AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY, AUGUST 27, 2015 AT 2:00 P.M.

CITY-COUNTY BUILDING
BILL LUXFORD STUDIO, 1ST FLOOR
555 S. 10TH STREET
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)

2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

   Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.

3. Approval of the minutes from the JPA meeting held June 25, 2015 (Chair Beutler)
   - (Staff recommendation: Approval of the minutes as presented)

4. Approval of June and July 2015 Payment Registers (Steve Hubka)
   - Public Comment
   - (Staff recommendation: Approval)

5. Review of June and July 2015 Expenditure Reports (Steve Hubka)
   - Public Comment

6. Delivery and presentation of Venue Solutions Group's "Operational and Financial Review" report regarding its operational and financial review of the Pinnacle Bank Arena. (Mike Wooley).

7. WH 15-13 Resolution to amend the 2014-2015 JPA Operating Budget. (Steve Hubka)
   - Public Comment
   - (Staff recommendation: Approval)

8. WH 15-14 Resolution to approve the adoption of the 2015-2016 JPA Operating Budget. (Steve Hubka)
   - Public Comment
   - (Staff recommendation: Approval)

9. WH 15-15 Resolution to approve the Letter Agreement to engage BKD to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards for the year ended August 31, 2015 (Chris Lindner)
   - Public Comment
   - (Staff recommendation: Approval)

10. WH 15-16 Resolution to approve the West Haymarket TDP Phase Three Redevelopment Agreement between the City of Lincoln, West Haymarket Joint Public Agency, and TDP Phase Three, LLC relating to the redevelopment of property generally bounded by R Street on the north, O Street on the south, Pinnacle Arena Drive on the west, and 7th Street on the east, including Canopy Street south to N Street, and the Project Site which is legally described as the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 3, Block 6, West Haymarket Addition. (Rick Peo)
    - Public Comment
    - (Staff recommendation: Approval)

11. WH 15-17 Resolution to approve the Settlement Agreement and Release of Claims between the JPA and Hawkins Construction Company relating to the lawsuit filed by the JPA arising out the dispute over the responsibility for and cost to repair the pedestrian bridge following the partial collapse of a concrete bridge girder which supports the pedestrian bridge. (Chris Connolly and Jocelyn Golden)
    - Public Comment
    - (Staff recommendation: Approval)

12. WH 15-18 Resolution authorizing the Chair to enter into a temporary Right-of-Entry Agreement with TDP Phase Three, LLC to enter upon the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 7, Block 6, West Haymarket Addition prior to closing on TDP Phase Three's acquisition of said Property to begin mobilization, site preparation (fencing around site, scrape rock off site, install SWPPP barriers, rebar/supplies ordered, etc.) and completing auger cast test piles to facilitate the building schedule agreed to in the Redevelopment Agreement between the JPA, City of Lincoln, and TDP Phase Three, LLC. (Rick Peo)
    - Public Comment
    - (Staff recommendation: Approval)

13. Set Next Meeting Date: The next meeting date will be Thursday, September 17, 2015 at 3:30 p.m. in the County-City Building, Third Floor, Room 303

14. Motion to Adjourn

*If the conflicting meeting ends early, this meeting will be held in the City Council Chambers Room 112.

Pinnacle Bank Arena Event and West Haymarket JPA information may be found at:
www.pinnaclebankarena.com
www.lincoln.ne.gov

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
June 25, 2015

Meeting Began At: 3:34 P.M.

Meeting Ended At: 4:15 P.M.

Members Present: Chris Beutler, Tim Clare, and Carl Eskridge

Item 1 -- Introductions and Notice of Open Meetings Law Posted by Door

Chair Beutler opened the meeting with the introduction of fellow Board members Tim Clare and Carl Eskridge. Beutler advised that the open meetings law posted at the entrance to the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

Beutler advised the audience that public comment is welcome. He further stated that individuals from the audience are given a total of five minutes to speak on specific items listed on today's agenda and that those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting May 7, 2015

There being no corrections or changes to the minutes of the May 7, 2015 JPA meeting, Clare moved approval of the minutes as presented. Eskridge seconded the motion. Motion carried 3-0.

Item 4 – Election of JPA Secretary

Beutler asked for nominations for Secretary. Clare nominated Carl Eskridge to serve as JPA Secretary and Eskridge seconded the nomination. Hearing no other nominations, on a roll call vote, Eskridge was elected as Secretary 3-0.

Item 5 -- Approval of April and May 2015 Payment Registers

Steve Hubka, City Finance Director, presented the April and May 2015 payment registers. He pointed out the April payment register total of $480,146 includes $336,158 in payments from the Operating Budget, a good share of which are payments to the District Energy Corporation and City of Lincoln Parking. Payments from the Phase 1 Budget totaled $143,238, and there was a small payment of $750 from the Phase 2 Budget. Hubka then reported on the May payment register which totals $645,720. Payments from the Operating Budget totaling $564,074 contain two significant payments – one to the District Energy Corp of $170,919 and one to the Pinnacle Bank Arena in the amount of $255,000 for advance sponsorships. Payments from the Phase 1 Budget total $77,057 and Phase 2 total $4,589. In response to questions from Clare, Hubka

confirmed that the JPA is still on budget in the Operating Budget; that there is a matter in the Contingency Budget that will be cleaned up before the end of this fiscal year relating to an interest payment on the turn back tax bonds; and that all matters have been handled according to the audit standards.

There being no public comment, Eskridge moved approval of the April and May 2015 payment register. Clare seconded the motion. Motion carried 3-0.

Item 6 -- Review of April and May 2015 Expenditure Reports

In presenting the April and May 2015 Expenditure Reports, Hubka reported the expenditure reports reflect the activity of the Joint Public Agency showing budgets in comparison to expenditures and available balances. Hubka deferred additional comments to Paula Portz who will be presenting modifications to the Project Budget (Item 10 below). The amendments made to the Project Budget will be reflected in the expenditure reports made next month and will clean up a few of the overages. Hubka explained that the proposed amendments do not mean an increase in the budget, but a shifting of available funds.

No public comment was offered on the April and May 2015 Expenditure Report. No action on this item was necessary.

Item 7 -- WH 15-8 Resolution to approve the Contract for Appraisal Services with Great Plains Appraisal, Inc. to perform an appraisal regarding the fair market value of the South 1/2 of Lot 3, Block 6, West Haymarket Addition.

Rick Peo, City Attorney's Office, reported that this resolution is a request to hire an appraiser to appraise the property being sold to TDP Phase Three for the Hudl Project. He said this project is on a fast track with hopes of getting the Redevelopment Agreement approved by the end of August. Peo said that to help reach an agreed upon sales price for the property, it is important to get an appraisal of this property. Prior developments have been sold for $15/sq.ft. Peo pointed out that this value was not based upon direct appraisals of the property involved, but rather upon the value of the property when it was acquired from the Railroad in its environmental condition and taking into consideration the cost to get the property ready for development purposes. Peo stated the $15/sq. ft. value was also supported by some appraisals done of abutting properties in the area when smaller purchases were made to acquire title in order to develop those properties. Peo believes that in order to have a direct correlation to the property involved, it is time get an official appraisal of the property.

There being no public comment offered, Beutler open the discussion to questions from the Board. Clare stated he understood the valuing of the other parcels that have been sold, but questioned why the cleanup caused the property to be valued lower. Peo clarified that the lower value was the value when the property was bought from the Railroad. Peo pointed out that that value was $2/sq. ft., but the JPA had to move all tracks and do the environmental work. Adding all those costs together, it was concluded that the property was worth about $15/sq. ft. Clare asked what did the property then sell for, and Peo responded that Project Oscar was still at $15/sq. ft. He said that the County Assessor is currently assessing the Railyard, the Canopy Lofts, the Hotel, and Project Oscar at $15/sq. ft. He added that an appraisal might shake out the

same number, but the parties just want to get an actual fair market value at today's current values. Clare encouraged consistency and fairness when pricing this property. Peo reminded the Board that there are use restrictions and environmental use restrictions on the property that will affect the negotiation price on value. Appraisers sometimes do not consider those factors.

There being no further discussion, Clare moved approval of the resolution. Eskridge seconded the motion. Motion carried 3-0.

Item 8 -- WH 15-9 Resolution of the JPA's Intent to enter into a Redevelopment Agreement upon acceptable terms and conditions between the JPA, City of Lincoln, and TDP Phase Three which will include (1) the sale of the South 1/2 of Lot 3, Block 6, West Haymarket Addition with prepaid parking rights in the JPA Green 2 Parking Garage for five years to TDP Phase Three LC for fair market value, and (2) the JPA's purchase of TIF Bond A to be issued by the City in the amount of $5,000,000.

Rick Peo explained that this is the Redevelopment Agreement being negotiated by the Law Department and Urban Development with TDP Phase Three for redevelopment of the JPA land previously discussed (Item 7) for a large office building and some retail development. The agreement is on a fast track process in order to secure construction financing. In addition to needing to determine the value of the property, the Redeveloper has proposed that the JPA purchase a TIF Bond in the amount of $5 million. Peo pointed out the JPA previously did this for TDP Phase One (Railyard Canopy Lofts). At that time, JPA purchased a bond in the amount of $3.5 million. Redeveloper is seeking to get the same type of funding mechanism which would pay a 4% interest rate to the JPA which is a little higher than typical investment strategies. It saves money for the Redeveloper which gives them more bang for their buck for their improvements. This financial plan is being proposed by the Redeveloper and they would like some assurances that the JPA is on board with this concept as we go forward. The timeline is very short and the Redeveloper is looking for a 'nod of approval' to the concept, understanding that it has to be on acceptable terms and conditions.

Clare asked Peo about an email from Councilman Camp relating to this matter and the sale of parking rights. Peo confirmed that Camp's concerns had been addressed. The parking for this project will be sold at the City's standard operating rate for parking garages. A commitment has been made that parking will be made available and the number of stalls is currently being negotiated.

There being no public comment, Eskridge moved approval of the resolution. The motion was seconded by Clare. The motion carried 3-0.

Item 9 -- WH 15-10 Resolution to approve Amendment No. 12 to the Agreement for Environmental Remediating Consulting Services between Alfred Benesch & Company and the JPA to include project management under existing Task 1, preparing plans and specifications for the cleanup of contamination at the Alter South Site under new Task 31; and conducting remediation oversight and documentation of the Alter South cleanup under new Task 32.

Adam Hoebelheinrich of PC Sports presented this item. He said Amendment 12 extends the project management support fees for Benesch through the remainder of 2015 for the environmental remediation services. The funds will allow for preparation of plans and specifications for the Alter South cleanup project located south of N Street which will most likely be the last large environmental cleanup in the West Haymarket. The Amendment provides cleanup construction oversight documentation and preparation of the final remediation action completion reports for the site. Hoebelheinrich read a note prepared by Frank Uhlarik, the City's Environmental Compliance Administrator, relating to this item: "The continuity and institutional knowledge of Benesch/OA Team has been critical to meeting NDEQ's expectations and staying within the original projected environmental budget for this project."

There was no public comment on this item. The Board's discussion on this matter began with Eskridge asking if there is a sense of how much contamination there is at the Alter site. Hoebelheinrich said initial assessments of the property were previously conducted and strategies have been submitted to the NDEQ. He said there is a small sliver of soil that may have to be trucked off to a site in Oklahoma and the rest of the areas can be capped or removed in whole to a landfill. Clare questioned the status of the environmental budget. Hoebelheinrich advised that this project should be well within the current budget. Clare also asked if the individual interested in archeological surveys of the cleanup areas had been contacted regarding this project. Hoelbelheinrich confirmed the individual had not expressed any interest in areas south N but that he would be contacted prior to commencing the cleanup.

There being no further discussion, Eskridge moved approval of the resolution. The motion was seconded by Clare. The motion carried 3-0.

Item 10 -- WH 15-11 Resolution to amend the Project Budget for the West Haymarket Joint Public Agency.

Paula Portz of PC Sports presented this item. She said this resolution updates the JPA Official Project Budget to match how it has been operating over the past year. The job cost report is typically amended once a year. This resolution cleans up line items to reflect savings and increases. Portz reported that the current contingencies are sitting at $1,923,102.37 in Arena Contingency; Infrastructure, $11,694,608.61; and Phase 2, $385,677.86, for total contingencies of $14,003,388.84. Most of the savings cover some of the overages and some are shifting dollars from one line item to the other. Overall we are sitting really well. We are carrying some line items in the budget for dollars that we know we are going to spend over the next several months but, again, we will come back and update it as needed. In response to statement by Clare, Portz confirmed that this is something that is done every year. The purpose of this resolution is to "clean it up and make sure that the job cost report matches the actual budget that we are working towards."

There being no public comment, Clare moved to approve the resolution. The motion was seconded by Eskridge. The motion carried 3-0.

Item 11 -- WH 15-12 Resolution to approve the Independent Consultant Contractor Agreement with Venue Solutions Group to conduct a Financial Performance Review and Operational Review of the Pinnacle Bank Arena.

Steve Hubka presented the contract with Venue Solutions Group (VSG). He said the contract will result in a report that will provide points of information valuable to the Board. VSG will provide an apples-to-apples comparison with similar arenas. They will look at the operational aspects and sources of revenue of the Haymarket Arena and other arenas, including other arenas that have universities as a prime tenant. They will analyze staffing, building maintenance, and a number of other areas included in the Scope of Services. Due to the way the JPA and our bond issues are structured, only $1 million of the $3.4 million generated by the Arena itself gets to be reported as revenue by the operator. That $1 million is from the sponsorships approved in the operating budget last year. As we near the end of this fiscal year, it is clear that the Arena operations as we report them will not get back to a zero or positive result for the whole year. We are looking are at likelihood of a $400,000 to $500,000 deficit, so the timing of this contract is perfect. Hubka continued saying VSG is ready to start work next week and will likely have a report available in time to provide guidance that will help in dealing with the deficit prior to the end of the fiscal year.

No public comment was offered and the Board's discussion followed.

Eskridge stated his understanding of what the contract provides and in response Hubka added that it will not only look at how the Arena is performing but how it is set up between operations and debt service, etc. Hubka believes the report will provide some reasons to look at different alternatives, i.e. revenue sharing or cost sharing that provides the operator with the best chance of success. He said we are only in the second year of operation. The first year was phenomenal with 18 concerts, all of which made money, but that may not be the typical year in the long term. We need to know what to expect in the future in a more average-type year; make sure that the building is being run as efficiently as possible, cost-wise; and find out if we are being realistic with our expectations. Clare pointed out that it is also important to look at how we are doing from an accounting standpoint and where we are putting revenue. He reminded the audience that when initially set up, a larger portion of revenue was put into the "debt service bucket" because that is where the obligation to repay the bonds lies. From a total financial picture of this project, looking at the operations and the debt service, the debt service is doing extremely well. Hubka confirmed that fact and stated that the income from the occupation tax has been higher than expected. Over the last year, the amount collected was equivalent to what was earlier projected for 2021 or 2022. So far this year, that revenue is up again about 7%, when it was projected at 2%. Over a long period of time, the base of revenue is much higher than expected. If it continues to exceed the 2% projection, it will be vastly greater than expected years down the road.

Beutler presented a prepared statement wherein he identified all income sources: sponsorships, premium seating, food and beverages, event income, miscellaneous sources of income, and money generated by the use of the Festival Space and Pinewood Bowl. He pointed out that last

year all of these revenues generated $6.8 million in revenue. Hubka clarified that the numbers used were projected, not actual, revenue dollars for the current fiscal year. Beutler went on to state that of the $6.8 million, $5 million will go to pay for the operation functions that SMG is responsible for. Beutler stated this means there is $1.8 million more made by Arena operations than paid in Arena expenses.

Although Hubka agreed $5 million in expenses is correct, he said the problem right now is that the projected SMG revenues will be $400,000 or $500,000 less than that; but, if all revenue money was given to the operator to make up that deficit, total revenue would be $1.8 million over expenses.

Expanding on the relationship between the income and expenses of the Arena, Beutler stated that the actual revenues generated by that facility would be more than the expenses of that facility, except by virtue of how the operation was broken down in the first instance, which added two more large categories of expense. One expense is the debt payment on the capital expenditures, the payment for the bonds; and the other is the operational expenses that SMG was never charged with but which the JPA itself was charged with taking care of – such things as road infrastructure in the area or a whole number of things.

Hubka agreed and cited paying the parking operator as an example.

Beutler, continuing his discourse with Hubka on the relationship between income and expenses of the Arena, made the following assertions which Hubka agreed with (Hubka responses noted parenthetically). "So you have those three basic categories. The SMG part generated an excess of 1.3 or 1.8 million, however you want to look at it, and that money then could be taken and used to paydown one of the other two categories. Right? (yes) And in addition, the tax money that we haven't talked about yet, that was always to be there to pay for JPA expenses, would be applied to cover those other two categories in conjunction with what was left over from the Arena Operation. Is that accurate? (yes, it is). And when you do that, if you look at the cash flow and you look at the bottom line, cash at the end of the year is $26,000,000. (yes) And that cash at the end of the year for each succeeding year increases in amounts that are way more than sufficient to pay for anything we know about now with regard to bond coverage or with regard to those other operating expenses that are outside the SMG responsibilities. Is that accurate? (yes)"

Hubka went on to state: "In fact this morning, I was visiting with Don Herz and he was updating some figures on his model, which an earlier copy you have there before you. We were taking a look at where we expected to be in 2022 when we're paying the full amount of principle. There is a ton of assumptions between now and 2022 but the number that was on the bottom line of the page was $43.2 million, which is a date in time where we've got to make sure we've got a lot of cash on hand because our expenses go up a lot every year because of starting to pay principle."

Summing up this conversation, Beutler said "If you look at what this body said we could do this whole thing for, and if you look at what we said we needed in taxes and what we said the Arena could generate, this operation is not losing money. This operation is in a very good place when it comes to taking care of all three of those categories of expenses that constitute the whole – the SMG operations expense, the JPA operational expenses, and the JPA capital bond payment expenditures."

Hubka agreed stating: “When you look at that set of expenditures and all of the revenues, including the occupation taxes, yes – it’s doing very well.”

Clare moved approved of the resolution. The motion was seconded by Eskridge. Motion carried 3-0.

Item 12 -- Set Next Meeting Date

Without objection, the next meeting date was set for Thursday, July 30, 2015, at 3:30 p.m. in the City-County Building, Bill Luxford Studio, First Floor.

Item 7 -- Motion to Adjourn

Eskridge moved to adjourn. Motion seconded by Clare. The meeting adjourned at 4:15 p.m.

Prepared by: Cheryl Eno, City Law Department

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
108417	Citizen Information Center	5 City Studio WHJPA 3/26/15	OP	06095	W Haymarket Surplus/ O & M	PV	1628774	152.50	06/03/15	536814
120272	City of Lincoln - Accounting Dept	City Staff 2/12/15-5/20/15	OP	06095	W Haymarket Surplus/ O & M	PV	1628775	102,997.37	06/03/15	536815
324566	Union Bank & Trust Company	West Haymarket Series 2010A	OP	195011	JPA 2010A Debt Service	PV	1628688	2,325,755.00	06/03/15	536816
324566	Union Bank & Trust Company	West Haymarket Series 2010B	OP	195021	JPA 2010B/C Debt Service	PV	1628691	1,855,980.00	06/03/15	536816
324566	Union Bank & Trust Company	West Haymarket Series 2010C	OP	195021	JPA 2010B/C Debt Service	PV	1628694	1,081,181.25	06/03/15	536816
324566	Union Bank & Trust Company	West Haymarket Series 2011	OP	195031	JPA 2011 Debt Service	PV	1628696	2,295,843.75	06/03/15	536816
324566	Union Bank & Trust Company	West Haymarket Series 2013	OP	195041	JPA 2013 Debt Service	PV	1628697	565,337.51	06/03/15	536816
38519	Progressive Electric Inc	12-177 Canopy St wiring repair	OP	06095	W Haymarket Surplus/ O & M	PV	1628771	4,766.73	06/04/15	81152
45225	Schmieding Concrete Inc	Canopy & Q concrete	OP	06095	W Haymarket Surplus/ O & M	PV	1628772	900.00	06/04/15	81160
98079	Black Hills Energy	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus/ O & M	PV	1628773	42.22	06/04/15	81209
76881	Windstream	Billing Number 402-477-6387	OP	06095	W Haymarket Surplus/ O & M	PV	1630545	98.31	06/10/15	537136
609076	Rich Owen	2015 FB SEASON AT RED	OP	06096	W Haymarket Parking Revenue	PV	1630004	210.00	06/10/15	537137
609094	Mac Acquisition, LLC	Refund 11/2014 overpayment	OP	06094	W Haymarket Revenue	PV	1630547	162.07	06/10/15	537138
53356	Lincoln Electric System	605 N 8th St Pk Lot Lgh	OP	06095	W Haymarket Surplus/ O & M	PV	1630543	51.25	06/11/15	81391
53356	Lincoln Electric System	200 N 7th St	OP	06095	W Haymarket Surplus/ O & M	PV	1630544	206.18	06/11/15	81391
102154	Public Building Commission	Space Rental 06/15	OP	06095	W Haymarket Surplus/ O & M	PV	1630546	38.75	06/11/15	81442
102154	Public Building Commission	Space Rental 06/15	OP	06095	W Haymarket Surplus/ O & M	PV	1630546	80.50	06/11/15	81442
97885	Copy Services	Customer #595381	OP	06095	W Haymarket Surplus/ O & M	PV	1632262	2.07	06/17/15	537494
53356	Lincoln Electric System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus/ O & M	PV	1632261	306.07	06/18/15	81616
588846	District Energy Corp	Customer WHM-JPA	OP	06095	W Haymarket Surplus/ O & M	PV	1632263	172,589.03	06/18/15	81754
Category total								8,406,700.56		
82368	State of Nebraska	Monitoring Act 0637,March2015	PH1	870602	WH Voluntary Clean-up Program	PV	1627344	1,029.93	06/04/15	81188
82368	State of Nebraska	Monitoring Act 10620,Feb,2015	PH1	870602	WH Voluntary Clean-up Program	PV	1629770	22.51	06/11/15	81416
82368	State of Nebraska	Monitoring Act 10620, Mar,2015	PH1	870602	WH Voluntary Clean-up Program	PV	1629771	36.37	06/11/15	81416
82368	State of Nebraska	Monitoring Act 10620,Apr,2015	PH1	870602	WH Voluntary Clean-up Program	PV	1629773	26.60	06/11/15	81416
82368	State of Nebraska	Monitoring Act 0637,Apr,2015	PH1	870602	WH Voluntary Clean-up Program	PV	1629776	1,905.89	06/11/15	81416
596877	Olsson Associates		PH1	870000	WH General Coordination	OV	1629716	7,288.76	06/11/15	81529
596877	Olsson Associates		PH1	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1629716	221.08	06/11/15	81529
Category total								10,531.14		
Grand total								8,417,231.70		

West Haymarket Joint Public Agency
Payment Register
July 2015

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
98415	Lincoln Water System	277 Pinnacle Arena Drive	OP	06095	W Haymarket Surplus	PV	1635724	133.25	07/01/15	538341
98642	Information Services	JPA 05/15	OP	06095	W Haymarket Surplus	PV	1635725	104.48	07/01/15	538342
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 05/15	OP	06095	W Haymarket Surplus	PV	1635727	22,107.67	07/01/15	538343
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 05/15	OP	06095	W Haymarket Surplus	PV	1635727	17,604.33	07/01/15	538343
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 05/15	OP	06095	W Haymarket Surplus	PV	1635727	43,657.55	07/01/15	538343
593961	Jeff Sheets	BYU 09/05/15 AT RED	OP	06096	W Haymarket Parking Revenue	PV	1634210	20.00	07/01/15	538344
77921	County/City Property Management	Amtrak Station 05/15	OP	06095	W Haymarket Surplus	PV	1635720	381.23	07/02/15	82104
98079	Black Hills Energy	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1635723	36.58	07/02/15	82132
76881	Windstream	Billing number 402-477-6387	OP	06095	W Haymarket Surplus	PV	1636910	98.31	07/08/15	538556
98415	Lincoln Water System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1637150	150.00	07/08/15	538557
118009	University of Nebraska-Lincoln	Customer #268641	OP	06095	W Haymarket Surplus	PV	1637154	180,515.00	07/08/15	538558
118009	University of Nebraska-Lincoln	Customer #268641	OP	06095	W Haymarket Surplus	PV	1637247	90,010.00	07/08/15	538558
53356	Lincoln Electric System	200 N 7th St	OP	06095	W Haymarket Surplus	PV	1637245	294.47	07/09/15	82292
53356	Lincoln Electric System	605 N 8th St Pk Lot Lgh	OP	06095	W Haymarket Surplus	PV	1637246	67.34	07/09/15	82292
77921	County/City Property Management	CITY CONTROLLER-JPA	OP	06095	W Haymarket Surplus	PV	1636911	144.62	07/09/15	82309
609335	Venue Solutions Group LLC	25% PBA operational review	OP	06095	W Haymarket Surplus	PV	1639168	13,750.00	07/15/15	539024
102154	Public Building Commission	Space Rental	OP	06095	W Haymarket Surplus	PV	1639159	38.75	07/16/15	82526
102154	Public Building Commission	Space Rental	OP	06095	W Haymarket Surplus	PV	1639159	80.50	07/16/15	82526
588846	District Energy Corp	Customer WHM-JPA	OP	06095	W Haymarket Surplus	PV	1639160	176,137.55	07/16/15	82617
98642	Information Services	JPA 06/15	OP	06095	W Haymarket Surplus	PV	1640967	104.48	07/22/15	539447
607447	Robert Whitesel	DEF LEPPARD 10/11/15 AT RED 1	OP	06096	W Haymarket Parking Revenue	PV	1640668	10.00	07/22/15	539448
27756	Voss Lighting	Customer 100925	OP	06095	W Haymarket Surplus	PV	1640947	35.16	07/23/15	82702
53356	Lincoln Electric System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1640948	551.64	07/23/15	82735
58261	Bob & Don's Plumbing	Amtrak Station backflow test	OP	06095	W Haymarket Surplus	PV	1640950	130.00	07/23/15	82737
77921	County/City Property Management	Amtrak Station 06/15	OP	06095	W Haymarket Surplus	PV	1640957	613.19	07/23/15	82754
81357	Great Plains Appraisal Inc	Customer 957	OP	06095	W Haymarket Surplus	PV	1640960	3,800.00	07/23/15	82757
31860	NIFCO Mechanical Systems Inc	Customer No C0182	OP	06095	W Haymarket Surplus	PV	1643244	150.00	07/29/15	539823
108417	Citizen Information Center	5 City TV WHJPA 6/25/15	OP	06095	W Haymarket Surplus	PV	1643248	152.50	07/29/15	539824
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 06/15	OP	06095	W Haymarket Surplus	PV	1643249	39,194.27	07/29/15	539825
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 06/15	OP	06095	W Haymarket Surplus	PV	1643249	29,492.44	07/29/15	539825
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 06/15	OP	06095	W Haymarket Surplus	PV	1643249	61,360.20	07/29/15	539825
609472	Spencer Lindsay	1/2 MO JULY 2015 REFUND @ RED1	OP	06096	W Haymarket Parking Revenue	PV	1642972	35.00	07/29/15	539826
77921	County/City Property Management	CITY CONTROLLER-JPA	OP	06095	W Haymarket Surplus	PV	1643245	142.02	07/30/15	83052
98079	Black Hills Energy	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1643246	30.28	07/30/15	83086
Category total								681,132.81		
598263	PC Sports LLC		PH1	870002	WH General Coordination P3	OV	1632239	17,000.00	07/02/15	82233
604774	Pinnacle Bank Arena	1/2 Click Effects Software	PH1	870100	WH Arena	PV	1632241	26,000.00	07/02/15	82253
596877	Olsson Associates		PH1	870000	WH General Coordination	OV	1638157	2,566.31	07/16/15	82634
596877	Olsson Associates		PH1	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1638157	2,067.36	07/16/15	82634
598263	PC Sports LLC	June,2015 Ph 3 oversight	PH1	870002	WH General Coordination P3	OV	1639052	17,000.00	07/23/15	82945
Category total								64,633.67		
39781	Davis Design	Final on Deck 3 work	PH2	870206	WH Parking Garage #3 P2	OV	1643032	8,518.96	07/30/15	83029
Category total								8,518.96		

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
Grand total								754,285.44		

As of June 30, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870000 WH General Coordination	6,812,618.77	6,586,902.68	225,716.09	
870002 WH General Coordination P3	204,000.00	85,000.00	119,000.00	
70090 West Haymarket Park	7,016,618.77	6,671,902.68	344,716.09	
70091 Arena				
870100 WH Arena	183,778,900.40	183,777,880.40	27,020.00	26,000.00-
870101 WH Arena Contingency	2,023,102.37			2,023,102.37
870203 WH Arena Parking Garage	726,438.23	726,438.23		
70091 Arena	186,528,441.00	184,504,318.63	27,020.00	1,997,102.37
70092 Parking				
870201 WH HymktPkLot,FestSp&PedGrdStr	15,020,199.15	14,989,549.74	30,649.41	
870202 WH Parking Garage #1	14,041,819.09	13,962,401.59		79,417.50
870204 WH Parking Garage #2	203,400.39	203,400.39		
70092 Parking	29,265,418.63	29,155,351.72	30,649.41	79,417.50
70093 Roads				
870301 WH Charleston Bridge/Roadway	252,015.40	252,015.40		
870302 WH "M"&"N" St,7th to 10th St	3,436,496.59	3,436,496.59		
870303 WH USPS Parking Lot Reconstctn	696,053.96	696,053.96		
870304 WH 10th & Salt Creek Road Impr	3,436,720.69	3,436,720.69		
870305 WH Core Area Roadway & Utility	14,890,418.47	14,682,918.47		207,500.00
870306 WH Traffic Analysis	72,351.96	72,351.96		
870307 WH Streetscape	2,584,704.75	2,581,075.83		3,628.92
870308 WH Sun Valley Blvd & West "O"	23,681.50	23,681.50		
70093 Roads	25,392,443.32	25,181,314.40		211,128.92
70094 Pedestrian Ways				
870401 WH Plaza				
870402 WH Canopy Phase II	1,431,269.05	1,356,269.05		75,000.00
70094 Pedestrian Ways	1,431,269.05	1,356,269.05		75,000.00

As of June 30, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70095 Utilities				
870501 WH Sanitary Sewer Relocation	1,492,905.32	1,492,905.32		
870502 WH Fiber Optic Comm & Other	506,034.95	506,034.95		
70095 Utilities	1,998,940.27	1,998,940.27		
70096 Environmental				
870601 WH NDEQ T-200	1,983,034.68	1,638,231.22	29,106.61	315,696.85
870602 WH Voluntary Clean-up Program	1,937,395.49	1,798,226.61	120,089.86	19,079.02
870603 WH Environmental Contngy Pln	2,181,523.91	1,332,043.57	109.01	849,371.33
870604 WH Other/Miscellaneous	711,095.22	703,474.84	942.58	6,677.80
870605 WH Canopy Phase I-Lead Abatemt				
870606 WH Alter Brownfield Site	200,000.00	289.86		199,710.14
870607 WH JayLynn/Watson/Alter N	200,000.00	200,000.00		
70096 Environmental	7,213,049.30	5,672,266.10	150,248.06	1,390,535.14
70097 Dirt Moving				
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF				
870703 WH Initial Haymarket Site Prep	6,087,616.60	6,087,616.60		
870704 WH Other Stormwater Mitigation				
70097 Dirt Moving	6,087,616.60	6,087,616.60		
70098 TIF Improvements				
870800 WH TIF Improvements				
70098 TIF Improvements				
70099 Site Purchase				
870901 WH BNSF Land Acquisition	1,060,419.44	1,060,419.44		
870902 WH Alter Site Purchase	4,611,008.12	4,611,008.12		
870903 WH Jaylynn Site Purchase	1,702,838.21	1,702,838.21		
870904 WH UP Site Purchase	1,326,248.15	1,326,248.15		
870905 WH BNSF Const, Rehab, Reloc	47,671,698.85	47,671,698.85		
870906 WH Amtrak Station	2,369,425.17	2,369,425.17		
870907 WH UP Track Mod West of Bridge	1,225,231.66	1,225,231.66		

