

**1320 P WEST WALL EASEMENT
AND
SIDEWALK CAFÉ DEVELOPMENT AND OPERATION AGREEMENT**

This Agreement is made this ____ day of June, 2013, by and between the City of Lincoln, Nebraska, a municipal corporation and Nebraska political subdivision (hereinafter referred to as “the City”), and 1320 P LLC, a Nebraska limited liability company (hereinafter referred to as “Owner”)

WHEREAS, Owner owns property located at 1320 P Street in Lincoln, Nebraska and legally described as Lot 9, Block 38, Lincoln Original, Lincoln, Lancaster County, Nebraska (“1320 P Street”); and

WHEREAS, the City owns contiguous property to the west of 1320 P Street, legally described as Lots 7 and 8, Block 38, Lincoln Original, Lincoln, Lancaster County, Nebraska and referred to in this Agreement as “Civic Plaza”; and

WHEREAS, the City desires to develop Civic Plaza into an attractive public space for the citizens of Lincoln; and

WHEREAS, part of the development of Civic Plaza includes the need to enhance and control the appearance of the west wall of 1320 P Street, (hereinafter referred to as the “West Wall”); and

WHEREAS, the Owner desires to repair and improve the West Wall, and;

WHEREAS, the conceptual drawings in Exhibit A, attached hereto, represent the look and appearance of the area each party desires, subject to further design development and refinement; and

WHEREAS, the City is willing to pay for easement rights in the West Wall and repairs and improvements to the West Wall, and allow the Owner the option to develop a sidewalk café in the southeast corner of Civic Plaza, subject to approval by the City, and, in the event the option exercised and approved by the City, the Owner is willing to develop a sidewalk café (“Café Work”) within 30 days after notice from the City that the site of the sidewalk café is available for construction and is anticipated to be available in the spring of 2014; and

WHEREAS, the Owner is willing to accept certain restrictions on the West Wall regardless of whether a sidewalk café is developed; and

WHEREAS, the City is willing to enter into an agreement to allow the Owner to operate the sidewalk café.

NOW, THEREFORE, in exchange of the mutual considerations set forth herein, the parties hereto agree to the following:

1. Grant of Easement to the City. The Owner shall, upon execution of this Agreement, grant and deliver to the City a wall easement similar in form and substance to the Wall Easement attached as Exhibit "B". The easement generally provides that the Owner shall make no changes, modifications, penetrations or additions to the West Wall without the express written permission of the City and violation of the Wall Easement shall be deemed a violation of this agreement. This grant is made regardless of whether the option to develop a sidewalk café, as described below, is exercised.

2. Grant of Building Restriction Easement to the Owner. The City shall, upon completion of "the Wall Work", as defined herein, grant and deliver to the Owner a building restriction easement similar in form and content to Exhibit C, attached hereto, over the east 10 feet of Civic Plaza. The Building Restriction Easement generally prohibits the City from constructing a building in the easement area and a violation of the Building Restriction Easement shall be deemed a violation of this agreement. This grant is made regardless of whether the option to develop a sidewalk café, as described below, is exercised.

3. Option to Develop Sidewalk Café. The Owner shall have the exclusive option to develop, construct, and install a sidewalk café in the southeast corner of Civic Plaza, as set forth in Exhibit E, subject to approval by the City which must be obtained from the City before the option can be exercised. Approval by the City shall include all necessary reviews and approvals by the Sidewalk Café Review Committee and the Urban Design Committee. The Owner shall be responsible for purchase, construction and installation of all structures, fixtures, equipment, and furnishings and the installation of the footings and shall exclude the grading, soil compaction, pavers, and fencing materials. The grading, soil compaction, fencing materials, and pavers, shall be the responsibility of the City as a part of its Civic Plaza project and shall not be a part of the cost of the Café Work. The City shall install the footings for the café cover and the Owner shall reimburse the City for said cost as part of the Cost of the Café Work. This option must be exercised in writing within 30 days of a final estimate of the cost of the Café Work or October 1, 2013, whichever occurs first. In the event the option is not timely exercised, the option shall be deemed abandoned. In the event of abandonment, the remaining sections of this agreement shall continue to be enforceable to the extent applicable without reference to the sidewalk café.

