (Remedies) below, in the event Redeveloper fails to maintain the Private Improvements as provided in Section 305 (Duty to Maintain) above, then said Redeveloper shall reimburse the City 1/15 of the grant funds granted Redeveloper for construction of the Private Improvements as provided for in Section 705 A (Grant of Funds) above, for each year a Redeveloper fails to maintain the Private Improvements.

**Section 706.** **Excess TIF Tax Revenues**. Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Project Site not needed or required to pay for the TIF Indebtedness or for the repayment of Redeveloper's Aggregate Deficiency Payments, as set forth in Section 704, shall be maintained in the Project Account B and shall be used to reimburse the City for eligible public expenditures.

**Section 707.** **Restriction on Transfer**. Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to Redeveloper the Redeveloper's Certificate of Completion of the Private Improvements, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "**Tax Increment Period**"), convey the Project Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries.

**Section 708.** **Agreement to Pay Taxes**. Redeveloper agrees to pay all real property taxes levied upon the Project Site and Private Improvements prior to the times such taxes

become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Project Site and improvements for tax purposes except as provided in Section 701.

**Section 709.** **Damage or Destruction of Redeveloper's Property**. During the Tax Increment Period, Redeveloper agrees to keep the Project Site and the Private Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 709 may, at Redeveloper's option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to use reasonable efforts to restore the Private Improvements to their prior condition within eighteen (18) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

**Section 710.** **Condemnation**. In the event that during the Tax Increment Period all or a substantial portion of the Project Site and Private Improvements is condemned by a condemning authority other than the City, and such 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 condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

**Section 711.** **Termination of Provisions**. The provisions of this Article VII shall terminate upon the end of the Tax Increment Period.

## ARTICLE VIII.

## MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

**Section 801.** **Limitation Upon Encumbrance of Property**. Prior to issuance of the Redeveloper's Certificate of Completion of Improvements by the City for the Private Improvements, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Project Site and Private Improvements, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to such Project Site and Private Improvements, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Redeveloper Improvements, and to finance, operate, maintain, repair, replace and insure said Redeveloper Improvements. All such mortgages, financial encumbrances, or monetary liens shall be subject to the terms and conditions of this Redevelopment Agreement and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Project Site and Redeveloper Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site and Redeveloper Improvements whether by voluntary act of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Project Site and Redeveloper Improvements 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 avoid or prevent foreclosure of such encumbrance or lien.

**Section 802.** **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 exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Redeveloper 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 Redevelopment 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 Redevelopment Agreement.

**Section 803.** **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 Redevelopment Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the Register of Deeds of Lancaster County, Nebraska or as provided to the City by such mortgage holder.

**Section 804.** **Mortgage Holder's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 803, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand as referred to in Section 803, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such 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 default. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Redevelopment Agreement.

**Section 805.** **City's Option to Purchase Property.** In any case where the holder of any mortgage obtains title to the Project Site and any Private Improvements as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements, the City shall (and any additional mortgage instrument made after the date of this Redevelopment Agreement with respect to the Project Site prior to issuance by the City of the Redeveloper's Certificate of Completion of Improvements shall so provide) be entitled, at its option, to a conveyance to it of the Project Site upon payment to such holder of an amount equal to the sum of:

(1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(2) All expense with regard to foreclosure;

(3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Project Site;

(4) The depreciated cost of any improvement made by such holder;

(5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and

(6) All other reasonable holding costs actually incurred as to the Project Site.

The City's option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to said Project Site and notifies the City, unless the City waives the option prior to the end of such 90-day period.

In the event the City exercises its option under this Section, then the City shall also be required to repay in full any and all outstanding TIF Bonds and TIF indebtedness and shall be entitle to receive the TIF Proceeds.

**Section 806. <u>Mortgage Rights Applicable to Other Forms of Encumbrance</u>.** The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site prior to issuance of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements thereon shall apply to any other type of encumbrance on 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, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

**Section 807. <u>Termination of Provisions</u>.** The provisions of this Article VIII shall terminate upon issuance by the City to the Redeveloper the Redeveloper's Certificate of Completion of Improvements for all the Private Improvements.

## ARTICLE IX.

## REPRESENTATIONS

**Section 901. <u>Development of Project</u>**. Redeveloper represents and agrees that its undertakings, pursuant to this Redevelopment Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

**Section 902. <u>Restrictions on Assignments of Rights or Obligations</u>**. Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion of Improvements by the City, there shall be no sale or transfer of Redeveloper or assignment of its rights or obligations under this Redevelopment Agreement to any party without the prior written approval of the City Administration, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Redevelopment Agreement, as conditions to any such 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 Redevelopment 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 of Lancaster County, 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 Redevelopment Agreement and agreed to be subject to all of the conditions and restrictions to which Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper's interest in the Project Site or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Redevelopment Agreement with respect to the Project Site and

the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

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. The restrictions set forth in this Section 902 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion of Improvements by the City.

**Section 903.** **Change in Scope, Termination of Project**. City and Redeveloper agree that any material change in the scope of the P Street and Canopy Street Project including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Sources and Uses of Funds for the Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of Redeveloper to obtain

the necessary governmental approvals and permits from the City prior to Closing to construct the Private Improvements as reflected on the Project Schematic Drawings, Redeveloper may terminate this Redevelopment Agreement by delivering written notice to the City.

## ARTICLE X.

## REMEDIES

**Section 1001. In General**. Except as otherwise provided in this Redevelopment Agreement, in the event of any default in or breach of this Redevelopment Agreement, or any of its terms or conditions by the City, the JPA, Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

**Section 1002. Other Rights and Remedies; No Waiver by Delay.** The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Redevelopment Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Redevelopment

Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 1003. <u>Delay in Performance For Causes Beyond Control of Party ("Force Majeure").</u>** For the purpose of any provisions of this Redevelopment Agreement, the City, the JPA, and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section 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 the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

**Section 1004. <u>Rights and Remedies Cumulative</u>.** The rights and remedies of the parties to this Redevelopment Agreement, whether provided by law or by this Redevelopment Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Redevelopment Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

## ARTICLE XI.

## MISCELLANEOUS

**Section 1101. <u>Conflicts of Interest; City Representatives Not Individually Liable</u>.** No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Redevelopment Agreement.

**Section 1102. <u>Persons Authorized to Issue Approvals</u>**. For purposes of this Redevelopment Agreement and the approvals and disapprovals required hereunder, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, or the Mayor, or the Director of the Department of Urban Development or its successor as authorized in this Redevelopment Agreement, as constituting the approval or disapproval required by the City. The Mayor is hereby authorized to amend or modify the Order of Priority and use of TIF Proceeds for the Priority items as shown in Section 703 A. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of Zach Wiegert as constituting the approval or disapproval of Redeveloper.

**Section 1103. <u>Equal Employment Opportunity</u>**. Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Redevelopment Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race,

religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Section 1104. <u>Notices and Demands</u>.** A notice, demand, or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

| | |
|---|---|
| If to the City: | Mayor<br>555 South 10th Street<br>Lincoln, Nebraska 68508 |
| With a copy to: | City Attorney<br>555 South 10th Street<br>Lincoln, Nebraska 68508 |
| If to the JPA: | Mayor<br>555 South 10th Street<br>Lincoln, Nebraska 68508 |
| With a copy to: | City Attorney<br>555 South 10th Street<br>Lincoln, Nebraska 68508 |
| If to Redeveloper: | Project Oscar, LLC<br>Attn: Zachary A. Wiegert<br>11422 Miracle Hills Drive, Suite 400<br>Omaha, NE 68154 |
| With a copy to: | Dinwoodey L.L.C.<br>Attn: Jeffrey K. Woodbury<br>2733 E. Parleys Way, Suite 300<br>Salt Lake City, UT 84109 |

| | |
|---|---|
| With a copy to: | Tetrad Real Estate, LLC<br>c/oTetrad Corporation<br>Attn: W. David Scott<br>11422 Miracle Hills Drive, Suite 400<br>Omaha, NE 68154 |
| With a copy to: | Wiegert Development, LLC<br>c/o Wiegert Properties, LLC<br>Attn: Zachary A. Wiegert<br>11422 Miracle Hills Drive, Suite 400<br>Omaha, NE 68154 |
| With a copy to: | Olsson Associates<br>Attn: Todd Lorenzen<br>1111 Lincoln Mall<br>Lincoln, NE 68508 |
| With a copy to: | Seacrest & Kalkowski, PC, LLO<br>Attn: Kent Seacrest<br>1111 Lincoln Mall, Suite 350<br>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 forward to the other as provided in this Section.

**Section 1105. <u>Approval Not Unreasonably Withheld and Timely Approval</u>.** 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 Redevelopment 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 Redevelopment Agreement submits any item to another party to this Redevelopment Agreement for approval pursuant to this Redevelopment 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 1106. Access to Project Site.** Redeveloper shall permit the representatives of the City to enter Project Site at any and all reasonable times, as the City may deem necessary for the purposes of this Redevelopment Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, the City shall permit Redeveloper such entry upon the public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this section. The City's right of access granted under this Section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

**Section 1107. Termination of Provisions; Provisions Run With the Land.** This Redevelopment Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest. Except as otherwise provided herein, the provisions and covenants of this Redevelopment Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements.

**Section 1108. Federal Immigration Verification System Requirements**. In accordance with *Neb. Rev. Stat*. §§ 4-108 through 4-114, the Redeveloper agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known

as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Redeveloper shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 USC 1324b. The Redeveloper shall require any contractor constructing the Private Improvements on behalf of Redeveloper to comply with the provisions of this section.

**Section 1109. Titles of Articles and Sections**. Any titles of the several parts, articles and sections of this Redevelopment Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 1110. Mutual Cooperation.** The parties agree to mutually cooperate in constructing the various improvements each is to construct in the West Haymarket Redevelopment Area so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time.

**Section 1111. Integrated Contract; Severance of Provisions; Interpretation; Governing Law.** It is intended by the parties that this Redevelopment 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 shall remain in full force and effect unless such court action shall materially change the intent of this Redevelopment Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Redevelopment 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 as reimbursement for the cost of the City Public Improvements 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). This Redevelopment Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 1112. <u>Definitions</u>.**

A. For the purpose of this Redevelopment Agreement, the term "holder" in reference to a mortgage 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. The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

C. The term "minimum investment" shall include all costs incurred by Redeveloper when constructing the Private Improvements and Public Enhancements, including but not limited to construction costs, fees, financing costs, and land costs.

**Section 1113. <u>Audit</u>.** 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 Redevelopment Agreement, as allowed by law. City shall be subject to audit by Redeveloper with regard to the collection, disbursement, and/or funding of any of the uses set forth in Section 703 B. and shall make available to Redeveloper and/or any auditor working on behalf of Redeveloper copies of all financial and performance-related records and materials germane to this Redevelopment Agreement and the use of the Tax Increment Financing Proceeds for the Priority Expenses described in Section 703 B.

**Section 1114. Effective Date of Ad Valorem Tax Provision.** The Effective Date of the Ad Valorem Tax Provision of the Private Improvements portion of the P Street and Canopy Street Project shall be the date of Closing or July 1, 2013, whichever is earlier (the "**Effective Date**"). The City will deliver written notice to the County Assessor on or before August 1, 2013 to divide the property taxes in the Project Area and use the last certified valuation for 2012 to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147 (3) of the Nebraska Revised Statutes.

**Section 1115. Expiration**. Except as otherwise provided herein, this Redevelopment Agreement shall expire upon the expiration of the Tax Increment Period.

**Section 1116. Recording**. A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit N shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site, at the Redeveloper's expense.

**Section 1117. Representations and Warranties of Parties**.

A. Redeveloper represents and warrants to City as follows:

i. 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 Redevelopment Agreement and perform the obligations hereunder.

ii. Authority Relative to Agreement. This Redevelopment 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.

iii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by Redeveloper has been duly authorized by all necessary action by Redeveloper and except as provided in this Redevelopment 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.

B. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment 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.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by City has been duly authorized by all necessary action by the City and except as provided in this Redevelopment 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.

C. JPA represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, 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.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by JPA has been duly authorized by all necessary action by JPA and except as provided in this Redevelopment 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 JPA, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which JPA is a party.