As of June 30, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70099 Site Purchase				
870908 WH Other Private Prop Acqstns	2,264,387.01	2,264,387.01		
70099 Site Purchase	62,231,256.61	62,231,256.61		
70100 Other Costs				
870951 WH ITS & Dynamic Message Signs	1,140,949.49	1,140,949.49		
870952 WH Community Space & Civic Art	1,500,000.00	370,114.85		1,129,885.15
870953 WH Breslow Ice Rink	2,000,000.00			2,000,000.00
70100 Other Costs	4,640,949.49	1,511,064.34		3,129,885.15
70105 Bond Related Costs				
870975 WH Miscellaneous				
870976 WH Line of Credit	78,227.31	78,227.31		
870977 WH Series 1 JPA Debt	1,535,167.50	1,535,167.50		
870978 WH Series 2 JPA Debt	1,221,802.25	1,221,802.25		
870979 WH Series 3 JPA Debt	577,661.29	577,661.29		
870980 WH Series 4 JPA Debt	1,243,824.50	1,243,824.50		
70105 Bond Related Costs	4,656,682.85	4,656,682.85		
00951 West Haymarket Capital Proj	336,462,685.89	329,026,983.25	552,633.56	6,883,069.08

As of June 30, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870001 WH General Coordination P2	360,000.00	360,000.00		
70090 West Haymarket Park	360,000.00	360,000.00		
70092 Parking				
870205 WH Parking Garage #2 P2	12,112,457.43	12,099,905.93	10,000.00	2,551.50
870206 WH Parking Garage #3 P2	14,858,656.42	14,822,128.62	15,349.96	21,177.84
70092 Parking	26,971,113.85	26,922,034.55	25,349.96	23,729.34
70093 Roads				
870309 WH Streetscape P2	953,573.17	943,573.17	10,000.00	
70093 Roads	953,573.17	943,573.17	10,000.00	
70105 Bond Related Costs				
870981 WH Series 5 JPA Debt P2	411,982.31	411,982.31		
70105 Bond Related Costs	411,982.31	411,982.31		
00951 West Haymarket Capital Proj	28,696,669.33	28,637,590.03	35,349.96	23,729.34

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06094 W Haymarket Revenue					
16 Transfer Out					
9220 Cash Transfers Out				453,465.63	453,465.63-
16 Transfer Out				453,465.63	453,465.63-
06094 W Haymarket Revenue				453,465.63	453,465.63-
06095 W Haymarket Surplus/ O & M					
11 Materials & Supplies					
5221 Office Supplies	250.00		250.00		250.00
5261 Postage	1,750.00		1,750.00	1,144.73	605.27
5323 Bldg Maint Supplies	500.00		500.00	41.88	458.12
11 Materials & Supplies	2,500.00		2,500.00	1,186.61	1,313.39
12 Other Services & Charges					
5621 Misc Contractual Services	799,772.00		799,772.00	329,968.69	469,803.31
5624 Auditing Service	20,000.00		20,000.00	13,400.00	6,600.00
5631 Data Processing Service	1,254.00		1,254.00	1,044.79	209.21
5635 Delivery Service				73.52	73.52-
5642 Legal Services				82.00	82.00-
5643 Management Services	1,223,420.00		1,223,420.00	1,020,000.00	203,420.00
5643.61 Deck 1 Mgmt Services	564,000.00		564,000.00	463,049.56	100,950.44
5643.62 Deck 2 Mgmt Services	407,000.00		407,000.00	217,549.18	189,450.82
5643.63 Deck 3 Mgmt Services	569,000.00		569,000.00	287,093.39	281,906.61
5683.04 Snow Removal	2,500.00		2,500.00	1,079.50	1,420.50
5683.05 Fire Alarm Monitoring	500.00		500.00	307.80	192.20
5723 Meals & Parking				60.00	60.00-
5762 Photocopying	500.00		500.00	37.70	462.30
5763 Printing	500.00		500.00	30.25	469.75
5784 Misc Insurance	26,521.00		26,521.00	26,521.00	
5786 Property	145,754.00		145,754.00	145,754.00	
5794 Public Officials	24,640.00		24,640.00	19,067.50	5,572.50
5821 Electricity - Bldg & Grnds	7,065.00		7,065.00	6,822.58	242.42
5825 Natural Gas	3,000.00		3,000.00	2,070.04	929.96

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06095 W Haymarket Surplus/ O & M					
12 Other Services & Charges					
5829 Telephone	1,200.00		1,200.00	982.81	217.19
5830 Water	1,000.00		1,000.00	636.39	363.61
5835 Thermal Heating & Cooling	2,150,000.00		2,150,000.00	1,765,723.70	384,276.30
5856 City Share Linc Center Maint	33,000.00		33,000.00	19,337.77	13,662.23
5862 Grounds Maintenance	3,000.00		3,000.00		3,000.00
5870 Other Bldg Maintenance	11,000.00		11,000.00	3,991.63	7,008.37
5928 Rent of Co/City Bldg Space	966.00		966.00	805.00	161.00
5931 Parking Rent Bldg Comm	465.00		465.00	387.50	77.50
5952 Advertising/Media Serv	1,450.00		1,450.00	672.50	777.50
5969 Arena Sales Commissions	2,828,329.00		2,828,329.00	2,828,329.00	
5993 Fees Paid to State of NE				45.00	45.00-
5996 Credit Card/Bank Fees	5,000.00		5,000.00	199.05	4,800.95
12 Other Services & Charges	8,830,836.00		8,830,836.00	7,155,121.85	1,675,714.15
06095 W Haymarket Surplus/ O & M	8,833,336.00		8,833,336.00	7,156,308.46	1,677,027.54
195011 JPA 2010A Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6235 Bd Trustee Pmt-Interest	4,651,510.00		4,651,510.00	4,651,510.00	
15 Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	
195011 JPA 2010A Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	
195021 JPA 2010B/C Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	1,048.00		1,048.00	1,048.00	
6235 Bd Trustee Pmt-Interest	5,874,323.00		5,874,323.00	5,874,322.50	.50
15 Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
195021 JPA 2010B/C Debt Service					
15 Debt Service					
195021 JPA 2010B/C Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	424.00	100.00
6235 Bd Trustee Pmt-Interest	4,591,688.00		4,591,688.00	4,591,681.83	6.17
15 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195031 JPA 2011 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195041 JPA 2013 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6234 Bd Trustee Pmt-Principal	540,000.00		540,000.00	540,000.00	
6235 Bd Trustee Pmt-Interest	1,136,075.00		1,136,075.00	1,136,075.02	.02-
15 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
195041 JPA 2013 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
00950 West Haymarket Revenue	25,629,552.00		25,629,552.00	24,405,883.44	1,223,668.56

As of July 31, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870000 WH General Coordination	6,812,618.77	6,589,468.99	223,149.78	
870002 WH General Coordination P3	204,000.00	102,000.00	102,000.00	
70090 West Haymarket Park	7,016,618.77	6,691,468.99	325,149.78	
70091 Arena				
870100 WH Arena	183,878,900.40	183,777,880.40	27,020.00	74,000.00
870101 WH Arena Contingency	1,923,102.37			1,923,102.37
870203 WH Arena Parking Garage	726,438.23	726,438.23		
70091 Arena	186,528,441.00	184,504,318.63	27,020.00	1,997,102.37
70092 Parking				
870201 WH HymktPkLot,FestSp&PedGrdStr	15,020,199.15	14,991,617.10	28,582.05	
870202 WH Parking Garage #1	14,041,819.09	13,962,401.59		79,417.50
870204 WH Parking Garage #2	203,400.39	203,400.39		
70092 Parking	29,265,418.63	29,157,419.08	28,582.05	79,417.50
70093 Roads				
870301 WH Charleston Bridge/Roadway	252,015.40	252,015.40		
870302 WH "M"&"N" St,7th to 10th St	3,436,496.59	3,436,496.59		
870303 WH USPS Parking Lot Reconstctn	696,053.96	696,053.96		
870304 WH 10th & Salt Creek Road Impr	3,436,720.69	3,436,720.69		
870305 WH Core Area Roadway & Utility	14,890,418.47	14,682,918.47		207,500.00
870306 WH Traffic Analysis	72,351.96	72,351.96		
870307 WH Streetscape	2,584,704.75	2,581,075.83		3,628.92
870308 WH Sun Valley Blvd & West "O"	23,681.50	23,681.50		
70093 Roads	25,392,443.32	25,181,314.40		211,128.92
70094 Pedestrian Ways				
870401 WH Plaza				
870402 WH Canopy Phase II	1,431,269.05	1,356,269.05		75,000.00
70094 Pedestrian Ways	1,431,269.05	1,356,269.05		75,000.00

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70095 Utilities				
870501 WH Sanitary Sewer Relocation	1,492,905.32	1,492,905.32		
870502 WH Fiber Optic Comm & Other	506,034.95	506,034.95		
70095 Utilities	1,998,940.27	1,998,940.27		
70096 Environmental				
870601 WH NDEQ T-200	1,983,034.68	1,638,231.22	29,106.61	315,696.85
870602 WH Voluntary Clean-up Program	1,937,395.49	1,798,226.61	120,089.86	19,079.02
870603 WH Environmental Contngy Pln	2,181,523.91	1,332,043.57	109.01	849,371.33
870604 WH Other/Miscellaneous	711,095.22	703,474.84	942.58	6,677.80
870605 WH Canopy Phase I-Lead Abatemt				
870606 WH Alter Brownfield Site	200,000.00	289.86		199,710.14
870607 WH JayLynn/Watson/Alter N	200,000.00	200,000.00		
70096 Environmental	7,213,049.30	5,672,266.10	150,248.06	1,390,535.14
70097 Dirt Moving				
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF				
870703 WH Initial Haymarket Site Prep	6,087,616.60	6,087,616.60		
870704 WH Other Stormwater Mitigation				
70097 Dirt Moving	6,087,616.60	6,087,616.60		
70098 TIF Improvements				
870800 WH TIF Improvements				
70098 TIF Improvements				
70099 Site Purchase				
870901 WH BNSF Land Acquisition	1,060,419.44	1,060,419.44		
870902 WH Alter Site Purchase	4,611,008.12	4,611,008.12		
870903 WH Jaylynn Site Purchase	1,702,838.21	1,702,838.21		
870904 WH UP Site Purchase	1,326,248.15	1,326,248.15		
870905 WH BNSF Const, Rehab, Reloc	47,671,698.85	47,671,698.85		
870906 WH Amtrak Station	2,369,425.17	2,369,425.17		
870907 WH UP Track Mod West of Bridge	1,225,231.66	1,225,231.66		

As of July 31, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70099 Site Purchase				
870908 WH Other Private Prop Acqstns	2,264,387.01	2,264,387.01		
70099 Site Purchase	62,231,256.61	62,231,256.61		
70100 Other Costs				
870951 WH ITS & Dynamic Message Signs	1,140,949.49	1,140,949.49		
870952 WH Community Space & Civic Art	1,500,000.00	370,114.85		1,129,885.15
870953 WH Breslow Ice Rink	2,000,000.00			2,000,000.00
70100 Other Costs	4,640,949.49	1,511,064.34		3,129,885.15
70105 Bond Related Costs				
870975 WH Miscellaneous				
870976 WH Line of Credit	78,227.31	78,227.31		
870977 WH Series 1 JPA Debt	1,535,167.50	1,535,167.50		
870978 WH Series 2 JPA Debt	1,221,802.25	1,221,802.25		
870979 WH Series 3 JPA Debt	577,661.29	577,661.29		
870980 WH Series 4 JPA Debt	1,243,824.50	1,243,824.50		
70105 Bond Related Costs	4,656,682.85	4,656,682.85		
00951 West Haymarket Capital Proj	336,462,685.89	329,048,616.92	530,999.89	6,883,069.08

As of July 31, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870001 WH General Coordination P2	360,000.00	360,000.00		
70090 West Haymarket Park	360,000.00	360,000.00		
70092 Parking				
870205 WH Parking Garage #2 P2	12,112,457.43	12,099,905.93	10,000.00	2,551.50
870206 WH Parking Garage #3 P2	14,858,656.42	14,830,647.58	6,828.00	21,180.84
70092 Parking	26,971,113.85	26,930,553.51	16,828.00	23,732.34
70093 Roads				
870309 WH Streetscape P2	953,573.17	943,573.17	10,000.00	
70093 Roads	953,573.17	943,573.17	10,000.00	
70105 Bond Related Costs				
870981 WH Series 5 JPA Debt P2	411,982.31	411,982.31		
70105 Bond Related Costs	411,982.31	411,982.31		
00951 West Haymarket Capital Proj	28,696,669.33	28,646,108.99	26,828.00	23,732.34

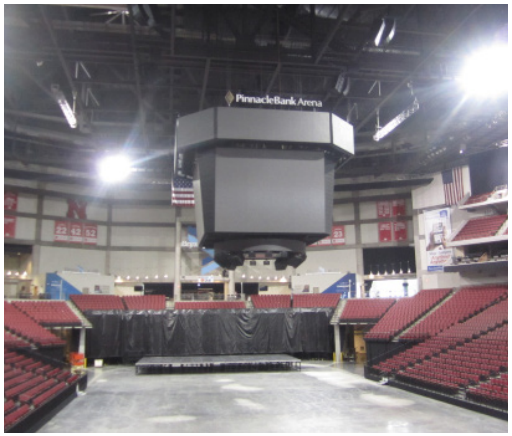
As of July 31, 2015

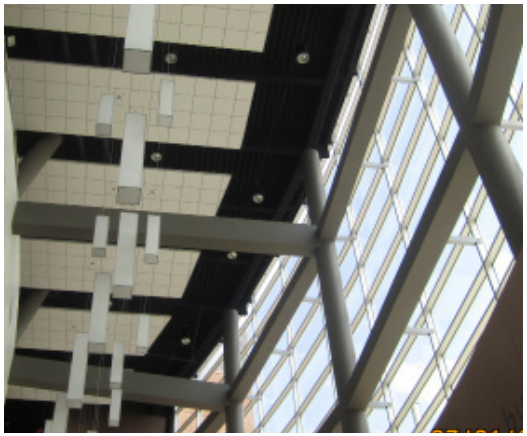
	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06094 W Haymarket Revenue					
16 Transfer Out					
9220 Cash Transfers Out				453,465.63	453,465.63-
16 Transfer Out				453,465.63	453,465.63-
06094 W Haymarket Revenue				453,465.63	453,465.63-
06095 W Haymarket Surplus					
11 Materials & Supplies					
5221 Office Supplies	250.00		250.00		250.00
5261 Postage	1,750.00		1,750.00	1,431.37	318.63
5323 Bldg Maint Supplies	500.00		500.00	41.88	458.12
11 Materials & Supplies	2,500.00		2,500.00	1,473.25	1,026.75
12 Other Services & Charges					
5621 Misc Contractual Services	799,772.00		799,772.00	618,043.69	181,728.31
5624 Auditing Service	20,000.00		20,000.00	13,400.00	6,600.00
5631 Data Processing Service	1,254.00		1,254.00	1,149.27	104.73
5635 Delivery Service				73.52	73.52-
5642 Legal Services				82.00	82.00-
5643 Management Services	1,223,420.00		1,223,420.00	1,020,000.00	203,420.00
5643.61 Deck 1 Mgmt Services	564,000.00		564,000.00	524,409.76	39,590.24
5643.62 Deck 2 Mgmt Services	407,000.00		407,000.00	247,041.62	159,958.38
5643.63 Deck 3 Mgmt Services	569,000.00		569,000.00	326,287.66	242,712.34
5683.04 Snow Removal	2,500.00		2,500.00	1,079.50	1,420.50
5683.05 Fire Alarm Monitoring	500.00		500.00	307.80	192.20
5723 Meals & Parking				60.00	60.00-
5762 Photocopying	500.00		500.00	37.70	462.30
5763 Printing	500.00		500.00	30.25	469.75
5784 Misc Insurance	26,521.00		26,521.00	26,521.00	
5786 Property	145,754.00		145,754.00	145,754.00	
5794 Public Officials	24,640.00		24,640.00	19,067.50	5,572.50
5821 Electricity - Bldg & Grnds	7,065.00		7,065.00	8,077.07	1,012.07-
5825 Natural Gas	3,000.00		3,000.00	2,100.32	899.68

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06095 W Haymarket Surplus					
12 Other Services & Charges					
5829 Telephone	1,200.00		1,200.00	1,183.55	16.45
5830 Water	1,000.00		1,000.00	786.39	213.61
5835 Thermal Heating & Cooling	2,150,000.00		2,150,000.00	1,941,861.25	208,138.75
5856 City Share Linc Center Maint	33,000.00		33,000.00	19,337.77	13,662.23
5862 Grounds Maintenance	3,000.00		3,000.00		3,000.00
5870 Other Bldg Maintenance	11,000.00		11,000.00	4,919.98	6,080.02
5928 Rent of Co/City Bldg Space	966.00		966.00	885.50	80.50
5931 Parking Rent Bldg Comm	465.00		465.00	426.25	38.75
5952 Advertising/Media Serv	1,450.00		1,450.00	825.00	625.00
5969 Arena Sales Commissions	2,828,329.00		2,828,329.00	2,828,329.00	
5993 Fees Paid to State of NE				45.00	45.00-
5996 Credit Card/Bank Fees	5,000.00		5,000.00	199.05	4,800.95
12 Other Services & Charges	8,830,836.00		8,830,836.00	7,752,321.40	1,078,514.60
06095 W Haymarket Surplus	8,833,336.00		8,833,336.00	7,753,794.65	1,079,541.35
195011 JPA 2010A Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6235 Bd Trustee Pmt-Interest	4,651,510.00		4,651,510.00	4,651,510.00	
15 Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	
195011 JPA 2010A Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	
195021 JPA 2010B/C Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	1,048.00		1,048.00	1,048.00	
6235 Bd Trustee Pmt-Interest	5,874,323.00		5,874,323.00	5,874,322.50	.50
15 Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
195021 JPA 2010B/C Debt Service					
15 Debt Service					
195021 JPA 2010B/C Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	424.00	100.00
6235 Bd Trustee Pmt-Interest	4,591,688.00		4,591,688.00	4,591,681.83	6.17
15 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195031 JPA 2011 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195041 JPA 2013 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6234 Bd Trustee Pmt-Principal	540,000.00		540,000.00	540,000.00	
6235 Bd Trustee Pmt-Interest	1,136,075.00		1,136,075.00	1,136,075.02	.02-
15 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
195041 JPA 2013 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
00950 West Haymarket Revenue	25,629,552.00		25,629,552.00	25,003,369.63	626,182.37

Pinnacle Bank Arena





Financial and Operational Review

August 20, 2015

VENUE Solutions group
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Overview

Venue Solutions Group, LLC (VSG) was retained by the West Haymarket Joint Public Agency (JPA) to provide a financial and operational review for Pinnacle Bank Arena, a venue managed by Pennsylvania-based SMG. The review consists of benchmarking the arena with four peer facilities and, where appropriate, making recommendations that will improve operations.

As apart of the review process, two VSG partners conducted interviews of SMG senior arena management, SMG corporate personnel responsible for oversight of the Pinnacle Bank Arena operations, University of Nebraska-Lincoln athletic department senior staff, City of Lincoln Mayor, City of Lincoln Finance Department, JPA Board Members, and senior management of the Lincoln CVB and Chamber of Commerce. SMG was also asked to provide financials, organizational charts, event utilization and food and beverage per capita data. VSG partners toured the facility with SMG senior staff to ascertain the cleanliness and upkeep of the arena and the processes currently employed to ensure its preservation of facility assets and systems. During the tour, VSG interviewed operations, engineering and security staff to understand how processes and procedures are implemented and utilized daily.

The Pinnacle Bank Arena is owned by the JPA (as long as there are outstanding bonds) and has entered into an operating agreement with SMG, a private facility management based in suburban Philadelphia, PA. SMG is responsible for the daily operation of the arena, which includes event programing and concert booking, Savor food and beverage operations, preventive maintenance, financial and accounting, repair and maintenance, marketing, staffing, HR compliance, security and managing the festival parking lot. SMG is also responsible for booking, staffing, event day operation and cleanup of the Pinewood Bowl, an outdoor amphitheater

with a seated capacity of 4,200 and GA capacity of 5,500.

During the design and construction of the arena, SMG was contracted to consult on the design, furniture, fixture & equipment quantities, costs and specifications, and the development of annual operating and grand opening budgets. On June 7, 2012 the JPA entered into a management agreement with SMG to manage the arena, Pinewood Bowl and festival parking lot to the north, as well as operate all food service activities under their Savor brand. The management agreement took effect starting September 1, 2013 to correspond with the opening of the arena. The term of the agreement is three (3) years with the JPA's option to renew for one (1) additional three (3) year term. SMG provided the JPA with a $2M project loan to be utilized by the JPA at their discretion to fund preopening expenses.

SMG's management fee for the initial term of the agreement is an annual fixed fee of $200,000 plus incentive based compensation based on the following:

1. Financial Incentive Fee (Revenue Based)
    a. Up to 50% of base fee of $200,000
    b. Would first have to achieve agreed upon operating budget for such year to qualify
    c. If budget is achieved SMG would earn 30% of AGI (excluding food & beverage) in excess of $2M
2. Non-Financial Incentive Fee
    a. Up to 50% of base fee of $200,000
    b. Based on JPA's evaluation of SMG's performance in booking non-university events (20% of fee)
    c. Based on JPA's evaluation of SMG's performance in booking non-university event attendance (20% of fee)
    d. Based on Client/Tenant satisfaction surveys (5% of fee)

e. Based on patron satisfaction surveys/mystery shopping (5% of fee)

SMG's Savor food service agreement pays them 4% of net food and beverage revenues, creating an incentive for Savor to maximize F&B gross revenue. The Savor agreement runs concurrently with the SMG management agreement, which expires August 31, 2016.

The JPA and the University of Nebraska-Lincoln have an agreement for the university to play their men and women's basketball games in the arena. The university's agreement to move their games from the on-campus arena to the Pinnacle Bank Arena was seen as an important factor in the development of the project. The agreement commenced on September 1, 2013 (executed on November 9, 2011) for a term of thirty (30) years with three (3) five (5) year options. The highlights of the agreements are as follows:

1. UNL pays an annual rent of $750,000 per year with an annual increase for inflation beginning September 1, 2014
2. UNL receives an annual credit toward rent payments equal to all "turnback" sales tax payments made by UNL from the total value of all UNL Men's and Women's Basketball Game ticket sales and total taxable sales from the Pinnacle Bank Arena based Husker Authentic store.
3. UNL receives annually a "make-whole" provision for lost Devaney Center Basketball game concessions sales, and that make-whole amount is credited toward the annual rent payments.
4. Scheduling priority for a minimum of 15 men's and 15 women's home basketball games
5. UNL receives access to arena for 15 additional days of use at no additional rent (UNL pays direct costs)
6. UNL receives four (4) suites and retains revenue from the sale of the suites

7. UNL receives 50% of net revenue from Loge Seating sales
8. UNL receives 100% of club and courtside seating sales for men's and women's basketball games
9. UNL receives 50 parking spaces for UNL events in the attached garage at no cost to UNL
10. UNL receives full payment for all Men's and Women's basketball game tickets from suite and loge seats

The JPA has contracted with IMG College for the sale of all arena advertising and sponsorship and who is also contracted to market advertising, marketing and media rights for UNL Athletics. The agreement with IMG College provides the JPA with the following guaranteed rights fee:

1. Year 1 $750,000
2. Year 2 $1,020,000
3. Year 3 $1,040,400
4. Year 4 $1,061,208
5. Year 5 $1,082,432
6. Year 6 $1,104,081
7. Year 7 $1,126,162
8. Year 8 $1,148,686

There is a predetermined revenue sharing threshold for each year, whereby the JPA receives 50% of net revenue in excess of the threshold, which averages roughly $850,000 in excess of the annual guaranteed rights fee.

IMG College also sold the beverage pouring rights to the arena for $285,000 per year and is included in the guaranteed payment to the JPA. Prior to the agreement with IMG College the pouring rights revenue was always intended to be included in arena operating revenues.

As part of the debt required to finance the arena, the City of Lincoln and the JPA earmarked revenue streams from arena operations to service a portion of the project debt service. The JPA currently utilizes revenue generated from arena operations to service project debt:

1. Naming Rights – partner paid $6,732,000 upfront for 25 years
2. Suite Leases – projected $1,660,000 annually from 2014-2022, $1,826,000 annually from 2023-2032, $2,008,600 annually from 2033-2042 and $2,209,460 from 2043-2046
3. Loges boxes (50% of net revenue) – projected at $180,000 for years 2014-2022, $198,000 from 2023-2032, $217,800 from 2033-2042 and $239,580 from 2043-2046
4. Club seats – projected at $624,000 annually from 2014-2022, $686,400 annually from 2023-2032, $755,040 annually from 2033-2042 and $830,544 annually from 2043-2046
5. Sponsorship – guaranteed rights fee from IMG College agreement of $8,332,969 over the eight (8) year agreement plus revenue sharing payments

Arena revenues earmarked for debt service totaled $2,312,859 after $465,000 in sponsorship revenue was transferred to SMG's operations due to a projected shortfall in arena revenues for the FYE 2015. The JPA has budgeted $3,484,000 in arena revenue for debt service payments in FYE 2016.

Beginning in FY 2016 the JPA will set aside $1.3M annually for arena capital improvements. SMG and the JPA have not developed a long-term capital plan for the arena, festival parking lot and the attached garage.

It should be noted that SMG staff were very cooperative and forthcoming with VSG in the interviews, facility tour, and follow up conference calls. They were also timely in the delivery of requested documents.

Executive Summary

FINANCIAL

In the first year of operations ending August 31, 2014, the PBA realized a net operating income of $34,000 after the JPA provided $465,000 in advertising revenue (total advertising revenue for year one was $750,000 with $285,000 in pouring rights being previously committed and budgeted toward the SMG/Savor operation). To retire the debt on the project the JPA set aside $3.4 million in arena operating revenue from naming rights, suite and loge leases, club seats and advertising revenue. The City of Lincoln also negotiated a lease with UNL Athletics for the men's and women's basketball teams to play their home games at Pinnacle Bank Arena. That made the move from campus advantageous for the institution. Having UNL play their games in the arena was critical to gaining the support necessary to move the project forward. SMG, as the chosen operator, assumed management of the arena, and working with the available information at the time, agreed with project leaders that the venue could operate at break even or better. The projections for the first year of operations were optimistic and as the second operating year nears its end, a "reset" in the expectations of the operating performance is required moving forward.

VSG has benchmarked the PBA with four comparable peer venues that all have opened recently, have a basketball capacity of 11,000-15,000, Division 1 collegiate basketball programs as major tenants, and are publicly or university owned and privately managed. The benchmark analysis focused on several broad indicators of business operations to include event utilization, revenues, expenses, staffing and food and beverage per capita spending. VSG also has provided a side-by-side comparison of the major lease deal points with the university tenants.

All of the peer group arenas operate at a significant loss mostly attributed to some loss of contractually obligated revenue such as naming rights, suite leases and advertising being utilized by the owner for debt service or to support the financial operations of a collegiate athletic department. Three (3) of the four (4) peer group venues have collegiate tenants who have first priority for holding dates to schedule non-conference and conference basketball games. In the case of the PBA, there have been instances where they have lost recent opportunities to book concerts due to a lack of scheduling flexibility, although UNL has been amenable to moving dates when allowed by the conference office. All of the peer group venues, and most arenas with professional sports teams as major tenants, have to work around tenant scheduling and the timeliness of the release of the final schedule. This can be particularly frustrating for a venue manager as most concert tours are routing 4-6 months in advance of the performances.

Pinnacle Bank Arena hosted a wide variety of events in the FYE 2014 highlighted by 18 concerts and most of the UNL men's basketball games playing at near capacity. Compared to its peer group the PBA performed well in both ticketed and non-ticketed events. Its total combined 235 events was significantly higher than the benchmark average of 138 events.

The PBA's revenue is primarily based on event activity and heavily dependent on concert activity, which by far generates the most revenue. Rentals, food and beverage and ticket rebates comprise 83% of total net revenue with advertising and sponsorship 14%. Without receiving the contractually obligated revenues and being heavily dependent on concert activity, some volatility in revenue can be expected year to year. It's difficult to predict the concert touring business from year to year and especially for the 157th largest market in the U.S. with plenty of competition on the regional marketplace.

The per capita spending on food and beverage for the PBA compares favorably to the peer group for concerts and women's basketball but underperforms for men's basketball. The underperformance is likely attributable to no alcohol sales, as all the peer group venues permit alcohol in suites and two of the venues sell it in public areas.

The overall size and event activity of a venue drives its operational costs. Compared to its peer group and based on its size, SMG appears to be managing the expense side well and was proactive in cutting costs in the first year of operations as revenues were not meeting projections. The PBA has more full time staff because they perform more functions "in-house" relative to the peer group, which includes security, cleaning and food service. Several of the peer group venues choose to outsource and therefore have higher expenses in contracted services than the PBA, with the PBA having higher full-time compensation and benefit costs.

Utilities, which were under projected for the first year of operation, is $2.39 per square foot, which is slightly higher than the peer group, mostly attributable to the purchase of chilled water and steam from the District Energy Corporation (DEC). The PBA is currently one of five customers of the DEC, and as more DEC customers come on line, the costs for the PBA should begin to decline. SMG has recently made improvements to their energy monitoring technology that have already resulted in reduced energy costs with the full benefits likely to be realized in the 2015-2016 FY.

Salaries associated with full-time staff at the PBA are on average $4,400 less than the peer group on a per employee basis.

FOOD SERVICE

SMG manages the food service (concessions, catering) operation through their subsidiary, Savor. Savor receives a percentage of gross F&B revenue (net of sales tax) as

a fee, and the term of their agreement is concurrent with the management agreement of SMG.

Because food service operations is a significant contributor to overall revenue, any incremental improvements or deficiencies can have a material affect on the arena budget.

In both FYE 2014 and the current year, SMG over projected budgeted net F&B revenue. The resulting shortfall can be due to a multitude of reasons, including the conservative (i.e. frugal) culture of the community, the proximity of competing dining establishments, precedents on menu and pricing by UNL facilities, game times, the use of suites, and of course quality and service of the food service operation.

In order to address the issue of missed revenue and customer service shortfalls, SMG has taken multiple steps since Year 1, which include replacing the chef, reducing some menu pricing, creating new dining packages for premium seat holders, surveying fans, and for 2015-2016, budgeting an F&B position that had been vacant for some time.

The condition of the kitchen and concession spaces was very good; we toured many of these areas and found them to be clean and well organized.

Alcohol is served at all non-University events, and currently it is prohibited by the school in all arena spaces during UNL events. For collegiate sports, the current trend is to allow alcohol (either via purchase or self-stocking) in suites and premium areas, and the concept is also gaining more traction for public spaces as well.

In an effort to create more event activity and decrease the arena's operating deficit, SMG has made strides to create their own events. This activity included hosting "watch parties" during UNL football games, whereby fans were invited into the arena to watch the games on the center hung scoreboard. The initial events drew 3,000-

4,000 people and provided SMG with additional food and beverage revenue. Because nearby restaurants believed they were losing sales to the watch parties, they successfully lobbied the City Council to restrict them in both quantity and scope. This fall, there will be watch parties in the arena during only three (3) football games, as well as smaller events (Stadium Terrace Parties) on the arena terrace that overlooks the Haymarket with expected attendance of 300-500 fans. These smaller events will occur prior to all home UNL football games. In an act that could be viewed as hypocrisy, the restaurants have been granted Special Designated Licenses to expand their footprints and generate food and beverage sales beyond their walls during times when the arena has booked a major concert. In essence, the restaurants don't want the arena to impact their sales, but at the same time they want to expand their own sales at the expense of the arena.

OPERATIONS

The operations review of Pinnacle Bank Arena touches on a variety of areas, such as recycling, parking, cleanliness, and client/guest surveys, to name a few. With each chosen category, we provide background information as well as best practices on the subject, then for PBA we examine the condition of any physical assets, reviewed applicable policies and procedures, and assess the effectiveness of SMG's effort.

SMG is required to adhere to a robust recycling and sustainability program as defined in the management agreement. While they meet almost all the requirements, due to limitations of local resources, the high diversion rate has not been met. However, recent changes with their contracted transportation companies, including a process to now compost food scraps, have permitted SMG to begin to divert more waste and calculate accurate diversion percentages.

SMG operates and maintains the adjacent garage that has a capacity of 286 spaces, as well as the Festival Lot, a 1,300-space paved lot northwest of the arena accessed via a long pedestrian bridge. SMG receives no revenue from the parking garage, but has financial responsibility to provide staffing, cleaning, utilities and maintenance. The Festival Lot has not seen maximum utilization, due in part to factors that include competition of nearby municipal garages, a perception of it being a long distance to the arena, and possibly, the perception that being remote equals being unsafe. If additional businesses open up in that area, or the municipal garages become busier due to new establishments in the Haymarket District, the Festival Lot could see an increase in event parking. On a more positive note, the Festival Lot has been used for UNL football tailgating as well as its own event space, including the annual Ribfest. This has resulted in additional revenue to the arena.