4. Construction by City and the Owner. The City shall construct certain improvements in and to Civic Plaza including the ground preparation and surface covering for the area to be occupied by the sidewalk café, purchase of the fencing materials separating the sidewalk café from the Civic Plaza, electrical service or conduit to serve the Plaza, including the café area and pavers for the sidewalk café area in the event the City approves the sidewalk café development and the Owner exercises the option herein. The Owner shall be solely responsible for the construction of the entrance through the West Wall as well as West Wall repairs and installation of windows (hereinafter referred to as "the Wall Work") related to the west wall of 1320 P Street, conforming to the concept drawings in Exhibit A and description of the Wall Work as shown in Exhibit D; provided if the total costs for the Work exceed the sum of

\$113,335.20, subject to the caps described in Paragraph 7 below (hereinafter referred to as “Total Wall Work Cap”), the Wall Work shall be adjusted by agreement of the City and the Owner to stay within the dollar amount of the Total Cap. Final designs of the Wall Work (“Plans”) and bids for the Wall Work that are in compliance with applicable City building codes, are acceptable to both parties, and are at or below the Total Wall Work Cap shall be completed by July 15, 2013. The portion of the Wall Work necessary to repair the West Wall, install windows, and make the site suitable for construction of the sidewalk cafe shall be completed by August 30, 2013. Should the option in Paragraph 3 be exercised, the Café Work shall be completed within 60 days of written notice by the City of the availability of the site to finish construction of the sidewalk café, all as set forth in Exhibit E; provided, should any part of the Wall Work or the Café Work not be completed as scheduled in Exhibits D or E or such later date as the parties may mutually agree, the City may, after 30 days written notice and opportunity to cure, terminate this Agreement and the following shall occur:

- A. The Owner shall refund ninety percent (90%) of all monies paid by the City to the Owner;
- B. The balance of any monies due and owing herein to the Owner shall be permanently retained by the City;
- C. The City shall retain the West Wall easement and the monies retained by the Owner shall be the consideration for the wall easement;
- D. The City may enclose or barricade that portion of the opening identified in Exhibit D that allows passage from the Owner’s property to Civic Plaza at the cost of the Owner;
- E. All other actions permitted by law in the event of termination.

5. Equipment and Furnishings. In the event the option in Paragraph 3 is exercised, the parties, together with and in consultation with Owner’s tenant of the sidewalk café, shall use reasonable good faith efforts to jointly agree upon the style, quantity, and quality, and of the furnishings, fixtures, and signs for the sidewalk café area, and equipment to be installed or placed in the sidewalk café area, which shall be included in the Plans, subject to approval by the Sidewalk Café Committee and the Urban Design Committee which will be obtained by the Owner at its sole cost and expense.

6. Construction Contracts. The Owner shall be solely responsible for hiring or contracting with all necessary design professionals, engineers, building contractors, and others necessary for completion of the Wall Work or the Café Work (collectively “Work”). No agreement by the Owner related to the Work shall implicitly or explicitly include the City, other than this Agreement.

7. Payment by the City for Wall Work and Wall Work Total Cap. In consideration of this agreement, the City shall pay to the Owner a sum equal to seventy-five percent (75%) of the cost of the Wall Work, with said sum not to exceed \$85,000.00 (City Wall Cap) and the Owner shall be responsible for the remaining twenty-five percent (25%) of the cost of the Wall Work, with said sum not to exceed \$28,336.00. Payment by the City to Owner shall

be \$35,000.00 upon execution of this Agreement by all parties and 90% of the City Wall Cap (less the \$35,000 initial payment) upon substantial completion of the Wall Work and the balance to be paid upon final completion of the Wall Work.

8. Payment by the City for Café Work and Total City Café Work Cap. In the event the Owner exercises the option to build a sidewalk café pursuant to this agreement, the Owner shall pay for the first \$50,000.00 of the cost of the Café Work. In the event the cost of the Café Work exceeds \$50,000.00, the City shall contribute the next \$15,000.00, or portion thereof, necessary to cover the cost of the Café Work. In the event the cost of the Café Work exceeds \$65,000.00, then the Owner shall be responsible for the balance above \$65,000.00. In no event shall the City's share of the cost of the Café Work exceed \$15,000.00. Upon completion of the Café Work Owner shall submit to City a statement of the total costs paid by Owner for the Café Work ("Owner Café Costs").