**Section 1118. Counterparts**. This Redevelopment Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

**Section 1119. Successors and Assigns.** The provisions of this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

**Section 1120. Purpose of Agreement.** This Redevelopment Agreement has been entered into by the City to provide financing for the P Street and Canopy Street Project, an approved redevelopment project as defined in Neb. Rev. Stat. § 18-2103(12) within the Lincoln Center Redevelopment Plan.

**Section 1121. Certain Public Enhancements and City Public Improvements.** Notwithstanding any contrary provisions herein, certain Public Enhancements and City 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 Enhancements and City Public Improvements with the New Building and Skywalk. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's competitive bids for said Public Enhancements and City Public Improvements 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, 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. 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 1122. Courtyard.** The New Building will have an outdoor area that will be accessible from the Plaza as shown on Exhibit M for use by the Redeveloper, and its tenants and tenants' customers, clients and visitors as outdoor dining, retail and/or open space ("**Courtyard**"). Such Courtyard is shown on Exhibit M.

**Section 1123. Authority.** 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 Agreement and the Exhibits.

**Section 1124. Exhibits**. The following Exhibits are attached to this Redevelopment Agreement and are incorporated herein by this reference:

Exhibit A -West Haymarket Redevelopment Area
Exhibit B - Project Site Map and Legal Description
Exhibit C – Access Easement
Exhibit D -Map of the Redevelopment Project Areas
Exhibit E -Project Schematic Drawings
Exhibit F - Certificate of Completion of Improvements
Exhibit G - Façade Easement
Exhibit H - Skywalk Bridge Easement
Exhibit I - Plaza License
Exhibit J - Penal Bond
Exhibit K - Staging Plan
Exhibit L - Sources and Uses of Funds
Exhibit M – Map of the Plaza and Courtyard

Exhibit N - Memorandum of Redevelopment Agreement and Use Restrictions

[SIGNATURE AND NOTARY PAGES TO FOLLOW]

Executed by City this _____ day of _____, 2013.

"**City**"

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor of Lincoln

"**JPA**"

WEST HAYMARKET JOINT PUBLIC AGENCY

_____
Chris Beutler
Chairperson of the West Haymarket Joint
Public Agency Board of Representatives

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, on behalf of the City of Lincoln, Nebraska.

_____
Notary Public

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives, on behalf of the Joint Public Agency.

_____
Notary Public

Executed by Redeveloper this _____ day of _____, 2013.

**"Redeveloper"**

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

# EXHIBIT A

## West Haymarket Redevelopment Area

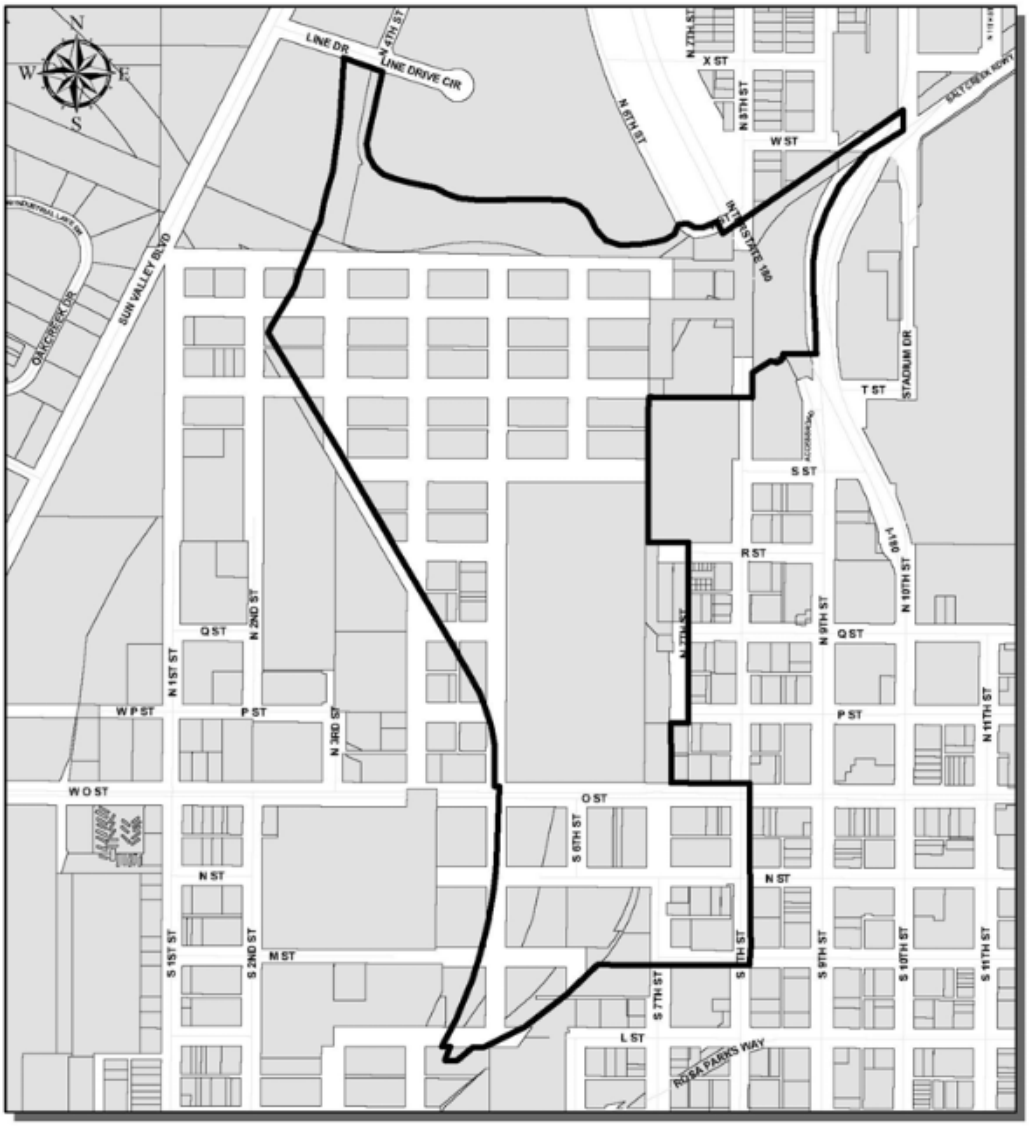



**Exhibit IV-141**

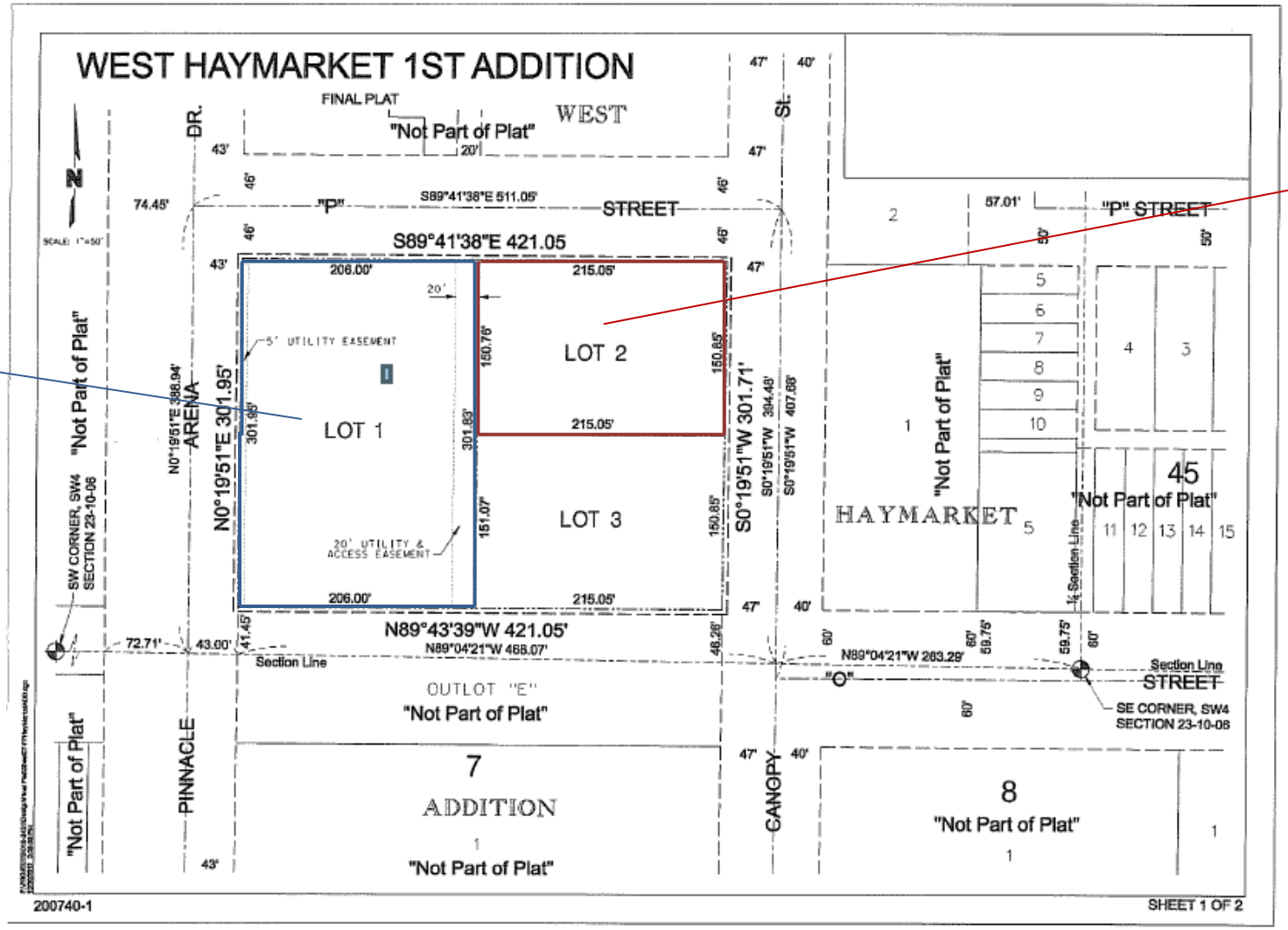
**West Haymarket Redevelopment Project Area**