SMG currently maintains a program where both fans and clients (licensees) are surveyed about their experience at the arena. This is a requirement of the management agreement that determines SMG's incentive-based compensation. Fans are surveyed by using the Ticketmaster database and are provided a link to an online survey. For most clients, SMG sends links to a surveymonkey.com survey. They typically do not request surveys from promoters of live entertainment events, as it is not in their "DNA" to complete such surveys. Currently, this survey does not use a rating scale like the fan survey. In order to better meet the requirement of the management agreement, we recommend modifying the survey so that it contains the rating scale.

SMG does not survey the University of Nebraska or their fans (the University has their own program in place), but they do meet regularly with their UNL Athletics counterparts to address any issues or potential challenges. Again, in order to meet the letter of the contract, we recommend working with the UNL Athletics to create some type of annual survey that will reflect their experience at Pinnacle Bank Arena.

We found the arena, inside and out, to be clean and well maintained overall. We toured public spaces as well as areas like the kitchen, janitor closets, storage areas, dressing rooms, and mechanical rooms. All were in good condition, both from the perspective of cleanliness as well as wear-and-tear. Cleaning and maintenance is performed with 2 Full Time Equivalent (FTE) staff and a stable of part time staff in-house, and with a subcontractor.

SMG opened the arena with 43 FTEs, and through attrition and cost cutting, that number was reduced to 35 FTEs. SMG's FY 2015-2016 budget proposed to restructure the operations department in order to re-establish the Director of Operations position along with several sales positions. Although not to the staffing levels of the arena's opening, SMG is confident that by adding these positions, they can maximize revenue opportunities and maintain the facility in a first class manner.

SMG is utilizing a preventive maintenance program, and the staff tasked with administering and executing the preventive maintenance has strong technical skills. The facility was observed to be in good condition and preventive maintenance of major systems is occurring on a regular basis.

SMG is currently implementing technology to better manage their utility consumption. The upgrades to the automation system and addition of 143 meters have resulted in a 20% reduction in electricity, and the project has a projected ROI of 1.5 years.

A long-term capital expenditure plan for the arena has not been developed to date. A 30-year plan that breaks out interior finishes, major systems, seating, structural elements, video & audio, roofs, lighting, food service and FFE should be developed in the next year by SMG and presented to the JPA annually as part of the budget approval process. The JPA may elect for SMG to submit a 5-year rolling plan that has greater detail.

The arena is staffed 24 hours a day by trained security personnel under the direction of SMG. The facility has 75 cameras that provide full coverage internally and externally, with appropriate data storage. The arena has an emergency plan and according to SMG, performs yearly evacuation training. Based on our review, the current plan in the security office requires updating and better organization.

Financial Review

Historical Performance

Pinnacle Bank Arena opened on September 1, 2013 and has completed almost two (2) operating years. While the arena was under construction, the City of Lincoln hired SMG to provide consulting services. To finance the project, the city earmarked certain arena operating revenues to service part of the project debt. Premium seating, advertising and naming rights revenue projected at $3,482,020 was retained by the JPA for debt service in FYE 2014. The goal of city was for the arena to at least break even financially, even with these revenues directed toward debt service. SMG felt they could operate the arena at break even and provided the city with a break-even proforma. It was evident early in the 2013-2014 FY that the revenue projections would not be met and that SMG would require additional revenue from the JPA. The JPA redirected sponsorship revenue of $465,000 and the operator cut costs to end the fiscal year with income of $34,000. For the current fiscal year, which ends in August 31, 2015, SMG submitted a break-even budget that included the sponsorship revenue of $735,000 (which increased to $1,020,000 in year two of the IMG College contract). As of today, arena operations for FYE 2015 are projected to lose $600,000. The original projections for operating performance, in hindsight, were overly optimistic. Food and beverage revenues were significantly under projections and the utility cost significantly over projections. It should be noted that the arena purchases its chilled water and steam from the local DEC. As more businesses are added to their service, the arena's share of the cost should decline. SMG's primary source of revenue is from event activity that is dependent on concerts and the ancillary revenue generated through food and beverage sales, merchandise and ticket rebates and surcharges. Concert touring is cyclical and the competitiveness of the surrounding markets results in high volatility in revenue from year to year.

Benchmarking With Comparable Arenas

This section of the analysis provides a benchmark comparison of the Pinnacle Bank Arena's financial performance to four (4) similar sized multi-purpose arenas. The purpose of the benchmarking is to provide a framework from which to assess the business operations of the Pinnacle Bank Arena relative to other peer facilities and to identify potential opportunities for improvement.

Benchmark facilities were identified based on a variety of criteria including: (1) modern areas built in recent years; (2) capacity of 10,000-15,000 seats; (3) major university basketball tenant; and (4) public or university ownership.

The four (4) arenas for comparison include:

- Ford Center – Evansville, IN
- John Paul Jones Arena – Charlottesville, VA
- Save Mart Center – Fresno, CA
- Chaifetz Arena – St. Louis, MO

The table on the following page summarizes the key characteristics of the benchmark venues including location, market population, ownership, operator, tenants, square footage and seating capacity.

The benchmark analysis focused on several broad indicators of business operations including, but not limited to:

- Utilization
- Financial Operations
    - Revenues
    - Expenses
    - Staffing
    - Food & Beverage Per Capita Spending

Pinnacle Bank Arena - Primary Benchmark Facilities

	Note	Pinnacle Bank Arena	Ford Center	Chaifetz Arena	Savemart Center	John Paul Jones Arena
City, State		Lincoln, NE	Evansville, IN	St. Louis, MO	Fresno, CA	Charlottesville, VA
MSA		Lincoln, NE Metro Area	Evansville, IN-KY Metro Area	St. Louis, MO-IL CSA	Fresno, CA Metro Area	Charlottesville, VA Metropolitan Statistical Area
MSA Population	(1)	318,945	315,162	2,806,207	965,974	226,968
MSA Rank		155	156	19	56	196
Year Open		2013	2011	2008	2003	2006
Construction Cost		$180M	$128M	$80.5M	$103M	$131M
Owner		West Haymarket Joint Public Agency	City of Evansville	Saint Louis University	California State University, Fresno Association, Inc.	University of Virginia
Operator		SMG	VenuWorks	Spectra	SMG	SMG
Tenants		University of Nebraska Men's and Women's Basketball	University of Evansville Men's & Women's Basketball East Coast Hockey League	SLU Men's and Women's Basketball	Fresno State Men's & Women's Basketball	UVA Men's and Women's Basketball
Building Square Footage		470,000	290,000	269,300	450,000	350,000
Seating Capacity - Basketball		15,147	10,000	10,600	15,544	14,593
Seating Capacity - Concerts		14,620	11,000	10,800	16,183	14,200

(1) http://factfinder.census.gov/

Utilization

Pinnacle Bank Arena hosts a wide variety of events including UNL Men's & Women's basketball games and practices. UNL's agreement with the JPA provides them with first rights to schedule home games which can impact SMG's ability to book concerts and family shows as most touring events are booked 4-6 months in advance. It is particularly difficult in the months of December through March, as the Big 10 conference schedule is not released far enough in advance to book during these months. It should be noted that UNL is sensitive to the need to book concerts and tries to help on clearing calendar holds for games, but is at the mercy of the Big 10 conference office and has little leverage to move holds.

The PBA compares favorably with the peer benchmark facilities, especially in the non-ticketed events such as banquets, meetings and community events. Combined, non-ticketed events represent 128 of the 235 total events, which is 54% of the arena's event activity and is 57% more than the benchmark average. Concert activity is typically the most profitable event type that an arena can host. The arena's concert activity in the first year of operation was robust especially for the size of the market, and is typical in the "honeymoon" period. The PBA's 18 concerts were 4 more than the peer group average with the market likely to sustain 10-14 concerts per year moving forward.

The arena significantly underperformed relative to the peer benchmark group on family shows. This is likely due to the lack of calendar flexibility during the basketball season as these touring events require at least a week for production set up and multiple performance days.

Tenant events provide a stable event base of events for a venue each year. The 39 UNL men's and women's basketball games was one more than the benchmark average and represented approximately $500,000 in net event revenue.

Event Comparison
Based on FYE 2014

	Pinnacle Bank Arena	Benchmark Average	Above/(Below) Benchmark Average	Benchmark Detail			
				Arena A	Arena B	Arena C	Arena D
Events							
Tenant	39	49	(10)	33	50	81	31
Sports	25	3	22	5	5	0	1
Concerts	18	14	4	21	14	11	9
Entertainment	23	3	21	1	9	0	0
Family Shows	2	12	(10)	2	4	22	21
Civic/Religious	0	7	(7)	21	0	7	0
Convention / Trade /Public Shows	7	7	(0)	9	7	13	0
Meetings/Banquets, Etc.	88	42	46	12	30	4	164
Other	33	2	31	8	0	0	0
Total Events	**235**	**138**	**97**	**112**	**119**	**138**	**226**

Financial Comparison
Based on FYE 2014

	Arena A	Arena B	Arena C	Arena D	Pinnacle Bank Arena
REVENUE					
Rent Income	$72,730	$427,541	$144,683	$747,870	$1,201,856
Service Income	$352,780	$95,014	$1,883,289	$1,244,494	$1,947,835
Less: Service Expenses	$0	($575,707)	($1,331,083)	($1,901,851)	($2,976,066)
Direct Event Income	$425,510	($53,152)	$696,889	$90,513	$173,625
Food and Beverage	$757,514	$1,212,540	$1,749,827	$0	$2,519,836
Merchandise	$31,481	$101,939	$115,623	$49,413	$315,942
Parking	$350,211	$665,049	$0	$120,803	$273,451
Premium Seating Leases	$0	$0	$1,018,631	$0	$0
Suite/Club Seat Ticket Sales	$37,270	$94,356	$113,577	$80,087	$212,462
Ticket Rebates	$181,173	$0	$267,345	$249,517	$613,894
Facility Fees	$185,040	$551,628	$809,137	$448,986	$331,621
Advertising Income	$0	$0	$728,765	$102,500	$753,000
Other Income	$23,682	$117,899	$14,766	$36,674	$93,129
TOTAL	$1,991,881	$2,690,259	$5,514,560	$1,178,493	$5,286,960
EXPENSES					
Salaries & Wages	$758,568 *(3)*	$2,249,535	$1,660,961	$838,232	$3,866,484
Benefits	$211,064	$700,901	$649,641	$185,686	$790,590
Less: Event Labor Allocations		($1,261,844)	$0	($146,046)	($1,704,837)
Contracted Services	$0	$469,761	$304,495	$246,134	$13,009
General and Administrative	$145,773	$173,955	$292,707	$105,542	$231,937
Advertising/Marketing	$52,502	$12,938	$164,568	$0	$31,288
Operations	$44,799	$0	$152,100	$34,715	$125,957
Repair and Maintenance	$19,086	$164,228	$95,753	$84,986	$25,976
Supplies	$50,232	$189,683	$176,459	$66,849	$141,490
Insurance	$99,530	$117,760	$90,510	$136,632	$156,723
Utilities	$0	$643,746	$775,552	$738,225	$1,123,108
Other	$0	$0	$1,141,988	$1,998	$55,582
TOTAL	$1,381,554	$3,460,663	$5,504,732	$2,292,953	$4,857,307
Less: Management Fee	$125,000	$516,875	$566,060 *(2)*	$192,652	$396,939 *(2)*
Net Income/(Loss)	$485,327	($1,287,279)	($556,232)	($1,307,112)	$32,714
Margin	*24.37%*	*-47.85%*	*-10.09%*	*-110.91%*	*0.62%*
University Reimbursement/Assumed Expenses	(900,000) *(3)*			568,931	
NOI after University Participation	($414,673)	($1,287,279)	($556,232)	($738,181)	$32,714

(1) Reimbursement for common area maintenance and some operating expenses related to athletics spaces
(2) Includes management fee for arena as well as food and beverage management
(3) Several costs for Arena A are provided by their University, such as repair/maintenance, full time security, and maintenance contracts. Also, utilities are paid by the University. We estimate this value is approximately $900,000.

Financial Performance

The table on the previous page provides a comparison of the revenues, expenses and operating income for the PBA to the those of the peer benchmark arenas. For the FYE 2014 the PBA realized operating income of $32,714 after the transfer of the advertising revenue that was originally earmarked for debt service, and will now be included as operating revenue moving forward. It should be noted that the other debt service revenue streams are exceeding projections so the redirection to arena operations won't significantly impact debt service payments.

Each of the peer group venues is impacted by a variety of factors including but not limited to, revenues dedicated to debt service, lease terms with tenants, event activity, building size and local market conditions.

The four peer venues each operate a significant loss ranging from $400,000 to $1.3M after factoring in costs assumed by the owners not realized in operations.

Revenues

The largest net revenue streams for the PBA include rentals (23%), food & beverage (48%), ticket rebates (12%) and advertising (14%).

The financing of the arena's construction requires certain contractually obligated income (naming rights, suites, premium seating and advertising) are directed to the JPA for debt payments and are not reflected in the PBA's operating revenues. These restricted revenues account for $2.5 million after $750,000 in advertising revenue was moved into arena operations in FY 2013/2014. Without these "restricted" revenues, the revenues generated by the PBA out perform the peer group. Three of the four venues in the peer group do not realize premium seating

lease and naming rights revenue, resulting in a larger operating deficit.

Per capita spending on food and beverage is generally a good indicator of the operational effectiveness of the food service operator. Concerts have historically provided the highest per capita spending for arena events, which is driven by alcohol sales. Margins on sales of beer, wine and liquor, which have higher price points, are significantly higher than food. The appropriate number of points of sales for the event demographic also plays a large part in driving higher per capita spending as you can serve more customers faster. The physical layout of the venue is a factor, as having wide and multiple concourses allows for greater distribution and locations to drive higher sales.

Pinnacle Bank Arena compared favorable relative to the peer benchmarking group as it exceeds the benchmark average for concerts, women's basketball and family events, although they only hosted two (2) family shows which underperformed the peer group for utilization. The PBA underperforms on UNL men's basketball games compared to the peer group more likely due to no alcohol sales in the suites, as well as the proximity of Haymarket restaurants and bars. This topic will be further developed in the operational section of the report.

The current lease agreement with UNL gives them priority on dates for men's and women's home basketball games, annual rent payments to the JPA of $750,000 that are offset by a "turnback tax" and a $300,000 food and beverage rebate. The net rent payment to the JPA was $301,732 for FY 2013-2014 and $312,244 for FY 2014-2015.

Three (3) of the four (4) peer group venues have collegiate tenants that have first priority on dates for home basketball games and three (3) of the four in the peer group remit 100% of the net food and beverage revenue from basketball games to university athletics. Generally, the rights received by UNL through their lease

are consistent with the peer group with the exception on suite lease revenue. In the comparable venues owned by the universities, that revenue stream remains with athletics as well as the net naming rights revenue. In peer group venues where premium seating and naming rights revenue is retained by the owner, it is likely that some portion is utilized to service debt on the venue.

Our review and analysis of the concert and mainstream event activity suggests that the PBA hosts events that are available to them by third parties. It is appropriate to recognize that sports tenant date commitments have a material effect on the venue's availability revenue generating events.

Per Capita Food & Beverage Spending Comparison
Based on FYE 2014

Events	Pinnacle Bank Arena	Benchmark Average	Above/(Below) Benchmark Average	Benchmark Detail: Arena A	Arena B	Arena C	Arena D (1)
Concert	13.67	11.41	2.26	7.95	10.64	11.65	15.39
Men's Basketball	4.89	5.95	(1.06)	6.61	5.41	6.27	
Women's Basketball	4.37	3.31	1.06	4.26	3.66	2.33	
Family Shows	6.50	3.36	3.14	4.31	4.13	2.57	2.44

For University Basketball Events

Alcohol Available in Suites	No	Yes	Yes	Yes	Yes
Alcohol Available in General Concessions	No	Yes	Yes	Yes	No

(1) At the request of the respondent, two per cap numbers were withheld from the chart; however they were used in calculating the Benchmark Average

Tenant Lease Comparison

	Pinnacle Bank Arena	Arena A	Arena B	Arena C	Arena D
Annual Rent	$750,000 with annual increases + $2,500 per game in event expenses (floor security)	No rent, but arena is reimbursed for typical game day expenses, plus a flat $1000 utility expense. Athletics retains 100% of ticket sales, club dues/donations, etc..	No rent, and athletics retains all merchandise revenue and ticket revenue for University events, but reimburses for typical venue expenses such as staffing.	$304,500 (increased annually) for regular season men's & women's basketball games. University pays $200 per 3-hour practice.	No rent, but arena is reimbursed for typical game day expenses
Annual Credits/Rebates	Credit based on turnback tax and a portion of ticket surcharge				
F&B Revenue	$300,000 rebate in lieu of F&B revenue	Athletics receives no revenue for basketball games	Athletics receives no revenue for basketball games	University receives portion of alcohol sales (10% if attendance exceeds 500 people)	Athletics receives 100% of net revenue
Premium Seating Allocation	UNL receives 4 suites			University provided with 1 suite during basketball games	
Premium Seating Revenue	UNL receives 50% of net revenue from Loge Seats and 100% of club/courtside seating for their events	Athletics receives 100% of net revenue on suite leases	Athletics receives no revenue. Revenue earmarked for debt service.	University receives $40,000 for suites and $15/ticket for Loge seats	Athletics receives 100% of net revenue
Advertising Revenue		Athletics receives 100% of net revenue except for naming rights.	Athletics receives 100% of net revenue from their game-day sponsors. Permanent arena advertising earmarked for debt service.	Bowl/court/sideline advertising to University for games only	Athletics receives 100% of net revenue
Parking Allocation	UNL receives 50 parking passes in attached garage			25 dock parking passes	

Expenses

The allocation of expenses for venue operations varied significantly for the peer benchmarking group. During our analysis of the financial data, two of the peer group venues have portions of their operating expenses assumed by the owner and not represented in the venue's income statement. VSG has added these expenses into the financial statement chart so that there is a truer comparison of financial data. In both instances the expenses were near or in excess of $1,000,000.

The PBA's operating expenses of $4.8 million in FYE 2014 are the highest of the peer group, with the largest expenses in salaries, wages and utilities. Size of the venue and event activity drives operating expense.

The utilities on a cost per square foot basis of $2.39 are slightly higher than the peer group average of $2.11, which can be mostly attributed to the purchase of chilled water and steam from the local DEC, as well as a financial obligation for a portion of the operating costs of the DEC. Currently, the arena is one of five customers of the DEC, but as new development connects to the system, those operating and usage costs will diminish for the PBA.

SMG has embarked on technology upgrades that have already resulted in decreased utility usage in FYE 2015 and should realize the full benefits of the improvements in FY 2016.

In areas such as general and administrative, supplies, insurance, operations the PBA compares quite favorably and appears to do well managing these expenses relative to its size.

Oftentimes, a venue that reports a higher number of full time positions (when compared to similar facilities) likely is the result of that venue performing services "in-house." This is certainly the case with the PBA, as they have chosen not to outsource functions such as cleaning, food

service and security. Although the PBA has one full-time security staff position, there are 12 part-time security staff responsible for guarding the arena 24 hours a day.

Salaries associated with full time staff based on a per employee basis are $4,400 lower than the peer group average. VSG has not adjusted the PBA average salary with the peer group cost of living in order to maintain the confidentiality of the peer group identities.

Staffing Comparison
Based on FYE 2014

Department	Arena A (1)	Arena B	Arena C	Arena D	Pinnacle Bank Arena
Administration (2)	2	4	3	2	3
Operations/Maint.	4	3	7	2	6
Housekeeping	0	0	0	0	0
Engineering/IT	0	3	2	2	3
Security	0	0	1	0	1
Box Office	2	3	2	2	2
Event Services	2	2	1	3	5
Sales & Marketing	2	2	3	1	4
Finance	2	3	3	3	3
Food & Beverage (3)	0	3	4	0	8
Total FT Staff:	**14**	**23**	**26**	**15**	**35**
Annual Labor Cost (FT):	*$758,568*	*$1,182,014*	*$1,316,548*	*$847,352*	*$1,705,078*
Cost per FT Staff:	*$54,183*	*$51,392*	*$50,636*	*$56,490*	*$48,717*

(1) 2 Engineers and 3 Housekeepers are provided by the University at their cost

(2) Includes positions of General Manager, AGM, Administrative Assistant, Human Resources and Receptionist

(3) F&B personnel at Arenas A and D are outsourced. Arenas B, C and PBA are through the management company's F&B division

Food Service Review

Food service (concessions and catering) at Pinnacle Bank Arena is operated by Savor, an SMG subsidiary, through an agreement that is separate from the management agreement with SMG. Savor's term runs from September 1, 2013 for a period of three (3) years, which is concurrent with the SMG management agreement. Savor's fees are 4% of gross concession revenue (net of sales tax), a fee that is appropriate for the scope of service provided.

The most critical piece of information, and the one that leads to a full discussion of food service, is the actual-to-budget variances of concessions, catering and premium catering for FYE 2014 and the current fiscal year. The variances, which are significant and prompted VSG to investigate further, are identified in the following chart:

FYE 2014	Budget	Actual	Variance
Concessions	2,075,132	1,845,562	-11.06%
Catering	749,278	603,101	-19.51%
Premium F&B	322,950	110,864	-65.67%

FYE 2015 (As of 5/31/15)	Budget	Rolling	Variance
Concessions	1,926,308	1,505,733	-21.83%
Catering	585,397	315,493	-46.11%
Premium F&B	133,999	226,545	69.06%

There are a variety of factors that can affect the performance found in any metric, and food service operation is no different. Through interviews with multiple stakeholders, including but not limited to SMG, the University of Nebraska, suite holders, a PBA concessions vendor, and JPA board members, we have identified several challenges to this aspect of the arena operation.

Culture

Throughout our interviews, there was a consistent theme that the local community is conservative, specifically financially conservative, and spending money unnecessarily is not a quality found here. This particular characteristic may have manifested itself in rejecting, at least in part, the food and beverage offerings at Pinnacle Bank Arena. While the number of offerings at PBA is greater than that of other local venues, the overall pricing is higher than what has been in the market prior to the opening of PBA. Also, the new, higher end offerings may not entirely be to the liking of the community, as they may be more content with basic arena fare. Unless the population felt the quality was extremely high (some feedback was that the quality was not), they would be less inclined to make purchases. The decision to eat elsewhere (or eat very little in the arena) could be highly influenced by culture in combination with the next factor.

Proximity of Competition

To a degree, the arena is a victim of the success of the surrounding establishments that located to the Haymarket District *because* of the arena. There are numerous dining and drinking establishments within a short walk of PBA. The variety of options ranges from quick service restaurants to full service dining, including several bar & grill eateries. Because the pricing is less than that in an arena, and restaurants offer a social setting that cannot really be duplicated in the arena, many event goers will choose the Haymarket option over the arena option.

With regards to catered events, there are several hotel options in or near the Haymarket District. Booking a hotel for a catered function is easier than an arena for several reasons: the hotel doesn't have to worry about losing a money making concert if they book a catered event a year out; hotels are a 24/7 operation, so they don't require additional staff that an arena might; the hotel has

at least the basic audio-visual services in-house; and the environment of a ballroom is many times more appealing than an arena concourse or cavernous arena bowl. Most arenas do not host numerous catered events, and what is occurring at PBA is typical.

University Venues

Similar to the culture of Nebraskans affecting purchasing decisions, the long history of events at Devaney Center set an expectation that is well established and ingrained. With a menu that is less extensive than PBA's, and lower prices, the Devaney Center established the benchmark on pricing and offerings.

Game & Event Times

The start times of events can have an impact on food and beverage sales; specifically, start times that occur in between meal times can greatly reduce the sales of concessions. While concerts and live events typically take place in the evenings, even when occurring on weekends, University basketball games are subject to network television scheduling and can occur at different times. For example, during the 2013-2014 season, 16 of 36 UNL basketball games started at times in between meals (2:00pm, 3:15pm, 4:00pm, 8:00pm and later). The next season saw 16 of 34 home games with similar start times. In these instances, fans will likely choose to eat before or after the games. This situation is not unique to Lincoln, and our commentary is not intended to suggest there are problems with the basketball schedules, simply to illustrate that start times affect food and beverage sales.

Use of Suites

The revenue generated by suite food and beverage sales has been noticeably lacking. The suite menu offers a standard list of items, including both advance purchase as well as event-day products, but the overall purchasing is lower than original expectations. The makeup of the

suites as described to VSG is about 20% corporate business and 80% small business and individuals. It was suggested that very few of the businesses entertain clients, and the use of the suites is primarily for entertainment purposes of the owners; therefore, much of the food bought by those with suite tickets is occurring on the public levels at the concession stands. SMG surveyed premium customers last summer, and the desire for a la carte purchases (e.g. concessions stand) versus buffet-type dining was split 50/50. One suite holder VSG spoke with cited a strong desire for at least limited concessions as well as beverage sales (non-alcoholic) during University basketball games. We understand SMG's reluctance to offer concession stands that would cannibalize the suite catering, however, it would be worth the time to again engage the suite holders to determine if adding a la carte items might be appropriate. To their credit, SMG has tried a pre-event buffet dinner package and created a 6-person meal package for the suites, but both received little interest. SMG also informed us that before the end of the year, they expect to speak with every suite holder about their experiences at Pinnacle Bank Arena, which will include discussions about food service.

Several stakeholders suggested a food tasting event for suite holders to gauge their interest in potential additional items to the suite menu. This kind of event would also be an opportunity to gain feedback on items that may be less desirable, as well as generate additional goodwill with the PBA's premium customers.

Inconsistent Service and Quality

During 3-4 interviews, poor quality and service in the food and beverage department was mentioned, such as quality of food and speed of delivery to suites. SMG has been aware of some of the comments, has replaced personnel when needed, and will be adding a new position in the next budget year to address catering needs. UNL indicated some improvement in food and beverage from Year 1 to Year 2.

FUTURE ACTIONS

SMG has taken steps, and continues to do so, to improve the food and beverage offerings and related service. Their actions relate to almost every aspect of food service, including pricing, types of offerings, personnel changes, and creating packages. Specifically, they have:

1. Lowered some prices since the building opened
2. Created buffet meals for loge seat holders
3. Created additional suite F&B packages for a smaller number of people
4. Replaced a chef
5. Surveyed their patrons via an online survey. There are cards at each concession stand that have the survey information, and fans are encouraged to take them and participate. This is not a requirement of Savor, but a program they self-initiated.
6. Conducted basic surveys of some premium customers (we recommend additional surveys to ensure ALL premium customers have been contacted)
7. For the 2015-2016 year, Savor has budgeted a Catering Manager who will focus on the sales and service of non-concession food events, including concert catering opportunities
8. Since opening, Savor has eliminated some offerings that were poorly received

Through our interviews and observations at Pinnacle Bank Arena, SMG and Savor are exerting solid efforts to increase service as well as sales in the food and beverage department. Some changes are trials that do not prove themselves to be worthy of permanent implementation, and others, such as price reductions, are indeed permanent.

In terms of the general condition of the Savor spaces (concession stands, kitchen), we found them to be clean and well organized. The equipment was observed to be in excellent condition; the finishes in the premium areas

were well maintained and overall, Savor and SMG are doing a fine job of maintaining the areas and equipment for which they have responsibility.

The areas in the photos below were found to be clean and organized.

ALCOHOL

For non-University events, alcohol (beer, wine, spirits) is available for purchase in all public areas as well as premium spaces (suites, loge and club seats).

The University of Nebraska does not currently permit the sale, provision, or consumption of alcohol during their events at Pinnacle Bank Arena. This is a long-standing philosophy of the University and is supported by the Nebraska Student-Athlete Advisory Committee.

As a point of reference, and not to support or suggest a change, we seek to educate and inform the JPA and the City on the current state of alcohol sales in collegiate athletic facilities.

Simply, the current trend is to allow alcohol in premium areas with an expansion of beer sales to the general public areas. In 2015, 38 NCAA football stadiums served alcohol in public areas, a number more than doubling in the last five years. Based on our research, of the 65 member institutions that comprise the “Power 5” Conferences, 36 of the 37 institutions allowed alcohol in at least their suite and club areas. Within the 36, some make alcohol available for purchase, and others allow suite holders to stock their suites at their (the suite holder) cost. UNL is the only one that declines to allow alcohol in these private areas.

The three primary reasons for allowing alcohol sales are, in no particular order 1) incremental increase in revenue; 2) facilities can better monitor and diffuse disruptive behavior from intoxicated individuals (reduce binge drinking) and 3) it is an effort to meet the needs and demands of customers. Each institution that considers or permits alcohol weighs these criteria according to their own situation.

SMG estimates that selling alcohol in premium areas only during men's and women's Husker games would return a net income to the arena in the six figures.

Additional, independent information was published by the United States Sports Academy via an article titled *"Beer and Ball On Campus? The Issue of In-Stadium Alcohol Sales."* The article examines the issue of in-stadium alcohol sales for collegiate sporting events and addresses the reasons for allowing it, constraints that may not permit it, and "best practices" among those who do allow it. The article can be viewed online here: http://thesportjournal.org/article/beer-and-ball-on-campus-the-issue-of-in-stadium-alcohol-sales/.

SPECIAL EVENTS

In an effort to create more event activity and decrease the arena's operating deficit, SMG has made strides to create their own events. They range from the low hanging fruit of selling tailgate spots in the Festival Lot during UNL football games to hosting "Watch Parties" (football events) at the arena, also for UNL football games.

The first set of three (3) watch parties in year 1 were very successful, bringing 3,000-4,000 people to the arena to watch the game on the video scoreboard. SMG described the demographics as many families and older individuals. During these events, the arena sold food and beverages, including alcohol. However, in year 2, due to complaints from nearby bars and restaurants, SMG was limited to only one (1) football event. This fall, there will

be watch parties in the arena during only three (3) football games, as well as smaller events (Stadium Terrace Parties) on the arena terrace that overlooks the Haymarket with expected attendance of 300-500 fans. These smaller events will occur prior to all home UNL football games.

Another influence the local dining establishments have had on the arena concession sales is from the awarding of Special Designated Licenses (SDL's) during larger concerts at Pinnacle Bank Arena. The businesses successfully lobbied the City Council to expand their footprints by creating street closures and a general festival atmosphere that would capitalize on the influx of concert fans to the Haymarket area. There is a bit of hypocrisy on the part of these businesses in that they do not want the arena to potentially siphon some F&B sales from them, yet they have no concerns with doing the same to the arena for events that SMG has booked. The most recent occurrence of an SDL with the Haymarket businesses was during the Kenny Chesney concert on July 16, 2015. The average food and beverage per capita spending at the arena for this concert was just over 8% lower than the average of the most previous three country concerts (all three concerts had higher per caps than the Kenny Chesney show). Not only does this reduce the arena's income, but it also impedes SMG's ability to secure concerts. Higher food and beverage sales give SMG greater ability to negotiate concert contracts with promoters.

We recommend the City consider all factors of the SDL process to ensure a level playing field. One organization should not benefit at the expense of the other.

We also recommend that SMG conduct on-site surveys of the fans of future watch parties to identify demographics, reasons why the fans came to the arena, and fans' tendencies to visit (or not) other Haymarket businesses if not for the arena watch party. These surveys, and their results, could be quickly conducted using 3-4 people armed with tablets (iPads, Microsoft

Surface) roaming the crowd. There is an opinion by some of those VSG interviewed that the fans attending the watch parties would not visit the Haymarket establishments if the arena watch parties did not exist. By surveying the watch party fans, SMG can prove (or disprove) that notion.

With the addition of new positions in the 2015-2016 budget, SMG will be in a better position to assess, confirm, and execute new event opportunities. A new catering position can focus on food and beverage events, and the new Director of Operations can assume some of the current duties of the General Manager, so he can focus more on event creation.

Operational Review

Recycling

There are numerous reasons why we should recycle, many of which fall under the categories of raw material conservation, energy conservation, pollution reduction and landfill reduction.

Raw Material Conservation

Most man-made products incorporate different materials in order to create the finished product. This involves harvesting raw materials such as trees, rocks and oil so that they can be processed by manufacturers. As a result of this, reserves of these raw materials are depleting and mining operations have a significant impact on vast areas of many different countries.

Deforestation is a prime example of how harvesting natural resources is harming the environment and this is a key reason why we should recycle. This impact can be reduced if we recycle increasing quantities of used products such as paper and furniture.