9. Compliance with Lincoln Municipal Code. Nothing contained in this Agreement shall be construed to mean that any part or provision of the Lincoln Municipal Code, including all building codes, is waived or not applicable to the Wall Work or the Café Work herein. Except as may be set forth herein, the Owner shall obtain and pay for all permits and licenses required by applicable law.

10. Sidewalk Café Operation. In the event a sidewalk café is developed and begins operations, the rights and obligations of the Owner may be assumed by a tenant of Owner ("Tenant"), without assignment of any portion of this agreement, provided Owner shall remain obligated to perform such obligations in the event of any breach of those obligations by Tenant and the City has recourse to the Owner for any damages resulting from such breaches. City shall provide Owner with 45 days' notice and an opportunity to cure any breach of the obligations by Tenant, except, if the Owner or Tenant violates any applicable law, this notice provision shall not apply. Except as may be modified herein, the Owner agrees to operate a sidewalk café in accordance with all applicable laws and ordinances, including, but not limited to, Lincoln Municipal Code Chapter 14.50. The owner shall pay for all utilities used in connection with the operation of the café. The Owner shall pay the annual permit fee for each year of operation as set forth in Chapter 14.50, but shall not be required to apply for a new permit each year of the term of this Agreement. The Owner agrees that the space designated for the sidewalk café shall not be used for any purpose other than a sidewalk café and, under no circumstances, shall the Owner permit or tolerate the following uses in the sidewalk café area:

- A. Sales of alcohol for consumption off-premises;
- B. Sales of alcohol for consumption on-premises if such use, in the exclusive opinion of the City, has an unreasonable pattern of unlawful disturbances or alcohol beverage law violations;
- C. Sale or use of tobacco products;
- D. A sexually oriented business including live entertainment as set forth in Lincoln Municipal Code Section 27.03.545 or any other business engaged in sexually oriented entertainment or materials such as any sexually oriented

show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature and this restriction further includes sexually oriented live entertainment or exotic dancing, exotic lingerie, sex toys, sexually oriented paraphernalia, sexually oriented telecommunications, internet or similar service, sexually oriented massage or escort service;

E. Access to or use of audio or video services or internet connections used for pornographic or sexually oriented purposes;

F. Storage, use, or processing of hazardous or potentially hazardous materials as defined by applicable law;

G. Any gambling or wagering, even if otherwise permitted by law, including, but not limited to slot machines, video lottery machines, casino games, and off-site pari-mutual wagering;

H. Any sale, display, or use of weapons;

I. Any illegal activity or legal activity not part of a sidewalk café operation as contemplated by Section 14.50 of the Lincoln Municipal Code.

The Owner agrees to cause the Sidewalk Café to operate for not less than three years after beginning operations. After three years, in the event the Owner presents reasonable evidence to the City that operating the Sidewalk Café is not sufficiently profitable, the Owner may close the Sidewalk Café. Any subsequent reopening by the Owner shall require a new permitting process. In the event of prepayment of permit fees, no refunds will be paid to the Owner if the Sidewalk Café closes before the end of the term of this Agreement.

11. Hours of Operation. Subject to any restrictions imposed by a liquor license or other operating limitations imposed by applicable law, the Owner agrees to use its best efforts to operate the Sidewalk Café not less than 40 hours during each week, including weekends, in which the weather is temperate and will permit the café to operate.

12. Suspension or Revocation of Permit. For so long as the Owner is current with the annual permit fees as set forth in paragraph 10 above and is compliant with all applicable laws, the City waives its authority to suspend or revoke the permit on demand under Lincoln Municipal Code Section 14.50.070(d) for the term of this Agreement. All other portions of Section 14.50.070 shall remain in full force and effect. Further, in the event of a violation of any of the terms or conditions of this agreement by the Owner, the City may suspend or revoke the Sidewalk Café permit. In the event of a suspension or revocation of the Sidewalk Café Permit, the Owner shall not be permitted to conduct any activities in or on the Sidewalk Café Area without permission from the City.

13. Building Tenant Identification Sign. The Owner shall be entitled to place one sign on the West Wall on the south end of the building consistent with the drawings in Exhibit A (“Building Sign”). The size of the sign shall be mutually agreed upon by the parties before

installation. No other signs or other attachments shall be permitted upon the West Wall without consent of the City.