Project Area Parcels Streets

City of Lincoln
Urban Development GIS
Printed 8/2007

# EXHIBIT B

## Project Site Legal Description




Project Site

Deck 3
JPA
Parking
Garage

Deck 2
JPA Parking
Garage

Deck 3
JPA Parking
Garage

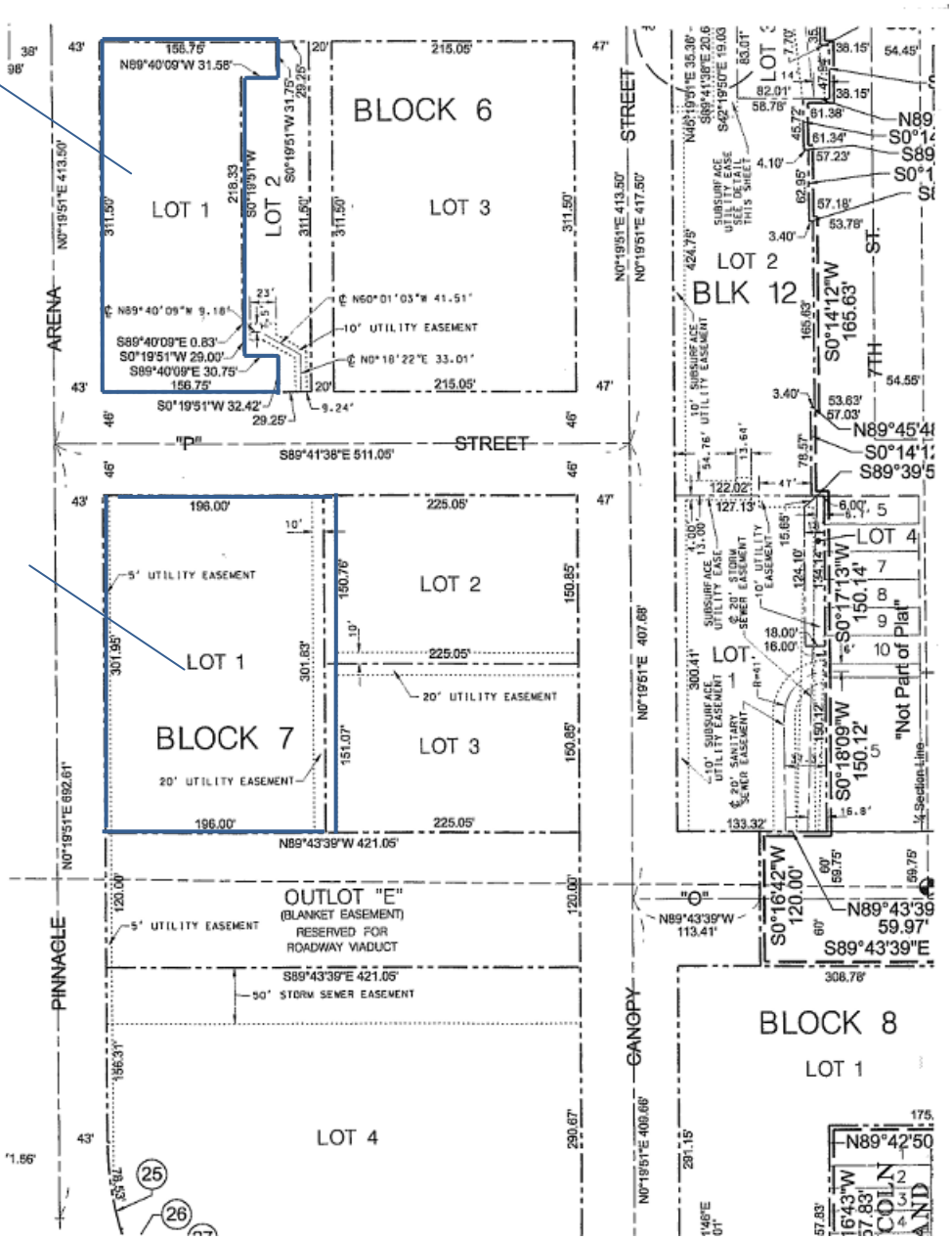


**EXHIBIT C**

**ACCESS EASEMENT**

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

ACCESS EASEMENT

THIS ACCESS EASEMENT is made and entered into this ____ day of _____, 2013 by and between the WEST HAYMARKET JOINT PUBLIC AGENCY, herein called "**JPA** or "**Grantor**", and PROJECT OSCAR, LLC, a Nebraska limited liability company, herein called "**Redeveloper**".

RECITALS

A. The JPA is the current owner of Lot 1 ("**Lot 1**") and Lot 3 ("**Lot 3**"), West Haymarket 1st Addition, and Lot 4 ("**Lot 4**"), Block 7, West Haymarket Addition, and Outlot E, Block 7, West Haymarket Addition (**"Outlot E"**), all in Lincoln, Lancaster County, Nebraska.

B. Redeveloper is the owner of Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska.

C. JPA and Redeveloper have entered into a Redevelopment Agreement for the Redeveloper's development of Lot 2, West Haymarket 1st Addition (**"Project Site"**) and the construction thereon of a new building (**"New Building"**) consisting of approximately 80,000 square feet of office space and 9,900 square feet of retail space.

D. Redeveloper is desirous of obtaining secondary vehicular/pedestrian access from P Street and Canopy Street to the Project Site to enable motor vehicle deliveries to the New Building and the JPA is willing to grant such secondary access.

NOW, THEREFORE, in consideration of the above Recitals and performance of the covenants and agreements between Redeveloper and JPA in the Redevelopment Agreement, it is hereby agreed as follows:

1. JPA does hereby grant and convey unto Redeveloper, its successors and assigns a permanent non-exclusive easement for two-way vehicular access and pedestrian access in, upon, and over all of the following described property to wit:

"**North Section Easement Premises":** The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska

and

**"South Section Easement Premises 1":**

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E" & LOT 4, BLOCK 7, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FROM THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF SOUTH 14 DEGREES 03 MINUTES 08 SECONDS EAST, A DISTANCE OF 90.81 FEET TO A POINT; THENCE SOUTH 0 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 322.73 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 15 MINUTES 31 SECONDS EAST, A DISTANCE OF 320.22 FEET TO A POINT; THENCE NORTH 14 DEGREES 03 MINUTES 08 SECONDS WEST, A DISTANCE OF 93.40 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,272 SQUARE FEET MORE OF LESS.

(collectively "**Easement Premises**") for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site from P Street and "N" Street. The Easement Premises (North Section Easement Premises and South Section Easement Premises 1) is shown on Exhibit 1, which is attached hereto and incorporated herein by this reference.

Notwithstanding the above, the JPA shall reserve the right at any time to remove the Easement Premises from Lot 4 and change the above-described portion of Outlot E by filing an amendment to this Easement Agreement which shall remove and delete South Section Easement 1 with the following South Section Easement 2:

**"South Section Easement Premises":**

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E", WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT "E"; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OF LESS.

for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site between "P" Street and Canopy Street. South Section Easement Premises 2 is shown on Exhibit 2, which is attached hereto and incorporated herein by this reference.

Upon filing said amendment to this Easement Agreement the **Easement Premises** shall include the North Section Easement Premises and South Section Easement Premises 2.

The Easement Premises is subject to the following terms and conditions:

(1) The Easement Premises is subject to the utility easement on the east twenty (20) feet of Lot 1 and the utility easement on south ten (10) feet of Lot 2 and the north ten (10) feet of Lot 3, dedicated on the final plat of West Haymarket 1st Addition, filed of record with the Lancaster County Register of Deeds as Instrument No. 2013_____ on _____, 2013, and the blanket utility easement over Outlot E, dedicated in the final plat of West Haymarket Addition filed of record with the Lancaster County Register of Deeds as Instrument No. 2012057225 on November 9, 2012.

(2) Responsibility for the cost of construction, maintenance, or repair of the Easement Premises shall rest with JPA and no responsibility thereof shall accrue to the Redeveloper by reason of the benefits from this Easement. The services to be provided by the Grantor shall include hard surface repairs and replacement, but not snow removal and cleaning.

(3) This Easement shall be permanent and shall be appurtenant to and run the Project Site.

(4) This Easement shall be exclusively used by Redeveloper for motor vehicle and pedestrian ingress and egress.

JPA covenants that JPA is the owner of the Easement Premises and has legal right, title and capacity to grant the Easement granted herein.

JPA is granting the uses herein specified without divesting the JPA of title and ownership of the right to use and enjoy the Easement Premises for any purpose except the construction thereof of permanent buildings, subject only to the right of Redeveloper to use the same for the purposes herein expressed, and subject to any easements of record heretofore granted to other parties.

It is further agreed that this Access Easement shall be filed with the office of the Register of Deeds of Lancaster County, Nebraska, and indexed against Lots 1-3, West Haymarket 1st Addition, and Outlot E, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska and shall thereafter run with the land and be finding upon all parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, JPA has executed this Easement as of this ____ day of _____, 2013.

"**JPA**"

**West Haymarket Joint Public Agency**
a political subdivision and body corporate
politic of the State of Nebraska

By: _____
Chris Beutler, Chair of the Board of
Representatives of the West Haymarket
Joint Public Agency

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

**"Redeveloper"**

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

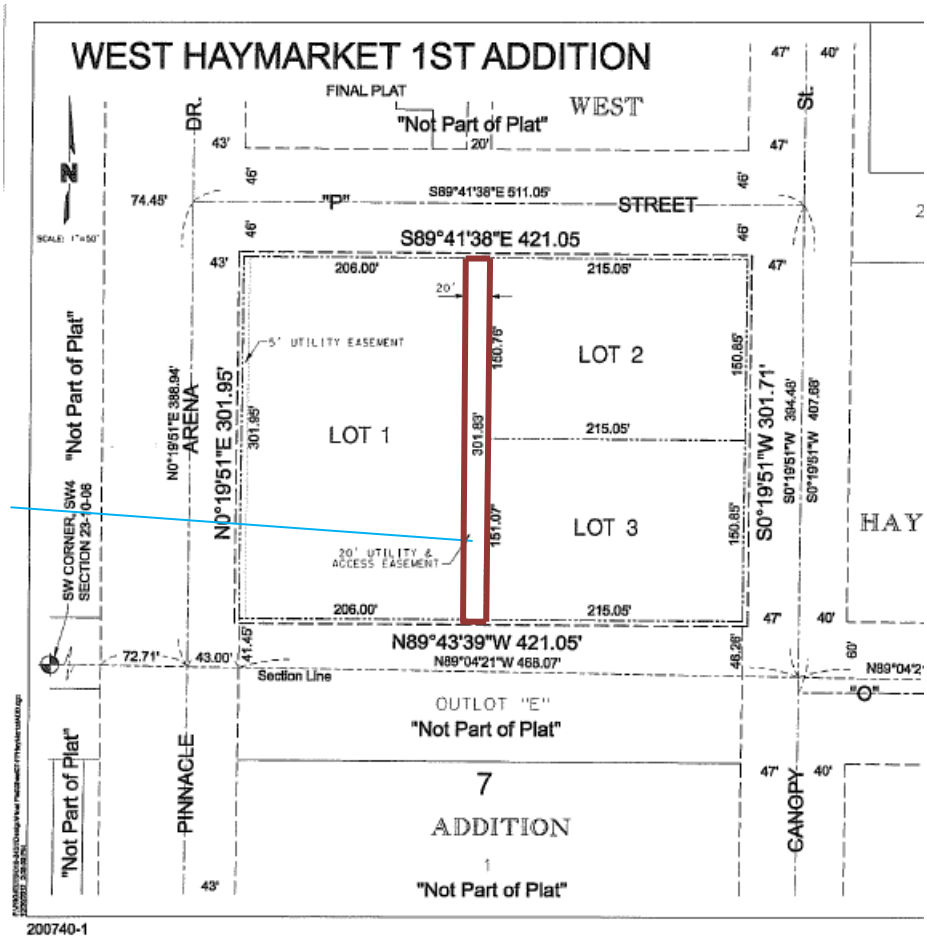
(Seal)

_____
Notary Public

**Exhibit 1**

**North Section Easement Premises**

Access Easement

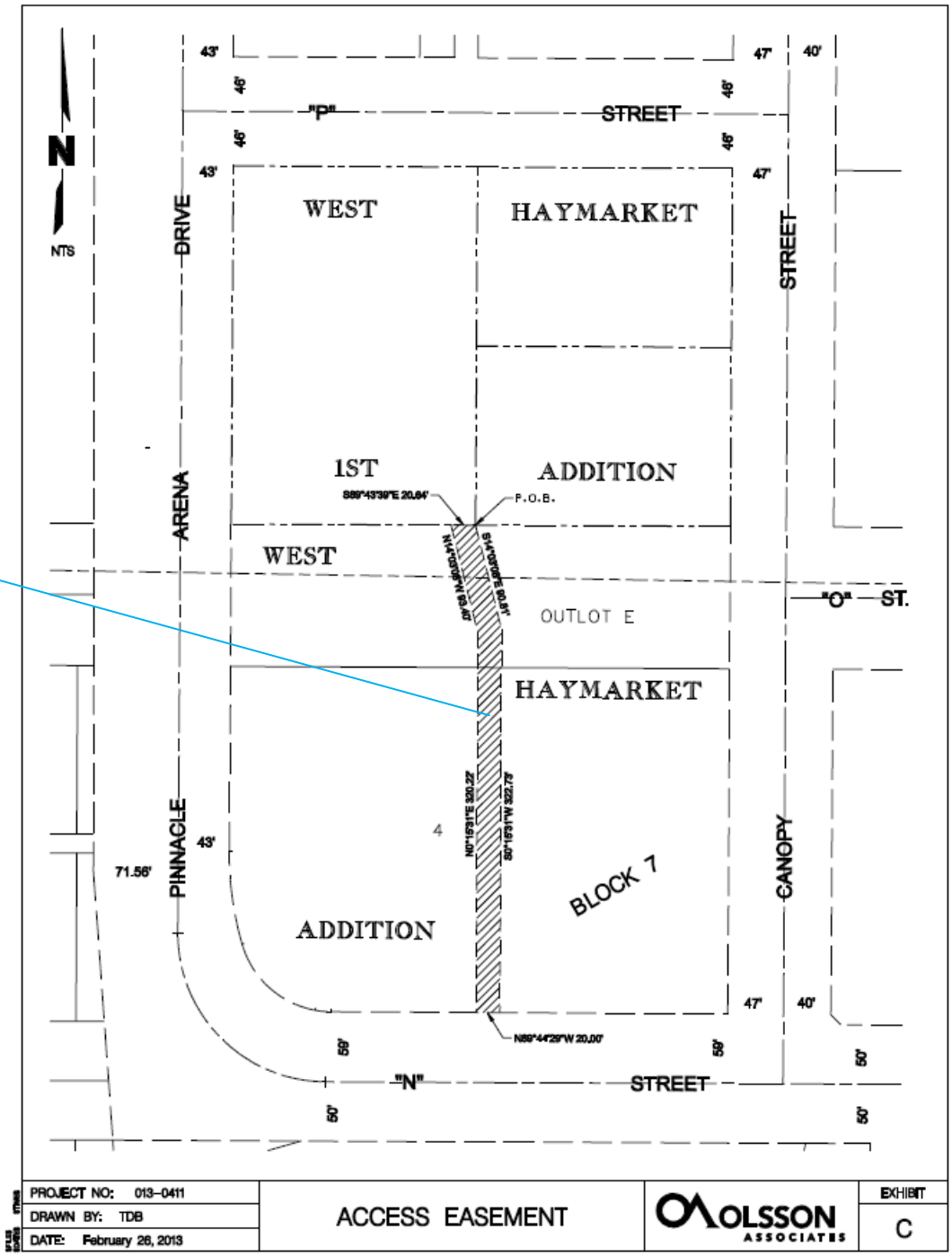



**North Section Easement Premises**

The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County Nebraska.