Energy Conservation

Recycling reduces the amount of energy required to create new products. If we didn't recycle paper, large areas of forest would have to be chopped down to meet global paper demands. The trees from these forests would then have to be transported before been manufactured into the finished product. The same process applies for a wide range of products such as plastics and metals, only they require different raw materials to be harvested.

By recycling, we are cutting out the energy requirements for the mining of new raw materials. This is a very important reason why recycling is important, as energy

conservation is one of the key ingredients for the fight against climate change.

Pollution Reduction

Tied in with the energy saving concept is a reduction in pollution levels. This can come as a result of manufacturing processes becoming more efficient and requiring less energy to manufacture a product. Although clean energy technologies exist, most products manufactured across the globe make use of energy that has been produced by the burning of fossil fuels.

Any reduction in CO2 or other harmful gases is not only a key ingredient for the fight against climate change, but a key ingredient for cleaning the air we breathe. If pollution levels can be cut by a significant level, this can have a positive impact on the health of a countries population.

Landfill Reduction

The more we recycle, the more we can help to reduce the burden on local and national landfill sites. As population levels increase, we will need to find additional landfill sites, which will harm the surrounding environment and wildlife.

Pinnacle Bank Arena Findings

The management agreement between SMG and WHJPA includes an extremely robust requirement related to sustainability and waste management. The components of the requirement include:

- maintaining a sustainability policy
- maintaining a procurement policy that addresses environmental concerns
- utilization of the arena's MEP system software in order to track and reduce energy consumption
- use of "green" cleaning chemicals and procedures

- diversion of up to 75% of total waste, including diversion plans for each event
- collaboration with City on recycling education
- quarterly reporting of recycling efforts
- annual report and participation in a City review of previous year's Sustainable Practices

While SMG has been able to meet almost all of these requirements, the single biggest challenge they face is the diversion of 75% of total waste. This has been very difficult for SMG due to the fact there are limited options when it comes to sorting and transporting recyclable material and composting materials. When the arena opened, one local company was utilized that would pick up and transport the recycles at no charge. The arena, however had to ensure that all recyclable materials were separated. This was a labor supply and cost borne entirely by SMG. The recycling company was to report back on the weight taken to the recycling facility so that SMG could determine the percentage diverted. However, according to SMG, such reports were never provided.

At some point after the arena opening, the recycling company determined it was not in their financial interest to continue the relationship, and ceased serving the arena. In an effort to meet the terms of the management agreement, SMG began utilizing a transportation company to make the pick up and delivery to the recycling center. Now, in addition to the labor cost to separate the materials, SMG was paying the transportation company a fee to make hauls after every event. SMG is now working with another recycling company, and arena staff must still take every bag and sort through to make sure there are no contaminants. To make things even more laborious, the recycling center won't accept any cups or plastic bottles that have liquid in them, nor do they accept the plastic bottle caps (additional work during the separation process). There still exists the challenge of determining the diversion percentage, as the recycling company does not have the capacity to weight the materials and report back to SMG.

Since the time when VSG began this project, SMG has been able to work with their recycler to now calculate weights, and between the weights of the recycled materials and the weights of the regular trash hauls, a diversion calculation is possible. This past June, the arena exited 4,200 pounds of trash and 5,900 pounds of recyclable materials, for a diversion rate of 58.4%, a very solid effort. This will be improved upon when SMG begins sending their composting program.

While Savor's foodservice operation can separate food scraps during the food prep process, the nearest composting facility is 30 miles away. The venue has not had composting equipment or storage, so keeping these scraps without drawing vermin or creating a malodorous situation is difficult. There is now a plan, we learned in late July, that SMG will start sending compostable materials to a facility outside of Lincoln. Assuming those weights can also be calculated, SMG will be able to produce an accurate diversion rate.

Simply stated, the infrastructure does not seem to exist that would allow SMG to meet their contractual obligation. There is no ability to single-source the efforts, and SMG has to allocate in range of $12,000-$16,000 per year for this activity. In addition, an area near the loading dock had to be designated for this purpose, and due to the inherent nature of dealing with garbage, it's extremely difficult to keep the area clean and without a foul odor. Even the critical act of weighing the materials does not take place.

As a point of reference, the following text is from an article in the April 22, 2015 edition of The Economist that talks about recycling in America. While talking mainly about household recycling, the content is still applicable to commercial enterprises.

http://www.economist.com/blogs/democracyinamerica/2015/04/recycling-america

(see next page for article)

Most recycled materials should be cheaper than virgin commodities, but America throws too much stuff away. Low landfill fees and a fragmented waste-management system have kept the country's recycling rate at around 34% for two decades—far lower than most rich countries. This waste comes at a cost. Making cans from recycled aluminum, the most valuable container material, requires 95% less energy and creates 90% less greenhouse-gas emissions than virgin stock, yet more than 40 billion aluminum cans hit America's landfills every year. The country chucks away $11.4 billion worth of recyclable containers and packaging annually, according to As You Sow, an advocacy group.

Part of the problem is that America's approach to waste is a mess of incompatible local systems. Around 9,800 different municipal recycling plans operate around the country, and they all follow different rules. Most recycling facilities were built in the 1990s, and the machinery is often ill-equipped to handle changes in the country's waste stream, such as the decline in paper (newsprint has fallen by half since a 2000 peak) and the swift rise in plastics. Diverting recyclable materials from landfills can save some money; cities spent about $5 billion on landfill fees in 2013. But this requires big capital investments, which cash-strapped governments are often disinclined to make. As a result, a quarter of Americans lack access to proper bins for collecting recyclable material, and another quarter go without any curbside recycling at all.

VSG was provided with a Work Plan (dated 6/30/15) created by the City that outlines a goal and various objectives related to sustainability for Pinnacle Bank Arena. The items listed are quite reasonable, although the expectation to reduce energy consumption by 20% is unrealistic. The arena was designed with high efficiency mechanical, electrical and plumbing systems, and unless there are significant capital investments made, simply reducing the operating hours will not achieve that goal. If that were the strategy, to simply turn things off, then SMG runs the risk of compromising the comfort and well being of employees, guests, and facility users. A better approach might be to set smaller goals over the course of

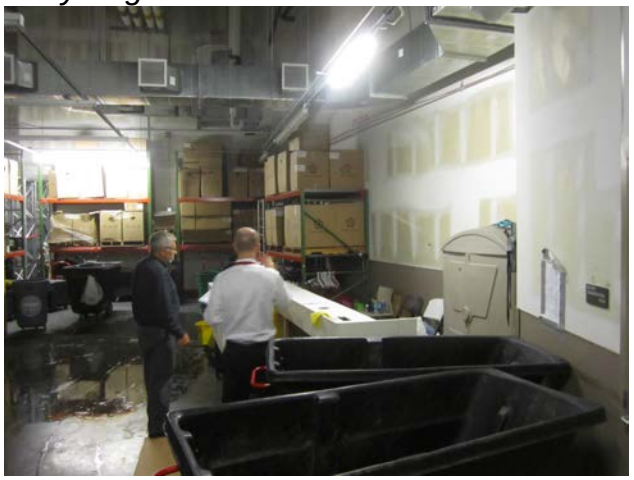
several years, and combine them with smaller annual capital replacements that have a reasonable ROI.

SMG is making admirable strides to achieve a high level of sustainability, but are hampered by the lack of local resources. Additionally, we encourage more collaboration in the goal-setting phase, versus being solely City-directed. Finally, as additional local resources (whether municipal or private) are developed over time, then the goals can be adjusted as appropriate, through this collaborative process.

Typical recycling container

Typical recycling container

Recycling room



Waste separation table

Parking

Parking for a public assembly facility manager can be a significant source of revenue with a relatively low expense. Parking fees may be charged on site during ingress, via a pre-paid situation (typically online), or the parking fee might be built into the cost of an event ticket. Methods of payment can be cash only or cash and credit card. When managing parking, it is very important to maintain strict cash controls, as there is less accountability in selling a “space” versus a tangible good that can be inventoried.

SMG currently manages the parking deck attached to the arena, and it contains 286 spaces for use by arena suite holders. SMG does not receive revenue to be applied to their budget, but does have the financial and operational responsibility to provide cleaning, security, and maintenance services.

SMG also is responsible for both revenue and expenses related to the Festival Lot, a paved surface lot located northwest of the arena site, accessible via a pedestrian bridge and containing 1,300 spaces.

Being the only SMG-managed parking area in which the income is reflected in the operating budget, it is very important that the lot be utilized as much as possible, both as arena event parking, and also as its own event site. So far, this lot has underperformed when compared to budget. In fact, in spite of charging only $3 per car, the greatest single usage for an arena event has put only

900 vehicles in the lot. During our discussions, there were a variety of possible explanations for the limited usage, including:

- The pedestrian bridge wasn't open for the first 4 months and fans identified their personal parking preference by the time it opened
- The extreme cold discourages the walk across the bridge
- Some downtown parking garages opened sooner than expected, drawing fans away from Festival lot
- Fans prefer to park closer to the entertainment/dining options across the street from the arena

These are legitimate concerns. If the area around the Festival lot becomes developed with retail, entertainment, or dining options, then we would expect to see an increase in the lot's utilization as guests have more reasons to park on that side. Or, as additional office and retail establishments open up south of the arena, putting pressure on the existing garages, then more traffic may head to the Festival lot.

The biggest opportunity for revenue generation is with events that take place in the lot. To date, there have been successful events such as the annual Ribfest and car shows. The lot is also used for tailgating during UNL football games, and the net income to SMG's budget is into six figures annually. Given the current level of SMG's staff, it is not surprising that sufficient focus has not been placed on event creation; if SMG is able to fill some key positions, then proper planning can occur that will provide for new and different event activity in the Festival lot.

SMG Surveys

A typical feature of facility management agreements is the inclusion of parameters for the management firm to earn a fee above and beyond the base management fee, called an incentive fee. There are a variety of benchmarks that can be utilized, including both financial-

based as well as non-financial. The incentive fee for SMG at Pinnacle Bank Arena includes goals and benchmarks related to revenue generation (financial based) as well as the number of non-University events, non-University attendance, client/tenant satisfaction, and patron satisfaction/mystery shopping (non-financial incentive). For these last two items, there is an element of surveying required for SMG to be eligible for a portion of the non-financial incentive fee. The agreement stipulates the clients and tenant be surveyed, as well as patrons attending events. SMG meets the requirements via two methods.

First, for clients (promoters, event producers, meeting planners, etc.), a post-event survey is submitted by SMG via email to the client contact using Survey Monkey (www.surveymonkey.com), a popular online survey service. This is easily accomplished with smaller and/or non-ticketed events where the event planner may be locally based. For concerts and family shows, the nature of the client is not conducive to completing surveys; they simply won't do it (with rare exceptions) because they are traveling the country with the event and have limited time. Despite that fact, we would encourage SMG to create a survey and send to promoter reps after each concert/family show, but only if SMG feels this would not create an annoyance. While we would expect very little response, nonetheless it is important to make a good faith effort.

The survey currently sent to clients is a brief, online survey that asks the recipient about their experience related to booking, catering, and event management. There is a nice variety of questions with multiple choice answers as well as open-ended answers. The questions are appropriate and varied enough to garner good feedback necessary for improvement. Many questions are designed with potential answers of "Excellent", "Very Good", "Good", "Fair", "Poor" and "Not Applicable." In order to better adhere to the terms of the management agreement, we recommend the surveys be modified such that there is a rating scale that matches the language of

the agreement (1 to 5), or at least one that the WHJPA and SMG can agree upon. This would be relatively easy by changing "Excellent" to a 5, "Very Good" to a 4, and so on, with instructions to the recipient on what each number represents. This will mitigate any future questions about the calculation of this portion of the incentive fee.

SMG does not conduct any formal surveys related to the University of Nebraska, however they meet regularly with athletic department staff, with more frequency during the basketball season. These meetings are excellent tools for maintaining a positive relationship. But, again, in order to better meet the requirement of the management agreement and mitigate questions, we recommend utilizing an annual survey for the University using an agreeable scoring scale. Because the University has a presence 365 days a year because of the locker and training facilities, slight modification of an existing survey would be appropriate.

The second survey method is that related to patrons and guests. SMG submits an online survey link after every event to each email in their database for that event (emails are provided by Ticketmaster from the patrons' ticket purchase). The survey and resulting data are held by an online company called ERC (www.ercbpo.com) and SMG receives the results both after each event as well as aggregated information at year end. These surveys have a scoring system that meets the criteria of the management agreement incentive fee calculation basis. It is important to note that the surveys have a section concerning parking, but SMG only controls the 286 spots in the attached garage. The WHJPA may want to consider discounting scoring related to parking when determining incentive fee, unless scores for the SMG-managed garage can be broken out and identified.

These surveys ask a total of 28 questions, with a great majority of them requiring a 1 to 10 scoring response (which can be easily modified to fit the 1-5 scoring scale required by the management agreement). Questions are

varied and ask the recipient about items such as the overall experience, parking, navigation around the arena, concessions, cleanliness, and staff service. There are also open-ended questions that allow for more detailed information and feedback.

These surveys do not go to those attending University basketball games, but UNL has it's own system in place to collect feedback from those individuals.

Additionally, and not a requirement of the management agreement, is surveying performed by Savor. At the concession stands, there are small cards that fans can take and complete surveys online (or via mobile device). This is not a mandate, but is something Savor does on its own.

Overall, SMG is doing a good job as relates to the surveying of their guests and clients.

Cleanliness

Cleanliness is a discipline that is not recognized when it's done well, but when executed poorly it can greatly detract from an otherwise positive experience by both guests and employees. Failure to keep a clean facility can perpetuate a perception (real or otherwise) that there is a lack of care with regards to how the facility is maintained and operated in other areas. For example, a dirty facility can lead many to believe the food and beverage items and kitchen conditions are of low quality. In fact, a Harris poll survey in 2011 found just that: 86 percent of U.S. adults equate the cleanliness of a restaurant's restroom with the cleanliness of its kitchen. It is not unreasonable to apply this level of bathroom-to-foodservice correlation to public assembly facilities.

A clean venue also promotes the idea of good health, it means minimizing clutter that can cause accidents, can extend the life of a finish, and provides a source of pride for those who pay for, work in, and visit the facility.

There will always be financial constraints with the level of cleaning that can be accomplished given the budget that's been approved. There are two key factors. First, are the allocated resources being used as effectively as possible? That is to ask, is the responsible department getting the best price for supplies and equipment, are they paying a reasonable wage given the quality of available personnel, and are resources being utilized on proper procedures and cleaning methods? Second, and just as important, is the simple concept of management and supervision. Front line employees must be trained, coached, encouraged, outfitted with the proper tools to do the job, and supervised such that they are performing very specific tasks that are measurable. In any job, employees who think they are not watched are more likely to loiter, hide, or otherwise perform with little effort. It is then incumbent upon supervisory staff to follow behind to conduct inspections to ensure the quality of the cleaning is at the appropriate level, and if necessary, follow up with certain parties who have an interest in knowing the work has been completed. Not only are doing the work and inspecting the work critical, but documenting such activities is extremely important. Why? The reality in our business is that at times authorities will question the things we are responsible for, and accurate records provide solid evidence of work completion.

The general areas we typically expect to be clean include the public path of travel: concourses and walkways (both debris and dust-free), restrooms, trash cans, landscaping that is debris-free, glass that does not have smudges and scratches, a visible lack of dust on both horizontal and vertical surfaces, clean condiment stands, clean concrete pre-cast, and any beams, low roofs and surfaces that the public can see. The expectation is that the cleaning staff that is appropriately attired and actively working.

The cleanliness of back-of-house spaces is also indicative of the overall care and effort of management to maintain an orderly facility. If storage rooms, mechanical rooms, operational spaces and janitor closets are dirty and in disarray, it is likely that there are similar situations

in other parts of the building, including those seen by the public.

Pinnacle Bank Arena Findings

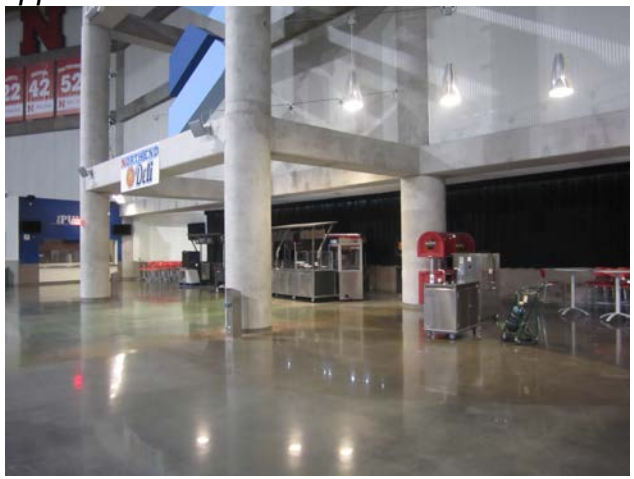
Cleaning at the arena is performed by SMG staff as an "in-house" function, through a department titled, "Environmental Venue Services." The staff is comprised of two (2) full time employees and a stable of part time help. EVS is responsible for the daily cleaning of the administrative offices and related restrooms, locker rooms, training areas, suites. They also spot clean public concourses and the seating bowl as necessary in between events. The landscaped grounds are maintained by an outside contractor and paid directly by WHJPA, although the EVS department empties trash cans, sweeps, and removes debris. Concessions stands and prep areas are cleaned maintained by Savor, and we observed them to be clean and orderly.

Overall, the arena was clean and well maintained. The public spaces were free of debris and exhibited few signs of wear and tear. The floors, equipment and counter spaces in the concession spaces were observed to be clean and very well maintained. The seats in the bowl, the Stageright telescopic risers, and the precast were all in excellent condition and very clean. The exterior was also clean and the landscaping in excellent condition.

Landscaping and concrete elements are in excellent condition

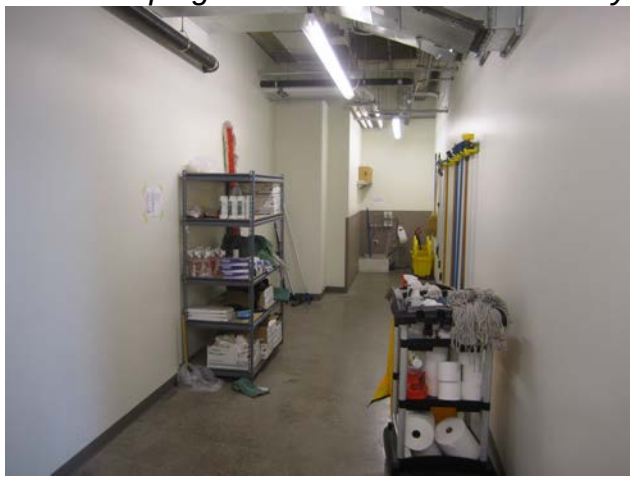
Concession stands are clean

Upper concourse is clean

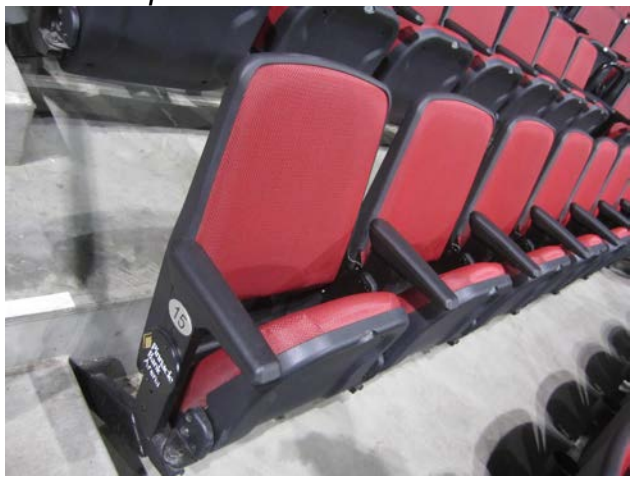


Restrooms are clean and stocked

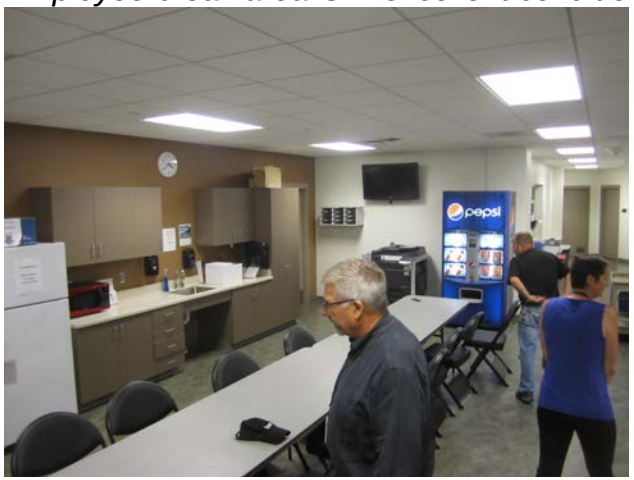
Housekeeping closets are clean and orderly



Seats and pre-cast are in excellent condition

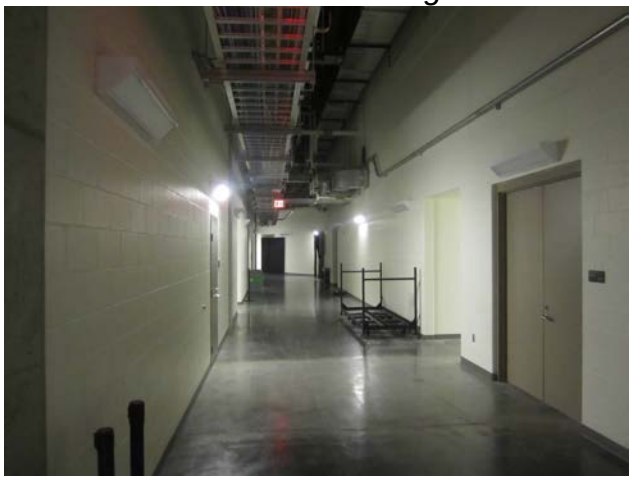


Employee break area is in excellent condition

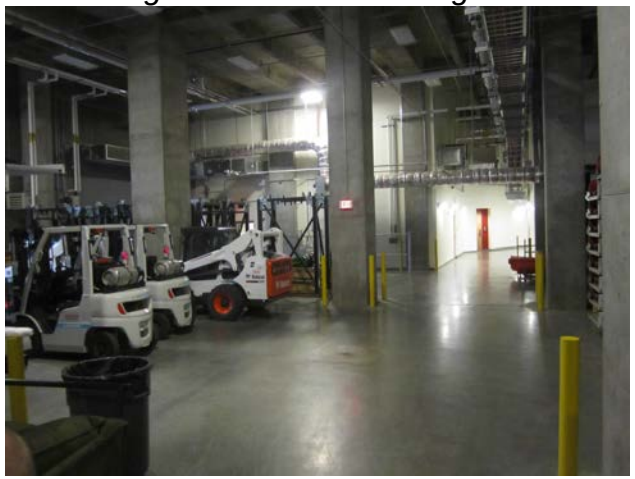


Kitchen is clean and organized

Back of house is clean and organized



Marshaling area is clean and organized



Staffing

An organization or management unit must be able to do many things well in order to be successful. Effectively communicating with multiple audiences, paying attention to the smallest of details, understanding how one action can affect the success of others on whom the unit depends, being content with working primarily behind the scenes, possessing at least a basic knowledge in a myriad of areas such as ticketing, technology, customer service, risk management, operations and maintenance, and being able to handle problems as they arise are all critical pieces to successfully hosting an event, not to mention the importance of developing positive relationships with the event personnel, such as a promoter, a coach and their staff, local police, or part-time event employees.

The development of a successful organization begins with placing the right people in the right positions. It is then followed-up by training, application of appropriate technology, the provision of a clear definition of the role and chain of command, the provision of the tools necessary to complete the work with clear standards of care, and timely support from superiors.

Pinnacle Bank Arena Findings

SMG opened the arena with 43 FTEs in September 2013 and since then there has been a steady decline due to positions being left vacant because of budget issues. Currently, SMG employs 35 FTEs and has left the following positions unfilled:

1. Director of Operations – one year
2. Savor (food service) finance position
3. Suite Services Manager
4. Event Manager
5. Concession Manager
6. Catering Director
7. Administrative Assistant

8. Eliminated the Assistant GM position (position now Director of Booking)

The General Manager has effectively assumed the Director of Operations' responsibilities and the Premium Food & Beverage Manager has assumed the responsibilities of the Suite Services and Catering Director Manager. The current staffing levels, on the surface, are not sustainable for an arena of this size and event activity. The Director of Operations plays a key role in the upkeep and presentation of the facility and would free the General Manager to focus more on event and revenue creation. Based on the proposed FY 2015/2016 budget SMG has proposed elevating an internal operational staff person to be the Director of Operation and refill the Technology Coordinator position.

SMG has plans to fill the following positions during the 2015/2016 FY:

- Catering Manager
- Premium Manager
- Savor Finance Manager

SMG is currently assessing the long-term options for the Event Services position as they believe this position is critical in delivering a positive experience for live entertainment clients.

Based on our interviews with the engineering staff, it was clear they have a deep technical knowledge of building controls and systems, and are more than capable of providing the requisite upkeep of these systems.

Preventive Maintenance

Public assembly facilities that are well maintained and upgraded when appropriate remain contemporary and competitive with their local and regional rivals. On the other hand, poorly maintained facilities have a negative impact on the operator and owner's ability to attract national events that have large economic impacts on their home cities.

Well-maintained facilities do not happen by accident and require an actionable plan, resources to implement the plan, and staff with proper skill sets to execute the work, which includes tracking and capturing data, transferring knowledge, and implementing training and professional development.

The plan should have a set of objectives on how the operator wants to execute preventive maintenance for the facilities, and the following items should be part of the overall plan:

1. Develop policies for preventive maintenance (which would start with a list of equipment by facility)
2. Utilization of a computerized maintenance management software (CMMS)
3. Develop a set of checklists for equipment maintenance
4. Establish who performs the work
5. Establish a process for employee feedback
6. Establish a quality assurance process to ensure work is actually being done
7. Establish performance metrics for department employees and contractors

Preventive maintenance (PM) is not an attractive or high profile function, and decisions to defer preventive maintenance are made every day by well-intentioned people when prioritizing resources. More resources are typically allocated toward revenue generation. Poorly maintained systems and equipment typically results in more rapid, untimely breakdowns, expensive emergency service calls, and higher utility costs. Proper preventive maintenance procedures require investments in staff and materials; however, an effective program will save the operator money over the life of the facility by limiting repairs and replacements, therefore avoiding costly breakdowns and accelerated equipment replacement and facilitating lower utility costs.

Employees tasked with executing preventive maintenance require training and updating on the systems they are to maintain. Mechanical, electrical, plumbing, roofing, telecommunication and other facility systems require specific training that is ongoing, and this takes a commitment from the employer and employee in the investment of time and financial resources. Well trained employees and a continued commitment to maintaining certification in their respective disciplines will lay the foundation for adherence to the preventive maintenance program. As technology advances, the commitment to training will ensure that employee skills do not become dated and obsolete.

One of the most critical aspects for effective asset preservation is the utilization of a computerized maintenance management software (CMMS) that allows for the implementation of preventive maintenance along with the necessary tracking and budgeting for preventive maintenance. Daily work orders can be produced through the system, employee hours tracked, and materials required to perform preventive maintenance can be identified and managed. The software can assist the operator administratively, as it can be used for contract and insurance tracking, purchase orders, inventory ordering and scheduling.

Pinnacle Bank Arena Findings

SMG currently deploys Altum/Bigfoot CMMS to document and plan preventive maintenance for the arena. SMG provided VSG representative documentation of their past preventive maintenance. An example of which is provided in the Appendix section of the report. As a part of the annual budget submittal process or at the JPA board meetings, SMG should be asked to present documentation to the board on the number of work orders that have been completed and are in the process of completion. The JPA should periodically audit the efficacy of the SMG preventive maintenance program by engaging a 3rd party to assess the condition of the arena's major systems.

SMG currently has a full-time engineering and operations staff of 9 FTEs with the Director of Operations and Technology Coordinator positions vacant due to budget cuts to offset revenue not meeting budget projections. The Engineering Manager and Engineering Lead perform most the preventive maintenance in the arena, augmented by three part-time engineers. Depending on the nature of the task, work orders can be assigned to the operations department, Production Manager or Savor if it's food service related. The operations staff performs all preventive maintenance, repair and service on the retractable riser system. SMG also contracts out preventive maintenance and repair of more complex systems such as elevators and escalators, which is consistent with industry "best practices".

According to SMG they have a weekly operations department meeting to review the Altum PM program to review the number of open work orders and if a department requires assistance in closing out work orders then additional resources are added to finish the work in a timely manner.

The cleaning of the facility is "in-house" under the direction of the Facility Manager who also manages the recycling program, exterior maintenance, ice & snow

removal and production set-up for Pinewood Bowl and exterior events such as car shows and Ribfest. The Facility Manager coordinates the preventive maintenance of housekeeping equipment such as floor scrubbers and buffers.

Building Automation Systems (BAS)

Building Automation Systems (BAS) offer a myriad of benefits when configured and utilized properly. Ideally, such a system will be created with an open communications protocol to allow for system expansion or upgrading; a BAS with components proprietary to the manufacturer can lock the owner into expensive, long-term service arrangements.

Building automation is very effective in reducing both the energy costs and environmental costs of operating a building. Because of this, most systems start by automating the operation of the heating, cooling, ventilation and air conditioning (HVAC) systems. Automating the interior and exterior lighting systems usually provides the next-biggest gains in energy efficiency, but there are many other potential benefits as well. Modern building automation systems provide remote monitoring and alerting capabilities that can warn operators of a failure or an abnormal condition in a building.

Pinnacle Bank Arena Findings

The Pinnacle Bank Arena deploys a Niagra BAS that allows SMG to seamlessly schedule and monitor HVAC systems. The engineering manager was interviewed about the system's capabilities and clearly demonstrated a technical knowledge to optimize the system. SMG has undertaken an improvement of the base automation system to include an additional 143 sub meters that will enhance the operators' ability to monitor energy consumption and where it is being consumed in the arena. SMG has a targeted demand charge reduction of 20% for the 2015/2016 FY. For June 2015, they have

reduced the demand charge from $32K to $17.6K. The enhancement is projected to cost $184K with a return on investment (ROI) of 1.5 years.

Capital Planning

Long-term capital expense planning is a critical component to properly maintaining and extending the usable life of any facility. The capital investment required over the expected usable life of a venue, in many cases, will exceed the original project cost to construct the facility.

Oftentimes, the appropriate mixes of fan amenities change, especially in facilities that are older than 10 years that have had no upgrades. Technological advances in video technology and the improvement of the home entertainment experience require owners and operators to continually plan for improvements and update systems to provide a positive guest experience.

Mechanical and roof systems typically have an expected usable life of 20 to 25 years if properly maintained and eventually require significant investment. Food service improvements are necessary over the life of the facility and typically involve large and small wares replacement, digital menu boards for concession stands, an improved point-of-sale system and portables that can provide cooking for specialty food items.

Pinnacle Bank Arena Findings

To date there has been no development of a long-term capital expense plan for the arena, which is not unexpected due to being only 2 years into its operations. However, a long-term capital plan should be developed in the near term so the JPA can start the planning process for large dollar repair and replacement items. We recommend that the JPA task SMG with developing an initial plan with a 30 year time horizon broken down into the following categories:

1. Interior Finishes – Suites/Loges/Clubs, Concourses, Wayfinding, Locker & Dressing Rooms, Fan Amenities
2. Major Systems – HVAC, Controls, Electrical & Plumbing
3. Fixed Seating Replacement
4. Structural Systems
5. Entertainment Systems – Video & Ribbon Boards, Audio, Televisions, Broadcast, IPTV, Cabling
6. Roofs – Membranes, Water Diversion & Lightning Protection
7. Food Service – Equipment, POS, Menu Boards, Graphics, Portables
8. Furniture, Fixture & Equipment – Staging, Folding Chairs, Tools, Tables

The plan should provide the following detail on individual items:

1. Expected Life Cycle of Equipment and or System
2. Current Condition of Equipment and or System
3. Estimated Cost of Repair or Replacement

SMG, as a part of the budget submittal process, should be required to present an updated capital expense plan that focuses on the next 5 years.

Beginning in the 2016 FY, the JPA will set aside $1.3M (increasing by 3% annually) into a capital reserve fund for the arena. To ensure that the facility and its systems are being maintained according to industry "best practices" and manufacturer specifications, the JPA should consider engaging a 3rd party to assess the condition of the arena every 3 years or one year prior to the expiration of the management agreement.