14. Sidewalk Café Area. The parties agree that the area upon which the Sidewalk Café shall operate is set forth in the attached Exhibit "E". The Owner hereby agrees and acknowledges that the Sidewalk Café Area is City owned property and that nothing in this Agreement shall be construed to mean that the Owner, its successors, or assigns shall acquire any ownership or other interest in any portion of the Civic Plaza or the Sidewalk Café Area other than as set forth herein.

15. Limited Waiver of Appeal Rights. In consideration of the extended term of this Agreement, the Owner hereby agrees to waive any and all rights to appeal or withhold consent to, or seek review by the Lincoln City Council of, decisions of the Sidewalk Café Review Committee and the Urban Design Committee relating to the design, layout, or materials used in the furnishings, equipment, or fencing used in the Sidewalk Café Area by the Owner.

16. Term. The initial term of this agreement shall be five (5) years from the effective date as defined herein and may be renewed by agreement of the parties for two additional five (5) year terms. Such renewals shall require approval by the Lincoln City Council.

17. Insurance. The Owner agrees to provide insurance as required by Lincoln Municipal Code Section 14.50.080 and shall provide proof of insurance for general liability, public liability and property coverage in amounts acceptable to the City during construction of the Wall Work and the Café Work, if the option is exercised. The City shall be named as a co-insured and the Owner shall provide proof of said insurance within 30 days of the effective date of this Agreement or before construction of the Wall Work begins.

18. Maintenance. The Owner shall be responsible for all maintenance, upkeep, repairs and replacement of equipment, fixtures, furnishings, signs, and fencing for the Sidewalk Café Area. Said maintenance and upkeep includes, but is not limited to, keeping the area (pavers, concrete and other materials installed by the City in the Sidewalk Café Area) and the equipment, furnishings, signs, and fencing clean and orderly; making repairs necessary to comply with applicable laws; taking action to minimize or eliminate rust, decay, visible deterioration, or damage inflicted by weather or other sources; replacing faded, frayed or torn umbrellas, awnings or other items made of fabric; and keeping all equipment in good working order. In the event that the Owner fails to maintain the area, equipment, furnishings, signs or fencing for the Sidewalk Café Area, the City may, after reasonable notice to Owner and/or Tenant, enter the Sidewalk Café Area and perform such services as may be necessary to maintain, repair, or replace the area, equipment, furnishings, signs or fencing for the Sidewalk Café Area. The cost of such services by the City shall be the responsibility of the Owner. In the event the Owner fails to pay for services, repairs, or replacement under this section within 30 days of delivery of an invoice for such services, the City may suspend or revoke the Sidewalk Café Permit. The City may pursue any remedy allowed by law to recover the expenses paid by the City pursuant to this section.

19. Termination. In the event this Agreement is terminated for any reason, including expiration without renewal, the Owner shall vacate the Sidewalk Café Area within 14 days and shall remove all equipment, furnishings, and all other personal property, including fixtures and any café signs. The Owner shall also return the Sidewalk Café Area to the City in a condition that will allow it to be incorporated into Civic Plaza, with allowance for reasonable aging and deterioration for the time the Sidewalk Café was operated. The Owner shall also grant and deliver to the City a Bill of Sale conveying the café cover and columns and/or quitclaim deed for the Sidewalk Café Area and will take such steps as may be necessary to terminate or release the easement granted to the Owner by the City for the use of the Café area for café purposes.

20. Owner Café Costs Recovery and Building Entry Closure Costs. The estimated useful life of the Café Cover and related improvements is 40 years. The Owner shall be entitled to recover a portion of those costs should the café area not be used by the Owner as contemplated by this Agreement for their useful life. In the event the Owner elects to no longer operate and use the café area, the Owner shall be entitled to claim a charitable contribution for the unamortized Café Work Costs based upon a 40 year straight line amortization of those costs. Owner shall also pay for all costs to remove the door opening from the building into the café area. Should the City elect to allow this Agreement to expire without renewal the City may elect to remove the door opening from the building into the café area at its own cost. The Owner shall be entitled to claim a charitable contribution for the unamortized Café Work Costs to the extent allowed by applicable federal and state law. Nothing stated herein shall be construed as approval or disapproval by the City of qualification for, applicability of, or extent of any such charitable contribution.