## South Section Easement Premises 1

Access Easement



## South Section Easement Premises 1

**PERMANENT EASEMENT**

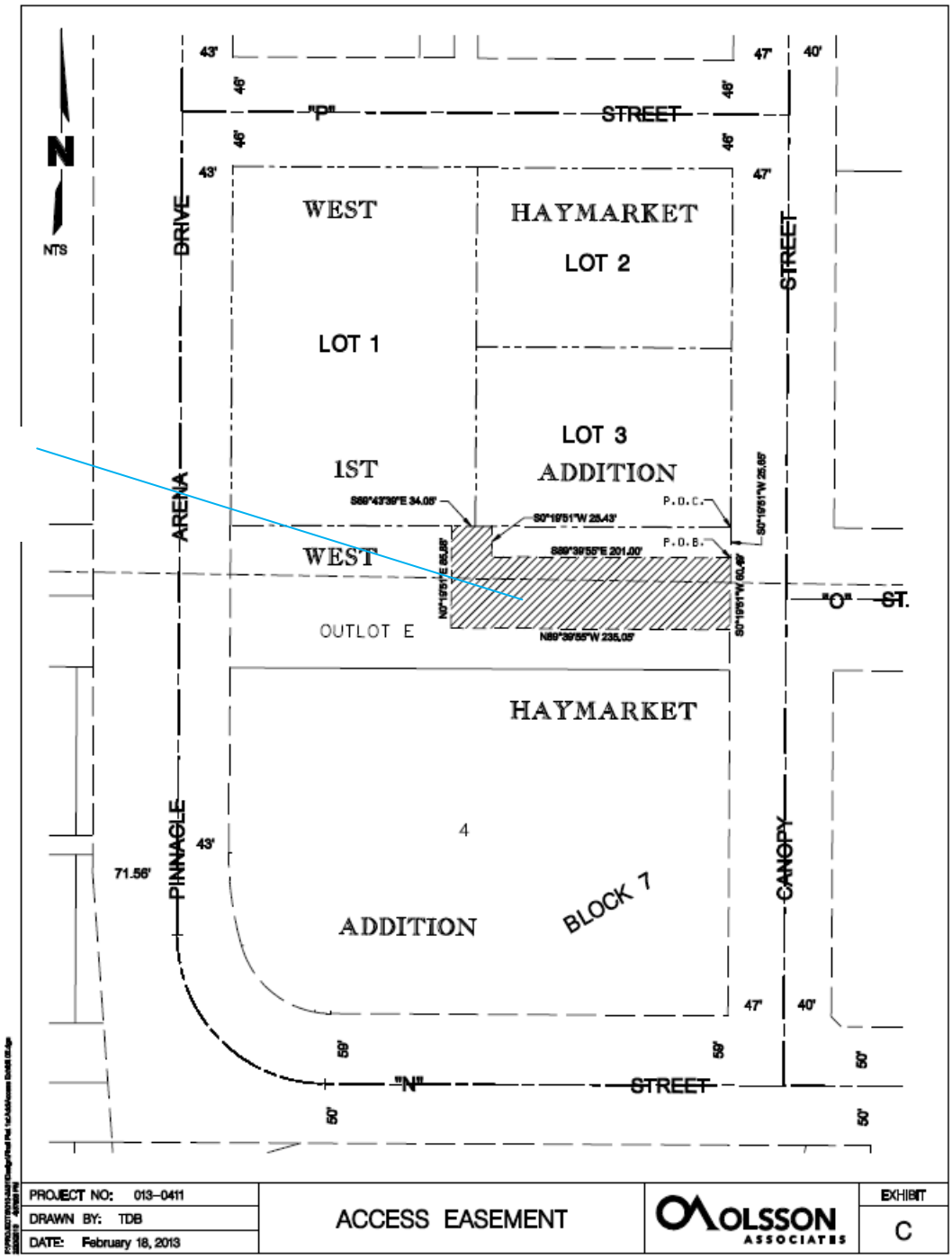
A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E" & LOT 4, BLOCK 7, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FROM THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF SOUTH 14 DEGREES 03 MINUTES 08 SECONDS EAST, A DISTANCE OF 90.81 FEET TO A POINT; THENCE SOUTH 0 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 322.73 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 15 MINUTES 31 SECONDS EAST, A DISTANCE OF 320.22 FEET TO A POINT; THENCE NORTH 14 DEGREES 03 MINUTES 08 SECONDS WEST, A DISTANCE OF 93.40 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,272 SQUARE FEET MORE OF LESS.

## South Section Easement Premises 2

Access Easement



## South Section Easement Premises 2

**PERMANENT EASEMENT**

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E", WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT "E"; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OF LESS.

# EXHIBIT D

## Map of the Redevelopment Project Area

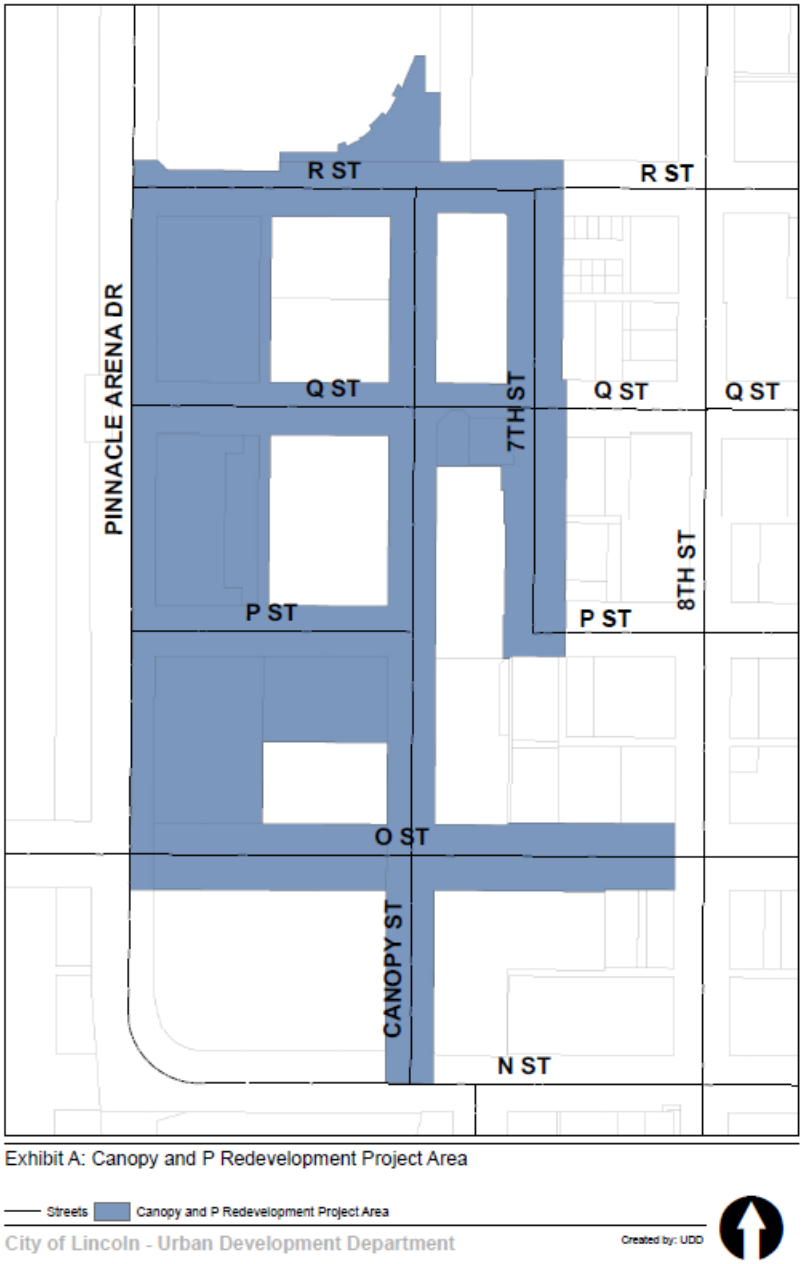


**EXHIBIT E**

**PROJECT SCHEMATIC DRAWINGS**

car associates

oscar associates

**EXHIBIT F**

**CERTIFICATE OF COMPLETION OF IMPROVEMENTS**

Return the Original to:

Project Oscar, LLC
Attn: Zachary A. Wiegert
11422 Miracle Hills Drive, Suite 400
Omaha, NE 68154

**CERTIFICATE OF COMPLETION OF IMPROVEMENTS**

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned Redeveloper certifies, represents and warrants to the City of Lincoln, Nebraska, ("**City**") the conclusive determination and certification with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit:

> Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska,

that the Private Improvements required to be constructed by the undersigned "**Redeveloper**" upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated as of the _____ day of _____, 2013, between the City, the West Haymarket Joint Public Agency ("**JPA**"), and the Redeveloper, as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the City, JPA and Redeveloper and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

**"Redeveloper"**

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

ACCEPTED by the City of Lincoln, Nebraska, this _____ day of _____, 201___.

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 _____, 201__, by Chris Beutler, Mayor of the City of Lincoln.

_____
Notary Public

**EXHIBIT G**

**FAÇADE EASEMENT AGREEMENT**

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

**FAÇADE EASEMENT AGREEMENT**

THIS FAÇADE EASEMENT AGREEMENT (the "**Agreement**") is made this as of this ____ day of _____, 2013 by and between Project Oscar, LLC, a Nebraska limited liability company ("**Grantor**"), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska ("**Grantee**").

RECITALS

A. Grantor owns certain real estate located in Lincoln, Lancaster County, Nebraska, legally

described as:

Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Property**").

B. Grantor entered into a Redevelopment Agreement, dated as of _____, 2013 between the Grantor as Redeveloper, the Grantee as the City and the West Haymarket Joint Public Agency ("**JPA**"), as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the Grantor, Grantee and JPA and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska (the "**Redevelopment Agreement**") 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 new building constructed on the Property (the "**New Building**"), Grantor agreed to make certain improvements to the vertical exterior façade of the New Building (the "**Façade**") for the benefit of the public. Under the Redevelopment Agreement Grantor is receiving tax increment financing from Grantee 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, Grantor and Grantee do now hereby agree as follows:

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

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

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

b. Grantor shall not undertake, or allow to be undertaken, any material changes to the Façade, without the express written consent of Grantee. 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 Grantor from implementing any ordinary or necessary maintenance as set forth in Section 3 below or permitted signage.