Safety & Security

The principles, practices, and procedures to systematically manage risks and the ability to facilitate the planning and execution of effects-based security

operations are critical to preserving large assets, preventing theft of smaller portable items, and ensuring the safety of facility occupants.

There is not a “one solution fits all” scenario, as each arena has its own nuances that require different means and methods of providing a sufficient security program. What works in one arena may not be applicable to another. It is also true that relying on a single security method (CCTV, patrols, or card swipe) is not sufficient in today’s environment. A proper security plan involves both hardware and procedural mandates.

Properly securing and protecting an arena may include some or all of the following:

1. Closed circuit TV system with 24 hour surveillance and DVR capability
2. Alarm systems at critical areas (e.g. where money is handled/stored)
3. Perimeter fencing that is controlled and of proper construction
4. Gate and door hardware that is reliable and controlled via personnel, card swipes, or biometric readers (eye, fingerprint, etc.)
5. Regular patrols of security staff/law enforcement with the means to verify the routes (e.g. Tour Scan)
6. A properly trained security staff with strong post orders and a clearly identified range of authority
7. A clear procedure for authorized employee entry
8. Adequate vehicular intrusion devices (bollards, etc.)
9. Properly protected/elevated air intake grills
10. Properly manicured landscaping to prevent the hiding of explosive devices or individuals
11. Background checks performed on all security personnel
12. Ticket windows with bulletproof glass and roll down security shutters
13. Utility access points are protected (gas main, water main, etc.)
14. Adequate exterior lighting

15. Use of panic button to alert law enforcement where significant cash is handled
16. Regular maintenance and inspection of fire suppression devices

Mitigating theft of portable property has its own set of measures, including:

1. Maintaining an asset inventory of portable equipment and annually verifying its availability. This includes noting each item, the quantity, the serial number, and its current physical condition
2. Properly storing equipment, with smaller but more valuable pieces kept secured with limited access
3. Keeping a sign-out/sign-in log for small items that may be required by many different individuals
4. Maintaining strict protocols on equipment that is used at multiple facilities so there is a record of who takes possession of it, where it goes, and when it returns
5. Creating an environment where everything has its place; it is then much easier to determine if something is missing
6. Mark portable equipment with the location, building, person, etc., to which (or to whom) it belongs
7. Maintain a clear and enforceable policy on employee theft – employees should learn this as soon as they are hired
8. Be aware of employee behavior that indicates potential theft, such as not taking vacations, being overly protective of a workspace, an unexplained change in behavior, or choosing or electing to work unsupervised at an inappropriate time
9. Use anchoring devices when appropriate (e.g. use coated airplane cable run through racks of chairs so individual chairs cannot be removed)

Pinnacle Bank Arena Findings

SMG is responsible for hiring and training security guards for the 24-hour, seven-day week security of the arena. SMG has one full-time security manager who provides an 8-hour training course as a part of employee onboarding. The training program gives an overview of policy and procedures such as evacuation and life safety. The security manager liaises with the local emergency responders. Currently, three shifts cover the 24-hours.

The shifts are broken down as follows:

1. Shift 1 8:00 A.M. – 4:00 P.M.
2. Shift 2 4:00 P.M. – 12:00 A.M.
3. Shift 3 12:00A.M. – 8:00 A.M.

The first shift and third shift is staffed with one guard and the 2nd shift with two guards on nights there are events and one on "dark" days. The 24-hour security staff is made up entirely of part-time employees who typically have prior law enforcement or military experience.

Based on the size and physical characteristics of the arena, it appears the facility is properly staffed to monitor the electronic surveillance systems, checking of exterior doors, and still be able to react when the need arises.

Currently, the arena deploys 75 CCTV operable cameras some of which are "PTZ" which can me manually operated. According to the security manager the current system has sufficient video storage capacity.

A review of the "emergency procedures manual" in the security office indicated that updating is required in the near term. The current plan is detailed in several areas but lacks organization. The arena emergency plan could be structured in the following manner:

1. Emergency Call Out Roster
    a. List of emergency contact numbers for city and arena personnel
    b. Team emergency contact numbers
    c. Overnight emergency procedures

2. Emergency Plan
    a. Statement of Purpose
    b. Responsibility for Coordinating Emergency Actions
    c. Command Posts
    d. Radio Communications
    e. Public Information
    f. Emergency Structure
3. Bomb Threats
    a. Telephone Operator Procedures
    b. Notification
    c. Search Action
    d. Staff Responsibility
    e. Sweep/Verification/All-Clear
        i. During Event
        ii. During Non-Event
4. Fire
    a. Fire Alarm Steps
    b. Fire Alarm Detection
    c. Assembly Areas
    d. Department Responsibility
5. Evacuation
    a. Partial Evacuation Procedures
    b. Full Evacuation Procedures
    c. Mobility Impaired Patrons
    d. Box Office Procedures
    e. Post Evacuation Procedures
    f. NBA Evacuation Procedures

6. Attachments
    a. Evacuation Public Address Announcement
    b. Incident Checklists
        i. Severe Weather
        ii. Power Failure
        iii. Post Damage Assessment
    c. Bomb Threat Call Form
    d. Facility Preparedness
    e. Medical Emergency
    f. Fire
    g. Mechanical/Equipment Failure
    h. Place of Refuge
    i. Evacuation
    j. Detours
    k. Emergency Assembly Area
    l. Evacuation Equipment Aids
    m. Media/Tenant Relations
    n. Crisis Management Plan Summary
    o. Seating Maps
    p. Incident Report

It is recommended that new hires be required to read the emergency plan and sign off that they have read the document. Everyone who works in the arena every day has some responsibility in executing the plan, not just security and event services personnel.

WH 15-13 Introduce: 8-27-15

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Amended Operating Budget for September 1, 2014 to August 31, 2015 is hereby adopted as the West Haymarket Joint Public Agency Operating Budget for FY 2014/2015. As amended, the Operating Budget includes three additional expenditures, (1) $68,413 for Arena Maintenance, Repair, and Replacement; (2) up to $650,000 for an Arena Operational Increment; and (3) a $250,000 transfer to the City for Turn Back Tax Bond interest.

Adopted this _____ day of _____, 2015.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

West Haymarket Joint Public Agency
Proposed Amended Operating Budget
September 1, 2014 to August 31, 2015

Expenditure Budget	2014-15 Adopted	Proposed 2014-15 Amended
Operating Expenditures		
Personnel Costs - Transfer to the City of Lincoln		
Assistant City Controller	$ 115,680	$ 115,680
Assistant City Attorney	140,563	140,563
Assistant Purchasing Agent	46,551	46,551
City Treasurer Staff-Occupation Tax Collection	41,565	41,565
Accountant-Occupation Tax Collection/Audit	43,378	43,378
Public Works Administrative Support	5,500	5,500
Total Personnel Costs	$ 393,237	$ 393,237
Materials and Supplies	$ 2,500	$ 2,500
Services		
Miscellenous Contractual Services	$ 172,789	$ 172,789
Premium Seat Husker Tickets	255,000	255,000
Arena pre-opening loan repayment	203,420	203,420
Arena sponsorships	1,020,000	1,020,000
Arena Maintenance, Repair and Replacement	-	68,413
Arena Operational Increment	-	650,000
Parking Management Services	1,540,000	1,540,000
Project Administrator	-	-
Insurance	172,275	172,275
Public Official's Liability Insurance	24,640	24,640
District Energy thermal services	2,150,000	2,150,000
JPA Share of downtown maintenance	33,000	33,000
Arena Sales Commissions	2,828,329	2,828,329
Amtrak Station maintenance and utilities	24,600	24,600
Other services	8,546	8,546
Credit Card Fees on premium seat payments	5,000	5,000
Total Services	$ 8,437,599	$ 9,156,012
Total Operating Expenditures	$ 8,833,336	$ 9,551,749
Other Expenditures		
Debt Service		
Principal	$ 540,000	$ 540,000
Interest	$ 16,253,596	$ 16,253,596
Trustee Service Charges	$ 2,620	$ 2,620
Total Debt Service	$ 16,796,216	$ 16,796,216
Transfer to City-Turn Back Tax Bond Interest	$ -	$ 250,000

West Haymarket Joint Public Agency
Proposed Amended Operating Budget
September 1, 2014 to August 31, 2015

Expenditure Budget	2014-15 Adopted	Proposed 2014-15 Amended
Total Expenditure Budget	$ 25,629,552	$ 26,597,965
Sources of Funds		
Occupation taxes	$ 13,902,174	$ 14,870,587
Reappropriation of unspent 2013-14 Arena Sales commissions for payment in 2014-15	919,622	919,622
Reappropriation of unspent 2013-14 Miscellaneous Contractual funds for cleanup of JPA property.	35,000	35,000
Federal subsidy of debt payments	3,619,458	3,619,458
Private Developer thermal energy payments	1,413,000	1,413,000
Arena Premium Seat Revenues	2,583,066	2,583,066
Arena Sponsorships	1,020,000	1,020,000
Parking Revenues	1,655,000	1,655,000
UNL Rent	310,732	310,732
Amtrak Station Rent	38,500	38,500
Interest on cash balances	133,000	133,000
Total - Sources of Funds	$ 25,629,552	$ 26,597,965

* See Arena/JPA Revenue Distribution Schedule

West Haymarket Joint Public Agency
Proposed Amended Operating Budget
September 1, 2014 to August 31, 2015

Arena/JPA Revenue Distribution Schedule

JPA Revenues (Operating and Program Budget)	Legal Authority
1 . Suites	Premium seating and Facilities agreement
2 . Loge Boxes	Premium seating and Facilities agreement
3 . Club Seats	Premium seating and Facilities agreement
4 . Parking (decks 1,2,3)	Facilities agreement
5 . Occupation Taxes	Facilities agreement, City ordinance
6 . Energy payments from private tenants	Energy Service agreements b/t JPA/Tenants
7 . County lodging tax	Grant contract b/t JPA and County
8 . Land Sales	JPA has fee title
9 . IMG Sponsorship (Transfer Guaranteed Rights Fee to Arena)	Contract between JPA and IMG
10 . Naming rights	JPA/Pinnacle Bank agreement
11 . Property taxes from TIF	TIF note holder is the JPA, JPA resolution
12 . UNL Rent	UNL Lease and Operating Agreement/Facilities Agreement, Memorandum of Understanding
13 . Private donations	Donor designation, terms of gift
14 . Interest earnings	Facilities agreement
15 . Rental income	Rental agreements
16 . Turnback tax surplus	Facilities agreement, Convention Center Facility Financing Act
Arena Revenues	
1 . Arena event revenue including food, beverage, merchandise and other	City/SMG agreement
2 . $200,000 annual repayment of preopening loan from SMG (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA
3 . IMG Guaranteed Rights Fee. (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA
4 . Festival parking and events, attached garage	Facilities agreement, City acting as an agent for the JPA, City/SMG agreement
5 . Operational Increment (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA, City/SMG agreement
City Revenues	
1 . Turnback Tax	Facilities agreement to pay Turnback Tax bonds

WH 15-14 Introduce: 8-27-2015

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Proposed Operating Budget for September 1, 2015 to August 31, 2016 is hereby adopted as the West Haymarket Joint Public Agency Operating Budget for FY 2015/2016.

Adopted this _____ day of _____, 2015.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

West Haymarket Joint Public Agency
Proposed Operating Budget
September 1, 2015 to August 31, 2016

Expenditure Budget	2014-15 Adopted	2015-16 Proposed
Operating Expenditures		
Personnel Costs - Transfer to the City of Lincoln		
Assistant City Controller	$ 115,680	$ 119,045
Assistant City Attorney	140,563	149,867
Assistant Purchasing Agent	46,551	49,265
Accountant-Occupation Tax Collection/Audit	43,378	45,925
Total Personnel Costs	$ 393,237	$ 406,521
Materials and Supplies	$ 2,500	$ 2,500
Services		
Miscellenous Contractual Services	$ 172,789	$ 141,079
Premium Seat Husker Tickets	255,000	298,500
Arena pre-opening loan repayment	203,420	203,040
Arena sponsorships	1,020,000	1,040,400
Arena Maintenance, Repair and Replacement	-	150,000
Arena Operational Increment	-	600,000
Parking Management Services	1,540,000	1,445,000
Insurance	172,275	268,402
Public Official's Liability Insurance	24,640	31,864
District Energy thermal services	2,150,000	2,260,000
JPA Share of downtown maintenance	33,000	20,000
Arena Sales Commissions	2,828,329	-
Amtrak Station maintenance and utilities	24,600	24,700
Other services	8,546	12,821
Credit Card Fees on premium seat payments	5,000	5,000
Total Services	$ 8,437,599	$ 6,500,806
Total Operating Expenditures	$ 8,833,336	$ 6,909,827
Other Expenditures		
Debt Service		
Principal	$ 540,000	$ 540,000
Interest	$ 16,253,596	$ 16,242,796
Trustee Service Charges	$ 2,620	$ 2,620
Total Debt Service	$ 16,796,216	$ 16,785,416
Transfer to City-Turn Back Tax Bond Interest	$ -	$ -
Total Expenditure Budget	$ 25,629,552	$ 23,695,243

West Haymarket Joint Public Agency
Proposed Operating Budget
September 1, 2015 to August 31, 2016

Expenditure Budget	2014-15 Adopted	2015-16 Proposed
Sources of Funds		
Occupation taxes	$ 13,902,174	$ 13,017,974
Reappropriation of unspent 2013-14 Arena Sales commissions for payment in 2014-15	919,622	-
Reappropriation of unspent 2013-14 Miscellaneous Contractual funds for cleanup of JPA property.	35,000	-
Federal subsidy of debt payments	3,619,458	3,615,556
Private Developer thermal energy payments	1,413,000	1,320,000
Arena Premium Seat Revenues	2,583,066	2,506,046
Arena Sponsorships	1,020,000	1,040,400
Parking Revenues	1,655,000	1,546,947
UNL Rent	310,732	316,820
Amtrak Station Rent	38,500	38,500
Interest on cash balances	133,000	293,000
Total - Sources of Funds	$ 25,629,552	$ 23,695,243

West Haymarket Joint Public Agency
Proposed Operating Budget
September 1, 2015 to August 31, 2016

Arena/JPA Revenue Distribution Schedule

JPA Revenues (Operating and Program Budget)	Legal Authority
1 . Suites	Premium seating and Facilities agreement
2 . Loge Boxes	Premium seating and Facilities agreement
3 . Club Seats	Premium seating and Facilities agreement
4 . Parking (decks 1,2,3)	Facilities agreement
5 . Occupation Taxes	Facilities agreement, City ordinance
6 . Energy payments from private tenants	Energy Service agreements b/t JPA/Tenants
7 . County lodging tax	Grant contract b/t JPA and County
8 . Land Sales	JPA has fee title
9 . IMG Sponsorship (Transfer Guaranteed Rights Fee to Arena)	Contract between JPA and IMG
10 . Naming rights	JPA/Pinnacle Bank agreement
11 . Property taxes from TIF	TIF note holder is the JPA, JPA resolution
12 . UNL Rent	UNL Lease and Operating Agreement/Facilities Agreement, Memorandum of Understanding
13 . Private donations	Donor designation, terms of gift
14 . Interest earnings	Facilities agreement
15 . Rental income	Rental agreements
16 . Turnback tax surplus	Facilities agreement, Convention Center Facility Financing Act
Arena Revenues	
1 . Arena event revenue including food, beverage, merchandise and other	City/SMG agreement
2 . $200,000 annual repayment of preopening loan from SMG (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA
3 . IMG Guaranteed Rights Fee. (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA
4 . Festival parking and events, attached garage	Facilities agreement, City acting as an agent for the JPA, City/SMG agreement
5 . Operational Increment (Transferred from JPA)	Facilities agreement, City acting as an agent for the JPA, City/SMG agreement
City Revenues	
1 . Turnback Tax	Facilities agreement to pay Turnback Tax bonds

WH 15-15 Introduce: 8-27-15

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Engagement Letter Agreement to engage BKD, LLC to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards as of and for the year ended August 31, 2015 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said engagement letter on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return one fully executed original Engagement Letter Agreement and a copy of this Resolution to Steve Hubka, Finance Director, for transmittal to BKD.

Adopted this _____ day of August, 2015.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

BKD LLP
CPAs & Advisors

1248 "O" Street, Suite 1040// Lincoln, NE 68508-1461
402.473.7600// fax 402.473.7698 // bkd.com

July 16, 2015

Board of Representatives
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, Nebraska 68508

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the West Haymarket Joint Public Agency ("West Haymarket JPA").

ENGAGEMENT OBJECTIVES AND SCOPE

We will audit the basic financial statements of the West Haymarket JPA as of and for the year ended August 31, 2015, and the related notes to the financial statements.

Our audit will be conducted with the objectives of:

- ✓ Expressing an opinion on the financial statements
- ✓ Issuing a report on your compliance based on the audit of your financial statements.
- ✓ Issuing a report on your internal control over financial reporting based on the audit of your financial statements.

OUR RESPONSIBILITIES

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by fraud or error. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Praxity MEMBER
GLOBAL ALLIANCE OF INDEPENDENT FIRMS

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance having a direct and material effect may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system.

We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

Chris Lindner is responsible for supervising the engagement and authorizing the signing of the report or reports.

We will issue a written report upon completion of our audit of the West Haymarket JPA's financial statements. Our report will be addressed to the board of representatives of the West Haymarket JPA. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis of matter or other matter paragraph(s), or withdraw from the engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

Our audit will be conducted on the basis that management acknowledge and understand that they have responsibility:

a. for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;

b. for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;

c. for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities; and

d. to provide us with

i. access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;

ii. additional information that we may request from management for the purpose of the audit; and

iii. unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management written confirmation acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

We will provide you with the following nonattest services:

- Preparing a draft of the financial statements and related notes
- Review bond offering documents, for the inclusion of our audit opinion, for a fee of $2,500 – 3,000, per offering document, as outlined in our 2015 audit proposal

In addition, we may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of the services described above and for any other services that we may provide, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management responsibilities related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

The fee for our services will be $17,000, in accordance with our 2015 audit proposal, which includes an administrative fee of 4% to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

We will provide you with a detailed list of assistance and schedules required and the date such assistance and schedules are to be provided before the audit begins. All schedules should be provided in electronic form unless indicated otherwise.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase.

Our pricing for this engagement and our fee structure are based upon the expectation that our invoices will be paid promptly. We will issue progress billings during the course of our engagement, and payment of our invoices is due upon receipt. Interest will be charged on any unpaid balance after 30 days at the rate of 10% per annum.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

BKD is not acting as your municipal advisor under Section 15B of the *Securities Exchange Act of 1934*, as amended. As such, BKD is not recommending any action to you and does not owe you a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. You should discuss such information or communications with any and all internal or external advisors and experts you deem appropriate before acting on any such information or material provided by BKD.

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date, as well as an administrative fee of 4% to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event we are unable to secure an appropriate confidentiality agreement, you

will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

Any time you intend to reference our firm name in any manner in any published materials, including on an electronic site, you agree to provide us with draft materials for our review and approval before publishing or posting such information.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2014 peer review report accompanies this letter.

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities. If the signed copy you return to us is in electronic form, you agree that such copy shall be legally treated as a "duplicate original" of this agreement.

BKD, LLP

Acknowledged and agreed to on behalf of

WEST HAYMARKET JOINT PUBLIC AGENCY

BY _____
Chris Beutler, Board Chairman

DATE _____

BY Steve Hubka
Steve Hubka, Treasurer

DATE 7/21/15

Postlethwaite & Netterville

A Professional Accounting Corporation
Associated Offices in Principal Cities of the United States
www.pncpa.com

System Review Report

To the Partners of BKD, LLP
and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of BKD, LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended May 31, 2014. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*, audits of employee benefit plans, audits performed under FDICIA, audits of carrying broker-dealers, and examinations of service organizations (SOC 1).

In our opinion, the system of quality control for the accounting and auditing practice of BKD, LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended May 31, 2014, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. BKD, LLP has received a peer review rating of *pass*.

Postlethwaite & Netterville

Baton Rouge, Louisiana
September 19, 2014

8550 United Plaza Blvd, Suite 1001 • Baton Rouge, LA 70809 • Tel: 225.922.4600 • Fax: 225.922.4611

WH 15-16 Introduce: 8-27-15

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached West Haymarket Redevelopment Agreement (TDP Project) between the West Haymarket Joint Public Agency, the City of Lincoln, Nebraska, and TDP Phase Three, LLC, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Redevelopment Agreement on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Rick Peo, Chief Assistant City Attorney, for transmittal to the parties.

Adopted this _____ day of August, 2015.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

WEST HAYMARKET
REDEVELOPMENT AGREEMENT
(TDP Project)

THIS WEST HAYMARKET REDEVELOPMENT AGREEMENT (TDP Project) ("**Redevelopment Agreement**") is entered into as of the ____ day of _____, 2015 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 TDP PHASE THREE, 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 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 "**TDP Project**" in an area generally bounded by R Street on the north, O Street on the south, Pinnacle Arena Drive on the west, and 7th Street on the east, including Canopy Street south to N Street and the Project Site (defined below) as shown on Exhibit B ("**TDP Project Area**"). The TDP Project provides for the Redeveloper to acquire property owned by the JPA located in the West Haymarket Redevelopment Area and legally described as the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 3, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, ("**Project Site**") to grade and prepare the Project Site for development ("**Site Preparation**") and to construct certain Private Improvements (defined below) and Redeveloper Public Improvements (defined below) thereon. The Project Site and the remaining portion of the North Half of Lot 3, Block 6, West Haymarket Addition are to be replatted as two separate lots tentatively identified as Lots 1 and 2, West Haymarket 2nd Addition. Acquisition of the Project Site is sometimes referred to herein as "**Site Acquisition**."

C. The Redeveloper undertakings ("**Redeveloper Undertakings**") for the TDP Project consist of the following activities:

(1) Site Acquisition;

(2) Site Preparation;

(3) Design and construction of a seven-story building containing approximately 140,000 square feet of office space, and approximately 10,000 square feet of retail space and/or enclosed commercial recreational facility ("**New Building**");

(4) Design of an outdoor plaza ("**Plaza**") on the Project Site satisfactory to the City which includes design of a unified Plaza on the remaining portion of the North Half of Lot 3, Block 6, West Haymarket Addition. The Plaza is more particular defined in Exhibit M;

(5) Design and construction of a skywalk bridge connecting the New Building and the JPA Green 2 Parking Garage (Deck 2) located at 530 P Street ("**Skywalk Bridge**");

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

(7) Design and construction and installation of certain upgraded streetscape improvements primarily along, but not limited to, the P Street and Canopy Street abutting the Project Site within the TDP Project Area ("**Redeveloper Streetscape Improvements**") as defined in Section 303.B below.

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

D. City Public Improvements. Intentionally Omitted.

E. 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 Private Improvements.

F. 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 Private Improvements receiving heating and cooling from the Energy Services provided by the DEC to the JPA.

G. This Redevelopment Agreement implements the TDP Project and sets forth the terms and conditions for the Project.

H. *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.

I. 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.

J. 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 TDP 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 TDP 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**."

K. Resolution No. A-84988 adopted by the City Council for the City of Lincoln, Nebraska on August 25, 2008 adopted the City of Lincoln FY 2008/2009 annual budget and as part of said budget resolution, established Fund #230 to be known as the Fast Forward Fund. The purpose of Fund #230 is to make funds available for economic projects where (1) there is a demonstrated benefit to the community, and/or (2) where incentive(s) can positively influence the outcome of the project. Resolution No. A-85490 adopted by the City Council on August 24, 2009 adopted the City's FY 2009/2010 annual budget and, as part of said budget, said budget resolution modified the purpose of the Fast Forward Fund to provide priority for economic development and/or infrastructure project. The resolution further provides that "any project relating to business shall be required to show: (1) that new employees added as a result of the project will meet a median wage requirement that is 120% of the county average wage, and (2) that the business derives 50% or more of its revenue from outside of the county. Any project not related to a particular business must be in the CIP. The eligibility of projects and the amount of funding must be approved on a case-by-case basis by resolution of the City Council." The Mayor is recommending the TDP Project as an economic development project to be supported by the Fast Forward Funds in the amount of $600,000 to be used for construction of the Skywalk Bridge connecting the New Building to the JPA Green 2 Parking Garage (Deck 2).

L. 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 in Section 603 below and summarized

on Exhibit C, 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 ("**TIF Indebtedness**") to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision.

M. 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. Redeveloper shall, within sixty (60) days following the date of this Agreement, state the amount and source of liquid assets on hand and the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper in connection with acquisition of the Project Site, construction of the Private Improvements, and construction of the Redeveloper Public 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. To the extent allowed by law, the City agrees to keep the information confidential.

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 304 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.

A. Payment of Purchase Price. The JPA agrees to sell and Redeveloper agrees to buy the Project Site which purchase shall include associated prepaid parking rights related to Redeveloper's use of the Project Site for office use by Redeveloper's tenants. The Parking Rights are more particularly described in Article V below. The prepaid Parking Rights are intended to provide free parking for an average of 263.4 non-reserved parking stalls per month based upon the estimated number of new employees to be employed by Redeveloper's tenants in

the New Building during the first five years following substantial completion of the New Building. The Purchase Price shall be determined as follows:

Land Price + Prepaid Parking Rights = Purchase Price

The Land Price is the sum arrived at by multiplying the square footage of the Project Site (assumed to be 34,580 sq. ft., subject to confirmation of the actual square footage in the final plat) x $33.00 per square foot, or $1,141,140. The prepaid Parking Rights is the sum arrived at by multiplying the 263.4 stalls x $56.25/month/stall ($62.50/month x 90% (10% discount for large volume and annual prepayment)) x 60 months = $888,975 (called $890,000).

The City agrees to assist in Redeveloper's acquisition of the Project Site (including the prepaid Parking Rights) by providing a grant of TIF Bond A Proceeds (defined below) to the Redeveloper in the amount of $1,590,000 to be applied toward the Purchase Price. The City further agrees to make a grant of Excess Tax Increment Revenues (defined below) to the Redeveloper to be applied to the remaining portion of the Purchase Price (collectively "**Land Purchase Assistance**"). Redeveloper's payment of the Purchase Price to the JPA shall be evidenced by:

(1) A cash payment of $700,000 (Land Value Payment) from TIF Bond A Proceeds to the JPA at Closing.

(2) A cash payment of $890,000 from TIF Bond A Proceeds to the City's Parking Manager for the benefit of JPA upon substantial completion of the New Building and prior to the use of the parking by Redeveloper and its Tenants.

(3) An assignment to the JPA of the Redeveloper's rights to the grant of Excess TIF Tax Revenues from the City for the remaining $441,140.00 (Land Value portion) of the Purchase Price.

Redeveloper does hereby assign its rights to a grant of funds from Excess TIF Tax Revenues for Land Purchase Assistance in the amount of $441,140.00 to the JPA and JPA does hereby accept said assignment. The JPA understands and agrees that the Purchase Price shall be paid solely from the aforementioned payments from TIF Bond A Proceeds and Excess TIF Tax Revenues and without recourse against Redeveloper.

B. Administrative Plat. Prior to Closing, the JPA shall cause Olsson Associates ("**Engineer**") to prepare and obtain the necessary final approval of an administrative final plat ("West Haymarket 2nd Addition) which replats (i) the North Half of Lot 3, Block 6, except for the south five feet and the South Half of Lot 3, Block 6, and the south five feet of the North Half of Lot 3, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska into two individual lots tentatively identified as Lots 1 and 2, West Haymarket 2nd 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, Redeveloper will reimburse the JPA one half (1/2) of the Engineer's cost to prepare and obtain the City's approval of the West Haymarket 2nd Addition administrative final 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 September 30, 2015, 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 TDP 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 below;

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

(iv) City approval of the Administrative Final Plat of West Haymarket 2nd Addition which in part replats the Project Site as Lot 2, West Haymarket 2nd Addition pursuant to Section 201.A above;

(v) Execution and delivery of the Skywalk Bridge Easement Agreement between the JPA and Redeveloper pursuant to Section 310.B below;

(vi) Availability of city water, city sanitary sewer, city storm sewer, electrical, cable/data and natural gas utilities within the public right-of-way abutting the Project Site;

(vii) City Council approval of the use of Fast Forward Funds to assist in the cost of financing the Skywalk Bridge;

(viii) Execution and delivery of the Use of Right-of-Way Easements and Hold Harmless Agreement.

2. JPA Closing Contingencies. The JPA's obligation to close shall be contingent upon (i) the execution and delivery of the Energy Service Agreement between the

Redeveloper and the JPA pursuant to Section 302A.2(c) below; and (ii) execution and delivery of the Skywalk Bridge Easement Agreement between the Redeveloper and JPA pursuant to Section 310.B below.

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 (defined below) in order to issue a title policy ("**Title Policy**") in accordance with the Redeveloper's Title Commitment (defined below), 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 (defined below) 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 Union Title 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 fifteen (15) 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 for 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.

Section 203. Property Taxes and Assessments. All real and personal property taxes and assessments, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years' taxes, assessments, and interest, 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.

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 304,

the JPA, subject to the Redeveloper's right to cure in Section 901 and/or for delay of performance for cause beyond the control of the Redeveloper pursuant to Section 903, shall be entitled, at its option, to purchase the Project Site (including the Parking Rights) 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.

Section 207. Right to Effectuate Section 1031 Land 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**") for the Private Improvements have been prepared by the Redeveloper. The Project Schematic Drawings are 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 attached as Exhibit D have been

reviewed and approved by the Mayor. The Project Schematic Drawings shall serve as the basis for development of the plans and specifications for the Private Improvements.

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. Prior to the finalization of the New Building's finished floor elevation and right-of-way elevations, Redeveloper must receive City approval that these grades are in concert and achieve the proper grades. This will require the streetscape elevations to be completed concurrently with the finish floor elevations. Such Design Development Plans shall be based upon the approved Project Schematic Drawings and shall show all the exterior faces of the Private Improvements to be constructed by Redeveloper as part of the TDP Project the construction materials to be used for the exterior walls, elevation views of the exterior faces of the Private Improvements, and the attachment of the Skywalk Bridge to the Green 2 Parking Garage ("**Exterior Drawings**"). The Exterior Drawings shall be submitted to the Mayor for his review and approval, as provided in subsection D below.

The Design Development Plan shall also include a site plan ("**Site Plan**"). 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.

C. Final Construction Documents. Upon approval of the Exterior Drawings by the City, Redeveloper shall prepare or have prepared the final construction documents for the private improvements which shall include exterior construction documents ("**Exterior Construction Documents**"). The Exterior Construction Documents shall be submitted to the Mayor for review and approval, as provided in subsection D below.

D. City and JPA Approval. City and JPA, 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. The Exterior Drawings 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. 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. Failure of the Mayor to reject the applicable documents within said fourteen (14) days shall be deemed as approval by the City and JPA. If the Mayor rejects the applicable plans, the Mayor shall deliver to Redeveloper notice thereof accompanied by an explanation of the reasons for such rejection based on the standards for this TDP 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.

E. 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. Approval of a building permit for construction of the exterior walls and the attachment of the Skywalk Bridge to the Green 2 Parking Garage is not a substitute for and does not eliminate the requirement that Redeveloper submit the Exterior Drawings and Exterior Construction Documents to the Mayor for his review and approval.

F. Changes. If the Exterior Drawings, or Exterior Construction Documents are substantially and materially modified after the Mayor's approval, any such modification shall be resubmitted to the Mayor for review and approval, provided that such Exterior Drawings or Exterior Construction Documents shall first be submitted to the Historical Preservation Commission and 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 recommendations to the Mayor.

Section 302. Construction of Private Improvements.

A. Construction. Redeveloper shall, at its own cost and expense, through an approximate investment of Thirty Million Dollars ($30,000,000.00), subject to reimbursement for the Skywalk Bridge and Public Enhancements as set forth in this Agreement, construct the Private Improvements as described in Recital C 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 equivalent of the standard established by U.S. Green Building Council through its Leadership in Energy and Environmental Design ("**LEED**") Green Building Rating Systems or a similar program 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 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 the Estimated Completion Date (defined in §304 below) 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) 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 an 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 110 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 for such screening to the Mayor for his review and approval which will not be unreasonably withheld.

5. Staging and Construction Activities.

(a) Staging. The Redeveloper and its contractor, subcontractors and material suppliers, shall have a right of entry subject to the below terms and conditions to exclusively use the surface and air right space on the remaining portion of the north half of Lot 3, Block 6, West Haymarket Addition ("**Staging Area**") during the construction of the Private Improvements, without additional consideration. The Staging Area is to be left in the same or better condition vs. before its use. Any damage to the abutting public right-of-way shall be repaired at Redeveloper's own cost and expense.