21. Breach or Default. In the event that either party breaches or defaults on any or all terms, conditions, or covenants in this agreement, the non-breaching or non-defaulting party may pursue any remedy allowed by law.

22. Effective Date. The effective date of this Agreement shall be 15 days after final action by the Lincoln City Council approving this Agreement.

23. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto.

24. Nebraska Law. This Agreement shall be construed pursuant to the laws of the State of Nebraska and the ordinances of the City of Lincoln, Nebraska, to the extent that said ordinances are not pre-empted by Nebraska law.

SIGNATURE PAGE FOLLOWS

1320 P LLC
A Nebraska Limited Liability Company

By: _____
Monte Froehlich, Manager

CITY OF LINCOLN, NEBRASKA
A municipal corporation

By: _____
Chris Beutler, Mayor

Attachment A: Conceptual Drawings of the Civic Plaza at 13th and P Street and Sidewalk Café Adjoining 1320 P Street Building



Site Plan of Civic Plaza at 13th and P Streets

LEGEND:

1. Proposed Sidewalk Café Space
2. Raised Planter with Seat Wall
3. Raised Planter with Seat Wall
4. Shade/Performance Structure
5. Ceramic Tile Wall
6. Proposed Sidewalk Café Space
7. Street Trees
8. Art Glass Tower
9. High Contrast Colored Masonry Pavers
10. Street Trees



Street View of Civic Plaza Looking Northwest



View of Proposed Sidewalk Café Looking Northeast

EXHIBIT B

WALL EASEMENT

THIS WALL EASEMENT (the “Easement”) is made this ____ day of _____, 2013 by and between 1320 P LLC, a Nebraska limited liability company (“Grantor”), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska (“Grantee”).

RECITALS

WHEREAS, Grantor owns certain real estate located in Lincoln, Lancaster County, Nebraska, legally described as:

Lot 9, Block 38, Original Lincoln, Lancaster County, Nebraska (the “Property”),
and

WHEREAS, Grantor has entered into an agreement identified as the 1320 P West Wall Easement and Sidewalk Café Development and Operation Agreement (the “Development Agreement”) with Grantee for the redevelopment and renovation of the Property; and

WHEREAS, pursuant to the Development Agreement, to enhance the aesthetics of the new facilities constructed on Civic Plaza, described as Lots 7 and 8, Original Lincoln, Lancaster County, Nebraska (hereinafter referred to as “Civic Plaza”) and immediately west of the Property, Grantor agreed to make certain repairs to the west wall of the Building (the “Wall”) for the benefit of the public; and

WHEREAS, the Development Agreement provides Grantor an Option to construct and operate a café within a portion of the Civic Plaza adjoining the Property which café will include a covering that will be attached to the Wall which attachment may continue without the operation of the café by Grantor; and

WHEREAS, this Easement sets forth the parties’ rights and obligations with respect to the Wall and the attachment of the café covering to the Wall.

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

1. Easement. In consideration of the benefits received by Grantor under the Development Agreement, Grantor hereby grants and conveys to the Grantee, and the Grantee

accepts, an easement in and on the Wall for the purpose of granting control and authority to the Grantee to approve changes, modifications, repairs, maintenance, use, attachments, and generally control the appearance of the Wall. Grantor hereby further grants and conveys to the Grantee, and the Grantee accepts, an easement for the attachment of the café cover to the Wall for so long as the café cover as constructed by Grantor remains. Grantor further agrees to subject the Wall to the restrictions described herein.

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

a. Grantor shall not demolish, remove or raze the Wall, or demolish, remove or detach the café cover after its installation unless either are irreparably damaged as set forth in Section 5 below.

b. Grantor shall not undertake, or allow to be undertaken, any material changes to the Wall without the express written consent of Grantee. Material changes to the Wall include, but are not limited to:

(i) The alteration, partial removal, complete removal, construction, remodeling or physical or structural change or changes in color or surfacing with respect to the appearance or construction of the Wall;

(ii) Any significant reconstruction, repair, repainting or refinishing of any Wall feature that alters its state from the existing condition, other than repairs, maintenance, or other modifications permitted by the Grantee.