3. Façade Maintenance. Grantor 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 Grantor desires to make any material changes to the Façade, Grantor shall give Grantee 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 Building or any part thereof shall be damaged by fire or other casualty, then Grantor shall use reasonable effort to reconstruct the Façade to the condition required under this Agreement. If the Building is damaged to such an extent that Grantor determines that reconstruction of said Building is not feasible and provides Grantee 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 Building.

6. Inspection. Grantee 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 fifteen (15) years from the date of completion of the improvements to the Façade. Provided, however, this Agreement shall terminate at any earlier date that the Redevelopment Agreement is terminated and is no longer in effect.

8. Public Access. Grantor 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 Building. Grantor shall have no obligation under this Agreement to allow the general public to view the interior of the Building.

9. Indemnification. Grantor shall defend, indemnify and hold Grantee 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 Grantor arising out of the conveyance of or possession of the Façade Easement.

10. Binding Effect. This Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heir, executors, administrators, successors and assigns of Grantor.

**[SIGNATURE PAGE FOLLOWS]**

This Façade Easement Agreement is effective as of the date first stated above.

**"Grantor"**

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

GRANTOR ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

**"Grantee"**

THE CITY OF LINCOLN, Nebraska,
a municipal corporation

Attest: _____ By: _____
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, Nebraska, a municipal corporation.

_____
Notary Public

**EXHIBIT H**

**SKYWALK BRIDGE EASEMENT**

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

**SKYWALK BRIDGE EASEMENT**

That the **WEST HAYMARKET JOINT PUBLIC AGENCY**, herein called "**JPA**", record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, and the further consideration of the performance of the covenants and agreements by Redeveloper as hereinafter set out and expressed, does hereby GRANT, REMISE and RELINQUISH unto PROJECT OSCAR, LLC, a Nebraska limited liability company, and its successors and assigns, (collectively "**Redeveloper**"), the RIGHT, PRIVILEGE and NONEXCLUSIVE PERPETUAL SKYWALK BRIDGE EASEMENT to permit the design, construction, reconstruction, inspection, support, footings, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the Redeveloper's New Building located on Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska ("**New Building Property**") and the JPA Parking Garage ("**Deck 3**") located on Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska ("**Deck 3 Property**"), and to permit pedestrian ingress and egress from the New Building over and through the JPA Parking Garage (Deck 3) including Deck 3 vertical access between street level and the private skywalk bridge and to permit the construction, maintain, repair and replace said skywalk bridge (collectively "**Easement**").

The **"Easement Premises**" includes: (i) the width and location for said skywalk bridge and area necessary to construction, maintain, repair and replace said skywalk bridge between the New Building and the JPA Parking Garage (Deck 3) ("Skywalk Bridge Permanent Easement Area") and (ii) the pedestrian vertical access between street level and the Skywalk Bridge Permanent Easement ("Vertical Access Permanent Easement Area") and is shown on Exhibit A

Said Easement shall run with the land, New Building Property and Deck 3 Property for the benefit the New Building Property.

TO HAVE AND TO HOLD UNTO THE REDEVELOPER, its successors and assigns, so long as the JPA Parking Garage (Deck 3) is used as a parking garage and so long as the private skywalk bridge shall be in existence, subject to early termination as provided below, together with the right of ingress and egress, for the purpose of designing constructing, reconstructing, inspecting, supporting, connecting, operating, maintaining, repairing and replacing the skywalk bridge and appurtenances thereto, located thereon, in whole or in part, at the will of Redeveloper, it being the intention of the parties hereto that JPA is hereby granting the uses herein specified without divesting JPA of title and ownership of the rights to use and enjoy the above described JPA Parking Garage (Deck 3).

This Easement shall be subject to the following terms and conditions:

(1) Prior to commencement of construction, reconstruction or repair of the skywalk bridge, Redeveloper shall submit for the JPA's review and approval, architectural and engineering plans for the construction, reconstruction or repair of the skywalk bridge.

(2) Redeveloper shall cause the skywalk bridge to be constructed, reconstructed or repaired in substantial conformance with the skywalk bridge construction plans as approved by the JPA.

(3) Responsibility for the cost of the private skywalk bridge and corridors within the New Building shall rest with the Redeveloper and no responsibility thereof shall accrue to the JPA by reason of the Redeveloper's benefits from this Easement. The services to be provided by the Redeveloper shall include, but not be limited to, the design, construction, reconstruction, inspection, support, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the New Building and the JPA Parking Garage (Deck 3).

(4) Redeveloper shall indemnify, defend and save harmless the JPA or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney's fees arising out of the activities of Redeveloper or of Redeveloper's contractors or their agents, employees or invitees, in constructing, maintaining, operating, repairing or reconstructing the skywalk bridge, or the negligent or wrongful use of the Easement by Redeveloper or Redevelopers employees, invitees or agents. In this connection Redeveloper shall maintain during the life of this Easement, Commercial General Liability Insurance, naming and protecting Redeveloper and the JPA against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from work under this Easement whether such work be by Redeveloper or by any contractor, or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of $2,000,000 and $5,000,000 aggregate.

i. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and

ii. The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of coverage: Contractual Liability, Products Liability and/or Completed Operation.

The coverage required herein shall be subject to review and the minimum coverage amounts may be increased at any time by the JPA after a public hearing. At all times the Redeveloper shall keep on file with the City Clerk for the City of Lincoln, Nebraska a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for the City of Lincoln, Nebraska for conformance with this section evidencing the existence of valid and effective policies of insurance naming the JPA as an additional insured for the coverage required herein, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty (30) days' notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declaration page of such policies.

(5) This Easement shall be permanent and shall be appurtenant to and run with the New Building Property. The JPA shall have the right to determine the location of the access corridor through the JPA Parking Garage (Deck 3).

(6) Upon completion of construction of the skywalk bridge the Redeveloper shall be responsible for managing, maintaining, operating, repairing, and cleaning the skywalk bridge, the same to be done in a good and workmanlike manner.

(7) This Easement shall not be released, terminated, revoked, amended, or modified, in any manner, without the express written consent of the City of Lincoln and the Redeveloper. Any purported release, termination, revocation, amendment, or modification of this Easement without such written consent shall be null and void and of no force or effect.

(8) JPA, at its expense, will cause the design and construction of Deck 3's footings, foundation and exterior walls to permit the connection of the skywalk bridge to Deck 3.

(9) Notwithstanding any contrary provision herein, the City shall reserve all its rights to acquire by voluntary negotiation, and, if necessary, by the exercise of the power of eminent domain and payment of just compensation for the skywalk bridge and terminate this Easement for public purposes after the adoption by it of

a resolution or ordinance declaring that the acquisition of skywalk bridge and terminate this Easement is necessary for such purposes.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF, we have hereunto set our hands as of this ____ day of _____, 2013.

"**JPA**"

**West Haymarket Joint Public Agency**
a political subdivision and body corporate
politic of the State of Nebraska

By: _____
Chris Beutler, Chair of the Board of
Representatives of the West Haymarket
Joint Public Agency

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

**"Redeveloper"**

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

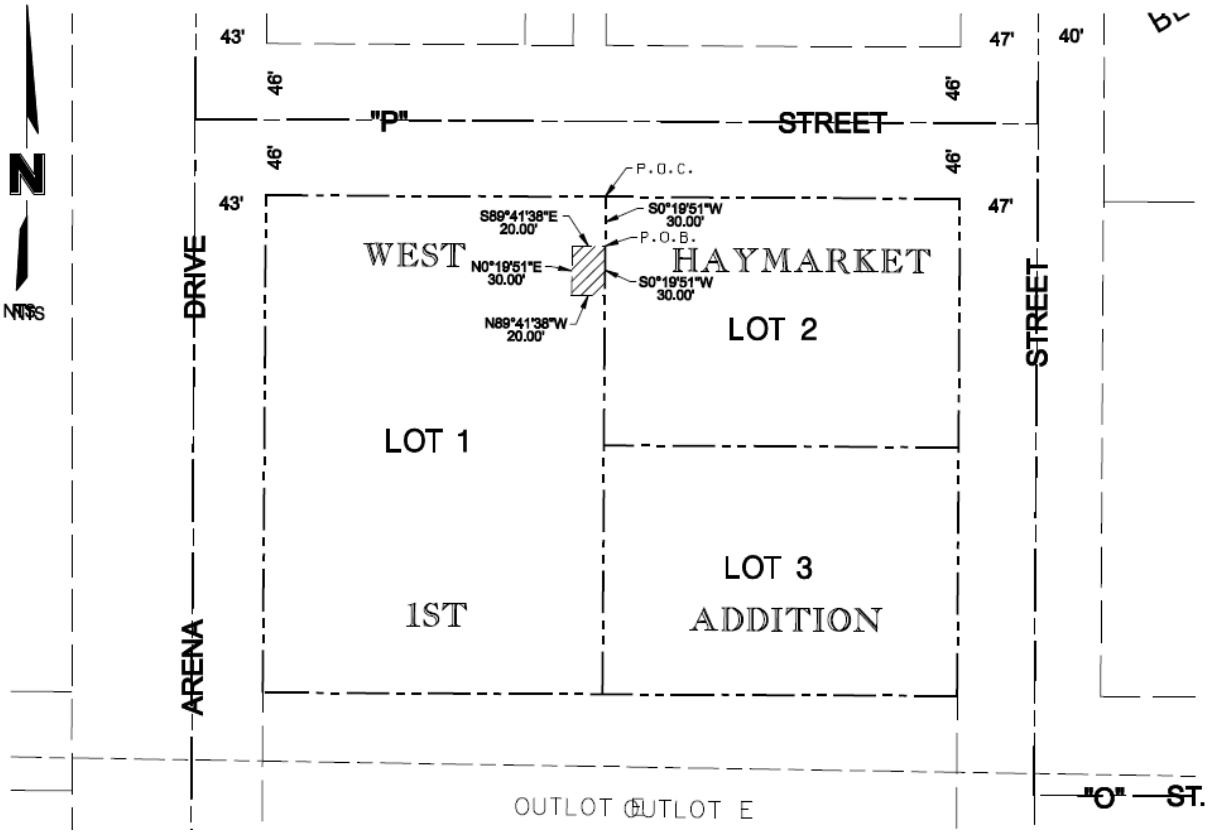
On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Exhibit “A”

Skywalk Bridge Permanent Easement Area



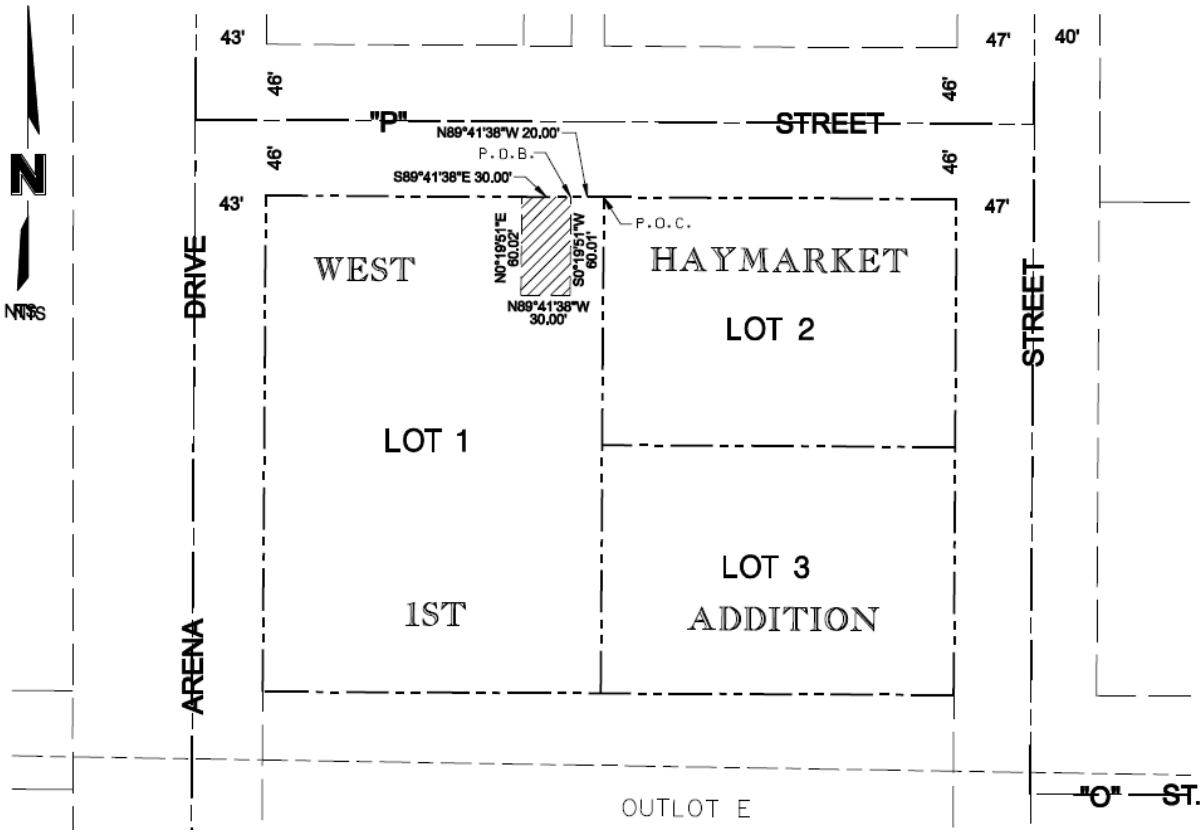

Legal Description

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.01 ACRES OR 600 SQUARE FEET MORE OF LESS.