Section 303. Construction of Redeveloper Public Improvements. Redeveloper at its own cost and expense, except as otherwise provided in this Agreement, shall construct/install or cause the Redeveloper Public Improvements to be designed and constructed/installed.

A. Redeveloper Streetscape Improvements (Minimum Invest of $300,000). Overall conceptual plans and drawings ("**Streetscape Drawings")** for the Redeveloper Streetscape Improvements shall be prepared by the Redeveloper. The Redeveloper Streetscape Improvements shall include but not be limited to decorative hardscape, landscaping, and pedestrian lighting and other streetscape features and amenities. The Streetscape Drawings shall be based upon and consistent with the existing streetscape installed along Canopy Street. The Streetscape Drawings shall be submitted to the City's Urban Development Department for review and submittal of a recommendation to the Mayor. Upon receipt of the Urban Development's recommendation, the Mayor shall approve or reject the Streetscape Drawings within fourteen (14) days after receipt. Upon approval of the Streetscape Drawings, the

Redeveloper shall prepare or cause to be prepared final Streetscape Construction Documents in accordance with City Design Standards and Standard Specifications which shall be submitted to the Mayor for review and approval as provided above. The Redeveloper Streetscape Improvements shall be competitively bid through the City's Purchasing Division or by the Redeveloper pursuant to the Redeveloper Bidding Procedures attached hereto as Exhibit F.

B. Redeveloper shall, at its own cost and expense, subject to a minimum investment of $400,000 reimbursable from TIF Bond A Proceeds, design the Plaza and construct the Plaza Enhancements included in the approved design. Design development plans and specification for the Plaza will be prepared for the Plaza and the Plaza Enhancements to be construction within the Plaza and submitted to the Mayor of his review and approval. The design development plans and specifications will include a concept design to incorporate a similar plaza on the remaining portion of the North Half of Lot 3, Block 6, West Haymarket Addition. The Plaza Enhancements shall be competitively bid through the City's Purchasing Division or by the Redeveloper pursuant to the Redeveloper Bidding Procedures (Exhibit F).

C. Façade and Energy Enhancements. Redeveloper shall, at its own cost and expense, subject to reimbursement with available TIF Bond A Proceeds and TIF Bond B Proceeds as set forth in this Redevelopment Agreement, construct the Façade Enhancements and Energy Enhancements. The City shall not have any obligation to reimburse Redeveloper for the cost of the Façade Enhancements and Energy Enhancements in excess of available TIF Bond A Proceeds and TIF Bond B Proceeds as provided for in this Redevelopment Agreement. Redeveloper shall use its own funds to fund any Façade Enhancements and Energy Enhancements costs that exceed the TIF Bond A Proceeds and TIF Bond B Proceeds that are lawfully available and granted to Redeveloper under this Redevelopment Agreement.

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

2. For the purpose of this Redevelopment Agreement, "**Energy Enhancements**" shall consist of the following: Redeveloper's cost, after deducting any Lincoln Electric System or other rebates, to construct and/or upgrade the energy, cooling, heating, lighting, insulation, controls, equipment, hardware and/or software improvements and systems made to the Private Improvements including, but not limited to, air handling units (fan and coils) and associated piping in the New Building to accommodate the DEC heating and cooling piping for the greater good of the community to exceed energy efficiencies in excess of that required by the International Building Code, 2009 Edition, and in particular Chapter 13, Energy Code ("**State Building Code**"), or the City of Lincoln Building Code.

3. For the purpose of this Agreement, Plaza Enhancements shall consist of and include all common areas and amenities located within the Plaza including, but not limited to, landscaping, hardscape permanent seating, permanent furnishings, canopies, and related improvements and equipment subject to the "Plaza License Agreement" in Exhibit M.

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.

Section 304. Commencement and Completion Deadline for Private Improvements. The Redeveloper anticipates the commencement of the Private Improvements on or before October 1, 2015. 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 April 30, 2017

("**Estimated Completion Date**") and will substantially complete the Private Improvements on or before December 31, 2017 ("**Completion Date**").

Section 305. <u>Payment of Costs for Private Improvements</u>. 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 306. <u>Redeveloper's Certificate of Completion of Improvements</u>.

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 G. 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 New Building, 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 307. Duty to Maintain. 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, the Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any material change to the Façade 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 that alters their state from the Construction Documents, wear and tear excepted.

Section 308. 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. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements.

Section 309. 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 603 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 310. Grant of Easements, Licenses and Consents.

A. Façade Easement. The City and Redeveloper shall enter into a Façade Easement Agreement wherein Redeveloper shall grant to the City a Façade Easement. The form of the Façade Easement Agreement is attached hereto as Exhibit H.

B. Skywalk Bridge Easement. The JPA and JPA agree to enter into a Skywalk Bridge Easement Agreement in which the JPA shall convey to Redeveloper a Skywalk Bridge Easement (including a Skywalk Bridge Footings Easement for the Skywalk Bridge support columns(s) next to Deck 2) over portions of Lots 1 and 2, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, for the Skywalk Bridge connecting the New Building to the JPA Parking Garage (Deck 2). The Skywalk Bridge Easement Agreement shall be in the form attached hereto as Exhibit I. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Skywalk Bridge Easement Premises as generally shown on the Project Schematic Drawings, Exhibit D. As part of the Skywalk Easement Agreement, Redeveloper agrees to convey to the JPA for the benefit of the public a pedestrian access easement connecting the first floor retail area and/or enclosed commercial recreational facility in the New Building to the Skywalk Bridge and the Skywalk Bridge to Deck 2.

C. Use of Right of Way Easements. The City and Redeveloper shall enter into a Use of Right of Way Easements and Hold Harmless Agreement wherein City shall grant to the Redeveloper (i) a foundation easement for the New Building over a portion of the street and alley rights of way adjacent to the east, south, and west property lines of the Project Site permitting the footings of the New Building to encroach into the rights of way; and (ii) a facade easement permitting an ornamental shade structure to the New Building to extend above the Canopy Street and Q Street rights of way. The form of the Use of Right of Way Easements and Hold Harmless Agreement is attached hereto as Exhibit E.

D. The City and Redeveloper shall enter into a Plaza License Agreement wherein Redeveloper shall grant to the City a permanent, limited, nonexclusive license to use the Plaza. The form of the Plaza License Agreement is attached hereto as Exhibit M.

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 equal to the total cost of the Private Improvements 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. Surety Bond Alternative. The City shall accept, in lieu of the requirements in Section 401.A above, a surety bond supplied by Redeveloper or Redeveloper's prime contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the prime contractor. The penal amount of the bonds 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. A copy of the lien waiver shall be provided to the City prior to the start of construction of the Private Improvements.

C. Disbursement Agreement. The City shall accept in lieu of the requirements in Sections 401.A and 401.B above a fully executed Disbursement Agreement in the form attached hereto as Exhibit K and a Redeveloper cash deposit for the purposes set forth in Sections 401.A and 401.B to be held by the City in the amount of $10,000. The cash deposit will be refunded upon issuance of the Certificate of Completion for the 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 TDP Project Area, Project Site, and/or New Building 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) the first floor of the New Building shall be used for retail use and/or enclosed commercial recreational facility and at least 50% of the leasable retail square footage of the 10,000 square feet of retail and/or enclosed commercial recreational facility 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. History. JPA is the owner of real property, including the Project Site, located within the East Flank of the West Haymarket Redevelopment Site North (WHRSN). . The Project Site has been used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the "West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan" (Benesch, 2012). The Project Site is now the subject of environmental response projects or actions pursuant to enrollment in the Nebraska Department of Environmental Quality's Voluntary Cleanup Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Products and

Hazardous Substances Storage and Handling Act. The selected environmental response projects or actions which has heretofore been performed by JPA, is documented in "West Haymarket North Investigation Report and Remedial Action Plan," (Benesch, 2012). The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400; Lincoln, NE.

B. Environmental Covenant. Redeveloper understands and agrees that the Project Site will be bound by, held, sold, and conveyed subject to the terms, conditions, obligations, and restrictions set forth in an NDEQ approved Environmental Covenant. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Project Site and to ensure that the Project Site is not developed, used, or operated in a manner incompatible with the approved remediation.

C. Activity and Use Limitations. The Environmental Covenant will subject the Project Site to the following activity and use limitations:

1. Groundwater shall not be used as a potable drinking water source.

2. Contact with contaminated soils shall be prevented by maintaining hard surface (building floor slabs, roadways, sidewalks, etc.) and/or a minimum of three ft. thick soil cover (East Flank).

3. Any ground intrusive work (including, but not limited to excavation, digging and drilling) conducted must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, XXX) ("**O & M Plan**"). The O & M Plan has not been finalized and is still under review by NDEQ. A copy of the draft O & M Plan has been provided to the Redeveloper.

D. No Further Action Letter. JPA is in the process of seeking and will continue to seek a "**No Further Action Letter**" from 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. The JPA and Redeveloper shall reasonably cooperate with each other and the NDEQ to obtain the "No Further Action Letter" and to ensure the Redeveloper is a named recipient to the No Further Action Letter once issued by the NDEQ.

E. Environmental Insurance Policy. The City and/or JPA currently holds and shall continue to hold an environmental insurance policy covering the Project Site (the "**Environmental Insurance Policy**"). The Redeveloper and the lender of the Redeveloper shall be specifically named as additional insureds on the Environmental Insurance Policy. The City and/or JPA shall provide a Certified Copy of the Environmental Insurance Policy to the Redeveloper on or before Closing.

F. Redeveloper Environmental Tests. The Redeveloper is hereby 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, subject to the following conditions:

1. Any ground intrusive Test (including, but not limited to, excavation, digging, and drilling) must be conducted in accordance with NDEQ approved O & M Plan.

2. City and JPA shall not be responsible for the actions of the Redeveloper, its employees, or contractors while they are on the Project Site.

3. Redeveloper shall indemnify and hold City and JPA harmless from and against any loss, claim, expense, or demand arising out of such testing.

4. Damage to any abutting property, street right-of-way, or utilities caused by the Redeveloper, its employees, and contractors shall be repaired and/or reconstructed at Redeveloper's expense.

5. Redeveloper shall restore the Project Site to the same condition as before any Tests occurred. 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.

6. Commercial General Liability Insurance. Redeveloper shall maintain or cause its contractor(s) performing the Tests to maintain Commercial General Liability Insurance at its own expense during the performance of the Tests and occupancy of the Project Site, naming and protecting Redeveloper and the City, its officers, agents, employees, successors, assigns, legal representatives, and agents as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations are conducted by Redeveloper and its employees, or those directly or indirectly employed by Redeveloper. This insurance shall be written by an insurance company authorized to do business in the State of Nebraska. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
   a. All Acts or Omissions - $1,000,000 each Occurrence; $2,000,000 Aggregate; and
   b. Bodily Injury/Property Damage - $1,000,000 each Occurrence; $2,000,000 Aggregate; and
   c. Personal Injury Damage - $1,000,000 each Occurrence; and
   d. Contractual Liability - $1,000,000 each Occurrence; and
   e. Products Liability and Completed Operations - $1,000,000 each Occurrence; and
   f. Medical Expenses (any one person) - $10,000; and
   g. Fire Damage (any one fire) - $100,000; and
   h. Umbrella or excess coverage - $2,000,000 each Occurrence.

7. Worker's Compensation Insurance and Employer's Liability Insurance. Redeveloper shall provide applicable statutory Worker's Compensation Insurance with minimum limits within the statutory requirements covering all Redeveloper' employees, and in the case of any contracted or subcontracted work, Redeveloper shall require the contractor and any subcontractor similarly to provide Worker's Compensation Insurance for contractor's and subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of City."

   Redeveloper shall provide Employer's Liability Insurance with minimum limits or $500,000 for bodily injury by accident or disease for each accident and each employee placed with an insurance company authorized to write

such insurance in all states where Redeveloper will have employees located in the performance of this contract, and Redeveloper shall require each contractor and subcontractor similarly to maintain Employer's Liability Insurance on the contractor's and subcontractor's employees.

8. Vehicle liability insurance coverage. Redeveloper shall provide reasonable insurance coverage for all owned, non-owned, hired, and leased vehicles. This insurance shall obtain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to bodily injury and property damage and any and all vehicles owned, used, or hired.

9. Certificate of Insurance. Prior to entering the Project Site to perform the tests as authorized by this Agreement, Redeveloper shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. The City of Lincoln shall be specifically named as an additional insured on the Commercial General Liability Insurance. Proof of worker's compensation insurance shall be shown as appropriate. All certificates shall provide for thirty (30) days written notice to Redeveloper prior to cancellation, non-renewal, or material change of any insurance referred to therein. Redeveloper shall provide the City a copy of such notice of cancellation, non-renewal, or material change within five (5) days following its receipt of said notice. Failure of Redeveloper to provide such certificate or other evidence of full compliance with these insurance requirements may result in termination of this Agreement at City's option. If Redeveloper fails to maintain the insurance as set forth herein throughout the term of this Agreement, City shall have the right, but not the obligation, to purchase said insurance at Redeveloper's expense. Redeveloper shall provide certified copies of all insurance policies required above within ten (10) days of City's written request for said copies. By requiring insurance herein, City does not represent that coverage and limits will necessarily be adequate to protect Redeveloper, and such coverage and limits shall not be deemed as a limitation on Redeveloper' liability under the indemnities granted to City in this contract.

10. Waiver of Subrogation. City and Redeveloper hereby waive any recovery of damages against each other (including their employees, officers, directors, agents, or representatives) for any loss or damage to the Project Site, tenant improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance required by this Agreement. Redeveloper waives all rights against City and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance or by the Worker's Compensation or Employer's Liability Insurance.

G. Right to Terminate Redevelopment Agreement. 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.

H. 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), the Environmental Covenant and/or the O & M Plan.

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.

ARTICLE V.

PARKING RIGHTS

Section 501. <u>Office & Retail Monthly Parking; Redeveloper's Right to Lease</u>. After substantial completion of the Private Improvements, the Redeveloper, for the sole use of its tenants, shall have the right to lease the following monthly parking in the JPA Green 2 Parking Garage ("**Deck 2**"), which is operated, managed, and maintained by the City, acting through its Parking Manager, on behalf of the JPA.

A. <u>Non-Reserved Monthly Parking Stalls</u>. Subject to Section 402.B below, the first right of refusal to lease up to Three Hundred Ninety (390) parking stalls ("**Non-Reserved Parking**"). The Non-reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year except for parking for University of Nebraska home football games, Nebraska men's home basketball games, and the largest twenty (20) Arena events (collectively, "Events"). The Redeveloper's right to lease the Non-Reserved Parking shall be placed ahead of all other requests for parking except for those requests made pursuant to parking rights contained in an earlier Redevelopment Agreement. 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 parking permit to accommodate Redeveloper's request for Non-Reserved Parking permits. The Non-Reserved Parking shall initially be leased under parking permits issued by the City at the rate of $56.25/month/stall which reflects the current monthly rate of $62.50/month/stall discounted 10% for the combined large volume and annual prepayment discount. The $62.50/month/stall rate (subject to eligible discounts) shall apply for the first five (5) years following Substantial Completion of the New Building, and thereafter parking permits shall be at the then-current monthly rates (subject to eligible discounts) charged to other non-reserved monthly parkers in similarly situated garages. The City's Parking Manager

shall use the $890,000 prepaid Parking Rights payment portion of the Purchase Price to fund a Redeveloper Parking Account Fund which the City Parking Manager will draw down upon to pay for the Redeveloper's Non-Reserved Parking until the Redeveloper Parking Account Fund is depleted. Except as herein stated, the rights granted hereunder shall be subject to regular and timely payment of the 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 during the life of the Redeveloper Parking Account Fund and thereafter shall not charge its tenants a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its tenants to manage the parking rights.

B. Duration. The parking rights outlined in this Section 501 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the New Building is adequately maintained and utilized for office and retail use.

Section 502. Failure to Exercise Parking Rights. If Redeveloper does not exercise any or all of the above rights to lease parking stalls in Deck 2, Redeveloper shall have the following continuing right to lease parking stalls:

> If Non-Reserved 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 Non-Reserved Parking waiting list to be compiled by the City or its agent operating the Deck 2 ("**Waiting List**"). 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.

Section 503. **Termination of Parking Rights.** The City shall have the right to terminate any or all of the parking rights granted to Redeveloper in this Article IV in the event the Redeveloper fails to pay the ad valorem taxes on the Private Improvements.

ARTICLE VI.

TAX AGREEMENT

Section 601. **Valuation of the Redeveloper Property.** The City intends to use the Ad Valorem Tax Provision to generate tax increment financing funds which shall be used to finance the issuance of the TIF Bond A and TIF Bond B (defined below) to fund the Redeveloper Public Improvements and to make the grant or grants to Redeveloper in accordance with this Redevelopment Agreement. 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 Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service on the TIF Indebtedness from the sale of the TIF Bond A and TIF Bond B will be derived from the increased valuation from redeveloping the Project Site as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Project Site and Private Improvements thereon which do not exceed $26,928,000.00 commencing on the Effective Date (defined below) of the Ad Valorem Tax Proposition 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 with respect to the TDP Project remains outstanding and unpaid, whichever period of time is shorter.

Section 602. **TIF.**

A. 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 Indebtedness (defined below) has been authorized by an ordinance adopted by the City Council of the City of Lincoln ("**TIF Bond Ordinance**"), which date is after the remonstrative period in Neb. Rev. Stat § 18-2142.01 but as soon thereafter as is practicable and on or before the date(s) the City needs funds in the Project Account A or Project Account B in order to reimburse the City for the First Priority use of TIF Bond A Proceeds and TIF Bond B Proceeds or for the City to timely make a grant or grants from the TIF Bond A Proceeds and/or TIF Bond B Proceeds to the Redeveloper, the City shall issue TIF Indebtedness as follows: (i) "TIF Bond A" in the aggregate principal sum of Five Million Dollars ($5,000,000) to be purchased by the JPA or other investor purchaser of the City's choosing ("**TIF Bond A Purchaser**") and receive TIF Bond A Proceeds from the TIF Bond A Purchaser to be deposited into a City fund account (the "**Project Account A**") for payment of the City's First Priority expenses set forth in Section 603.A below and to fund in the Second, Third, Fourth, and Fifth Priority Expenses in Section 603.A below, and (ii) "TIF Bond B" in the aggregate principal sum of One Million Dollars ($1,000,000) to be purchased by the Redeveloper or Redeveloper's Lender ("**TIF Bond B Purchaser**") and receive TIF Bond B Proceeds from the TIF Bond B Purchaser to be deposited into a City or Lender fund account (the "Project Account B") for payment of the City's First Priority Expenses in Section 603.B below and to fund the Second Priority Expenses as set forth in Section 603.B below. The combined total dollar amount of the above TIF Indebtedness 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 $26,928,000.00 after substantial completion of the Private Improvements in 2017.

B. Authority of City Finance Director. Subject to the terms of the TIF Bond Ordinance and this Redevelopment Agreement, the City Finance Director on behalf of the City shall make all necessary arrangements regarding timing of issuance of TIF Bond A and TIF

Bond B in one or more series and all other details of TIF Bond A and TIF Bond B, TIF Tax Revenues, Project Account A, Project Account B, and Grant of Funds to reimburse Redeveloper for all or a portion of the Site Acquisition, Public Enhancements, and Redeveloper Public Improvements; provided that, the semi-annual TIF Tax Revenues shall first be applied toward payment of the annual debt service on TIF Bond A and then applied toward payment of the annual debt service on TIF Bond B. Thereafter, any remaining unencumbered TIF Tax Revenues shall be allocated between the debt service on the TIF Bond A and the TIF Bond B based upon the prorated principal amount of the TIF Bond A and TIF Bond B, or as otherwise provided in the TIF Bond Ordinance and any amendments thereto authorizing issuance of the TIF indebtedness. Upon retirement of TIF Bond A and TIF Bond B, any remaining semi-annual TIF Tax Revenues received during the Tax Increment Period ("**Excess TIF Tax Revenues**") shall be applied toward the remaining payment of Purchase Price for so long as any portion of the Purchase Price remains outstanding. Thereafter, Excess TIF TAX Revenues shall be used to reimburse the City for other eligible public expenditures in the TDP Project Area or returned to the County Treasurer for distribution to the taxing authorities as provided in the Community Development Law. All such arrangements made by the Finance Director shall be subject to approval of the Mayor.

Section 603. <u>Use of TIF Bond Proceeds.</u>

A. <u>Use of TIF Bond A Proceeds</u>. TIF Bond A Proceeds shall be used for and expended in the following priority:

FIRST PRIORITY: Reimburse the City for the cost of issuing the TIF Bond A, including but not limited to bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves, the Tax Increment Financing Fee in the amount of one percent (1%) of the

combined total of TIF Bond A and TIF Bond B, and the City's cost to record Exhibits G, H, I, and L.

SECOND PRIORTY: Payment of grant or grants in the amount of $1,590,000 to reimburse Redeveloper for a portion of the Purchase Price for the Site Acquisition including the acquisition of the Parking Rights.

THIRD PRIORITY: Payment of grant or grants in the minimum amount of $300,000 to reimburse Redeveloper for costs of the Redeveloper Streetscape Improvements and in the minimum amount of $400,000 to reimburse Redeveloper for costs to design the Plaza and construct the Plaza Enhancements.

FOURTH PRIORITY: Payment of grant or grants to reimburse Redeveloper for the cost of the Energy Enhancements.

FIFTH PRIORTY: Payment of grant or grants to reimburse Redeveloper for the costs of the Façade Enhancements.

B. Use of TIF Bond B Proceeds. TIF Bond B Proceeds shall be used for and expended in the following priority:

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

SECOND PRIORITY: Payment of grant or grants to reimburse Redeveloper for costs of the Façade Enhancements.

Only costs for Redeveloper Streetscape Improvements, Site Acquisition (including the acquisition of the Parking Rights), Plaza design, Plaza Enhancements, Energy Enhancements, and Façade Enhancements incurred after the date of this Agreement shall be eligible for reimbursement Priority items under Section 603.A and Section 603.B above.

The City shall not have any obligation to making a grant or grants to reimburse the Redeveloper for the Redeveloper Streetscape Improvements, Site Acquisition, Energy Enhancements and/or Façade Enhancements in excess of the available TIF Bond A Proceeds and TIF Bond B Proceeds as described above. Redeveloper shall use its own funds to fund any such costs that exceed the TIF Bond A Proceeds and TIF Bond B Proceeds that are lawfully available and granted to the Redeveloper hereunder. The funds granted to Redeveloper are restricted and earmarked solely for the reimbursement of eligible Redeveloper Streetscape Improvements, Site Acquisition (including the acquisition of the Parking Rights), Site Preparation, and Public Enhancements as described herein and the Redeveloper does not have discretionary judgment over the applications of said grant funds.

Section 604. 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 A Purchaser and TIF Bond B Purchaser the principal of the TIF Bond A and TIF Bond B, respectively, with interest as provided in the TIF Bond Ordinance at a rate not to exceed four percent (4%) per annum for TIF Bond A and not to exceed eight percent (8%) per annum for TIF Bond B. Any debt service on the TIF Indebtedness (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City. Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Project Site not needed or required to pay the TIF A Bond Purchaser or TIF Bond B Purchaser for the TIF Bond A or TIF Bond B, respectively, shall be expended by the City or returned to the applicable taxing authorities as provided in the Community Development Law. Any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the

Redeveloper, TIF Bond A Purchaser and TIF Bond B Purchaser without recourse of any kind against the City.

605. Tax Increment Deficiency on TIF Bonds.

A. JPA or Investor Purchased TIF Bond A. If the JPA or an investor purchases TIF Bond A, any shortfall in the annual TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the JPA or investor purchaser without recourse of any kind against the City. To the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond A, the Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes if and when annual TIF Tax Revenues do become available from the Ad Valorem Provisions to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event the Redeveloper fails to pay any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond A, the TIF Bond A Purchaser agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period. If the TIF A Bond Purchaser is required to defer any such payments, the City shall reimburse all sums deferred if and when annual TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse TIF Bond A Purchaser for such deferred payments. In the event the TIF Bond A is not retired in full at the end of the Tax Increment Period, any remaining indebtedness on TIF Bond A shall be forgiven.

B. Redeveloper Purchased TIF Bond B. If the Redeveloper purchases TIF Bond B, any shortfall in the annual TIF Tax Revenues from the Tax Increment Provision for any reason

whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond B, the Redeveloper as purchaser of the TIF Bond B agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred if and when annual TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Bond B is not retired in full at the end of the Tax Increment Period, any remaining indebtedness on TIF Bond B shall be forgiven.

C. Lender Purchased TIF Bond B. If Redeveloper's Lender purchases the TIF Bond B, any shortfall in the annual TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the Redeveloper and TIF Bond B Purchaser without recourse of any kind against the City. To the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond B, the Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes if and when annual TIF Tax Revenues do become available from the Ad Valorem Provisions to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event the Redeveloper fails to pay any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond B, the TIF Bond B Purchaser agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period.

If the TIF B Bond Purchaser is required to defer any such payments, the City shall reimburse all sums deferred if and when annual TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse TIF Bond B Purchaser for such deferred payments. In the event the TIF Bond B is not retired in full at the end of the Tax Increment Period, any remaining indebtedness on TIF Bond B shall be forgiven.

D. 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 A and/or TIF Bond B as provided in paragraphs A, B, and C of this Section 605, 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 A or TIF Bond B) ("**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 on the TIF Bond A or TIF Bond B, 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 606. Grant of Funds.

A. Grant of Funds. In order to support redevelopment of this TDP Project and as an inducement for Redeveloper to construct the Private Improvements, 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 A ("**TIF Bond A Proceeds**") and TIF Bond B ("**TIF Bond B Proceeds**"), to pay on behalf of or make a grant of funds ("**Grant Funds A and Grant Funds B, respectively**") to the Redeveloper up to the total amount of the respective TIF Bond A and TIF Bond B Proceeds, less the amounts expended on the First Priority Item for each TIF Bond, to reimburse Redeveloper for the cost of the TIF Bond A and TIF Bond B Priority Expenses. In

order to receive reimbursement from Grant Funds A and Grant Funds B, 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 Bond A Proceeds and TIF Bond B Proceeds to determine the total amount of TIF Bond A Proceeds and TIF Bond B Proceeds expended on Redeveloper Priority Expenses. The City further agrees to grant Excess TIF Tax Revenues to Redeveloper to be applied toward the payment of the Purchase Price.

B. Reimbursement of Grants. Subject to Section 901 (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 603.A (Use of TIF Bond A Proceeds) Section 603.B (Use of TIF Bond B Proceeds) and Section 606.A (Grant of Funds) above in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 304 (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 901 (Remedies) below, in the event Redeveloper fails to maintain the Private Improvements as provided in Section 307 (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 606 A (Grant of Funds) above, for each year a Redeveloper fails to maintain the Private Improvements.

Section 607. 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 608. **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 609. **Damage or Destruction of Private Improvements**.

A. Construction Period. During the construction period, Redeveloper agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Redeveloper agrees to use its good faith efforts to commence restoration of the Private Improvements to its prior condition within nine (9) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

B. Tax Increment Period. During the tax increment period, Redeveloper agrees to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. Redeveloper agrees to use good faith efforts to commence restoration of the Private Improvements to its prior

condition within nine (9) months from the date of the damage or destruction, and shall pursue the same to completion.

C. Failure to Restore. In the event Redeveloper fails for any reason to restore the Private Improvements as provided in A and/or B above, Redeveloper shall pay the City the necessary amount for the City to retire the TIF Bond A in full, including interest. In addition, Redeveloper shall either forgive any remaining indebtedness and interest on TIF Bond B if the Redeveloper was the TIF Bond B Purchaser, or pay to the City the necessary amount of to retire the TIF BOND B in full (including interest) if the TIF Bond B was purchased by the Redeveloper's Lender.

D. Evidence of Insurance. On or before September 1 of each year during the Construction Period and Tax Increment Period, the Redeveloper shall provide the City with a certificate of insurance showing the above required insurance coverage, and said certificate shall include the amount of coverage provided under the policy.

Section 610. 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 611. Termination of Provisions. The provisions of this Article VI shall terminate upon the end of the Tax Increment Period.

ARTICLE VII.

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 701. **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 Private Improvements, and to finance, operate, maintain, repair, replace and insure said Private 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 Private Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site and Private 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 Private 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 702. **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 Private Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the holder of the mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the holder of the mortgage; provided, however, no person, including the holder of a mortgage authorized by this 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 703. **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 704. **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 703, 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 703, 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 705. <u>City's Option to Purchase Property</u>. 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 Bond A and TIF Bond B and shall be entitled to receive the TIF Bond A Proceeds and TIF Bond B Proceeds.

Section 706. Mortgage Rights Applicable to Other Forms of Encumbrance. 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 707. Termination of Provisions. 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 VIII.

REPRESENTATIONS

Section 801. <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 802. <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 802 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 803. **Change in Scope, Termination of Project**. City and Redeveloper agree that any material change in the scope of the TDP 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 IX.

REMEDIES

Section 901. **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 902. **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 903. **Delay in Performance For Causes Beyond Control of Party ("Force Majeure").** 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 904. **Rights and Remedies Cumulative**. 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 X.

MISCELLANEOUS

Section 1001. <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 1002. <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 Bond A Proceeds and TIF Bond B Proceeds for the Priority items as shown in Section 603.A and Section 603.B. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of WRK, LLC as constituting the approval or disapproval of Redeveloper.

Section 1003. <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 1004. <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 555 South 10th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10th Street Lincoln, Nebraska 68508
If to the JPA:	Mayor 555 South 10th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10th Street Lincoln, Nebraska 68508
If to Redeveloper:	TDP Phase Three, LLC 440 North 8th Street, Suite 140 Lincoln, NE 68508

With copies to: Cline Williams Wright Johnson & Oldfather, LLP
Attn: Thomas C. Huston
233 S. 13th Street, Suite 1900
Lincoln, Nebraska 68508

WRK Development, LLC
440 N. 8th St. #140
Lincoln, Nebraska 68508

B&J Partnership, Ltd.
340 Victory Lane
Lincoln, Nebraska 68528

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 1005. Approval Not Unreasonably Withheld and Timely Approval. Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this 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 1006. 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 1007. 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 1008. 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 1009. 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 1010. 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 1011. 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 Redeveloper 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 1012. Definitions.

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 1013. Audit. 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 603.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 Bond B Proceeds for the Priority Expenses described in Section 603.B.

Section 1014. Effective Date of Ad Valorem Tax Provision. At the request of the Redeveloper, the effective date of the Ad Valorem Tax Provision shall be January 1, 2017 (the year of Substantial Completion of the Private Improvements) as opposed to January 1 of the year of Site Acquisition and the City will deliver written notice to the County Assessor on or before August 1, 2017 to divide the property taxes in the Project Area and use the last certified

valuation for 2016 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. In consideration of the City approving the above request, Redeveloper agrees to defend, indemnify, and hold harmless the City of Lincoln against any claims, damages, losses, expenses, or challenges, including associated litigation costs and attorney fees, arising out of the establishment of the Effective Date as set forth in this Section. Further, to the extent that this provision is deemed invalid, void, unconstitutional, or otherwise unenforceable, the Redeveloper agrees to assume any and all risk associated with such an outcome and any effect it might have on the availability of proceeds otherwise allowed for repayment of indebtedness associated with this Agreement as described in Article III of this Agreement without any recourse against the City of Lincoln.

Section 1015. Expiration. Except as otherwise provided herein, this Redevelopment Agreement shall expire upon the expiration of the Tax Increment Period.

Section 1016. Recording. A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit O shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site.

Section 1017. 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 1018. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

Section 1019. 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 1020. Purpose of Agreement. This Redevelopment Agreement has been entered into by the City to provide financing for the TDP Project, an approved redevelopment

project as defined in Neb. Rev. Stat. § 18-2103(12) within the Lincoln Center Redevelopment Plan.

Section 1021. **Certain Public Enhancements.** Notwithstanding any contrary provisions herein, the Public Enhancements 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 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 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 1022. **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 minor alterations, changes or additions to the Agreement and the Exhibits.