(iii) Any windows, doors, or other openings. Any door or opening installed or constructed by the Grantor for use by Grantor or Grantor's tenant for the sidewalk cafe pursuant to the Development Agreement may be temporarily or permanently closed, barricaded or removed by the Grantee if the sidewalk cafe described in the Development Agreement is not constructed or ceases to operate.

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

d. The Grantor shall not cause, allow, or tolerate coverings or other displays on or attached to the Wall or the windows of the Wall without the consent of the Grantee.

3. Wall Maintenance. Grantor shall perform all ordinary and/or necessary maintenance and repairs on the Wall to maintain its appearance and structural soundness and to prevent any deterioration of the Wall and shall have a right of entry upon Civic Plaza for this purpose. The Grantor shall consult with the Grantee prior to performing such maintenance, except in an emergency.

4. Specification of Work. In the event Grantor desires to make any material changes to the Wall, 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. No work on the Wall shall begin without the consent of the Grantee.

5. Casualty Damage. In the event that the Wall or café cover is constructed or any part thereof shall be damaged by fire or other casualty, then Grantor shall use reasonable effort to reconstruct the Wall and/or café cover to the condition required under this Easement. If the Wall is damaged to such an extent that Grantor determines that reconstruction of said Wall is not feasible and provides Grantee with a statement from an independent engineer to the same effect, then this Easement shall be void and of no further force or effect with respect to said Property.

6. Inspection. Grantee shall be permitted to have reasonable access to the exterior of the Property to inspect the Wall for the purpose of determining conformance with this Easement.

7. Term. The term of this Easement shall be perpetual and shall run with the land.

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 Civic Plaza. Grantor shall have no obligation under this Easement to allow the general public to view the interior of the Owner's property.

9. Indemnification. Grantor shall defend, indemnify and hold Grantee harmless from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorney fees), resulting from actions or claims by third parties or defaults under this Easement arising out of or relating in any manner to Grantor's use or exercise of its rights in or to the Wall or this Wall Easement.

10. Binding Effect. This Easement 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 FOLLOW]

EXHIBIT C

BUILDING RESTRICTION EASEMENT AGREEMENT

This Building Restriction Easement Agreement (the "Agreement") is made this ____ day of June, 2013, by and between the City of Lincoln, Nebraska, a municipal corporation ("Grantor") and 1320 P LLC, a Nebraska limited liability company ("Grantee").

RECITALS

- A. Grantor owns certain real estate located in Lincoln, Nebraska, commonly known as 1300 P Street and legally described as Lots 7 and 8, Lincoln Original, Lincoln, Lancaster County, Nebraska (the "Grantor Property").
- B. Grantee owns real property located adjacent to the Grantor Property, commonly known as 1320 P Street and legally described as Lot 9, Lincoln Original, Lincoln, Lancaster County, Nebraska (the "Grantee Property").
- C. The Grantee Property is occupied by a building with a zero (0) foot setback from the property line adjacent to the Grantor Property.
- D. Grantee desires to maintain the Building with a zero (0) foot setback from the property line adjacent to the Grantor Property.
- E. In order to provide a sufficient fire break between the building on the Grantee Property and any building that may be built in the future on the Grantor Property, Grantor agrees it will not to develop the portion of the Grantor Property that would interfere with City Code requirements.
- F. Grantee desires to acquire an easement across a portion of the Grantor Property that will restrict Grantor's development of said portion of the Grantor Property to comply with Lincoln Building Code requirements.

NOW THEREFORE, in consideration of the mutual benefits to be derived from the facilities described herein and the further consideration of One and No/100 Dollar (\$1.00), the receipt of which is hereby acknowledged, Grantor does hereby convey to Grantee a building restriction easement on a portion of the Grantor Property as follows:

1. **Grant of Easement.** Grantor does hereby convey to Grantee, its respective successors and assigns, a building restriction easement (the "Easement") on the portion of the Grantor Property consisting of a strip of land ten (10) feet wide adjacent to the entire length of the Grantee Property, which land is more properly described as Lots 7 and 8, Block 38, Lincoln Original, Lincoln, Lancaster County, Nebraska, as shown in Exhibit "A" attached hereto and incorporated herein by this reference, and hereafter referred to as the "Easement Area." The purpose of this easement is to provide sufficient spacing for fire break purposes between the Grantee's building and any building that may be constructed on the Grantor's property. The Easement shall prohibit Grantor from construction or installation of any buildings in the Easement Area. The Grantor shall consult with the Grantee before constructing any structure or improvement not prohibited by this Easement. The Easement shall prohibit Grantee from the right to encroach upon or otherwise use the Easement Area, except as may be permitted by the Grantor, and eaves, gutters, doors or window swings of the Building shall not extend over the property line onto Grantor Property, except as may be permitted by the Grantor. The improvements provided for in the Wall Easement and Sidewalk Café Development Agreement between Grantor and Grantee are expressly permitted subject to all of the terms and conditions of that agreement.