Vertical Access Permanent Easement Area




Legal Description

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 60.01 FEET TO A POINT; THENCE NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 60.02 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.04 ACRES OR 1,800 SQUARE FEET MORE OF LESS.

**EXHIBIT I**

**PLAZA LICENSE AGREEMENT**

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

**PLAZA LICENSE AGREEMENT**

THIS PLAZA LICENSE AGREEMENT (the "**Agreement**") is made as of this ____ day of _____, 2013 by and between PROJECT OSCAR, LLC, a Nebraska limited liability company, ("**Grantor**"), and the City of Lincoln, Nebraska, a municipal corporation ("**Grantee**").

**RECITALS**

A. Grantor owns or will own certain real estate located in Lincoln, Lancaster County, Nebraska, legally described as Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Property**").

B. Grantor has identified an area of the Property that are accessible by the general public for nonexclusive limited uses, as defined in this Agreement. Such area include the outdoor plaza ("**Plaza**"), located on the Property as described on the attached Exhibit 1.

D. Grantor has identified an area of the Property that is accessible by the Grantor and its tenants for nonexclusive limited uses as an outdoor plaza ("Courtyard"), located on the Property as described on the attached Exhibit 2.

E. Grantor entered into the West Haymarket Redevelopment Agreement (the "**Redevelopment Agreement**") for, inter alia, the redevelopment of certain Redevelopment Areas in the West Haymarket, including the Property, dated as of _____, 2013 between the Grantor as Redeveloper, the Grantee as the City and the West Haymarket Joint Public Agency ("**JPA**"), as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the Grantor, Grantee and JPA and

recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

D. Pursuant to the Redevelopment Agreement, and to ameliorate the blighted and substandard conditions of the Property, Grantor agrees to grant a nonexclusive limited license for the Grantee and its permittees to use the Plaza. Under the Redevelopment Agreement, Grantor is utilizing tax increment financing facilitated by Grantee to improve the Plaza provided that the general public is granted certain rights to have access to the Plaza as described hereunder.

E. This Agreement sets forth the parties' rights and obligations with respect to the license of the Plaza.

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

1. General Conditions of Use.

a. Subject to the terms of this Agreement, Grantor hereby grants to Grantee for the benefit of the public a permanent limited, nonexclusive license to use the Plaza during the useful life of the Plaza. This license shall permit the Grantee and the general public rights for use of the Plaza in a manner that does not unreasonably interfere with Grantor's or any other permittee or authorized person's nonexclusive use of the Plaza, Courtyard or Property.

b. Nothing in this Agreement is intended to permit any of the following enumerated or similar activities by the permittees in the Plaza: loitering, demonstrating, picketing, soliciting, begging, camping, littering, sunbathing, carrying firearms, engaging in any illegal, offensive, indecent, obscene, vulgar, lewd or disorderly speech, dress or conduct, or otherwise disturbing the peace ("**Prohibited Activities**").

c. Grantor shall have the right to implement use restrictions, rules or regulations, subject to Grantee’s approval which shall not be unreasonably withheld, which may include the right to deny access to the Plaza to persons who are disorderly or intoxicated or engaging in any of the Prohibited Activities.

d. The rights and the license granted herein for the Plaza shall be in effect from 6:00 a.m. to 10:00 p.m. each day or the closing hours of the retail uses located on the Property, whichever is later, (the "Authorized Hours"). Provided, however, Grantor reserves the right to extend or decrease the Authorized Hours on certain specific days or for specific events if Grantor has a reasonable necessity or justifiable cause to do so. Grantor may deny access to the Plaza during the hours that do not constitute the Authorized Hours.

e. Notwithstanding any contrary provision herein, the Grantor and its tenants shall have the right to restrict the public from having access to the Plaza for private special

events, up to twenty (20) days per year. "**Private Special Events**" shall mean events formally sponsored by the Grantor or its tenants that require additional personnel or barriers to restrict or control access to the Plaza; provided that, the Property's building's entryways and Courtyard shall not be blocked nor barricaded. Grantor and Grantee shall mutually agree upon a calendar that outlines the permitted dates for the Private Special Events.

f. The Grantee and its designated users shall have the right restrict the public from having access to the Plaza for city special events, up to ten (10) days per year. "**City Special Events**" shall mean events formally sponsored by the Grantee or its designated users that require additional personnel or barriers to restrict or control access to the Plaza; provided that, the Property's building's entryways and Courtyard shall not be blocked nor barricaded. Grantor and Grantee shall mutually agree upon a calendar that outlines the permitted dates for the City Special Events. After each City Special Events, the Grantee or its sponsoring user, at their expense, shall be responsible to immediately clean up and remove all trash and event items and restore the Plaza to its pre-event condition.

g. Grantor shall not deny access to the Plaza to any persons based on their age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability or veteran status.

h. Grantor shall have the ability to deny access to the Plaza to any persons under the legal drinking age during certain hours or Private Special Events and City Special Events (collectively "**Special Events**") where the Plaza constitutes a licensed premises for liquor license purposes.

i. Guide dogs or other animals specifically trained to assist persons utilizing the Plaza shall be permitted. Persons may bring other animals, birds, or other living creatures ("**Other Animals**") into the Plaza, subject to the Grantor's rules and regulations; provided however, Grantor shall not prohibit dogs being offered for adoption during City Special Events.

j. The Grantee, to the fullest extent permitted by law, agrees to indemnify, save, and hold harmless the Grantor , its tenants, managers, members, officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and reasonable attorneys' fees (if permitted by applicable law) arising out of, claimed on account of, or in any manner predicated upon losses, damages, bodily injury, death, or property loss/damage resulting from, related to, caused by, or arising out of the City Special Events or the Grantee or its entities hosting or sponsoring a City Special Event (collectively "**City Special Event Sponsor**"), or their members, directors, officers, agents, servants, employees, contractors, invited quests, visitors, Other Animals, or others who may be on the Plaza for City Special Events (collectively "**City Special Event Parties**"). This section will not require Grantee to indemnify, defend, or hold harmless Grantor for any losses, claims, damages, and expenses arising out of ore resulting from the sole

negligence of the Grantor.

Grantee further agrees that it shall require any and all City Special Event Sponsor to maintain General Liability Insurance, at its own expense, during the of City Special Event's set-up, event, take-down, clean up, removal of all trash and event items, and restoration of the Plaza to its pre-event condition, naming and protecting said City Special Event Sponsor, the Grantee, and the Grantor, along with their members, directors, officers, agents, servants, employees, tenants, and visitors as additional insured against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury, and (d) property damage which may arise from the City Special Events whether caused by or as a result of the City Special Event Sponsor, or the City Special Event Parties. The minimum acceptable limits of liability to be provided by such insurance shall be $1,000,000 for each Occurrence and $3,000,000 aggregate. The minimum amount of liability insurance coverage is subject to reasonable review and increases by the Grantor and Grantee every five (5) years based upon the reasonably comparable to the liability coverage generally carried by other owners of buildings similar to the Property. The Grantee hereby agrees to deliver or cause the City Special Event Sponsor to deliver to the Grantor within ten (10) days of the City Special Events, a copy of the certificate or certificates of insurance evidencing the purchase of such insurance in a form reasonably acceptable to the Grantor, and including such endorsements necessary to afford additional insured status.

k. The Plaza shall at all times remain the private property of the Grantor and nothing in this Agreement or the granting of this License shall be deemed to create or constitute a public forum, limited or otherwise.

l. Grantor shall, at its own cost and expense, perform all ordinary and/or necessary maintenance and repairs on the Plaza.

2. Mutual Cooperation. The parties specifically agree to mutual cooperation in modifying the terms and conditions of this License to avoid unintended consequences for all parties.

3. Binding Effect. Unless defined within, this Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heirs, executors, administrators, successors and assigns of Grantor.

[SIGNATURE PAGES TO FOLLOW]

"**Grantor**"

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company, Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, Member

By: TETRAD CORPORATION, a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

GRANTOR ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

"**Grantee**"

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor

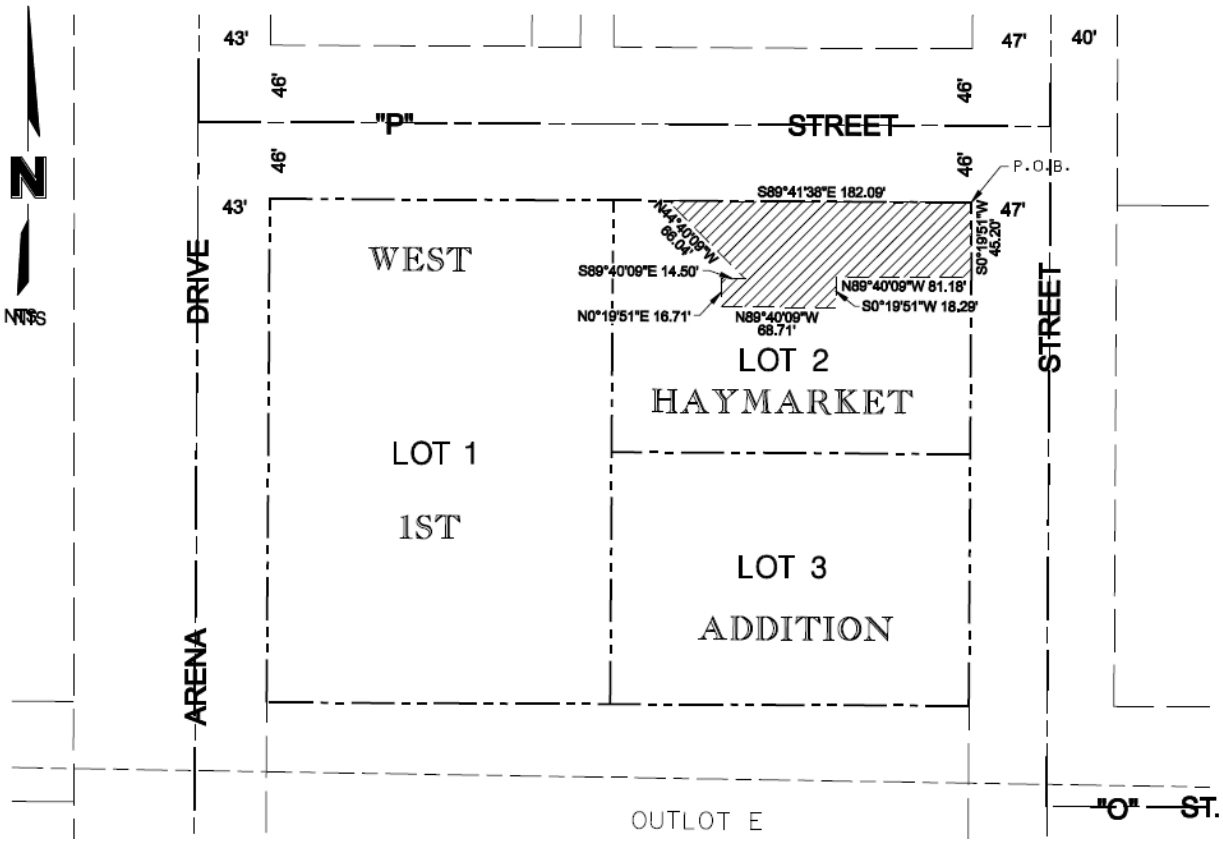
STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

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

_____
Notary Public

Exhibit 1

Plaza




Plaza License Area Legal Description

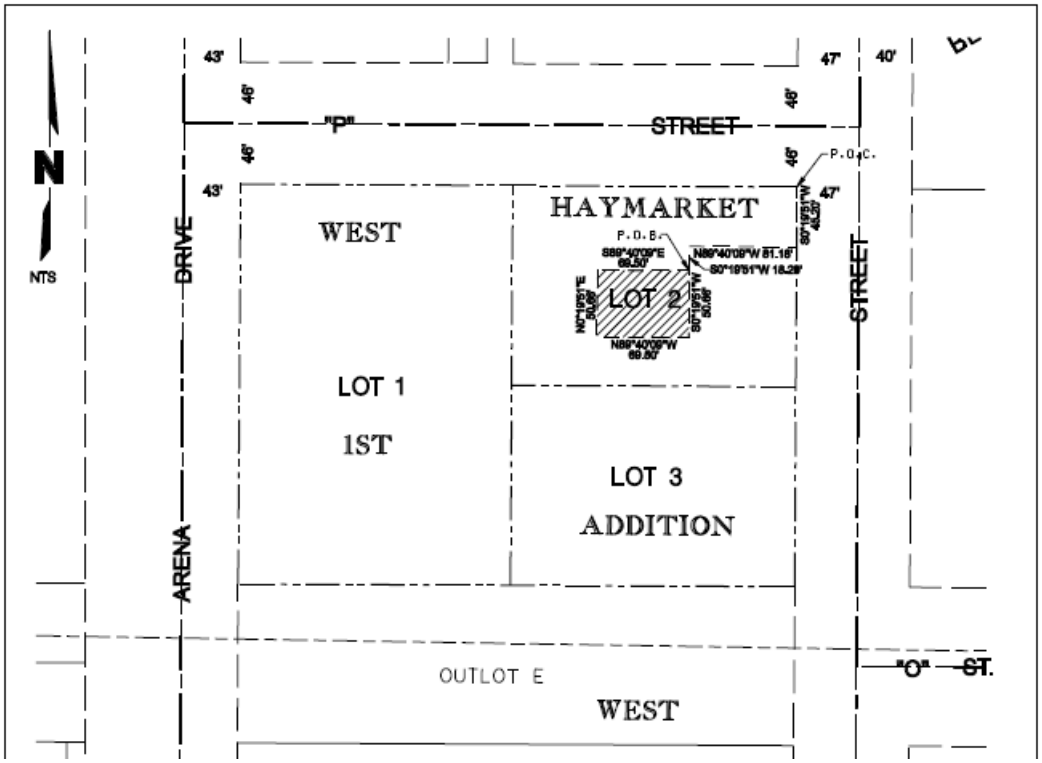
A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 2, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 45.20 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 81.18 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 18.29 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 68.71 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 16.71 FEET TO A POINT; THENCE SOUTH 89 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 14.50 FEET TO A POINT; THENCE NORTH 44 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 66.04 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 182.09 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,441 SQUARE FEET MORE OF LESS.

Exhibit 2

Court Yard




A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 2, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 45.20 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 81.18 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 18.29 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 50.66 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 69.50 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 50.66 FEET TO A POINT; THENCE SOUTH 89 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 69.50 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.08 ACRES OR 3,521 SQUARE FEET MORE OF LESS.

**EXHIBIT J**

Bond No. _____

**PENAL BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we, **Project Oscar, LLC**, a Nebraska limited liability company, as **Principal**, and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Nebraska, as **Surety**, are held and firmly bound unto the **City of Lincoln, Nebraska**, as **Obligee**, for the use of all persons entitled thereto, under Neb. Rev. Stat. § 18-2151, in the penal sum of **Two Million Five Hundred Thousand Dollars ($2,500,000.00),** lawful money of the United States of America and to the faithful payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators or, assigns, firmly by this presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That,

WHEREAS, Principal has entered into the City of Lincoln Redevelopment Agreement (P Street and Canopy Street Project), dated _____, 2013 (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided in part for the building and construction of Private Improvements as defined in said Redevelopment Agreement to be funded in part by tax increment financing pursuant to the Nebraska Community Development Law, upon the condition that Principal at all times promptly make payment of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials used in the prosecution of said Private Improvements provided for in the Redevelopment Agreement.

NOW, THEREFORE, if Principal shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials in the prosecution of the Private Improvements as require the execution of this Penal Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, Surety shall promptly indemnify and save harmless the Obligee to the extent any payment in connection with the carrying out of the prosecution of the Private Improvements provided for in the Redevelopment Agreement which Obligee may be required to make under the law, provided that the aggregate liability of Surety of any default(s) hereunder by the Principal shall in no event exceed the penal sum of this Bond.

All persons who have supplied or furnished the Principal, its Contractors and/or Subcontractors with labor or materials in the prosecution of the Private Improvements provided for in the Redevelopment Agreement shall have the direct right of action under this bond subject to the Obligee's priority.

**[SIGNATURE PAGE FOLLOWS]**

Signed and dated this ___ day of _____, 2013.

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

# EXHIBIT K

## Staging Plan and Map

## STAGING PLAN – TERMS AND CONDITIONS

1. The foregoing West Haymarket Construction, Staging, and Parking Coordination Plan (Effective 4/1/13) is not considered a final document but a working drawing. If the JPA determines changes are needed consideration will be given to the effect on all projects in order to limit impacts to the extent reasonably feasible.
2. There will need to be a high level of coordination and teamwork in order to accomplish all projects in the area.
3. All non-building site areas (roads, staging areas, parking lots, etc.) are to be left in the same or better condition vs. before their use.
4. Access roads have been installed for everyone's use and should be maintained as such. Any project causing damage to the access road will be required to repair the road.
5. If additional rock/material is requested for access roads or construction entrances, the project requesting additional rock will be required to add additional rock at its own cost and expense.
6. The temp power location on "Q" is meant to serve the DEC, Deck 1, and TDP Projects. It will remain in place until no longer needed for those projects.
7. Useable soil spoils from foundation and utilities work may be able to stay on site and provide a savings to both the JPA and the project involved. PC Sports shall be called prior to hauling soil spoils off site.
8. Each project is to have and execute a SWPPP program. Special attention needs to be paid to track off cleanup and any potential run-off.
9. If any fences, job trailers, or items that are not easily moved are to be located in the staging or ROW areas their location must be coordinated with PC Sports. If such fences, job trailers or items need to be relocated it will be at no additional cost to the JPA.
10. Prior to moving to the staging site, a proposed site laydown plan is to be sent to PC Sports for review and approval.
11. The JPA may require a screened joint site fence to be assembled between the Canopy and Pinnacle Arena Drive from "O" to "Q" in order to screen off construction after the Arena is open. Each project will be responsible to cover the costs of their sections of the fence.

**EXHIBIT K**

**MAP OF STAGING AREAS**

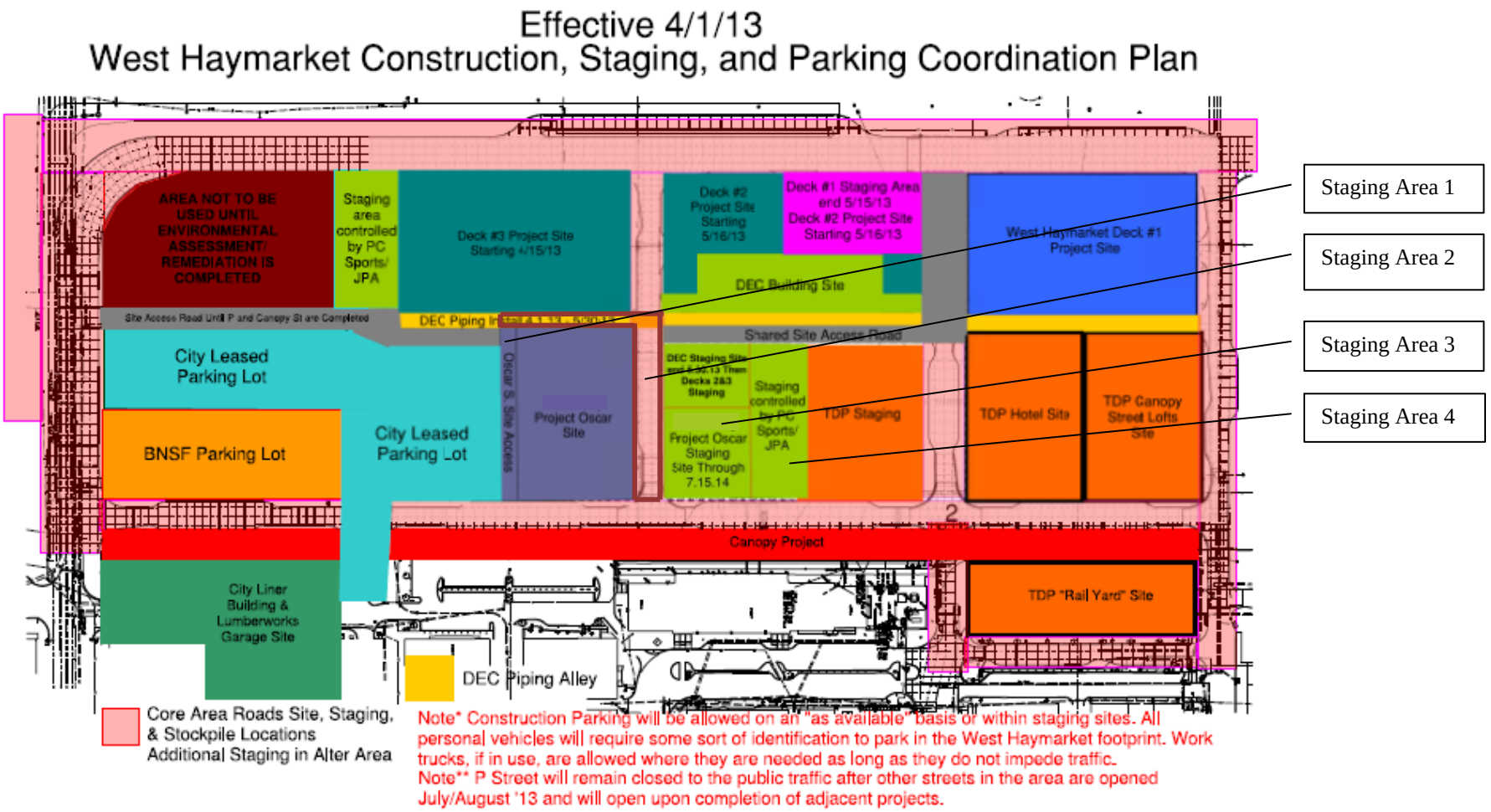


**EXHIBIT L**

**SOURCES AND USES OF TIF**

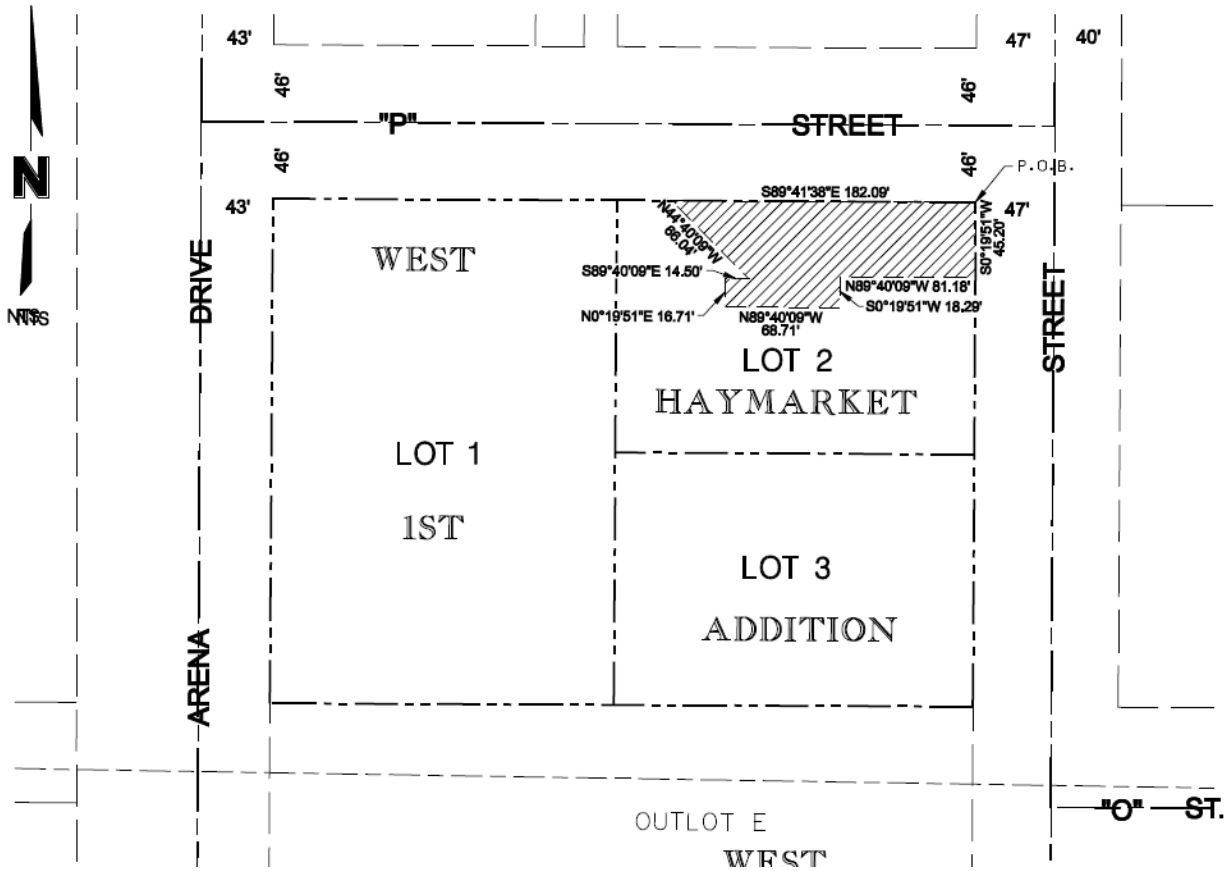
| TIF: Uses and Sources of Funds | | | | | |
|---|---|---|---|---|---|
| # | | Priorities | Description | Total TIF Uses | Total TIF Sources |
| a. | TIF Bond A | 1 | Issuance Costs | | |
| b. | | | | | |
| c. | | 2 | City Public Improvements | $300,000 | $300,000 |
| d. | TIF Bond B | 1 | Issuance Costs | 15,000 | |
| e. | | | Capitalized Interest | 157,384 | 172,384 |
| f. | | 2 | Streetscape | 206,000 | 206,000 |
| g. | | 3 | Land Purchase Assistance | 486,604 | |
| h. | | | Plaza Enhancements | 162,000 | |
| i. | | | Façade Enhancements | 545,000 | |
| j. | | | Energy Enhancements | 376,359 | $1,569,963 |
| k. | | | **Total** | **$2,248,347** | **$2,248,347** |

Notes:

1. Above uses include design, inspections, and project administration.
2. Streetscape will be implemented pursuant to the City's master plan (subject to changes for an outdoor restaurant). The Streetscape TIF would be used to fund (i) the Streetscape in the "P" Street and Canopy Street ROW abutting the Project Site.

**EXHIBIT M**

PLAZA DESCRIPTON



COURTYARD DESCRIPTION

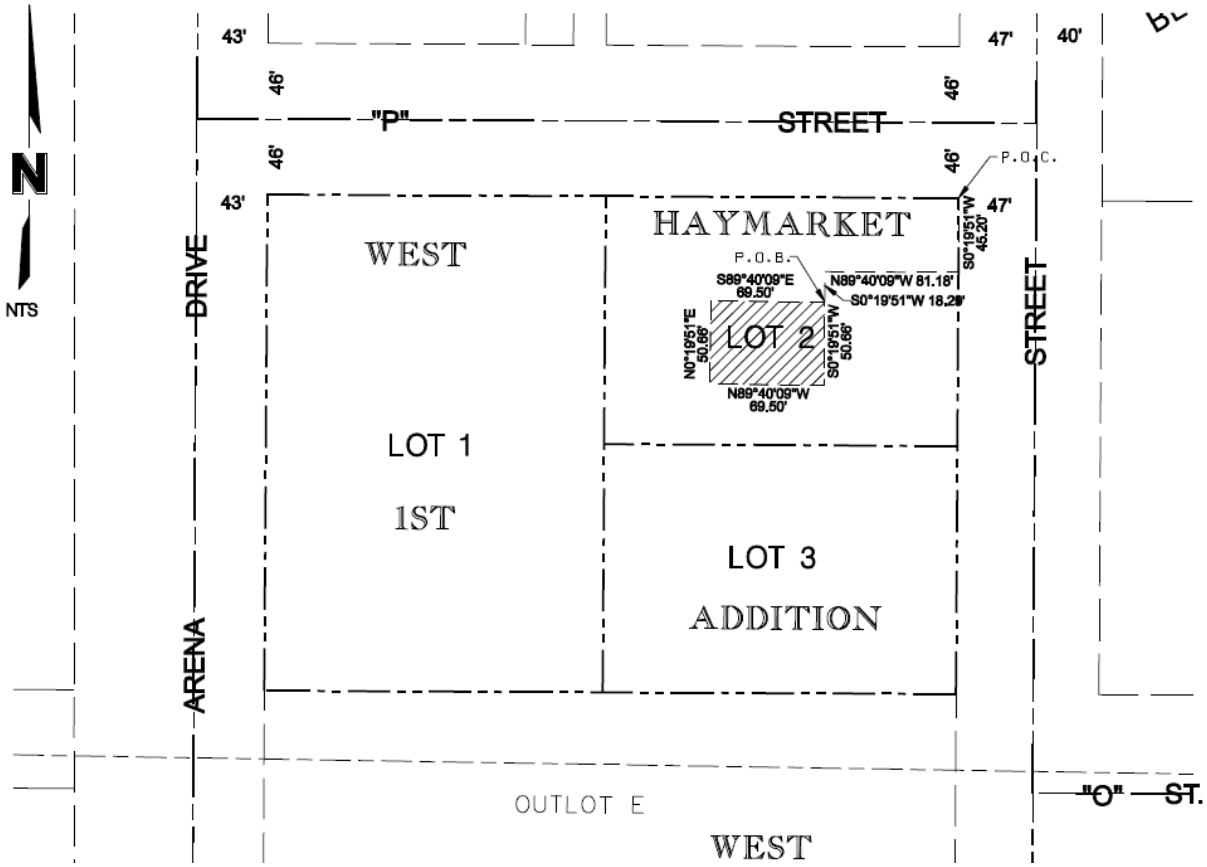


**EXHIBIT N**

**MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS**

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

**MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS**

This Memorandum of Redevelopment Agreement & Use Restrictions ("**Memorandum**") is made as of this ___ day of _____, 2013 by and between the City of Lincoln, Nebraska, a municipal corporation ("**City**"), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska ("**JPA**"), and Project Oscar, LLC, a Nebraska limited liability company ("**Redeveloper**").

1. **Redevelopment Agreement**. The City, JPA, and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements being made by the City in the Redevelopment Area and the private improvements being made to real property owned by Redeveloper and legally described as:

Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Project Site**").

2. **Parking Deck 3**. JPA will be constructing a parking garage immediately west of the Project Site, and legally described as:

Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Deck 3 Site**").

3. **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 Project Effective

Date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the public improvements as described in the Redevelopment Agreement.

4. **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.

5. **Use Restrictions of the Property**. Redeveloper hereby represents and agrees that neither all nor any portion of the Project Site shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(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 business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(d) any business operated or held out to the public as a sexually oriented business including any business 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; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

(g) at least 50% of the leasable retail square footage on any block face will have users whose minimum normal hours of operation, Monday through Saturday, are from 11:00 a.m. to 8:00 p.m.;

(h) no cell towers.

**6. Environmental Use Restrictions on the Property.** Redeveloper hereby represents and agrees that the Project Site is subject to the following Environmental Use Restrictions:

(1) The Project Site shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) Prior to beginning vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use, will require the approval of the Nebraska Department of Environmental Quality ("**NDEQ**").

It is intended that each of the restrictions set forth herein shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Project Site and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

**7. Office & Retail Monthly Parking; Redeveloper's Right to Lease.** Upon opening of Deck 3 on the Deck 3 Site and after completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Deck 3:

A. Reserved Parking Stalls. For office and retail uses, up to ten (10) fully reserved parking stalls ("**Reserved Parking**").

(1) The Reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, including all Husker football games, Husker basketball games, Husker baseball/softball games, Haymarket Park events, and West Haymarket Arena events (collectively "**Events**"). The Reserve Parking shall be signed and located on the north end of the first floor gated and nested area (west bay).

(2) The Reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other reserved parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the reserved parking rights granted to reserved parkers in similar City garages and in particular shall be subject to regular and timely payment of the reserved parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the reserved rate paid by the Redeveloper.

B. Monthly Parking Stalls. For office and retail uses, up to three hundred fifty (350) parking stalls ("**Monthly Parking**").

(1) Two hundred sixty (260) of the Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Deck 3 parking stalls allocated for monthly parkers.

(2) Approximately sixty-three (63) of the Monthly Parking stalls will be signed and located within the third floor gated and nested area (west bay).

(3) The balance of the three hundred fifty (350) Monthly Parking stalls (approximately twenty-seven (27)) will be signed and located on the north end of the first floor gated and nested area (west bay).

(4) The first and third floor nested areas will be gated from 7:00 a.m. to 5:00 p.m. during the weekday; but the gate will be open for transient and Event parking after 5:00 p.m. The JPA shall cause its parking garage operator to take reasonable efforts to ensure that the first and third floor nested areas are cleared of transient and Event parkers by 7:00 a.m. the next morning.

(5) The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the

same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

(6) Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Deck 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

C. Football & Events Parking. Up to ninety (90) of the Monthly Parking permits may include the right to park in Deck 3 for Nebraska home football games and Arena events ("**Football & Events Parking**") at the Football & Event Parking Rate (defined below). The Football & Events Parking will not be in assigned stalls. Rather, stalls will be occupied on a first come, first serve basis; provided that an eligible Monthly Parking parker who is already parked for their employment, shall not be required to re-park for the Football & Events Parking.

(1) The City projects that Deck 3, in addition to Nebraska football games, will be totally filled for the largest 20 Arena Events per year. To be sure the City does not lose parking revenues, the Football & Event Parking Rate will be the sum of (i) the twenty (20) largest Arena events per year (subject to adjustment as provided below), times the City's published Deck 3 Arena Event parking rate per Arena event for the upcoming year and (ii) the City's published Deck 3 Nebraska Football Game season parking rate for all games for the upcoming year. The pre-paid Deck 3 Football & Events Parking will be paid to the City on a monthly basis amortized over a twelve (12) month period ("**Football & Event Parking Rate**"). Each party reserves the right on the fifth anniversary of the Football & Events Parking and every five years thereafter, to request an increase or decrease in the projected number of Arena Events in which Deck 3 will be totally filled based upon the average number of per year Arena Events in which Deck 3 was totally filled during the prior five (5) years and to increase or decrease the Football & Event Parking Rate accordingly.

D. Duration. The parking rights outlined in this Section 8 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

[SIGNATURE PAGES TO FOLLOW]

Executed by the City this _____ day of _____, 2013.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor

"**JPA**"

WEST HAYMARKET JOINT PUBLIC AGENCY

_____
Chris Beutler
Chairperson of the West Haymarket Joint
Public Agency Board of Representatives

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

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives.

_____
Notary Public

Executed by Redeveloper this _____ day of _____, 2013.

"**Redeveloper**"

**PROJECT OSCAR, LLC**, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA )
) ss.
COUNTY OF _____ )

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public