Section 1023. **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 – TDP Project Area
Exhibit C – Sources and Uses of TIF
Exhibit D - Project Schematic Drawings
Exhibit E- Use of Right of Way Easements and Hold Harmless Agreement
Exhibit F - Redeveloper Bidding Procedures
Exhibit G - Certificate of Completion of Improvements
Exhibit H - Façade Easement Agreement
Exhibit I - Skywalk Bridge Easement Agreement
Exhibit J - Penal Bond
Exhibit K - Disbursement Agreement
Exhibit L - Environmental Covenant (Draft)
Exhibit M - Plaza License Agreement
Exhibit N - Intentionally Omitted
Exhibit O - Memorandum of Redevelopment Agreement, Use Restrictions, Environmental Restrictions, and Parking Rights

[SIGNATURE AND NOTARY PAGES TO FOLLOW]

Executed by City this _____ day of _____, 2015.

"**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 _____, 2015, 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 _____, 2015, 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 _____, 2015.

"Redeveloper"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

EXHIBIT A

West Haymarket Redevelopment Area

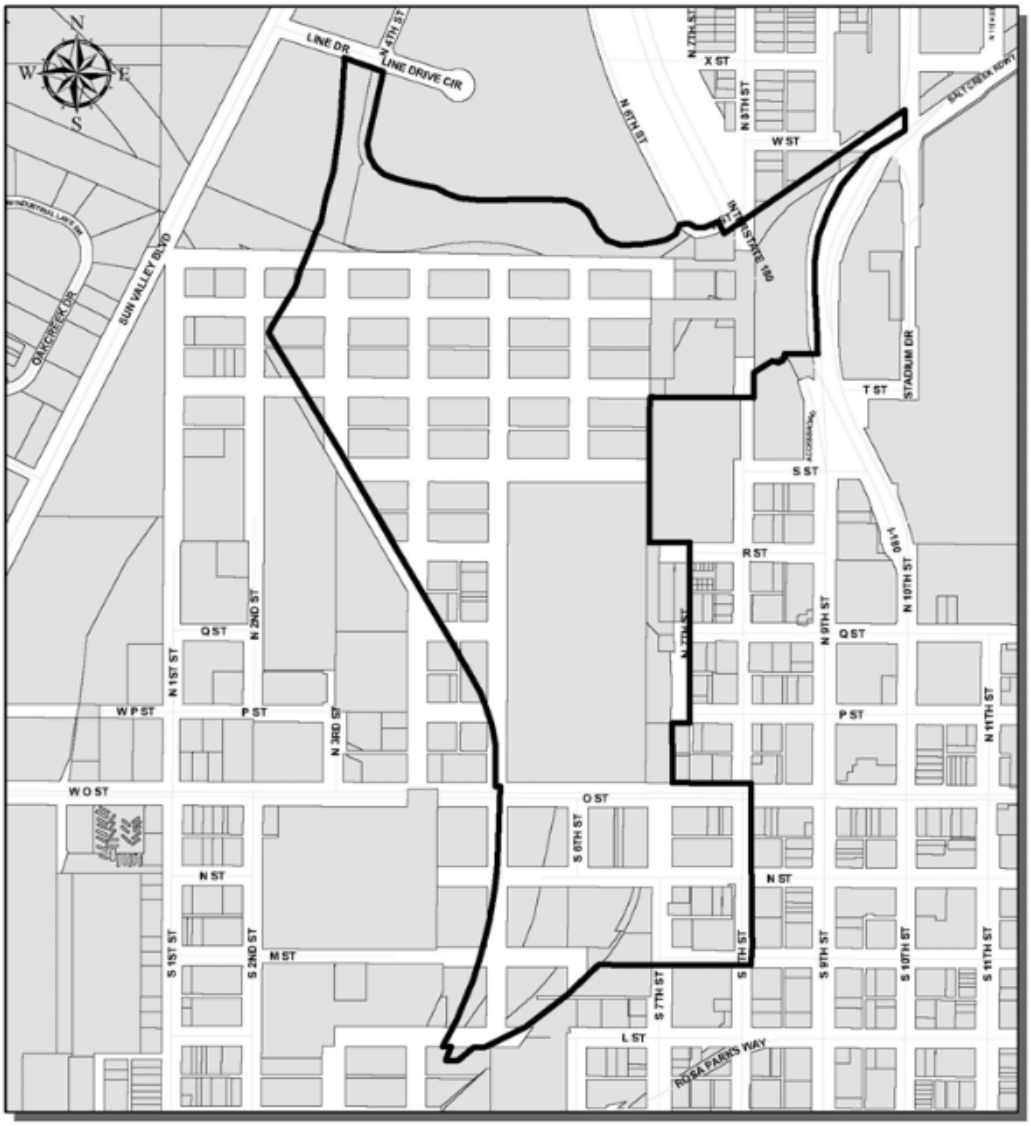
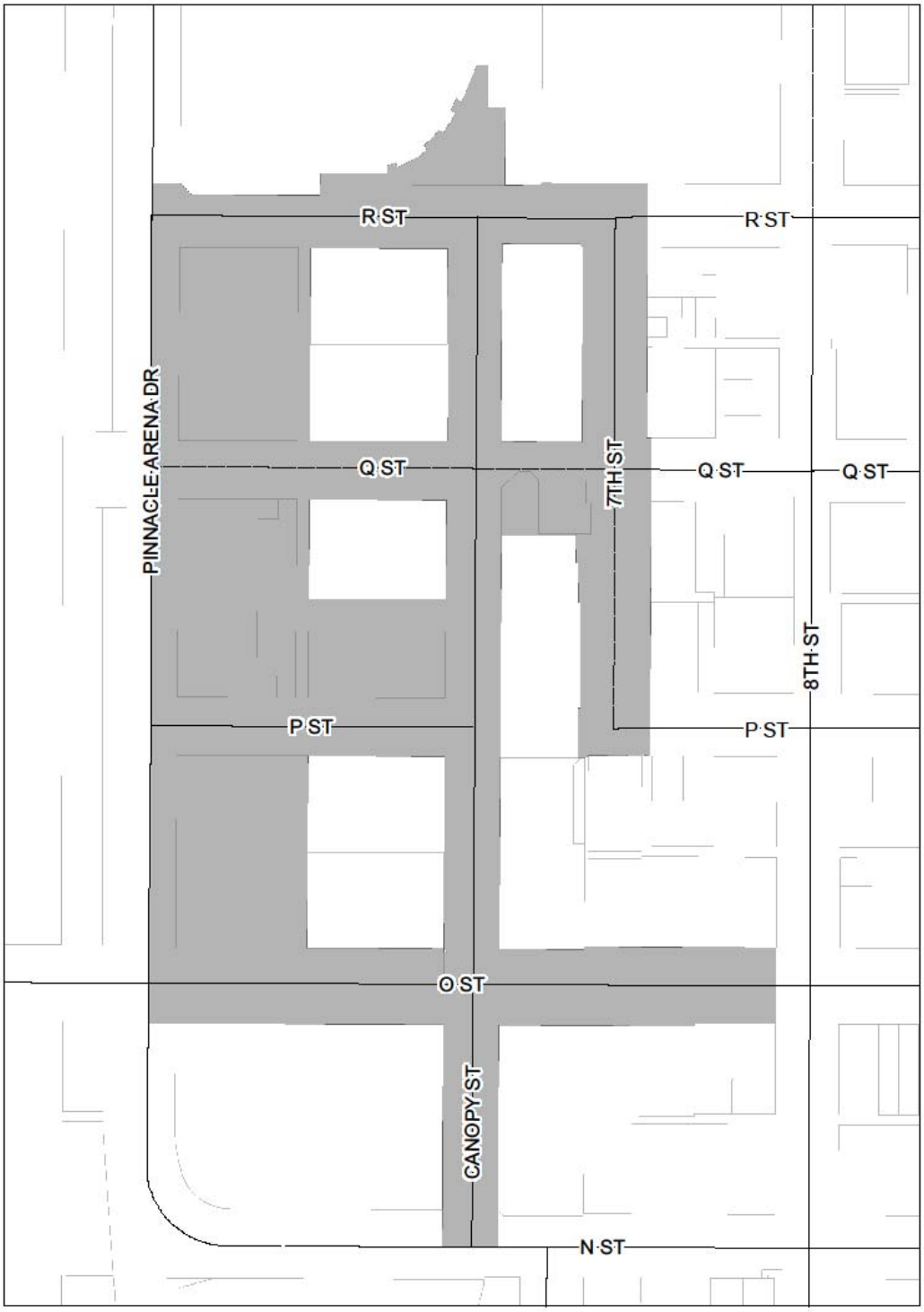


Exhibit IV-141

West Haymarket Redevelopment Project Area

Project Area Parcels Streets

City of Lincoln
Urban Development GIS
Printed 8/2007



TDP Phase Three

EXHIBIT B - PROJECT AREA

TDP Phase Three

City of Lincoln - Urban Development Department

Created by: UDD

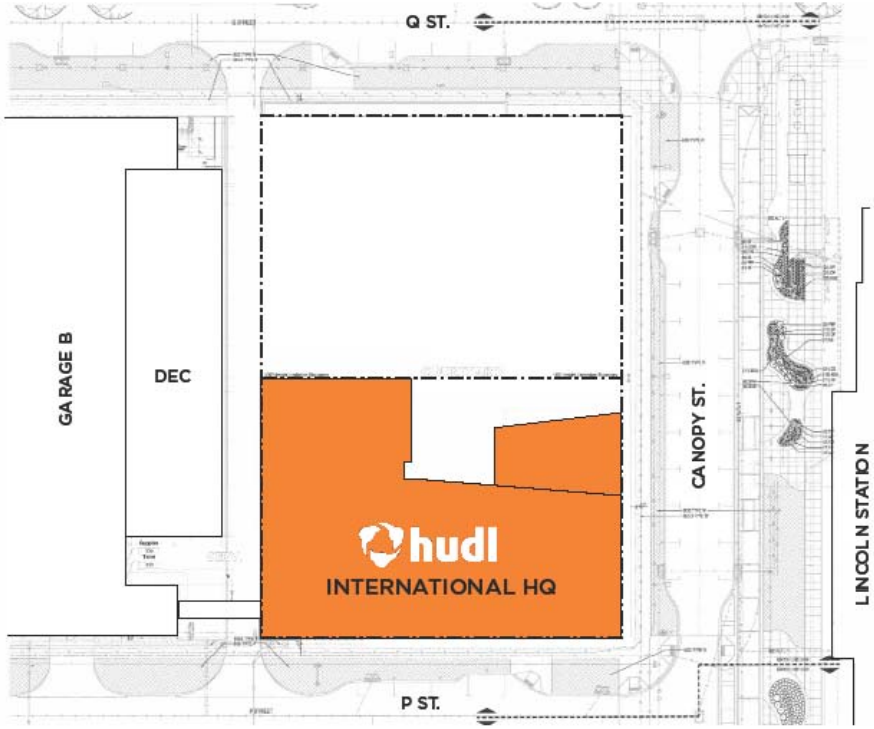
EXHIBIT C

Sources and Uses of TIF

TDP Phase Three Project	Total	Series A	Series B	Purchase Price Differential	Detailed Expenses
FIRST PRIORITY 1. Cost of Issuance 2. City Fee	 $10,000.00 $60,000.00 $70,000.00	 $70,000.00			Cost of issuing TIF indebtedness and City administrative fee
SECOND PRIORITY 1. Cost of Land 2. Cost of Parking	 $700,000.00 $890,000.00 $1,590,000.00	 $1,590,000.00		 $441,140.00	Cost of land and 5 year parking arrangement
THIRD PRIORITY 1. Streetscape Improvements 2. Plaza Design & Enhancements	 $300,000.00 $400,000.00 $700,000.00	 $700,000.00			Improvements to the public ways and design of Plaza and construc-tion of Plaza Enhancements
FOURTH PRIORITY 1. Energy Enhancements 2. DEC Capital Costs	 $1,415,000.00 $205,000.00 $1,620,000.00	 $1,620,000.00			Installation of DEC infrastructure and additional energy enhancements
FIFTH PRIORITY Façade Costs	 $2, 020,000.00	 $1,020,000.00	 $1,000,000.00		Difference between use of quality materials and use of materials that would satisfy Downtown Design Standards and Integrated Development Plan
TOTAL	**$6,000,000.00**	**$5,000,000.00**	**$1,000,000.00**	**$441,140.00**	

EXHIBIT D

PROJECT SCHEMATIC DRAWINGS



HUDL HEADQUARTERS
SITE PLAN

07.30.2015

SINCLAIR hille architects

HUDL HEADQUARTERS

WEST HAYMARKET DEVELOPMENT

07.30.2015

WRK

SINCLAIR hille architects

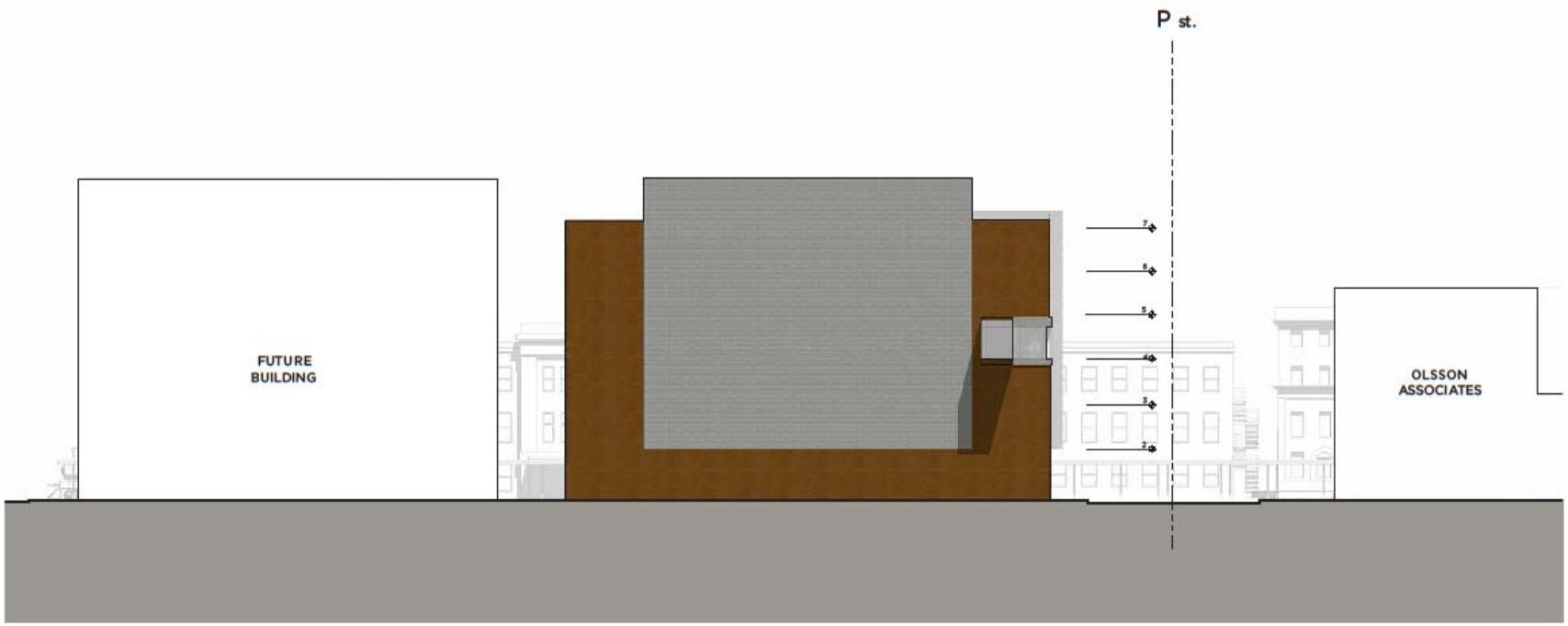
HUDL HEADQUARTERS

WEST HAYMARKET DEVELOPMENT

07.30.2015

WRK

SINCLAIR hille architects



BLOCK B SOUTH

WEST ELEVATION

WRK

SINCLAIR hille architects

EXHIBIT E

USE OF RIGHTS OF WAY EASEMENT AND HOLD HARMLESS AGREEMENT

THIS USE OF RIGHTS OF WAY EASEMENT AND HOLD HARMLESS AGREEMENT ("Agreement") is entered into by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **TDP Phase III, LLC**, a Nebraska limited liability company, ("Redeveloper").

RECITALS

A.

Redeveloper has entered into a Redevelopment Agreement with the City to construct a seven-story building containing approximately 140,00 square feet of office space, and approximately 10,000 square feet of retail space or enclosed recreational facility and related outdoor courtyard and softscape treatments ("New Building") to be located on the property legally described as:

> Lot 2, West Haymarket 2nd Addition, Lincoln, Lancaster County, Nebraska,

("Project Site").

B.

In order to construct the New Building with zero setbacks from the abutting public rights-of-way abutting the east, south, and west property lines of the Project Site as shown on the Footing and Foundation Encroachment Exhibit attached hereto as Attachment "A", Redeveloper

has requested the City to grant Redeveloper a permanent two-foot wide and 3'4" deep foundation easement for the construction of an underground foundation system ("Foundation") to use space underneath and on the surface of City street and alley rights-of-way for the purpose of supporting said New Building.

C.

In order to construct the exterior of the New Building with an ornamental shade structure with vertical "fins" attached to the exterior walls of the New Building above the surface and overhanging the Canopy Street and Q Street rights of way as shown on the Area of Property Line Overhang Exhibit attached hereto as Attachment B, Redeveloper has requested the City to grant Redeveloper a permanent four-foot Overhang Easement for the construction of the ornamental shade structure to the New Building.

D.

The City is agreeable to granting Redeveloper the above described permanent for use of the public rights-of-way upon the terms and conditions below.

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

1. Grant of Easements. The City agrees to and does hereby grant Redeveloper a two-foot permanent footings and encroachment foundation easement ("Building Foundation Easement") and a permanent four-foot Overhang Easement ("Building Overhang Easement) for the New Building on, under, or over those specific portions of the public street and alley rights-of-way abutting the New Building ("Easement Area") as shown on Attachment "A" and Attachment "B" to construct, maintain and repair the Foundation below the ground surface and to construct, maintain, and repair the ornamental shade structure above the ground surface. The Building Foundation Easement and Building Overhang Easement are granted in connection with

and for the benefit of Redeveloper's construction and use of the New Building. Redeveloper has the right of ingress and egress to (enter, exit and re-enter by vehicle or otherwise) the applicable Easement Area at all times and in such places as may be necessary or convenient to construct, maintain and repair the Foundation or ornamental shade structure for the New Building as permitted in this Agreement. Redeveloper may temporarily use such additional portions of the applicable right-of-way as may be reasonably required to access the applicable Easement Area and to construct, maintain or repair the Foundation and/or the ornamental shade structure as permitted in this Agreement, provided prior written notice is given to and written approval is received from the City for any such temporary use of public right-of-way outside any Easement Area, which approval will not be unreasonably withheld.

2. Covenants. In consideration of the grant of this Building Foundation Easement and Building Overhang Easement to Redeveloper, Redeveloper covenants and agrees with the City that the Redeveloper shall be bound by the following terms and conditions:

(i) In the exercise of Redeveloper's rights under the Building Foundation Easement and/or the Building Overhang Easement, Redeveloper is subject to any and all design, construction, or safety permits and the conditions of such permits required for the Foundation or ornamental shade structure by the City, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work to construct, maintain or repair the Foundation or ornamental shade structure for the New Building, Redeveloper shall obtain all requisite governmental approvals and permits necessary for such work. All such work shall be completed in accordance with the governmental approvals and permits issued to Redeveloper and shall be made at Redeveloper's sole cost and expense. Redeveloper shall perform all work so as to cause no unnecessary damage or disturbance to any existing utilities located in the public right-of-way. Following completion of

the Foundation and ornamental shade structure, Redeveloper shall cause all debris and materials incident to such activity to be removed; fill any excavations and to the extent reasonably possible cause any damage to public right-of-way to be repaired and restored to a condition fully equal to that existing before construction operations were commenced. Such restoration work shall be performed in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Redeveloper's sole cost and expense.

(ii) Except during construction, maintenance and repair of the Foundation or the ornamental shade structure, Redeveloper shall not impair the use of the abutting rights-of-way, nor impair the protection of pedestrians and vehicles traveling upon said rights-of-way.

(iii) Redeveloper shall be responsible for any damages caused to the public utilities located in the public rights-of-way. Redeveloper further agrees that if such utilities are damaged or destroyed by construction, maintenance or repair of the Foundation or ornamental shade structure for the New Building, the City shall have the right to restore or replace the damaged utilities to a condition reasonably satisfactory to the City and consistent with the condition existing prior to such damage and bill Redeveloper for the cost thereof. Redeveloper shall pay said cost to the City within thirty (30) days from the date Redeveloper receives a request from the City for payment of said cost. Redeveloper further agrees that if the City's costs to maintain, repair or replace the utilities are increased due to the close proximity of the Foundation or ornamental shade structure to the utilities, Redeveloper shall be responsible for such reasonable increased costs. Redeveloper shall pay said increased cost to the City within thirty (30) days from the date Redeveloper receives a request from the City for payment of said costs.

(iv) The City shall not be responsible for any damages to the Project Site or the New Building, or injuries to persons resulting from a damaged public utility in the public rights-

of-ways, or any subsequent repair or maintenance thereof, except for damages or injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation or ornamental shade structure of the New Building. Redeveloper agrees to make no claim against the City for and expressly waives all rights and claims Redeveloper may have against the City for loss or damage to the Project Site or the New Building or the Redeveloper's business operations due to the loss of use thereof arising or resulting from a damaged public utility in the public rights-of-way or any other failure of such utility, except for damages or injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation or ornamental shade structure of the New Building.

(v) Redeveloper agrees to indemnify, defend and hold the City harmless and free from any and all liability and expense, including reasonable attorney fees incurred by City arising out of Redeveloper's use of either Easement Area or other parts of public rights-of-way pursuant to this Agreement.

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

The City is not divesting itself of title and ownership of the rights to use and enjoy each Easement Area for any purpose except the construction thereon of permanent buildings. The City specifically retains the right to use the surface of each Easement Area for right-of-way purposes. Said Building Foundation Easement and Building Overhang Easement is conveyed by City to Redeveloper "AS IS, WHERE AS" and "WITH ALL FAULTS;" and

neither City nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied (and City shall not have any liability to Redeveloper whatsoever) as to the condition or fitness of the Easement Area for the Foundation to support the New Building. Further, City shall have no liability for any latent, hidden, or patent defect as to any Easement Area or the City's rights-of-way adjacent thereto.

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

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

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

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

SIGNATURE PAGES TO FOLLOW

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

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

Date of Execution: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

CITY OF LINCOLN, NEBRASKA

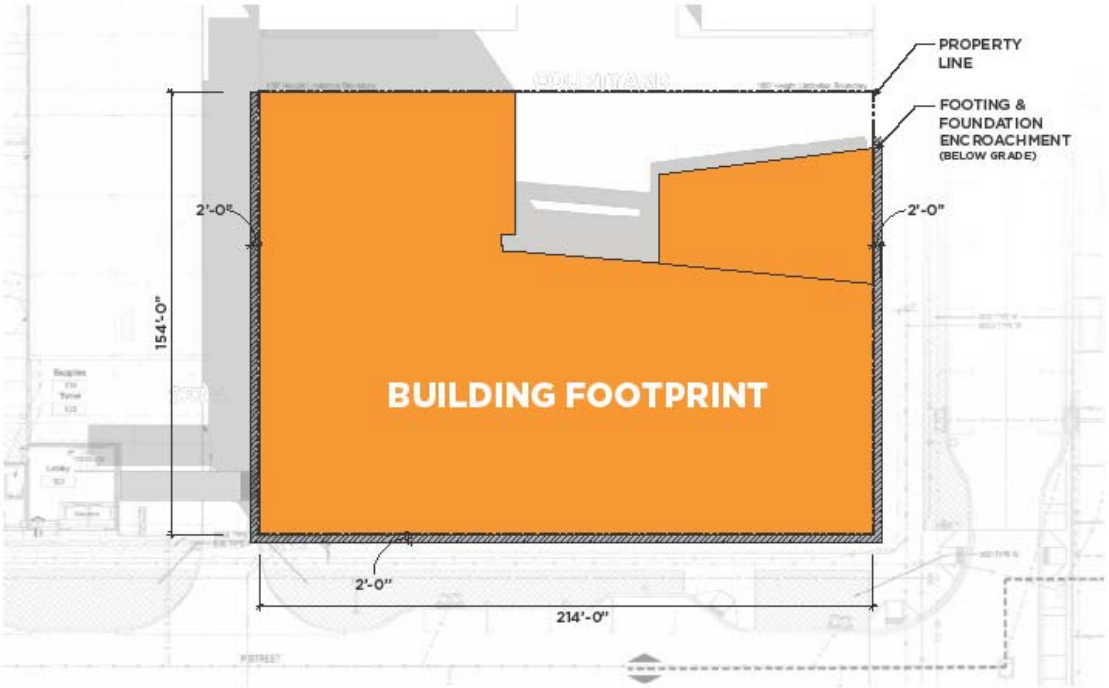
By: _____
Chris Beutler, Mayor of Lincoln

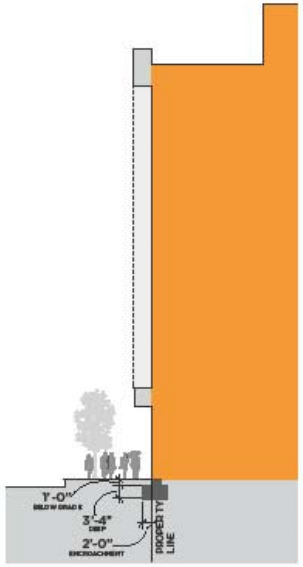
Date of Execution: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public





- AREA OF PROPERTY LINE ENCROACHMENT

SECTION "A"

ATTACHMENT 'A' to Exhibit E

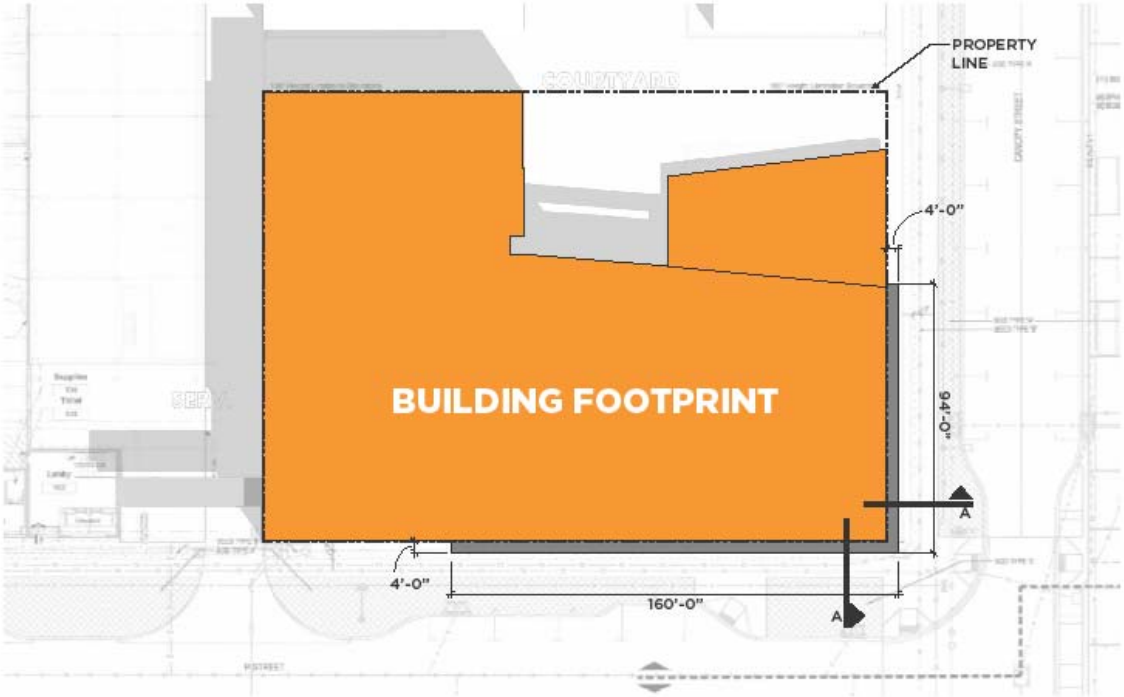
BLOCK B SOUTH

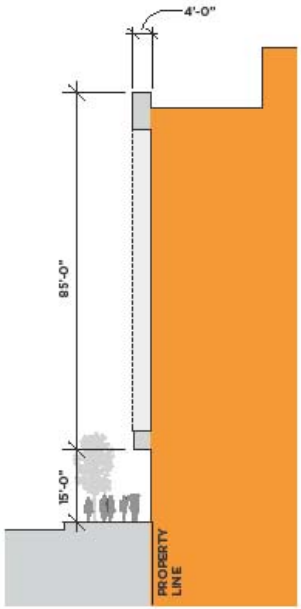
SITE PLAN & SECTION

07.23.2015

WRK

SINCLAIR hille architects





- AREA OF PROPERTY LINE OVERHANG

SECTION "A"

ATTACHMENT "B" to Exhibit E

BLOCK B SOUTH

SITE PLAN & SECTION

07.23.2015

WRK LLC.

SINCLAIR hille architects

EXHIBIT F

REDEVELOPER BIDDING PROCEDURES

Redeveloper may conduct its own bidding for TIF funded improvements in lieu of using the City's Purchasing Division of the Finance Department provided that the following procedures are followed:

GENERAL REQUIREMENTS

1. Any and all bid specifications need to be presented to the City at the time when the Notice to Bidders is published. They can be delivered to the Director of Urban Development.

2. The Notice to Bidders shall be published at least once per week for two consecutive weeks in a newspaper of general daily circulation in the City. Redeveloper shall be required to provide proof that proper publication of the Invitation for Bids has been completed prior to opening the bids. An Affidavit of Publication from the Journal Star would be deemed acceptable.

3. The Notice to Bidders itself must meet the following requirements:

   A. Be open to all potential bidders;

   B. State the date when sealed bids must be received and the location where the bids are to be delivered;

   C. State that the bids will be publicly opened and read in the presence of all bidders who attend the opening;

   D. State where plans and specifications may be examined; and

   E. Inform bidders that the redeveloper has the right to reject all bids.

4. A City representative shall be present when the bids are opened by the Redeveloper or its representative.

EXCEPTIONS TO FORMAL BIDDING

1. Single purchases of materials, parts, supplies, and equipment with an estimated cost of less than $3,000 may be purchased directly by the Redeveloper, provided that at least three informal bids shall be obtained and recorded with the Urban Development Department.

2. Executive Order Construction Contracts approved by the Mayor and specifically authorizing without formal sealed bids the construction of street paving, water mains, sanitary sewers, and storm sewers by Redeveloper or its contractor when the payment of reimbursement or subsidies for such construction does not exceed $100,000.

3. Competitive bidding shall not be required in contracting for professional services (e.g. architects, engineers, etc.)

4. Contracts for Public Enhancements, which include reasonable and appropriate design, improvement, and construction costs that are unique and not-competitive or otherwise required to transition, coordinate and integrate with Public Enhancements with or into the Private Improvements. Prior to entering into contracts for such Public Enhancements, Redeveloper shall submit architect, engineer or other professional designer or contractor's estimates for the cost of the Public Enhancements. The City shall approve or reject said cost estimates within ten (10) days of receipt of the same.

5. The bid must be awarded to the lowest responsible bidder. Any claim by the developer that the lowest bidder is not the lowest responsible bidder must be submitted with evidence to support said claim to the City in writing no later than five days following the public opening of the bids. The City, acting through the Mayor, shall review said request and either approve or deny said request within ten days of receiving said request. In considering the developer's request, the Mayor shall consider the factors listed in Lincoln Municipal Code Section 2.18.030(j). Denial of developer's request shall result in the lowest bidder being declared the lowest responsible bidder. Approval of the developer's request shall result in the bidder shown to be the lowest responsible bidder being selected. Redeveloper shall be specifically prohibited from awarding the contract to a bidder of its choosing subject to limiting the amount of reimbursement to the amount submitted by the lowest responsible bidder. Copies of all bids submitted pursuant to each Notice to Bidders shall be provided to the City Urban Development Department prior to the redeveloper awarding a contract based on said bids.