2. **Binding Effect.** This Easement shall be permanent and shall be appurtenant to and run with the Grantor Property. The grant of this Easement shall also be binding upon the heirs, executors, administrators, successors and assigns of Grantor and Grantee herein.

3. **Maintenance.** Grantor, as owner of the real property upon which the Easement has been established, shall maintain the Easement Area planted in grass and free of buildings thereon. If Grantor violates this provision, any structure that violates this easement, whether abovementioned or otherwise, shall be removed from the Easement Area at Grantor's expense.

4. **Grantee Obligations.** Grantee shall not construct or modify any eaves, gutters, windows and/or doors that are part of the west wall of the building on Grantee Property in such a way that they extend, open out into or otherwise encroach upon the Easement Area except as may be permitted by the Grantor.

5. **Termination.** This Agreement shall only be terminated pursuant to a written agreement signed by the owner of the Grantor Property and the owner of the Grantee Property, or if the building on Grantee Property no longer exists for any reason.

6. **Other Agreements.** This Agreement shall constitute the entire Easement and agreement between the owners of the Grantor Property and the Grantee Property with respect to the subject matter hereof.

7. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge,

and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Easement.

Dated this ___ day of June, 2013.

“GRANTOR”

CITY OF LINCOLN, NEBRASKA, a
municipal corporation

ATTEST:

City Clerk

Chris Beutler, Mayor

“GRANTEE”

1320 P LLC

By: _____
Monte Froehlich, Manager

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, Nebraska, a municipal corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____ 201__, by _____.

Notary Public

Attachment D: Description and estimated cost of the Wall Work



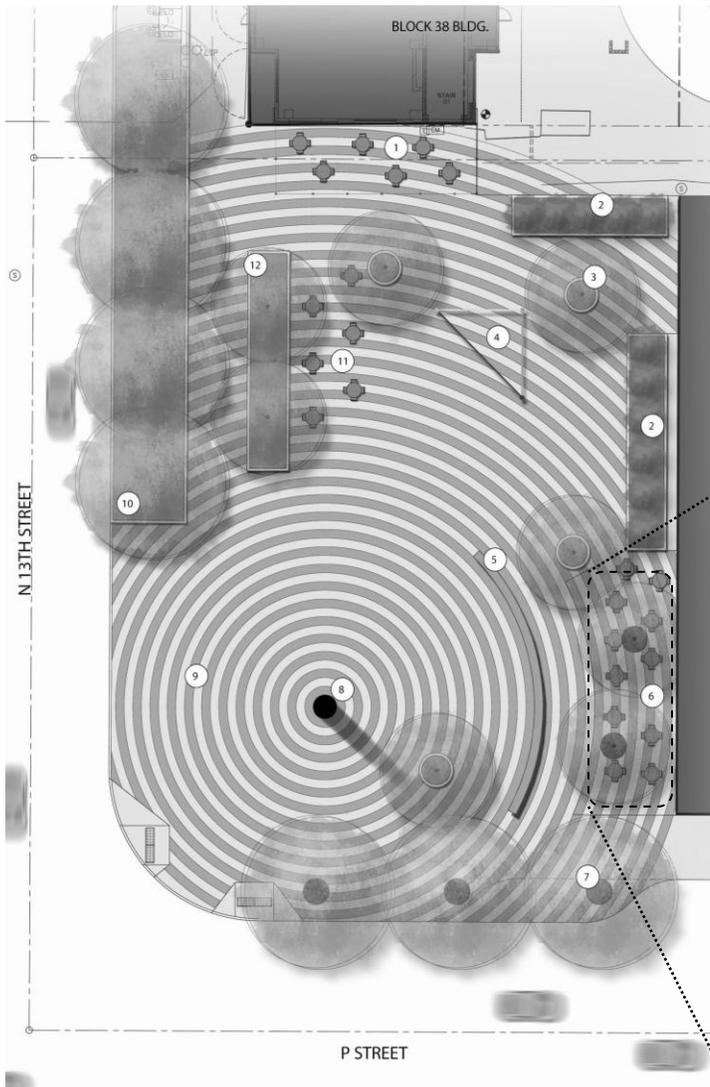
Composite photo of current condition of the west wall of 1320 P Street



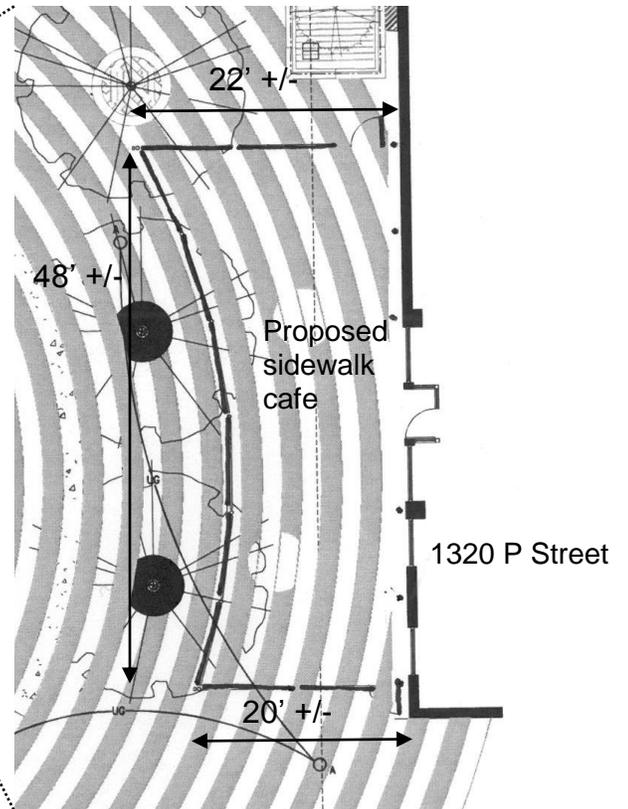
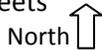
View of west wall of 1320 P Street depicting walls repairs to the north end of the wall, and installation of windows and doors on the south end of the wall.

Cost Estimate for Wall Work		
Items		Estimated Cost
Permit		\$250.00
Cut storefront opening	<i>Estimate</i>	\$2,750.00
Misc. Framing, Drywall, and Insulation	<i>Allowance</i>	\$1,500.00
Misc. Electrical	<i>Allowance</i>	\$1,500.00
(6) Windows	<i>Estimate</i>	\$4,000.00
Window Installation	<i>Allowance</i>	\$1,200.00
Masonry-new around window openings	<i>Estimate</i>	\$6,545.00
Window Trim	<i>Allowance</i>	\$450.00
Storefront (getting quote for sliding door system)	<i>Estimate</i>	\$27,000.00
Steel Lintels	<i>Allowance</i>	\$400.00
Misc. ceiling grid repair	<i>Allowance</i>	\$500.00
Paint/Stain Complete	<i>Allowance</i>	\$1,000.00
Masonry Opt.1-Lay up Brick	<i>Estimate</i>	\$54,045.00
Misc. trim install labor	<i>Allowance</i>	\$1,300.00
Equipment Rental	<i>Allowance</i>	\$1,500.00
Dumpster	<i>Allowance</i>	\$500.00
Clean up	<i>Allowance</i>	\$500.00
Sub Total		\$104,940.00
Profit and overhead 8%		\$8,395.20
Total		\$113,335.20

Attachment E: Location of proposed sidewalk café in southeast corner of the Civic Plaza



Site Plan of the Civic Plaza at 13th and P Streets
Not to Scale



Enlarge view of Proposed Sidewalk Café
Not to scale

The proposed sidewalk café is generally twenty-two (22) feet by forty-eight (48) feet in size and is located in the southeast corner of the Civic Plaza at 13th and P Street adjoining the building at 1320 P Street. The western edge of the sidewalk café is curved to follow the alignment of the radial paving pattern on the plaza. The sidewalk café is anticipated to be enclosed by a three (3) foot tall fence, and may have an overhead canopy with lighting.