PURCHASING AGENT APPOINTMENT

If the Redeveloper is responsible for installing/constructing any City Public Improvements under the Redevelopment Agreement, the Redeveloper is deemed to be the City's Prime Contractor. As the City's Prime Contractor, the Redeveloper will be issued a Purchasing Agent Appointment (and Delegation of Authority for Sales and Use Tax), Form 17, signed by the Purchasing Agent or other authorized representative of the City. The Purchasing Agent Appointment shall be used by the Redeveloper to purchase building materials that will be annexed into the City Public Improvements. The Purchasing Agent Appointment does not apply to (1) the purchase of tools, supplies, or any items that will not be annexed into the City Public Improvements, including but not limited to form lumber, scaffolding, etc.; (2) the purchase or rental of machinery, equipment, or tools owned or leased by the Redeveloper or its Subcontractors and used in installing/constructing the City Public Improvements; or (3) the purchase of building materials to be used for the installation/construction of (i) City water mains and appurtenances thereto, and (ii) Lincoln Electric System facilities. Purchases qualifying as aforesaid shall be considered as being made by the City.

The Redeveloper may delegate its authority as Prime Contractor to Redeveloper's Subcontractor by completing and signing a copy of the original Purchasing Agent Appointment for each subcontractor as provided in the Form 17 Instructions. Each Subcontractor is hereby given the authority to reproduce copies of the Redeveloper's copy of said Purchasing Agent Appointment provided to the Subcontractor by the Redeveloper and to furnish the same to the Subcontractor's subcontractor(s), and the Subcontractor's subcontractor(s) shall complete and sign the same for its purchases in the same manner as above set forth for the Redeveloper and Subcontractor. The Redeveloper or its Subcontractor will provide a Nebraska Resale or Exempt Sale Certificate with Section C, Part 2 completed to supplier when purchasing building materials to be annexed into the City Public Improvements. The City shall be obligated to the vendor for the purchase price, but the Redeveloper or Subcontractor, as the case may be, shall handle all payments therefore on behalf of the City. The vendor shall agree to make demand or claim for payment of the purchase price from the City by submitting an invoice to the Redeveloper or Subcontractor. Title to all materials and supplies so qualifying shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Redeveloper or Subcontractor shall not acquire title to any building materials annexed into the City Public Improvements. All invoices shall bear the Redeveloper's or Subcontractor's name as agent for the City.

EXHIBIT G

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

Return the Original to:

TDP Phase Three, LLC

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 2nd 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 _____, 2015, 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 _____, 2015 between the City, JPA and Redeveloper and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

Executed by Redeveloper this _____ day of _____, 2015.

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, 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 _____, 2015, by Chris Beutler, Mayor of the City of Lincoln.

_____
Notary Public

EXHIBIT H

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 _____, 20____ by and between TDP Phase Three, 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 2nd Addition, Lincoln, Lancaster County, Nebraska (the "**Property**").

B. Grantor entered into a Redevelopment Agreement, dated as of _____, 2015 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"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, 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 _____, 2015, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

EXHIBIT I

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 TDP PHASE THREE, 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 2nd Addition, Lincoln, Lancaster County, Nebraska ("**New Building Property**") and the JPA Parking Garage ("**Deck 2**") located on Lot 1, Block 6, West Haymarket 2nd Addition, Lincoln, Lancaster County, Nebraska ("**Deck 2 Property**"), and to permit pedestrian ingress and egress from the New Building over and through the JPA Parking Garage (Deck 2) including Deck 2 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 length location for said skywalk bridge and the area necessary (including the area for footings and support columns) to construct, maintain, repair and replace said skywalk bridge between the New Building and the JPA Parking Garage (Deck 2) ("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 Attachment A.

Said Easement shall run with the land, New Building Property and Deck 2 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 2) 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 2).

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 2).

(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 2).

(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) 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 _____, 2015.

"**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 _____, 2015, 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

Executed by Redeveloper this _____ day of _____, 2015.

"Redeveloper"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

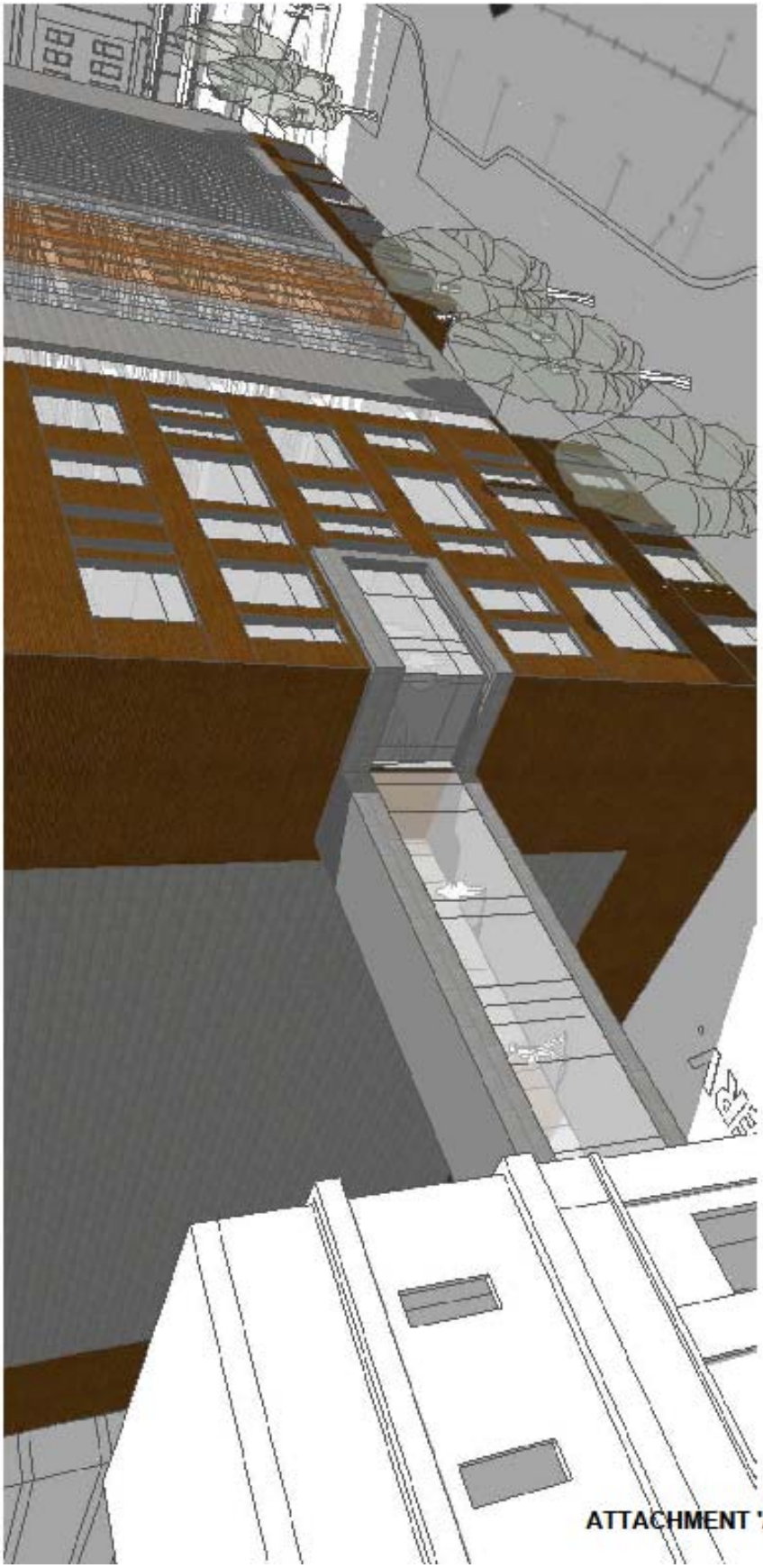
_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

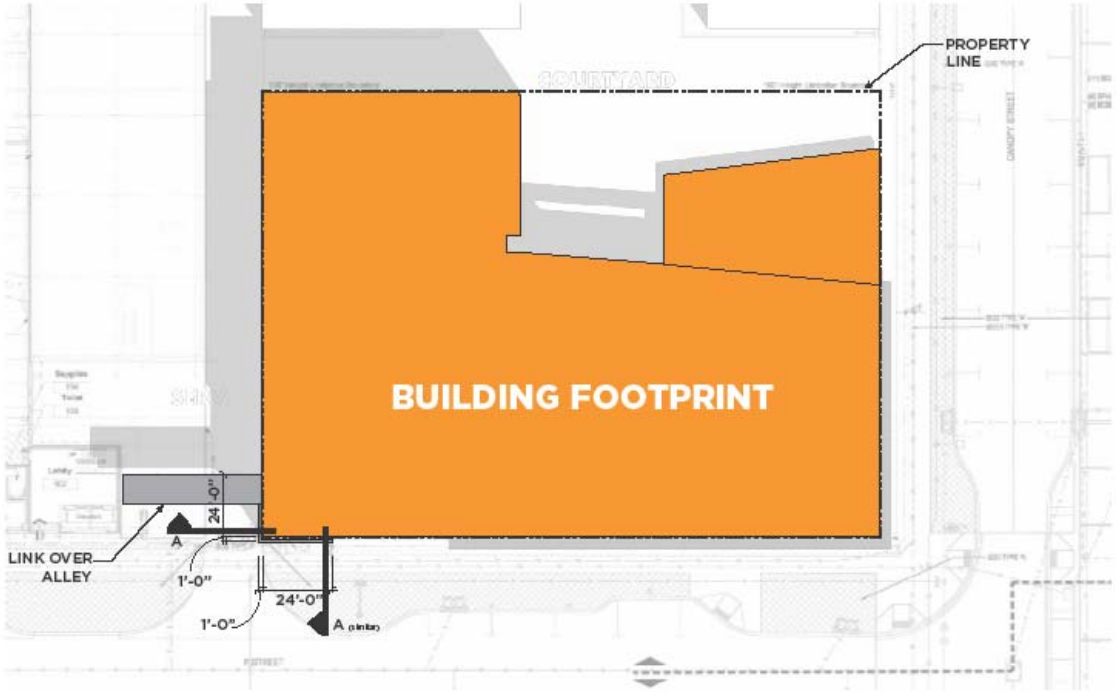
The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

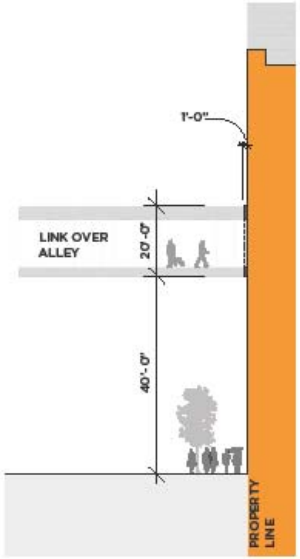
(Seal)

_____
Notary Public



ATTACHMENT 'A' to Exhibit I





- AREA OF PROPERTY LINE OVERHANG

SECTION "A"

ATTACHMENT 'A' to Exhibit I (Cont.)

BLOCK B SOUTH

SITE PLAN & SECTION

07.23.2015

WRK LLC.

SINCLAIR hille architects

EXHIBIT J

Bond No. _____

PENAL BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **TDP Phase Three, 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 **_____ Dollars ($_____.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 (TDP 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 _____, 2015.

"Redeveloper"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

EXHIBIT K

DISBURSEMENT AGREEMENT

This Disbursement Agreement is entered into between the City of Lincoln, Nebraska, a municipal corporation (City) and TDP Phase Three, LLC, a Nebraska limited liability company (Redeveloper).

City and Redeveloper have entered into a Redevelopment Agreement for the TDP Project (Project). The Redevelopment Agreement provides for City support for the Project through grants to Redeveloper, funded through the issuance of a TIF Bond, to be repaid with tax increment revenue generated by the Ad Valorem Tax Provision, all in accordance with the terms of the Redevelopment Agreement and the Nebraska Community Development Law.

The Redevelopment Agreement requires the Redeveloper to construct certain Private Improvements and to provide evidence of a performance and payment bond from the Redeveloper.

In consideration of the foregoing recitals which are made a part of this Agreement and the mutual covenants of this Agreement, the parties agree as follows:

1. Terms, definitions. Capitalized terms used in this Agreement shall have the same definitions as contained in the Redevelopment Agreement, unless specifically defined otherwise.

2. Guarantee of Performance and Payment. Redeveloper guarantees payment of all amounts lawfully due to each person, as defined in Neb. Rev. Stat. §49-801 that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements.

3. Construction Loan. Redeveloper shall, prior to commencement of the Private Improvements, provide evidence that the construction financing or title insurance for such work provides for construction draws only upon demonstration of work completed as being in accordance with the approved plans pursuant to the Redevelopment Agreement and that all persons having performed labor or furnished materials, equipment or supplies for such category of improvement have been paid and given lien waivers in exchange for payment.

4. City Discretion. The parties acknowledge that this Agreement is entered into in lieu of City requiring a performance and payment bond by the Redeveloper on the Project. City's decision as to whether a category of improvement has been completed satisfactorily shall be final up to completion of all work required under the Redevelopment Agreement.

Dated: _____, 2015.

REDEVELOPER:

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

CITY:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

EXHIBIT L

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

West Haymarket Joint Public Agency
c/o Rick Peo, Chief Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this ____ day of _____, ____, by the West Haymarket Joint Public Agency ("JPA"), a political subdivision and corporate body politic of the State of Nebraska, as Grantor and Holder/Grantee, pursuant to the Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613, hereinafter the "Act."

RECITALS:

A. Grantor is the owner of real property located within the East Flank of the West Haymarket Redevelopment Site North (WHRSN) generally located on the NW corner of Canopy and P Streets ("Property") and legally described as Lot 2, West Haymarket 2nd Addition (f/n/a the South 1/2 of Lot 3, Block 6, West Haymarket Addition).

B. Holder/Grantee (hereinafter "Holder") is JPA.

C. The Property has been used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the "West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan" (Benesch, 2012).

D. The Property is the subject of environmental response projects or actions pursuant to enrollment in the Nebraska Department of Environmental Quality's Voluntary Cleanup Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Products and Hazardous Substances Storage and Handling Act.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality (NDEQ).

F. The selected environmental response projects or actions which has heretofore been performed by Grantor, is documented in "West Haymarket North Investigation Report and

Remedial Action Plan", (Benesch, 2012). The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400; Lincoln, NE.

NOW, THEREFORE, Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties**.** The Grantor warrants to the other signatories to this Covenant that:

   a. The Grantor is the sole fee title owner of the Property;
   b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
   c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Grantor/Holder real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

   a. Groundwater shall not be used as a potable drinking water source.
   b. Contact with contaminated soils shall be prevented by maintaining hard surface (building floor slabs, roadways, sidewalks, etc.) and/or a minimum of three ft. thick soil cover (East Flank).

c. Any ground intrusive work (including, but not limited to excavation, digging and drilling) conducted must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, XXX).

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Lancaster County Register of Deeds.

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF LANCASTER COUNTY, NEBRASKA ON _____, AS INSTRUMENT NO. _____. THE ENVIRONMENTAL

COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

1) Groundwater shall not be used as a potable drinking water source.
2) Contact with contaminated soils shall be prevented by maintaining hard surface (building floor slabs, roadways, sidewalks, etc.) and/or a minimum of three ft. thick soil cover (East Flank).
3) Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, XXX).

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Lancaster County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lancaster County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Agency and each person identified in Neb. Rev. Stat. §76-2607(a).

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

City of Lincoln, Nebraska
Compliance Administrator
Public Works & Utilities Department
555 South 10th Street
Lincoln, NE 68508

West Haymarket Joint Public Agency
c/o City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor**,** as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this ____ day of _____, 2015.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Chris Beutler, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2015, by Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, who acknowledged said Environmental Covenant on behalf of Grantor/Holder.

(SEAL) _____
Notary Public

AGENCY:

IN WITNESS WHEREOF, NDEQ, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2015, by _____ who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) _____
Notary Public

EXHIBIT M

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 _____, 2015 by and between TDP PHASE THREE, 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 2nd 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 (TDP Project) (the "**Redevelopment Agreement**") for, inter alia, the redevelopment of the Property, dated as of _____, 2015 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, Use Restrictions, Environmental Restrictions, and Parking Rights dated as of the _____ day of _____, 2015 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**"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, 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 _____, 2015, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

EXHIBIT N

Intentionally Omitted

EXHIBIT O

MEMORANDUM OF REDEVELOPMENT AGREEMENT, USE RESTRICTIONS, ENVIRONMENTAL RESTRICTIONS, AND PARKING RIGHTS

Return the Original to:

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

MEMORANDUM OF REDEVELOPMENT AGREEMENT, USE RESTRICTIONS, AND ENVIRONMENTAL RESTRICTIONS

This Memorandum of Redevelopment Agreement & Use Restrictions ("**Memorandum**") is made as of this ___ day of _____, 2015 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 TDP Phase Three, 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 2nd Addition, Lincoln, Lancaster County, Nebraska (the "**Project Site**").

2. Parking Deck 2. Redeveloper will be constructing a skywalk connecting to Park Deck 2 west of the Project Site, and legally described as:

Lot 1, Block 6, West Haymarket 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 Environmental Covenant recorded against the Project Site which includes, but is not limited 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 West Haymarket Area Environmental Operations and Maintenance Plan (Benesch XXX). 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. After substantial completion of the Private Improvements, the Redeveloper, for the sole use of its tenants, shall have the right to lease the following monthly parking in the JPA Green 2 Parking Garage ("Deck 2"), which is operated, managed, and maintained by the City, acting through its Parking Manager, on behalf of the JPA.

A. Non-Reserved Monthly Parking Stalls. Subject to Section 402.B below, the first right of refusal to lease up to Three Hundred Ninety (390) parking stalls ("**Non-Reserved Parking**"). The Non-reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year except for parking for Events (defined below). The Redeveloper's right to lease the Non-Reserved Parking shall be placed ahead of all other requests for parking except for those requests made pursuant to parking rights contained in an earlier Redevelopment Agreement. 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 parking permit to accommodate Redeveloper's request for Non-Reserved Parking permits. The Non-Reserved Parking shall initially be leased under parking permits issued by the City at the rate of $56.25/month/stall which reflects the current monthly rate of $62.50/month/stall discounted 10% for the combined large volume and annual prepayment discount. The $62.50/month/stall rate (subject to eligible discounts) shall apply for the first five (5) years following Substantial Completion of the New Building, and thereafter parking permits shall be at the then-current monthly rates (subject to eligible discounts) charged to other non-reserved monthly parkers in similarly situated garages. The City's Parking Manager shall use the $889,000 prepaid Parking Rights payment portion of the Purchase Price to fund a Redeveloper Parking Account Fund which the City Parking Manager will draw down upon to pay for the Redeveloper's Non-Reserved Parking until the Redeveloper Parking Account Fund is depleted. Except as herein stated, the rights granted hereunder shall be subject to regular and timely payment of the 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 residential tenants for use of said parking stalls a fee during the life of the Redeveloper Parking Account Fund and thereafter shall not charge its tenants a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its tenants to manage the parking rights.

B. Duration. The parking rights outlined in this Section 501 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the New Building is adequately maintained and utilized for office and retail use.

8. Failure to Exercise Parking Rights. If Redeveloper does not exercise any or all of the above rights to lease parking stalls in Deck 2, Redeveloper shall have the following continuing right to lease parking stalls:

> If Non-Reserved 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 Non-Reserved Parking waiting list to be compiled by the City or its agent operating the Deck 2 ("**Waiting List**"). 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.

9. Termination of Parking Rights. The City shall have the right to terminate any or all of the parking rights granted to Redeveloper in this Article IV in the event the Redeveloper fails to pay the ad valorem taxes on the Private Improvements..

[SIGNATURE PAGES TO FOLLOW]

Executed by the City this _____ day of _____, 2015.

"**City**"

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 _____, 2015, 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 _____, 2015, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives.

_____
Notary Public

Executed by Redeveloper this _____ day of _____, 2015.

"**Redeveloper**"

TDP PHASE THREE, LLC, a Nebraska limited liability company

By: **From Lincoln For Lincoln III, LLC**, a Nebraska limited liability company, Member

By: WRK Management, LLC, a Nebraska limited liability company, Manager

By: _____
William D. Scott, Co-Manager

By: _____
Robert E. Scott, Co-Manager

By: **Prataria Ventures – West Haymarket Phase One, LLC**, a Nebraska limited liability company, Member

By: _____
DJ Eihusen, Manager

By: **B&J Partnership, Ltd.**, a Nebraska limited partnership, Member

By: _____
Clay F. Smith, General Partner

By: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member

By: _____
Terry J. Heimes, Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **William D. Scott,** Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Robert E. Scott**, Co-Manager of WRK Management, LLC, Manager of From Lincoln for Lincoln III, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **D J Eihusen**, Manager of Prataria Ventures – West Haymarket Phase One, LLC, a Nebraska limited liability company, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Clay F. Smith,** General Partner of B & J Partnership, Ltd. a Nebraska limited partnership, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **Terry J. Heimes**, Vice President of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

WH 15-17 Introduce: 8-27-15

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Settlement Agreement and Release of Claims in the case of *West Haymarket Joint Public Agency v. Hawkins Construction Company*, Case No. 14-4139 in the Lancaster County District Court, is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute the Settlement Agreement and Release of Claims on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to deliver the two original Settlement Agreement and Release of Claims attached hereto to Assistant City Attorney Jocelyn Golden for execution by Hawkins Construction Company, one original to be retained by Hawkins Construction Company.

Adopted this _____ day of _____, 2015.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is made and voluntarily entered into by Hawkins Construction Company ("Hawkins") and West Haymarket Joint Public Agency ("JPA") (collectively "the Parties") in order to conclude, terminate, and settle any and all disputes between them.

RECITALS

WHEREAS, JPA entered into a contract with Hawkins in 2012, Bid No. 12-291, to perform construction services for the construction of the West Haymarket Parking Lot, Festival Space and Pedestrian Bridge in Lincoln, Lancaster County, Nebraska, authorized by Resolution No. WH00429 on December 18, 2012 ("the Contract" or "the Project");

WHEREAS, the Contract required Hawkins to perform the construction work in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents;

WHEREAS, the Contract required Hawkins to reach substantial completion of the pedestrian bridge by July 28, 2013 and final completion of the Project by September 6, 2013;

WHEREAS, on April 19, 2013, a portion of the pedestrian bridge experienced a partial collapse of Girder Line B, at or near pier 1 at the north end of span 2A, during Hawkins' construction efforts, and this failure occurred shortly after final post-tensioning of the concrete girders was completed;

WHEREAS, JPA and Hawkins undertook various actions to provide for analysis, inspections, testing, and re-construction of the partially collapsed portion of the bridge, including JPA engaging and paying multiple independent engineering firms and contractors to perform various services related to the partial failure and reconstruction;

WHEREAS, Hawkins reached substantial completion of the construction efforts related to all aspects of the pedestrian bridge except staining on December 1, 2013 and on the entire pedestrian bridge on April 25, 2014;

WHEREAS, the Parties were unable to reach a consensus on what costs and liquidated damages JPA should be reimbursed by Hawkins for JPA's efforts and expenditures to assist in completion of the pedestrian bridge;

WHEREAS, on or about November 26, 2014, JPA filed a lawsuit in the District Court of Lancaster County, Nebraska against Hawkins arising out of the dispute over the pedestrian bridge collapse, captioned as *West Haymarket Joint Public Agency v. Hawkins Construction Company*, Case No. 14-4139 ("Lawsuit"); and

WHEREAS, the Parties to this Agreement desire to settle and compromise all claims and causes of action the Parties have, had, or may have in the future, in any way relating to, arising out of, resulting from or associated with the Lawsuit, as well as the Parties' dispute over the Contract and Project including, but not limited to, any and all other matters involved in Parties'

contractual obligations or responsibilities to each other, including any counterclaims or claims for setoff, relating to the pedestrian bridge ("Claim"); and

NOW, THEREFORE, in consideration of their recitals, mutual covenants and releases, and other agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby stipulate, confirm and agree as follows:

AGREEMENT

1. RELEASE. JPA and all of its respective affiliated and related entities, divisions, and its past, present and future administrators, board members, officers, directors, affiliates, partners, agents, servants, representatives, attorneys, employees, predecessors, successors, insurers, subrogees and assigns, do hereby release Hawkins and its board members, officers, directors, affiliates, partners, subsidiaries, parent entities, agents, servants, representatives, attorneys, employees, predecessors, successors, insurers, subrogees and assigns, and insurance carriers from all liability, rights, claims, demands, damages, costs, expenses, actions, causes of action, suits of liability and controversies of every kind and description whatsoever that exist, have existed or may exist in the future on account of and in any manner arising out of the Claim.

Hawkins and all of its respective affiliated and related entities, divisions, and its past, present and future administrators, board members, officers, directors, affiliates, partners, agents, servants, representatives, attorneys, employees, predecessors, successors, insurers, subrogees and assigns, do hereby release JPA its agents, servants, representatives, attorneys, employees, predecessors, successors, insurers, subrogees and assigns, and insurance carriers from all liability, rights, claims, demands, damages, costs, expenses, actions, causes of action, suits of liability and controversies of every kind and description whatsoever that exist, have existed or may exist in the future on account of and in any manner arising out of the Claim.

Notwithstanding any provision to the contrary contained herein, the Parties agree that Hawkins is expressly retaining its rights, claims, causes of action and the like against third parties seeking contribution, indemnity or damages whether based in contract or tort relating to or arising out of the Claim. No language in this Agreement shall be deemed or construed to constitute a waiver, release, accord and satisfaction or abandonment of any such rights, etc.

2. UNKNOWN FACTS. It is expressly understood and agreed by the Parties that this Agreement is intended to and does cover any and all losses, injuries, damages and claims of every kind and nature whatsoever that exist, have existed or may exist in the future, whether direct or indirect, known or unknown, suspected or unsuspected by the Parties against any of the other parties released herein related to the Claim.

3. PAYMENT. The parties hereto agree to settle the Lawsuit and the Claim for the sum of Six Hundred Seventy Nine Thousand Six Hundred Thirty-Seven and 89/100 Dollars ($679,637.89) payable by Hawkins to JPA as follows:

(a) JPA shall keep the Three Hundred Fifty-Three Thousand Six Hundred Thirty-Seven and 89/100 Dollars ($353,637.89) retainage that is being held due to pending final completion of the pedestrian bridge, and Hawkins shall have no claim to any of the retainer funds; and

(b) Hawkins, through the Hawkins Charitable Foundation, shall pay to the Lincoln Parks and Recreation Foundation ("the Foundation) a total of Three Hundred Twenty-Six Thousand and 00/100 Dollars ($326,000.00) ("Settlement Amount"). Payment of the Settlement Amount shall be made in four (4) equal installments of Eighty-One Thousand Five Hundred and 00/100 Dollars ($81,500.00). The first installment of Eighty-One Thousand Five Hundred and 00/100 Dollars ($81,500.00) shall be paid to JPA at closing on this settlement, on or about September 15, 2015 or sooner as otherwise mutually agreed by the parties. The successive three (3) installments shall be paid to JPA on or before January 5 of each successive year, with the fourth and final payment to be made on or before January 5, 2018. Time is of the essence, and failure to pay the installments on time shall constitute a breach of contract, although installments may be paid in advance. The Settlement Amount received by JPA shall be issued to and placed with the Foundation in a separate endowment fund for the purpose of "replacing and enhancing the current and/or future West Haymarket JPA area landscape and streetscape features" to be called the "Hawkins Endowment." JPA shall control use of the funds in the Hawkins Endowment, but said uses must be consistent with the uses set forth herein. Should JPA cease to exist as an entity, the successor in interest shall be entitled to direct use of the funds in the Hawkins Endowment to the same extent as JPA. The Foundation shall manage the funds and apply the funds as directed by JPA or its successor in interest.

4. DISMISSAL. After execution of this Agreement and within fourteen (14) business days of delivery of the first installment of the Settlement Amount, counsel for the Parties will file a Joint Stipulation to Dismiss with Prejudice requesting dismissal of the Lawsuit with prejudice.

5. ATTORNEYS' FEES. All Parties to this Agreement shall bear their own attorneys' fees and costs, including court costs. No claim shall be made against any other party to this Agreement for attorneys' fees and costs, including court costs, including any statutory fees, expenses, and/or costs which may have been entitled.

6. NO ADMISSION OF LIABILITY. Nothing contained in this Agreement, the documents being executed and delivered pursuant to this Agreement, or any actions taken in furtherance of this Agreement, shall constitute or be deemed, or construed as an admission of liability in connection with any matters related to the Claim. Any such alleged liability is expressly denied by the Parties.

7. APPROVAL OF SETTLEMENT. A resolution for approval of this Agreement shall be set for JPA's next scheduled public meeting. This Agreement is conditioned upon and subject to approval by the JPA's Board. The representatives, agents, attorneys, board members, employees, and officers of the Parties may discuss the Lawsuit and the settlement at that meeting. The parties agree that this Agreement is a public record pursuant to Neb. Rev. Stat. § 84-712, et seq. and subject to production upon a valid request under federal or state law.

8. WARRANTY OF CAPACITY TO EXECUTE THIS AGREEMENT. The Parties represent and warrant that they have the right and authority to execute this Agreement and to receive or provide the considerations specified in it; that no other person or entity has any interest in the claims, demands, obligations and causes of action referred to in this Agreement;

that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations and causes of action referred to in this Agreement; and that there are no other persons or entities who now have or may hereafter acquire the rights of the Parties to proceed on any action, claim, demand, cause of action arising out of or relating in any manner whatsoever to the Claim and demands and obligations referred to in this Agreement.

9. ACKNOWLEDGEMENTS. The Parties declare and acknowledge that the terms of this Agreement have been read and understood; that the Parties have been or have had the opportunity to be represented by their attorneys with regard to the execution of this Agreement; and that the Parties execute this Agreement voluntarily after consultation with attorneys and without being pressured or influenced by any settlement or representation made by any person acting on behalf of any other party.

10. BINDING EFFECT. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors, purchasers, assigns, heirs and survivors.

11. COMPLETE AGREEMENT. This Agreement constitutes and represents the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, negotiations, representations, warranties and understandings of the Parties.

12. SUPPLEMENTS, MODIFICATIONS, AMENDMENTS AND WAIVER. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Parties. No waiver of any provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether similar or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless set forth in writing signed by the party making the waiver.

13. FURTHER ASSURANCES. The Parties will execute and deliver any additional documents and will take further actions as may be necessary or desirable to effectuate and carry out the terms of this Agreement. Any additional documents shall be in form and substance as may be reasonably agreed upon by the Parties and any further actions shall be as may be reasonably requested by the other parties to this Agreement.

14. SEVERABILITY. If any provision of this Agreement is held to be invalid or unenforceable in any circumstance, such holding shall not be deemed to render this Agreement invalid or unenforceable, and to that extent the provisions of this Agreement are severable; provided, however, that this provision shall not preclude a court of competent jurisdiction from refusing to sever any provision if severance would be inequitable to the Parties.

15. INTERPRETATION AND CONSTRUCTION. Should any provision of this Agreement require interpretation or construction, this Agreement shall be interpreted and construed without any presumption that the provision of this Agreement are to be constituted against the party which itself or through its agents or attorneys prepared this Agreement.

16. ENFORCEMENT OF AGREEMENT. The Parties intend for this Agreement to be performed and enforced fully according to its terms. Upon any breach of this Agreement, the nonbreaching party shall be entitled to seek to enforce this Agreement pursuant to applicable law or equity. In any action to enforce, interpret or seek damages, injunctive relief or specific performance for violation of this Agreement, the prevailing party shall recover from the

breaching party, in addition to any other relief granted in such action, all reasonable attorney fees and other litigation expenses incurred by the nonbreaching party.

17. CHOICE OF LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

18. EXECUTION OF COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which together shall be one instrument and all of which shall be considered duplicate originals.

19. EFFECTIVENESS. This Agreement shall become effective immediately following execution by each of the Parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

HAWKINS CONSTRUCTION COMPANY:

By:_____ _____
Date

Its:_____

Approved by Attorney for **HAWKINS CONSTRUCTION COMPANY**:

_____ _____
Date

WEST HAYMARKET JOINT PUBLIC AGENCY:

By:_____ Date: August 27, 2015
Chris Beutler, Chair

Approved by Attorney for **WEST HAYMARKET JOINT PUBLIC AGENCY**:

_____ _____
Date

WH 15-18 Introduce: 8-27-15

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the Chairperson of the West Haymarket Joint Public Agency is hereby authorized to enter into an agreement with TDP Phase Three, LLC to enter upon the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 7, Block 6, West Haymarket Addition prior to closing on TDP Phase Three's acquisition of said Property to begin mobilization, site preparation (fencing around site, scrape rock off site, install SWPPP barriers, rebar/supplies ordered, etc.) and completing auger cast test piles to facilitate the building schedule agreed to in the Redevelopment Agreement between the JPA, City of Lincoln, and TDP Phase Three, LLC.

Adopted this _____ day of _____, 2015.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge