AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY, OCTOBER 29, 2015 AT 3:30 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 September 17, 2015 (Chair Beutler)
   - (Staff recommendation: Approval of the minutes as presented)

4. Approval of September 2015 Payment Register (Steve Hubka)
   - Public Comment
   - (Staff recommendation: Approval)

5. Review of September 2015 Expenditure Reports (Steve Hubka)
   - Public Comment

6. WH 15-20 Resolution approving and authorizing the Chair to execute Amendment No. 1 to the West Haymarket Redevelopment Agreement (TDP Project) to amend the Redevelopment Agreement by updating the environmental provisions in Subsections B and C of Section 404 of the Redevelopment Agreement and by substituting a new Use of Rights of Way Easement and Hold Harmless Agreement and a new Environmental Covenant for the existing Agreement and Environmental Covenant attached to the Redevelopment Agreement to clarify and address the duties and responsibilities of the parties under said documents. (Rick Peo)
   - Public Comment
   - (Staff recommendation: Approval)

7. WH 15-21 Resolution approving and authorizing the Chair to execute the Special Warranty Deed and further authorizing the Chair to execute all other closing documents associated with the JPA's conveyance of Lot 2, West Haymarket 2nd Addition, Lincoln, Lancaster County, Nebraska to TDP Phase Three, LLC. (Rick Peo)
   - Public Comment
   - (Staff recommendation: Approval)

8. WH 15-22 Resolution approving and authorizing the Chair to execute three Environmental Covenants subjecting certain JPA owned properties to activity and use restrictions to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the properties and to ensure that the properties are not developed, used or operated in a manner incompatible with the approved NDEQ environmental remediation under taken by the JPA. (Rick Peo)
   - Public Comment
   - (Staff recommendation: Approval)

9. WH 15-23 Resolution approving and authorizing the Chair to execute a Second Addendum to the Energy Service Agreement between the JPA and District Energy Corporation (WH00210, October 6, 2011) to include service to 600 P Street, Lincoln, Nebraska. (Chris Connolly)
   - Public Comment
   - (Staff recommendation: Approval)

10. WH 15-24 Resolution approving and authorizing the Chair to execute the Customer Energy Services Agreement between TDP Phase Three, LLC, and the West Haymarket Joint Public Agency for energy services to the office/retail space at 600 P Street, Lincoln, Nebraska. (Chris Connolly)

11. Set Next Meeting Date: The next meeting date will be Thursday, November 19, 2015 at 3:30 p.m. in the County-City Building, First Floor, Bill Luxford Studio.

12. 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
September 17, 2015

Meeting Began At: 3:31 P.M.

Meeting Ended At: 4:37 P.M.

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

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

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 and explained the time limit.

Item 3 -- Approval of the minutes from the JPA meeting August 27, 2015

Clare moved approval of the minutes as presented. Eskridge seconded the motion. Motion carried 3-0.

Item 4 -- Approval of August 2015 Payment Registers

Steve Hubka, City Finance Director, presented the August 2015 payment register. He reported that the August payment register total was $710,357.00 dollars and of that $626,956.00 is from the operations budget. Hubka noted a payment on the JPA's loan from SMG for operation expenses of $203,420.00; a payment of $56,335.00 for maintenance of the festival lot and Arena Drive to Parks and Recreation; and a payment of $27,500.00 for half of the VSG Consulting Contract.

Public comment from Jane Kinsey.

Eskridge moved approval of the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 5 -- Review of August 2015 Expenditure Reports

In presenting the August 2015 Operating Budget Expenditure Reports, Hubka reported that after the revisions to the budget were made last month, we ended the year $240,239.00 under budget. The capital project budget is well under budget at this point. Public comment from Jane Kinsey. No action on this item was necessary.

Item 6 - WH 15-19 Resolution to approve the Agreement between the West Haymarket Joint Public Agency (JPA) and Ed Carpenter relating to the final design, engineering, fabrication, and installation services for a metal sculpture to be installed in an area of the Pinnacle Bank Arena Plaza as designated by the JPA. (Chris Connolly)

Chris Connolly recommended approval of the Agreement between the JPA and Ed Carpenter relating to the design, fabrication, and installation of a metal sculpture. He explained the costs and the process by which the committee selected the sculpture. Connolly addressed the concerns of adding the sculpture to the designated location with drawings showing available space and the total non-pedestrian space or areas in which pedestrians cannot walk, stating that only 8% of the total area would be non-pedestrian space and this included the sculpture. Connolly presented a drawing for the Board's review and discussed the walkways and areas available for congregation in the space. Connolly stated in order for this item to pass only 2 votes are needed.
Ed Carpenter discussed his sculpture. Carpenter, from Portland, Oregon, stated his sculpture is an elegant and transparent piece that would be scaled properly against the arena and the other objects in the area. It would be effective from long distances and up close. Mr. Carpenter stated the sculpture would be made of outer layers of stainless steel and inner layers of laminated glass. He further explained how the glass will reflect and transmit light. Mr. Carpenter said the sculpture will almost be made in its entirety in the State of Nebraska. Carl Eskridge asked Mr. Carpenter for an explanation on what his inspiration was for the project to which he explained after spending time in the Lincoln area he was immediately struck by the beautiful and unique structures holding up the canopies along the rail line. When he started designing the sculpture he found himself designing a structure similar to the canopies he took pictures of along the rail line. Mr. Carpenter stated the sculpture represented the railways, but also had agriculture references.

Public comment from Launa Bacon of the Nebraska Arts Council. Launa believed the work proposed by Mr. Carpenter will add immeasurably to our growing reputation and explained the law passed in 1979 that the state will foster culture and the arts by appropriating 1% of capital expenditures and the important role of public art. Beutler discussed with her the 1% for art expenditures and stated that the JPA does not have the 1% contribution in place.

Public comment from Jane Kinsey expressed she does not have any negative feelings about the sculpture, stating it is rather beautiful, however, she is concerned about the money. She questioned who the committee members are who selected the sculpture. Beutler advised Kinsey that the committee is not listed publicly; however, she is able to obtain their names by contacting his office.

Public comment from Christi Dionisopoulos with Lincoln Partners for Public Art Development. Christi explained she was involved in the process of choosing the art for the arena. She further explained the funds that were available and how they went about advertising for proposals, in which 200 proposals were submitted for their review. The committee narrowed the proposals down to 3 and then from there, narrowed it down to the finalist. She is excited to say the piece is publicly funded and discussed previous pieces made by Ed Carpernter, his reputation, and the huge impact this sculpture will have on the West Haymarket area and the Arena plaza. Carl Eskridge questioned how many people were on the committee who selected the sculpture to which Christi responded around 12-15 people with various backgrounds in art and people with no background in art, but had an interest for the arts.

Public comment from Lori Thomas, Director of Lincoln Partners for Public Art Development ("LPPAD"). Lori stated she is speaking in support of the sculpture and explained the mission of LPPAD.

Tim Clare commented that he is a fan of public art, appreciates the benefits it brings to a community and feels that it is important. Clare stated he has two concerns: 1) the placement of the sculpture and 2) pursuing partnership opportunities. Clare explained, Husker Authentic, a retail store and tenant of PBA, will be almost 100% blocked by sculpture and proposes scaffolding be place where the sculpture would be placed to see traffic patterns and the impact of the sculpture. Clare discussed we should look at how the traffic is impacted coming off the ramp, for example, when there is a marathon. Clare requested more time and thought the process is moving too fast.

Chris Connolly submitted a letter to the Board from WRK, LLC, in support of the art sculpture for the Board's review.

There being no further discussion, Eskridge moved approval of the resolution. The motion was seconded by Clare. Clare moved to table the resolution so that it can be determined how the sculpture would impact basketball game traffic and to pursue private partnerships. No second was received on the motion to table. The motion failed for lack of second. Eskridge commented that he appreciated Clare's concerns, but believed the movement of the sculpture to its current location eliminated concerns for obstacles with traffic flow. Beutler also stated he appreciated Clare's concerns, but stated we cannot have perfect symmetry with every project. Beutler also stated the current location of the sculpture, as per discussions with SMG's Manager, is the best location for the sculpture out of the 3-4 locations previously looked at. The motion for approval of the resolution carried 2-1. Eskridge and Beutler for and Clare opposed.

Item 7 -- Set Next Meeting Date

Without objection, the next meeting date was set for Thursday, October 29, 2015 at 3:30 p.m. in the City-County Building, First Floor, Bill Luxford Studio.

Item 8 -- Motion to Adjourn

Eskridge moved to adjourn. Motion seconded by Clare. The meeting adjourned at 4:37 p.m.

Prepared by: Kasey Simonson, City Law Department

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
76881	Windstream	Billing Number 402-477-6387	OP	06095	W Haymarket Surplus	PV	1652372	100.73	09/02/15	541769
97885	Copy Services	Customer 595381	OP	06095	W Haymarket Surplus	PV	1652375	.06	09/02/15	541770
31405	Campbell's Nurseries	Mowing	OP	06095	W Haymarket Surplus	PV	1652369	750.00	09/03/15	84182
53356	Lincoln Electric System	605 N 8th St Pk Lot Lgh	OP	06095	W Haymarket Surplus	PV	1652370	67.21	09/03/15	84210
53356	Lincoln Electric System	200 N 7th St	OP	06095	W Haymarket Surplus	PV	1652371	283.70	09/03/15	84210
77921	County/City Property Management	CITY CONTROLLER-JPA	OP	06095	W Haymarket Surplus	PV	1652373	199.15	09/03/15	84231
98079	Black Hills Energy	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1652376	28.98	09/03/15	84253
604774	Pinnacle Bank Arena	14/15 Operational Inc/repairs	OP	06095	W Haymarket Surplus	PV	1652378	68,412.46	09/03/15	84350
604774	Pinnacle Bank Arena	14/15 Operational Inc/repairs	OP	06097	W Haymarket Oper & Maint	PV	1652378	650,000.00	09/03/15	84350
26761	NECO Security & Alarm Systems Inc	Customer 15834	OP	06095	W Haymarket Surplus	PV	1654119	101.70	09/16/15	542323
324566	Union Bank & Trust Company	WHJPA Series 2011	OP	195031	JPA 2011 Debt Service	PV	1654120	424.00	09/16/15	542324
609335	Venue Solutions Group LLC	Final 25% billing-PBA Review	OP	06095	W Haymarket Surplus	PV	1654121	13,750.00	09/16/15	542325
82350	Nebraska Department of Revenue	Waste Reduction Fee	OP	06095	W Haymarket Surplus	PV	1655453	25.00	09/23/15	542713
97885	Copy Services	Customer #595381	OP	06095	W Haymarket Surplus	PV	1655454	.76	09/23/15	542714
27756	Voss Lighting	Cust# 100925	OP	06095	W Haymarket Surplus	PV	1654118	51.50	09/24/15	84811
31827	Jacob North LLC-Print & Media Solu	Finance Department/JPA	OP	06095	W Haymarket Surplus	PV	1655451	56.00	09/24/15	84820
53356	Lincoln Electric System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1655450	546.61	09/24/15	84847
77921	County/City Property Management	Amtrak Station 08/15	OP	06095	W Haymarket Surplus	PV	1655452	459.62	09/24/15	84862
102154	Public Building Commission	Space Rental 09/15	OP	06095	W Haymarket Surplus	PV	1655455	38.75	09/24/15	84896
102154	Public Building Commission	Space Rental 09/15	OP	06095	W Haymarket Surplus	PV	1655455	80.50	09/24/15	84896
98642	Information Services	JPA 08/15	OP	06095	W Haymarket Surplus	PV	1657320	104.47	09/30/15	543112
113806	City Treasurer	WHJPA Credit Card Fees 08/15	OP	06095	W Haymarket Surplus	PV	1657323	2,129.74	09/30/15	543113
Category total								737,610.94		
431100	City of Lincoln - Parking	JPA Share of Parking Equip	PH1	870202	WH Parking Garage #1	PV	1652377	70,432.50	09/02/15	541771
39108	D F Lanoha Landscape Nursery Inc	Landscape work,Q & Canopy	PH1	870307	WH Streetscape	PV	1650687	2,483.00	09/03/15	84204
82368	State of Nebraska	Act#0637, July monitoring	PH1	870602	WH Voluntary Clean-up Program	PV	1653240	2,439.66	09/10/15	84422
594773	Alfred Benesch & Company	Remediation, 2/16-3/15/15	PH1	870601	WH NDEQ T-200	OV	1652379	1,835.93	09/10/15	84536
594773	Alfred Benesch & Company	Remediation,2/16-3/15/15	PH1	870602	WH Voluntary Clean-up Program	OV	1652380	6,813.62	09/10/15	84536
594773	Alfred Benesch & Company	Remediation,3/16-4/12/15	PH1	870601	WH NDEQ T-200	OV	1652381	1,493.50	09/10/15	84536
594773	Alfred Benesch & Company	Remediation,3/16-4/12/15	PH1	870604	WH Other/Miscellaneous	OV	1652382	401.94	09/10/15	84536
594773	Alfred Benesch & Company	Remediation,3/16-4/12/15	PH1	870602	WH Voluntary Clean-up Program	OV	1652382	13,301.80	09/10/15	84536
598263	PC Sports LLC	August,2015 project mgmt	PH1	870002	WH General Coordination P3	OV	1654355	17,000.00	09/17/15	84771
596877	Olsson Associates	Prof service,7/5-8/11/15	PH1	870000	WH General Coordination	OV	1656200	5,074.36	09/24/15	85008
596877	Olsson Associates	Prof service,7/5-8/1/15	PH1	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1656200	5,624.34	09/24/15	85008
Category total								126,900.65		
Grand total								864,511.59		

As of September 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	6,598,129.32	214,489.45	
870002 WH General Coordination P3	204,000.00	136,000.00	68,000.00	
70090 West Haymarket Park	7,016,618.77	6,734,129.32	282,489.45	
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	14,998,590.68	21,962.46	353.99-
870202 WH Parking Garage #1	14,041,819.09	14,032,834.09		8,985.00
870204 WH Parking Garage #2	203,400.39	203,400.39		
70092 Parking	29,265,418.63	29,234,825.16	21,962.46	8,631.01
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	2,583,558.83		1,145.92
870308 WH Sun Valley Blvd & West "O"	23,681.50	23,681.50		
70093 Roads	25,392,443.32	25,183,797.40		208,645.92
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 September 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	1,645,665.15	21,672.68	315,696.85
870602 WH Voluntary Clean-up Program	1,937,395.49	1,870,282.69	56,473.49	10,639.31
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	704,513.19		6,582.03
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	5,752,794.46	78,255.18	1,381,999.66
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 September 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	329,251,694.69	409,727.09	6,801,264.11

As of September 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	12,103,607.93	10,000.00	1,150.50-
870206 WH Parking Garage #3 P2	14,858,656.42	14,833,773.58		24,882.84
70092 Parking	26,971,113.85	26,937,381.51	10,000.00	23,732.34
70093 Roads				
870309 WH Streetscape P2	953,573.17	943,968.17	10,000.00	395.00-
70093 Roads	953,573.17	943,968.17	10,000.00	395.00-
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	28,653,331.99	20,000.00	23,337.34

As of September 30, 2015

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06095 W Haymarket Surplus					
11 Materials & Supplies					
5221 Office Supplies	250.00		250.00		250.00
5261 Postage	1,750.00		1,750.00		1,750.00
5323 Bldg Maint Supplies	500.00		500.00		500.00
11 Materials & Supplies	2,500.00		2,500.00		2,500.00
12 Other Services & Charges					
5621 Misc Contractual Services	824,846.00		824,846.00		824,846.00
5624 Auditing Service	20,000.00		20,000.00		20,000.00
5631 Data Processing Service	1,254.00		1,254.00	104.47	1,149.53
5643 Management Services	1,843,440.00		1,843,440.00	410,100.00	1,433,340.00
5643.61 Deck 1 Mgmt Services	517,000.00		517,000.00		517,000.00
5643.62 Deck 2 Mgmt Services	407,000.00		407,000.00		407,000.00
5643.63 Deck 3 Mgmt Services	521,000.00		521,000.00		521,000.00
5683.04 Snow Removal	2,500.00		2,500.00		2,500.00
5683.05 Fire Alarm Monitoring	500.00		500.00		500.00
5762 Photocopying	500.00		500.00	.76	499.24
5763 Printing	500.00		500.00	56.00	444.00
5784 Misc Insurance	112,847.00		112,847.00		112,847.00
5786 Property	155,555.00		155,555.00		155,555.00
5794 Public Officials	31,864.00		31,864.00	30,022.00	1,842.00
5821 Electricity - Bldg & Grnds	10,440.00		10,440.00	546.61	9,893.39
5825 Natural Gas	3,000.00		3,000.00		3,000.00
5829 Telephone	1,300.00		1,300.00		1,300.00
5830 Water	1,000.00		1,000.00		1,000.00
5835 Thermal Heating & Cooling	2,260,000.00		2,260,000.00	181,500.53	2,078,499.47
5856 City Share Linc Center Maint	20,000.00		20,000.00		20,000.00
5862 Grounds Maintenance	3,000.00		3,000.00		3,000.00
5870 Other Bldg Maintenance	161,000.00		161,000.00	459.62	160,540.38
5928 Rent of Co/City Bldg Space	966.00		966.00	80.50	885.50
5931 Parking Rent Bldg Comm	465.00		465.00	38.75	426.25
5952 Advertising/Media Serv	2,350.00		2,350.00		2,350.00
5993 Fees Paid to State of NE				25.00	25.00-
5996 Credit Card/Bank Fees	5,000.00		5,000.00		5,000.00
12 Other Services & Charges	6,907,327.00		6,907,327.00	622,934.24	6,284,392.76

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
06095 W Haymarket Surplus	6,909,827.00		6,909,827.00	622,934.24	6,286,892.76
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		5,874,323.00
15 Debt Service	5,875,371.00		5,875,371.00		5,875,371.00
195021 JPA 2010B/C Debt Service	5,875,371.00		5,875,371.00		5,875,371.00
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00		524.00
6235 Bd Trustee Pmt-Interest	4,591,688.00		4,591,688.00		4,591,688.00
15 Debt Service	4,592,212.00		4,592,212.00		4,592,212.00
195031 JPA 2011 Debt Service	4,592,212.00		4,592,212.00		4,592,212.00
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

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
195041 JPA 2013 Debt Service					
15 Debt Service					
6235 Bd Trustee Pmt-Interest	1,125,275.00		1,125,275.00		1,125,275.00
15 Debt Service	1,665,799.00		1,665,799.00		1,665,799.00
195041 JPA 2013 Debt Service	1,665,799.00		1,665,799.00		1,665,799.00
00950 West Haymarket Revenue	23,695,243.00		23,695,243.00	622,934.24	23,072,308.76

WH 15-20 Introduce: 10-29-15

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 1 to the West Haymarket Redevelopment Agreement (TDP Project) to amend the Redevelopment Agreement by updating the environmental provisions in Subsections B and C of Section 404 of the Redevelopment Agreement and by substituting a new Use of Rights of Way Easement and Hold Harmless Agreement and a new Environmental Covenant for the existing Agreement and Environmental Covenant attached to the Redevelopment Agreement to clarify and address the duties and responsibilities of the parties under said documents, is hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute said Amendment No. 1 to the West Haymarket Redevelopment Agreement (TDP Project) including execution of the Use of Rights of Way Easement and Hold Harmless Agreement and the Environmental Covenant on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return the executed original Use of Rights of Way Easement and Hold Harmless Agreement and the executed original Environmental Covenant to Rick Peo, Chief Assistant City Attorney, to obtain required signatures and to record the documents with the Lancaster County Register of Deeds.

Adopted this _____ day of October, 2015.

Introduced by:

_____

WH 15-20

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

AMENDMENT NO. 1
WEST HAYMARKET
REDEVELOPMENT AGREEMENT
(TDP Project)

THIS AMENDMENT NO. 1 TO THE WEST HAYMARKET REDEVELOPMENT AGREEMENT (TDP Project) ("**Amendment No. 1**") is entered into as of this ____ day of October, 2015, by and among 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**").

RECITALS

A. The parties previously entered into the West Haymarket Redevelopment Agreement (TDP Project) ("**Redevelopment Agreement**") executed by the Redeveloper on August 20, 2015 and by the City and JPA on August 28, 2015 which in part requires the Redeveloper to construct a new multi-story office building containing approximately 150,000 square feet of office space and 10,000 square feet of retail space ("New Building") on Lot 2, West Haymarket 2nd Addition, Lincoln, Lancaster County, Nebraska. The Redevelopment was approved by Resolution No. A-89209 adopted by the City Council for the City of Lincoln, Nebraska on August 24, 2015. A Copy of the Redevelopment Agreement is on file and available for inspection in the office of the City Clerk for the City of Lincoln.

B. Under the Redevelopment Agreement the City and Redeveloper have agreed to enter into a Use of Rights-of-Way Easement and Hold Harmless Agreement (the form of which is attached to the Redevelopment Agreement as Exhibit E) wherein the City would grant Redeveloper (i) a permanent two-feet wide and three-feet four inches deep foundation easement for the construction of an underground foundation system for the purpose of supporting the New

Building over a portion of Canopy Street on the east, P Street on the south, and the north-south alley ("Alley") on the west (collectively "City ROW") adjacent to Lot 2, West Haymarket 2nd Addition ("**Project Site**") and (ii) a building overhang easement permitting an ornamental shade structure with vertical fins and to be attached to the exterior walls of the New Building to extend above the Canopy Street and P Street rights-of-way.

C. Redeveloper has subsequently determined that an encroachment two-feet wide into the City ROW for the foundation of the New Building is not needed and the width of the easement may be reduced in size. Redeveloper further desires to clarify and address in the Use of Rights-of-Way Easement and Hold Harmless Agreement the duties and responsibilities of the City d/b/a Lincoln Electric System (LES), and the District Energy Corporation (DEC) as occupiers of space within the Alley to ensure that construction activities by the LES and the DEC within the Alley will not damage or destroy the foundation for the New Building.

D. Under the Redevelopment Agreement the Redeveloper agreed that the Project Site would be bound by, sold and conveyed subject to the items, conditions, obligations and restrictions set forth in an Environmental Covenant approved by the Nebraska Department of Environmental Quality ("**NDEQ**"), a draft of which was attached to the Redevelopment Agreement as Exhibit L.

E. The JPA and Redeveloper have subsequently been advised by NDEQ that in order for the JPA and Redeveloper to timely close upon the sale of the Project Site it will be necessary for the Redeveloper to subject the Project Site, post-sale, to the NDEQ approved Environmental Covenant attached hereto as Exhibit L.

NOW, THEREFORE, in consideration of the above Recitals, the parties agree that the Redevelopment Agreement be amended as follows:

1. That the attached Use of Rights-of-Way Easement and Hold Harmless Agreement marked as Exhibit E be substituted for and replace in its entirety the Use of Rights-of-Way Easement and Hold Harmless Agreement attached to the Redevelopment Agreement as Exhibit E.

2. That the attached Environmental Covenant (East Flank-West Haymarket Redevelopment) (Site North) marked as Exhibit L be substituted for and replace in its entirety the Environmental Covenant attached to the Redevelopment Agreement as Exhibit L.

3. That Section 404. Environmental of the Redevelopment Agreement be amended by revising Subsections B and C to read as follows:

B. Environmental Covenant. Redeveloper following its acquisition of the Project Site agrees to subject the Project Site to the terms, conditions, obligations, and restrictions set out in the NDEQ approved Environmental Covenant attached hereto marked as Exhibit L. 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, 2015) ("**O & M Plan**").

The O & M Plan has been approved by NDEQ and is available to the public and located at the NDEQ, 1200 N Street, Suite 400, Lincoln, Nebraska. A copy of the O & M Plan has been provided to the Redeveloper.

4. That all other terms and conditions of the Redevelopment Agreement shall remain in full force and effect.

[SIGNATURE PAGES TO FOLLOW]

Executed by City and JPA 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

Executed by Redeveloper this _____ day of _____, 2015.

"Redeveloper"

TDP PHASE THREE, LLC,
a Nebraska limited liability company

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

By: _____
Name Title

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 as of the date of execution hereof by the last signatory hereto as indicated below (the "Effective Date") by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **TDP Phase Three, 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 140,000 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 on the Project Site with zero setbacks from the abutting City owned public rights-of-way for Canopy Street on the east, P Street on the south, and the north-south alley on the west ("Alley") as shown on the Footing and Foundation

Encroachment Exhibit attached hereto as Attachment "A", Redeveloper has requested the City to grant Redeveloper a non-exclusive permanent foundation easement three feet four inches deep and not to exceed one-foot wide for the construction of an underground foundation system ("Foundation") to use space underneath and on the surface of Canopy Street, P Street and the Alley abutting the Project Site ("City ROW") for the purpose of supporting said New Building. Redeveloper understands and acknowledges that the City d/b/a Lincoln Electric System and the District Energy Corporation ("DEC") have utilities (defined below) located in the Alley which are outside of but in close proximity to the western boundary line of the not to exceed one-foot wide encroachment into the Alley for the Foundation. The parties understand and acknowledge that any construction, repair or replacement work undertaken in the Alley must be undertaken in a manner to ensure that such work does not damage or destroy the property of any other party located in the Alley.

C.

In order to construct the exterior of the New Building with an ornamental shade structure with vertical "fins" ("Fin Structure") attached to the exterior walls of the New Building above the surface and overhanging portions of the City ROW (i.e. the Canopy Street and P 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 Fin Structure to the New Building.

D.

The City is agreeable to granting Redeveloper the above described permanent easements for use of the City ROW 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. Definitions. For purposes of this Agreement, the following definitions shall apply:

(a) Utilities shall mean all utilities including, but not limited to water and sewer mains and service lines; electrical lines, communication lines and appurtenances thereto; thermal heating and cooling mains and service lines; gas mains and service lines; telephone, cable television and fiber optic installations; and any other utilities installed in the City ROW by the City, the DEC, or any entity ("Utility Company") operating under a utility franchise or other approval granted by the City.

(b) City shall mean and include the City of Lincoln, Nebraska and all utilities owned or operated by the City, including but not limited to Lincoln Electric System, Lincoln Water System, and Lincoln Waste Water System. Lincoln Electric System is sometimes referred to herein as "LES".

2. Grant of Easements. The City agrees to and does hereby grant Redeveloper a non-exclusive permanent footings and encroachment foundation easement three feet four inches deep and not to exceed one-foot wide ("Building Foundation Easement") and a non-exclusive permanent Overhang Easement not to exceed four feet ("Building Overhang Easement) for the New Building on, under, or over those specific portions of the City ROW 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 Fin 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. Upon completion of the Foundation and Fin Structure the Redeveloper shall provide the City with two hard copies and one electronic version of an

accurate as-built Foundation drawing and Fin Structure drawing certifying the location of the Foundation and Fin Structure respectively within the City ROW. The electronic version of the as-built drawings shall be in a commercially available electronic format acceptable to the City. If the as-built drawings demonstrate that the applicable Foundation encroachment or Fin Structure encroachment is less than the allowed not to exceed encroachment the applicable Easement Area will be reduced to correspond to the as-built dimension of the encroachment or encroachments by written amendment to this Agreement. Redeveloper has the right of reasonable 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 Fin Structure for the New Building as permitted in this Agreement. Redeveloper may temporarily use such additional portions of the applicable City ROW as may be reasonably required to access the applicable Easement Area and to construct, maintain or repair the Foundation and/or the Fin 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 City ROW outside any Easement Area, which approval will not be unreasonably withheld.

3. Redeveloper 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 Fin 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 FinStructure 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 damage or disturbance to any existing utilities located in the City ROW. Following completion of the Foundation and Fin 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 City ROW 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 Fin Structure, Redeveloper shall not impair the use of the abutting City ROW, nor impair the protection of pedestrians and vehicles traveling upon said City ROW.

(iii) Redeveloper shall be responsible for any damages caused to any utilities located in the City ROW. Redeveloper further agrees that if such utilities are damaged or destroyed by construction, maintenance or repair of the Foundation or Fin 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 Fin 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) Neither the City, the DEC, nor any Utility Company shall be responsible for any damages to the Project Site or the New Building, or injuries to persons, resulting from a damaged utility in the City ROW, or arising out of or resulting from any subsequent replacement, repair, or maintenance thereof, except for damages or injuries arising out of or resulting from the negligent acts or omissions of the City, the DEC, or any Utility Company due to causes unrelated to the Foundation or Fin Structure of the New Building. Redeveloper agrees to make no claim against the City, the DEC, or any Utility Company for and expressly waives all rights and claims Redeveloper may have against the City, the DEC or any Utility Company 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 utility in the City ROW or any other failure of such utility, except for damages or injuries arising out of or resulting from negligent acts or omissions of the City, the DEC, or any Utility Company due to causes unrelated to the Foundation or Fin Structure of the New Building. Nothing in this provision is intended to waive any defense or immunity that the City or DEC may have to any claim under the Political Subdivision Tort Claim Act.

(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 the City ROW 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 City ROW 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 Fin Structure in the applicable Easement Area.

(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.

(viii) Prior to commencement of construction of the Foundation or Fin Structure, 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.

4. The New Building will be supported by pile caps and grade beams ("Building Supports") located on the Project Site and in the Easement Area of the Building Foundation Easement. Redeveloper has provided the City with the design drawings attached hereto marked as Attachment "C" for the Foundation prepared by its structural engineer, R.O. Youker, Inc., dated September 10, 2015 (the "Foundation Design Drawings"). These Foundation Design Drawings and the Easement Area on Attachment "A" show the location of the Building Supports in relationship to the City ROW and in particular show the location of the Building Supports in relationship to the LES and DEC utilities in the Alley. If the City, LES, or DEC needs to excavate in the Alley to access its utilities, such excavation can be made without shoring

provided that the excavated trench does not exceed thirty feet (30') in length. In the event any such excavated trench shall otherwise extend to or into the Easement Area of the Building Foundation Easement, then the party excavating in the Alley to access its utilities shall exercise due care and, if necessary, will shore and support the Building Supports.

5. 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.

6. 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.

7. 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

Executed by Redeveloper this _____ day of October, 2015.

"Redeveloper"

TDP PHASE THREE, LLC, a Nebraska limited liability company

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

By: _____
Name Title

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal) _____
Notary Public

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

"**City**"

CITY OF LINCOLN, NEBRASKA
a municipal corporation

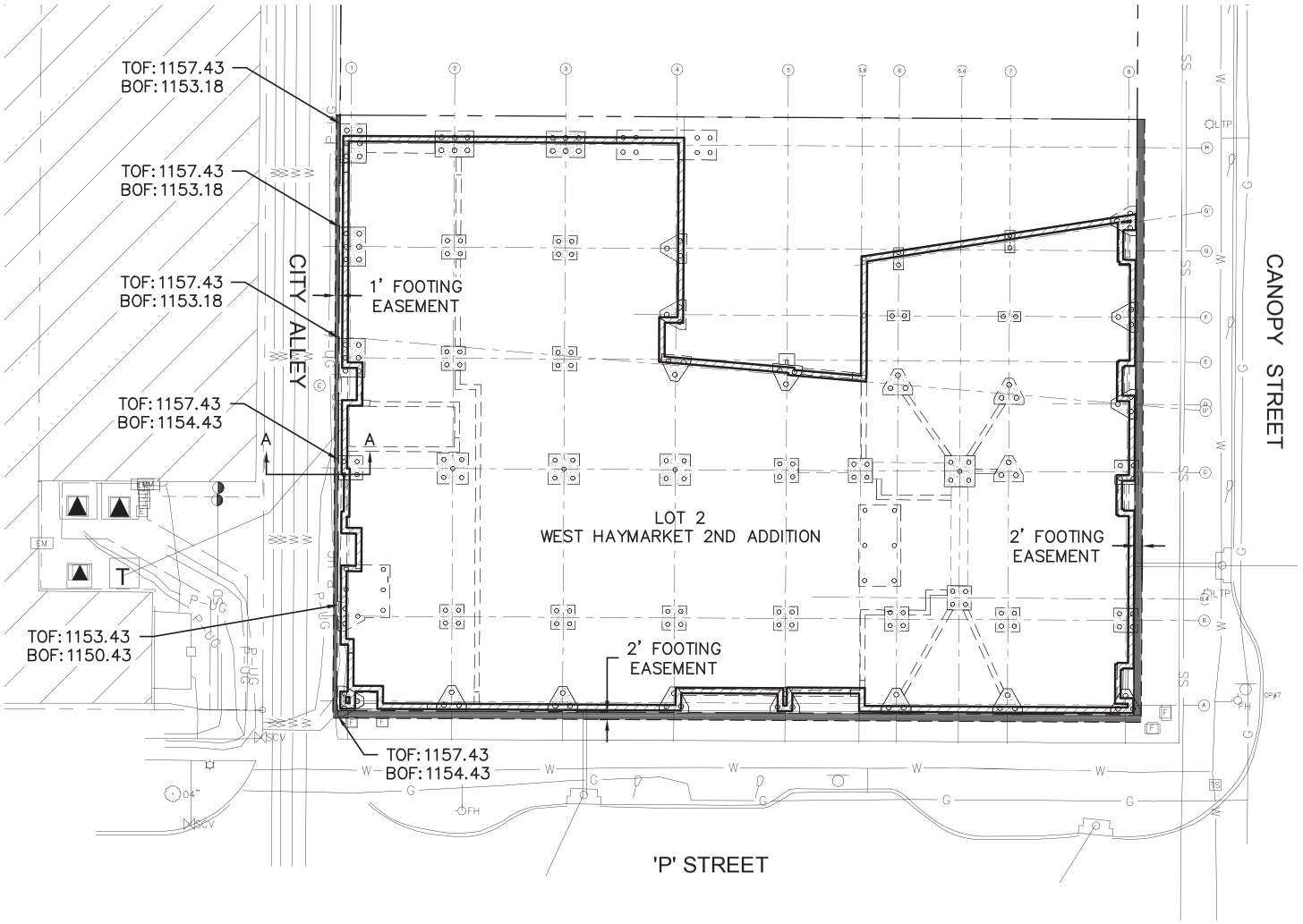
_____

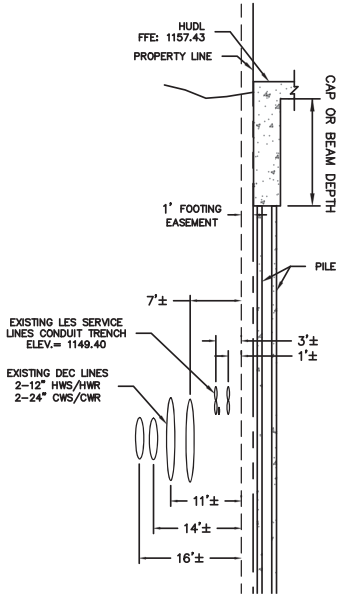
By: Chris Beutler, Mayor of Lincoln

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





SECTION 'A'–'A'
NOT TO SCALE

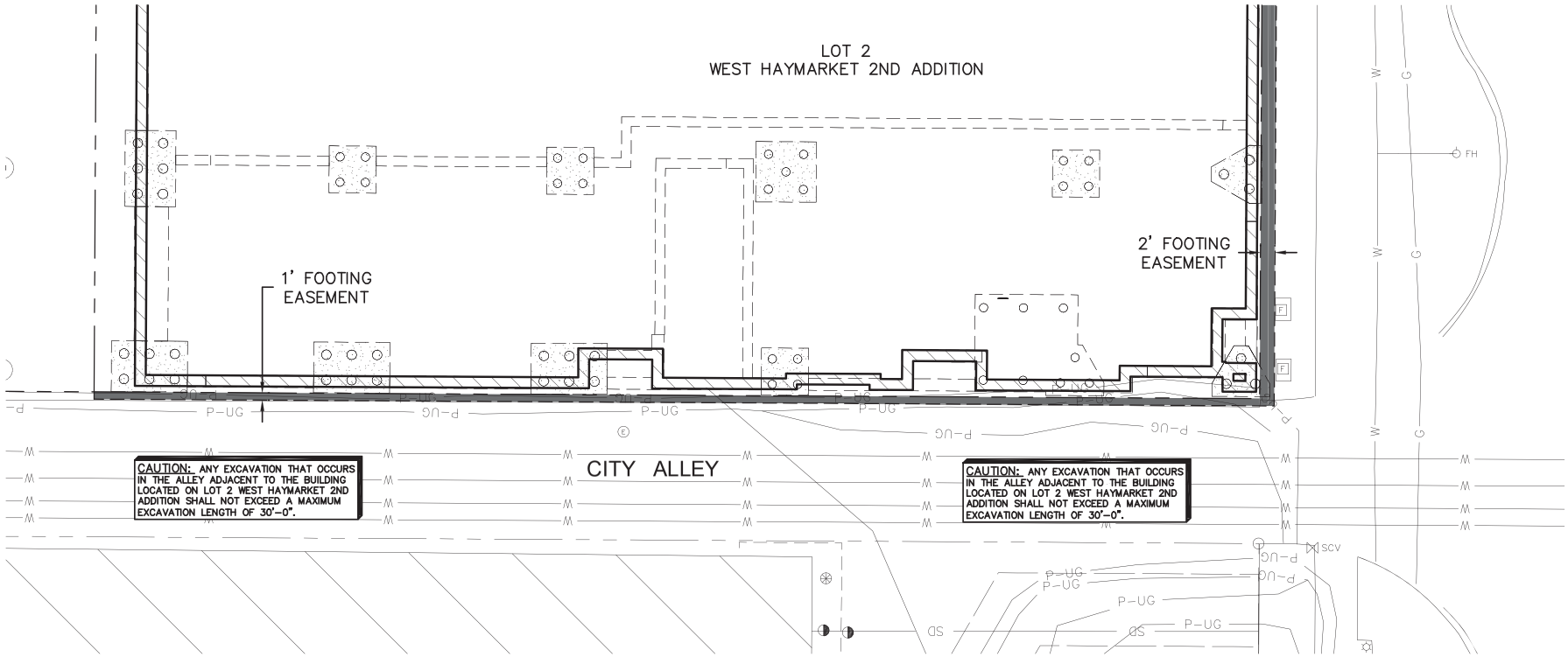
N

0' 15' 30' 60'
SCALE IN FEET

DWG: F:\Projects\015-2006\40-Design\AutoCAD\Exhibits\2015-09-22_LDVP_Footing Exhibit_015-2006.dwg USER: jfasnacht
DATE: Oct 12, 2015 2:26pm XREFS: C_PBASE_52006 122356_PBASE C_XBASE_52006 FloorPlan-Level1 Deck_3_Level_1

PROJECT NO: 015-2006	HUDL BLOCK B - FOOTINGS EXHIBIT	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JEF		601 P Street, Suite 200 P.O. Box 84608 Lincoln, NE 68508 TEL 402.474.6311 FAX 402.474.5160	1 OF 2
DATE: 09-22-2015			

ATTACHMENT 'A'



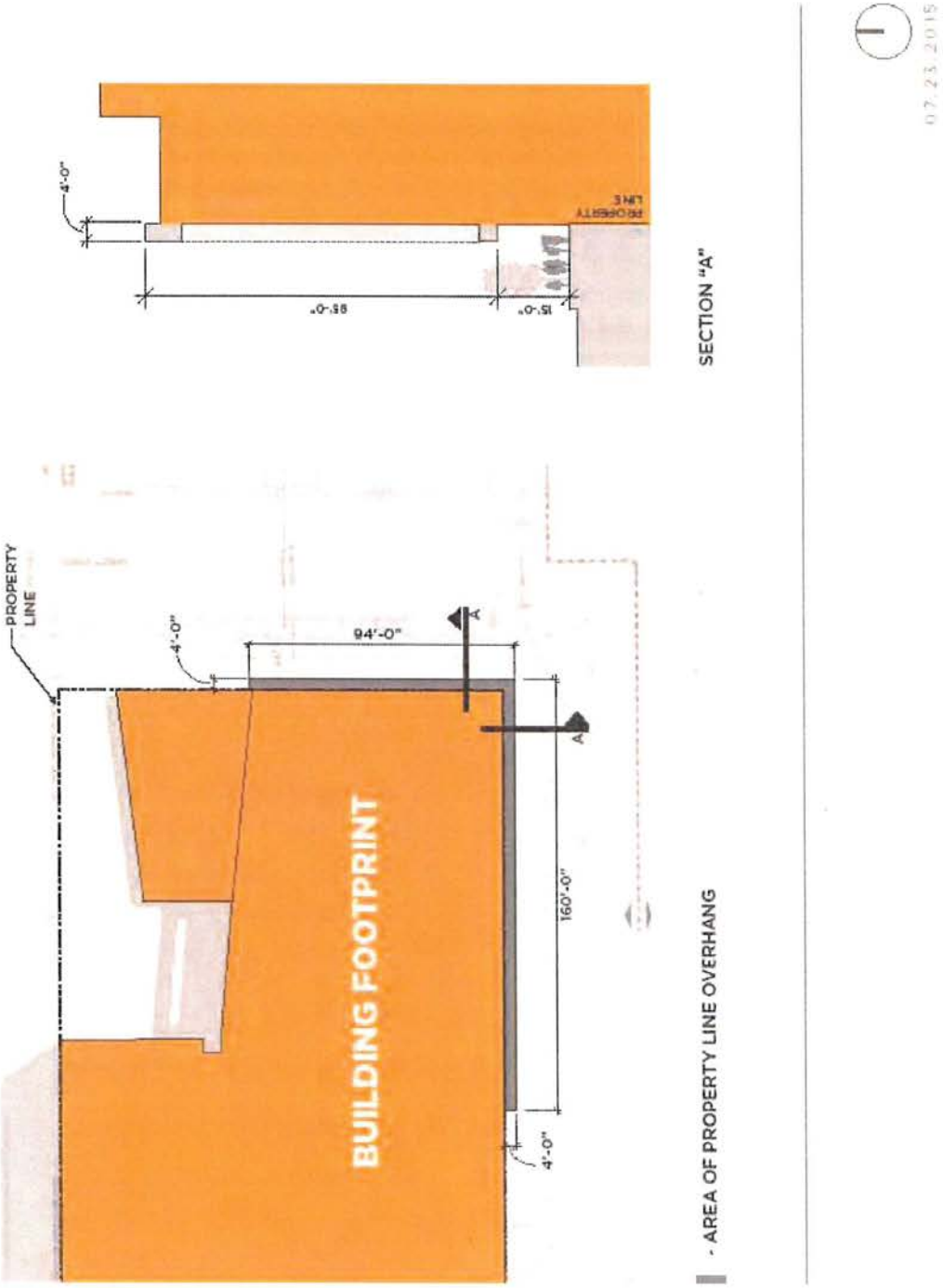
1. LOCATIONS OF UNDERGROUND UTILITIES ARE FROM DRAWINGS PROVIDED FROM LINCOLN ELECTRIC SYSTEM. HOWEVER, THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT ANY EXISTING UTILITIES OR STRUCTURES LOCATED AT THE WORK SITE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO CONTACT UNDERGROUND SERVICE ALERT @ 1-800-331-5666 IN ADVANCE OF ANY EXCAVATION FOR THE MARK-OUT OF THE LOCATION OF UTILITIES AND NOTIFICATION OF COMMENCEMENT OF WORK.
2. BEFORE EXCAVATING FOR THIS CONTRACT, THE CONTRACTOR SHALL FIELD VERIFY LOCATION OF UNDERGROUND UTILITIES. CONTRACTOR SHALL MAKE EXPLORATION EXCAVATIONS AND LOCATE EXISTING UNDERGROUND UTILITIES SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT REVISIONS TO PLAN IF REVISIONS ARE NECESSARY BECAUSE OF ACTUAL LOCATION OF EXISTING FACILITIES.
3. CONTRACTOR IS REQUIRED TO TAKE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN AND ANY OTHER EXISTING LINES NOT OF RECORD OR NOT SHOWN ON THESE PLANS.
4. THE CONTRACTOR SHALL USE CAUTION AROUND ANY EXISTING UTILITIES OR IMPROVEMENTS LOCATED ON SITE. HE SHALL BE RESPONSIBLE FOR THE REPAIRS OF SUCH STRUCTURES WHEN BROKEN OR OTHERWISE DAMAGED BY THE NEW CONSTRUCTION.
5. ANY EXCAVATION OF ENERGIZED LES FACILITIES SHALL REQUIRE LES STANDBY PERSONNEL ON SITE AT THE TIME OF THE EXCAVATION.

N

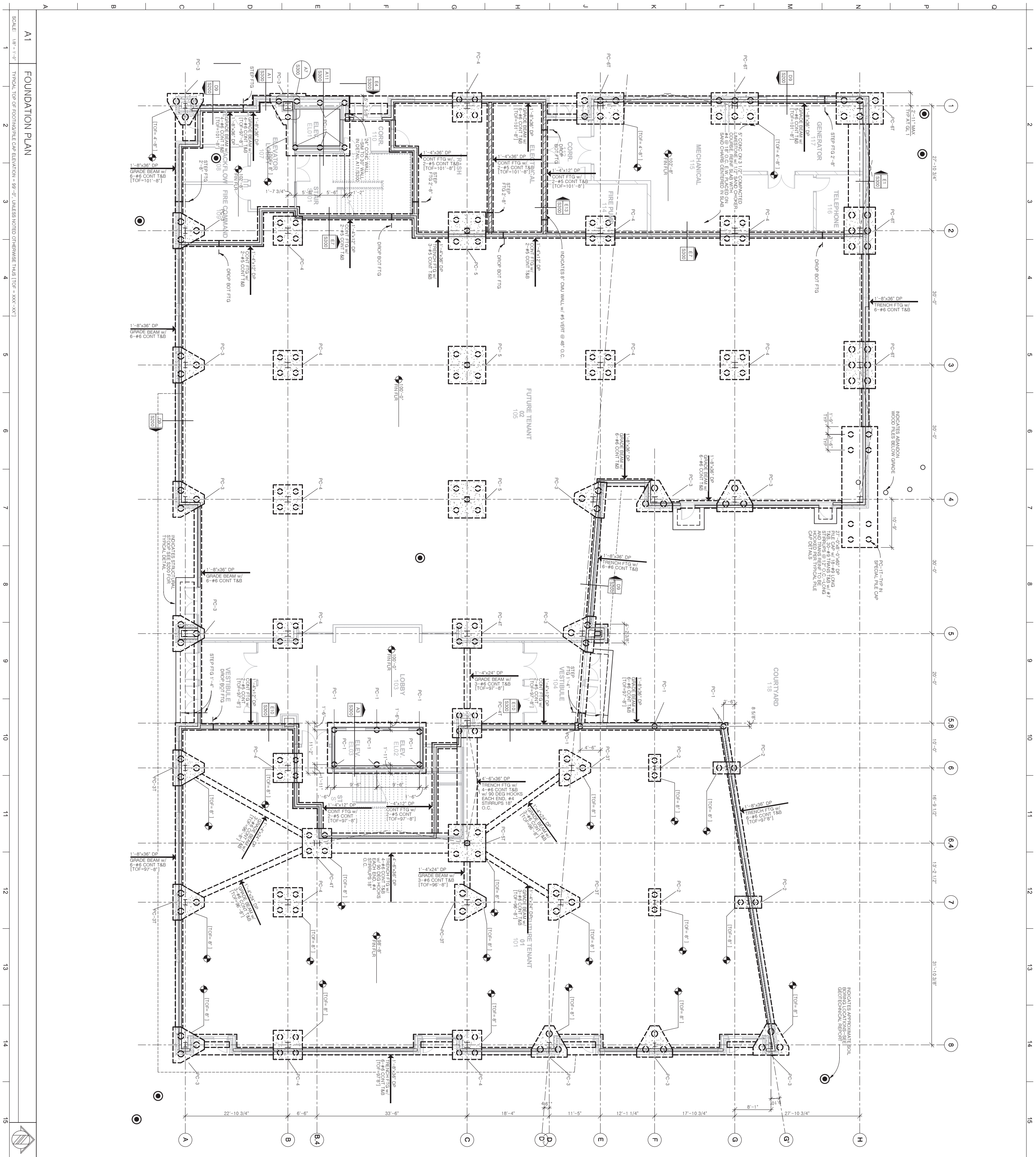
DWG: F:\Projects\015-2006\40-Design\AutoCAD\Exhibits\2015-09-22_LDVP_Footing Exhibit_015-2006.dwg USER: jfasnacht
DATE: Oct 12, 2015 2:32pm XREFS: C_PBASE_52006 122356_PBASE C_XBASE_52006 FloorPlan-Level1 Deck_3_Level_1

PROJECT NO: 015-2006	HUDL BLOCK B - FOOTINGS EXHIBIT	OLSSON ASSOCIATES 601 P Street, Suite 200 P.O. Box 84608 Lincoln, NE 68508 TEL 402.474.6311 FAX 402.474.5160	EXHIBIT
DRAWN BY: JEF			2 OF 2
DATE: 09-22-2015			

ATTACHMENT 'B'



ATTACHMENT 'C'



NOTE: PROPOSED CONSTRUCTION JOINT LAYOUT OF FOUNDATION SHALL BE SUBMITTED TO THE ENGINEER OF RECORD FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTING ANY GRADE BEAMS, PILE CAPS OR FOOTINGS.

DESIGN ENGINEER:	JP
PROJECT ENGINEER:	JP
DRAWN BY:	JP
ISSUED:	9/10/2015
REVISIONS:	

9/10/2015 9:50:11 AM

PROJECT CONSULTANTS

MECHANICAL ENGINEER
ELECTRICAL ENGINEER
Schnackel Engineers, Inc.
3035 South 72nd Street
Omaha, NE 68124
800.581.0963

CIVIL ENGINEER
Olsson Associates
1111 Lincoln Mall
Lincoln, NE 68508
402.474.6311

STRUCTURAL ENGINEER
R. O. YOUKER, INC.
CONSULTING ENGINEERS
1201 O STREET SUITE 310
LINCOLN, NEBRASKA 68508
PHONE: 402-477-7640
FAX: 402-477-7631
www.royouker.com
JOB# 15043

HUDL HQ

New Office / Mixed Use Building

Footings & Foundation Package

SINCLAIR hille architects
700 Q St. Lincoln, NE 68508 T: 402 476 7331 F: 402 476 8341

SHA PROJECT NO. 11-0064

FOUNDATION PLAN

S101

© Copyright SINCLAIR HILLE ARCHITECTS

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

EXHIBIT L
ENVIRONMENTAL COVENANT
(East Flank-West Haymarket Redevelopment Site North)

This Environmental Covenant is executed this ____ day of _____, ____, by TDP Phase Three, LLC, a Nebraska limited liability company, 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 certain real property located within the boundaries of the East Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described Lot 2, West Haymarket 2nd Addition (f/n/a south ½ of Lot 3 and the south 5 feet of the north ½ of Lot 3, Block 6, West Haymarket Addition) (the "Property"). The boundaries of the East Flank of the West Haymarket Redevelopment Site North are shown on the East Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property is shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is outlined in red on the map.

B. Holder/Grantee (hereinafter "Holder") is TDP Phase Three, LLC.

C. The Property was acquired by TDP Phase Three, LLC, from the West Haymarket Joint Public Agency ("JPA") in order to construct a multi-story building containing approximately 140,000 square feet of office space and approximately 10,000 square feet of retail space on the first floor as part of a community redevelopment project under the Nebraska Community Redevelopment Law. Prior to the JPA's acquisition of the Property, the Property was 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 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, 2015).

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, 2015).

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

TDP Phase Three, LLC
c/o WRK Management, LLC
440 North 8th Street, Suite 140
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.

TDP PHASE THREE, LLC, a Nebraska limited liability Company

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

By: _____
Name Title

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(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).

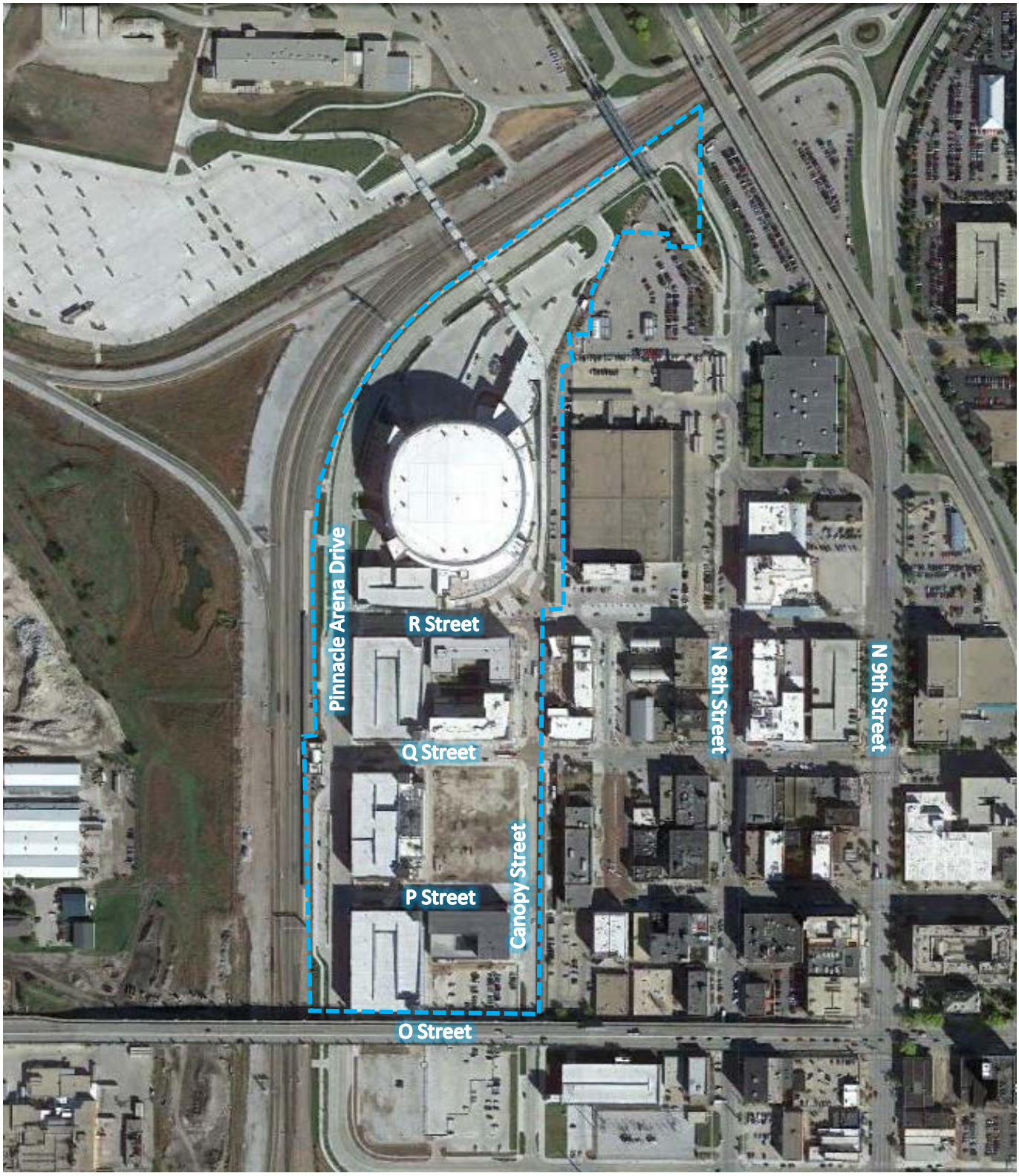
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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



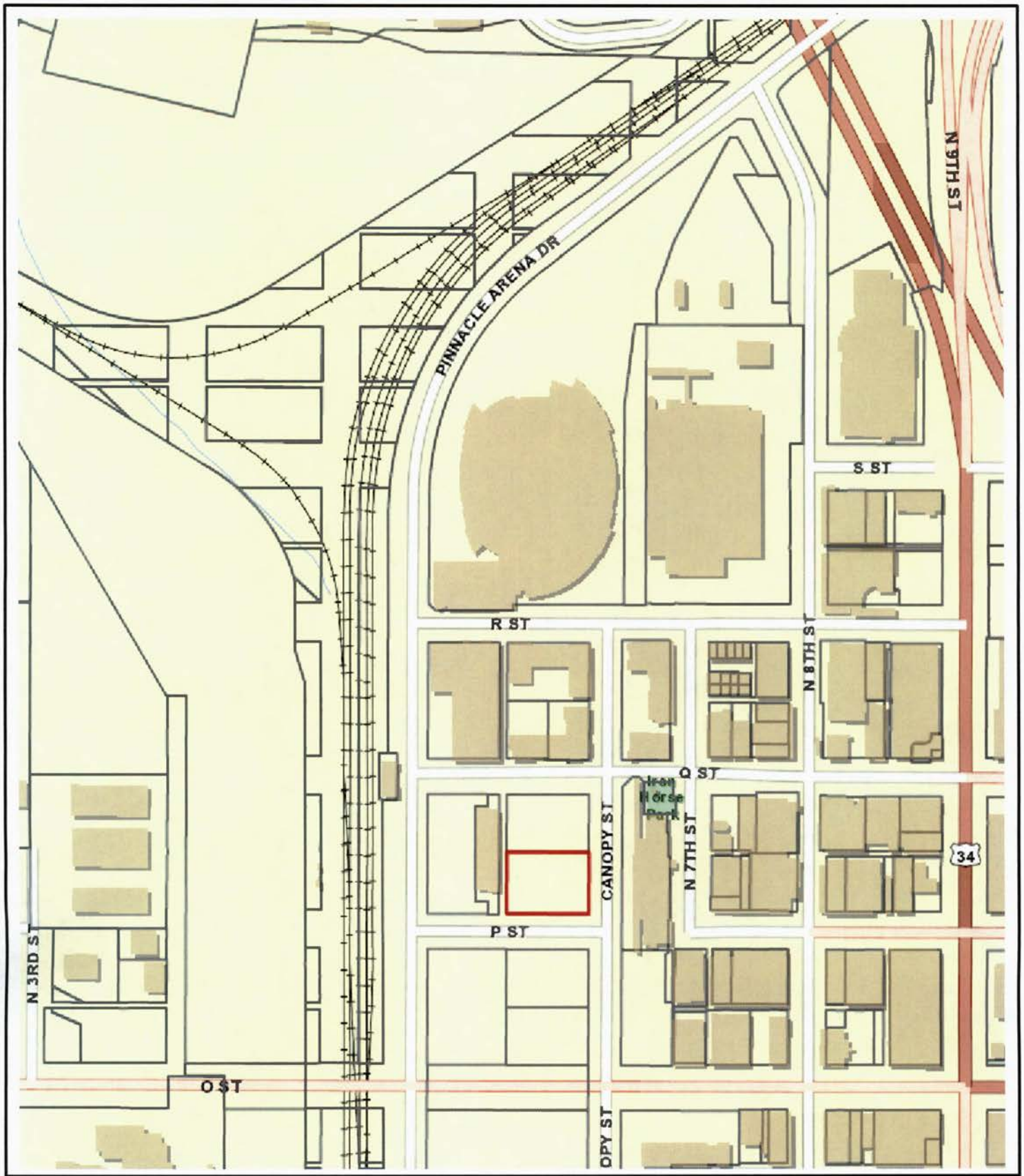
LEGEND

Site Boundary

0 200 400
Feet

benesch
engineers · scientists · planners

FIGURE 6 - EAST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE



Lancaster County/City of Lincoln GIS Map

N
W E
S

PROPERTY

Lot 2, West Haymarket 2nd Addition

Printed: Oct 15, 2015

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

WH 15-21 Introduce: 10-29-15

RESOLUTION NO. WH- _____

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

That the attached Special Warranty Deed Conveying Lot 2, West Haymarket 2nd Addition to TDP Phase Three, LLC, is hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute said Special Warranty Deed on behalf of the West Haymarket Joint Public Agency.

BE IT FURTHER RESOLVED that Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute the following attached Closing documents associated with the JPA's conveyance of Lot 2, West Haymarket 2nd Addition to TDP Phase Three, LLC, as provided for in the West Haymarket Redevelopment Agreement between the parties:

1. Memorandum of Redevelopment Agreement, Use Restrictions, Environmental Restrictions, and Parking Rights ("Memorandum").
2. Skywalk Bridge Easement.

BE IT FURTHER RESOLVED that Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute all other Closing documents associated with the JPA's conveyance of Lot 2, West Haymarket 2nd Addition to TDP Phase Three, LLC, as provided for in the West Haymarket Redevelopment Agreement between the parties including but not limited to:

1. Commercial Affidavit and Indemnification.
2. Seller's Statement of Understanding.
3. Seller's Settlement Statement.

The City Clerk is directed to return the executed original Special Warranty Deed and the executed original Memorandum and executed original Skywalk Bridge Easement to Rick Peo, Chief Assistant City Attorney, to obtain any other required signatures and to record the documents with the Lancaster County Register of Deeds.

Adopted this _____ day of October, 2015.

Introduced by:

_____

Approved as to Form & Legality:

Rick Peo

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

When recorded, please return to:
Tom C. Huston
Cline Williams Wright Johnson
& Oldfather, L.L.P
233 S. 13th Street, Suite 1900
Lincoln, NE 68508

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision and body corporate politic of the State of Nebraska, herein called the "*Grantor*," in consideration of One Dollar and other valuable consideration, ($1.00 & OVC), received from Grantee, does grant, bargain, sell, convey, and confirm unto **TDP PHASE THREE, LLC** a Nebraska limited liability company, herein called the "*Grantee*," the following described real property:

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

To have and hold the above described premises together with all tenements, hereditaments, and appurtenances thereto belonging unto the Grantee and to Grantee's successors and assigns forever.

The Grantor for itself and its successors does hereby covenant with the Grantee and with Grantee's successors and assigns that:

(a) The Grantor is lawfully seized of the Property;

(b) That the Property is free from all liens, assessments, taxes, restrictions, covenants, and encumbrances, but subject to:

1. Grantor's use restrictions environmental restrictions and parking rights pursuant to the Memorandum of Redevelopment Agreement Use Restrictions, Environmental Restrictions, and Parking Rights filed in the Office of the Lancaster County Register of Deeds as Instrument No. 2015-_____,

2. Easements and restrictions of record;

3. Governmental regulations and conditions including but not limited to those created by or as a result of the prior subdivisions of the Property;

4. Facts that may be disclosed or described by an accurate survey or inspection of the Property;

5. Permitted Exceptions as defined in the West Haymarket Redevelopment Agreement (TDP Project) entered into by and between TDP Phase Three, LLC, the City of Lincoln, Nebraska, and the West Haymarket Joint Public Agency approved by Resolution No. WH00711 adopted by the West Haymarket Joint Public Agency Board of Representatives on August 27, 2015.

(c) Grantor has good, right, and lawful authority to convey the same;

(d) Grantor warrants and will defend the title to said premises against the lawful claims of all persons claiming the same or any part thereof by, through, or under the Grantor.

Grantor hereby expressly agrees and acknowledges, for the benefit of Grantee and its successors and assigns, that it is retaining any and all obligations and liability arising out of any assumption of liability on behalf of or any indemnification for BNSF Railway Company ("Retained Obligations") contained in that certain Quitclaim Deed dated May 12, 2011 and recorded May 12, 2011 as Instrument #2011021271 in which BNSF Railway Company conveyed its property, which included the Property described herein, to Grantor. It is the intent of Grantor to terminate those Retained Obligations and terminate all liability pertaining to those Retained Obligations so that such Retained Obligations shall not be binding upon Grantee and its successors and assigns and shall not hereafter run with the land. Notwithstanding the foregoing, Grantee acknowledges and agrees it is obligated to comply with the post acquisition due diligence requirements in 42 USC § 9601(40), including but not limited to:

(1) The Property shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the Grantor as contemplated by the Remedial Action Plan dated June 5, 2012 on file at the Nebraska Department of Environmental Quality (NDEQ) under File #II580731.

(2) Groundwater use is strictly prohibited as the Property 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 Grantor for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the Grantor 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) As Grantee begins 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 Grantor's Environmental Contingency Plan on file at the Nebraska Department of Environmental Quality (NDEQ) under File #II580731. 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 with no ground floor dwelling units, will require the approval of NDEQ. (Collectively "Environmental Use Restrictions").

DATED this _____ day of October, 2015.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate politic of the State of Nebraska

By: _____
Chris Beutler, Chair 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 October, 2015, by Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives on behalf of the West Haymarket Joint Public Agency.

_____
Notary Public

Return the Original to:

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

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

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 the West Haymarket Redevelopment Agreement (TDP Project) ("**Redevelopment Agreement**") executed by the Redeveloper on August 20, 2015 and by the JPA and the City on August 28, 2015 as amended by Amendment No. 1 to the Redevelopment Agreement ("**Amendment No. 1**") dated as of the ____ day of October, 2015, describing the public improvements being made by the City in the Redevelopment Area and the private improvements ("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 the Private Improvements located on the Project Site to Parking Deck 2 located west of the Project Site, on property legally described as:

> Lot 1, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska (the "**Deck 2 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 as amended by Amendment No. 1 are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement as amended by Amendment No. 1 may be inspected at the office of the City Clerk of the City 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 will be subjected to the NDEQ approved Environmental Covenant to be recorded against the Project Site. The Environmental Covenant is attached to Amendment No. 1 marked as Exhibit L and 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 2015). 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 in the Environmental Covenant 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 and JPA 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: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member and Authorized Signatory

By: _____
Name Title

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Return the Original to:

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

EXHIBIT I
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, ("**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 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.

Executed by JPA 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: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member and Authorized Signatory

By: _____
Name Title

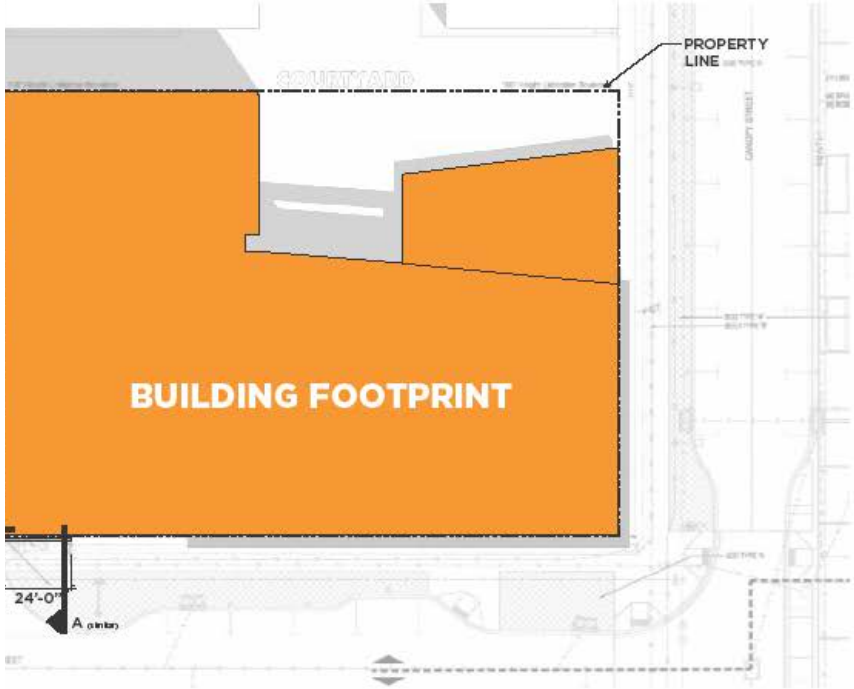
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

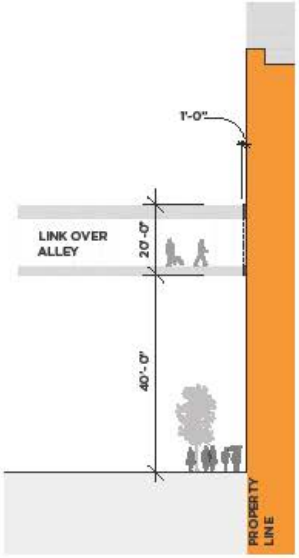
The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

ATTACHMENT 'A' to Exhibit I





- AREA OF PROPERTY LINE OVERHANG

SECTION "A"

07.23.2015

SINCLAIR hille architects

Return the Original to:

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

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

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 the West Haymarket Redevelopment Agreement (TDP Project) ("**Redevelopment Agreement**") executed by the Redeveloper on August 20, 2015 and by the JPA and the City on August 28, 2015 as amended by Amendment No. 1 to the Redevelopment Agreement ("**Amendment No. 1**") dated as of the ____ day of October, 2015, describing the public improvements being made by the City in the Redevelopment Area and the private improvements ("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 the Private Improvements located on the Project Site to Parking Deck 2 located west of the Project Site, on property legally described as:

> Lot 1, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska (the "**Deck 2 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 as amended by Amendment No. 1 are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement as amended by Amendment No. 1 may be inspected at the office of the City Clerk of the City 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 will be subjected to the NDEQ approved Environmental Covenant to be recorded against the Project Site. The Environmental Covenant is attached to Amendment No. 1 marked as Exhibit L and 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 2015). 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 in the Environmental Covenant 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 and JPA 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: **Nelnet Real Estate Ventures, Inc.**, a Florida corporation, Member and Authorized Signatory

By: _____
Name Title

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

WH 15-22 Introduce: 10-29-15

RESOLUTION NO. WH- _____

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

That the three (3) attached Environmental Covenants subjecting:

(a) Lot 1, West Haymarket 2nd Addition;

(b) Lot 1, Block 4, West Haymarket Addition; and

(c) Lots 1 and 2, Block 3, Lots 1 and 2, Block 6, and Outlot E, West Haymarket Addition; and Lots 1 and 3, West Haymarket 1st Addition;

to activity and use restrictions to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the properties and to ensure that the properties are not developed, used or operated in a manner incompatible with the approved NDEQ environmental remediation under taken by the JPA are hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency, is hereby authorized to execute the three (3) Environmental Covenants on behalf of the Wet Haymarket Joint Public Agency.

The City Clerk is directed to return the original of each Environmental Covenant to Frank Uhlarik, Compliance Administrator Public Works and Utility Department, to record with the Register of Deeds of Lancaster County, Nebraska.

Adopted this _____ day of October, 2015.

Introduced by:

_____

WH 15-22

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

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
(East Flank-West Haymarket Redevelopment Site North)

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 certain real property located within the boundaries of the East Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described as Lot 1, West Haymarket 2nd Addition (f/n/a the north ½ of Lot 3, except for the south 5 feet thereof, Block 6, West Haymarket Addition) (the "Property"). The boundaries of the East Flank of the West Haymarket Redevelopment Site North are shown on the East Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property is shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is outlined in red on the map.

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

C. Prior to the JPA's acquisition of the Property, the Property was 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 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, 2015).

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, 2015).

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

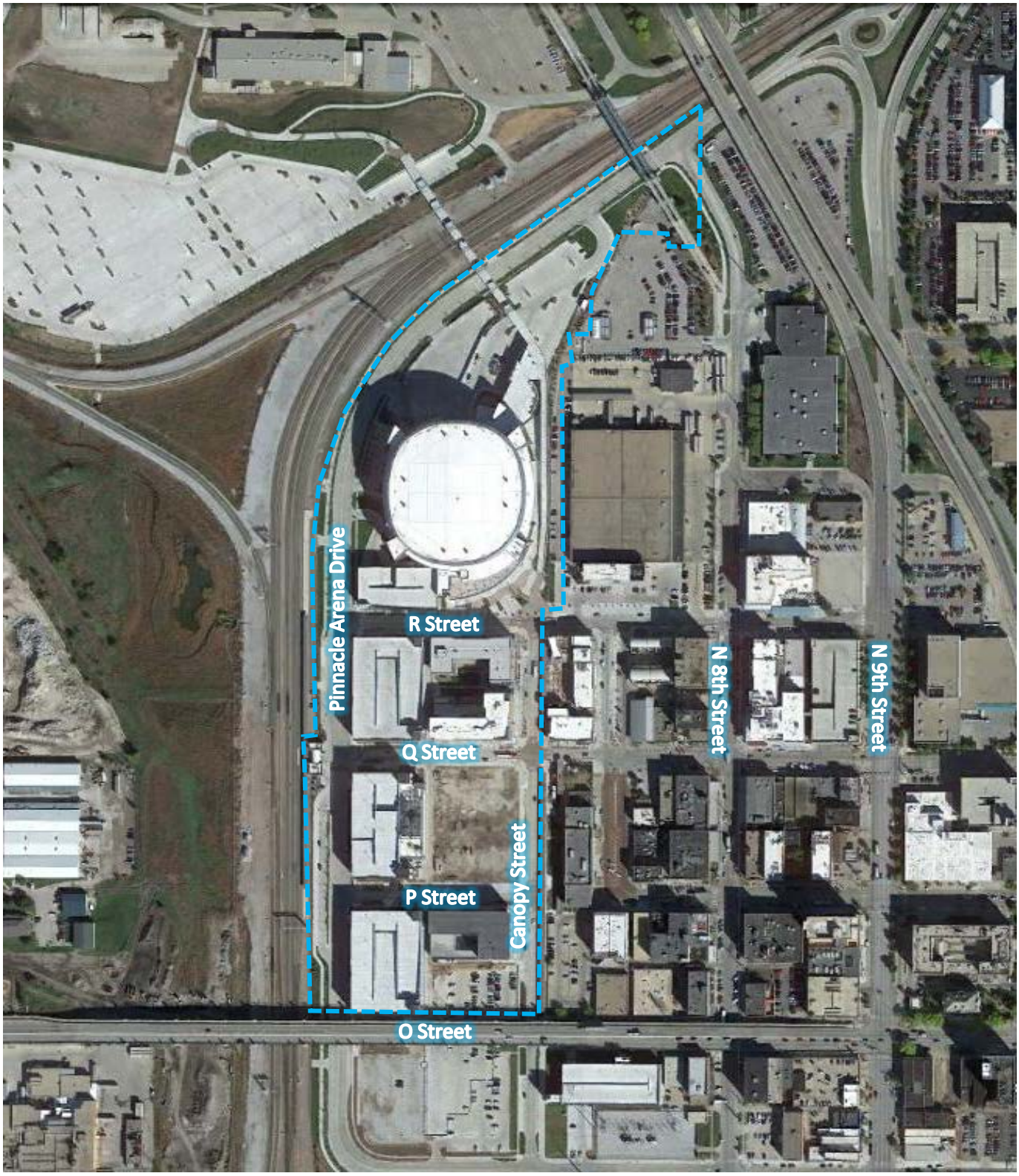
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th of October, 2015, by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL)

GENERAL NOTARY - State of Nebraska
LINDA L. ROHN
My Comm. Exp. November 12, 2016

_____
Notary Public



LEGEND

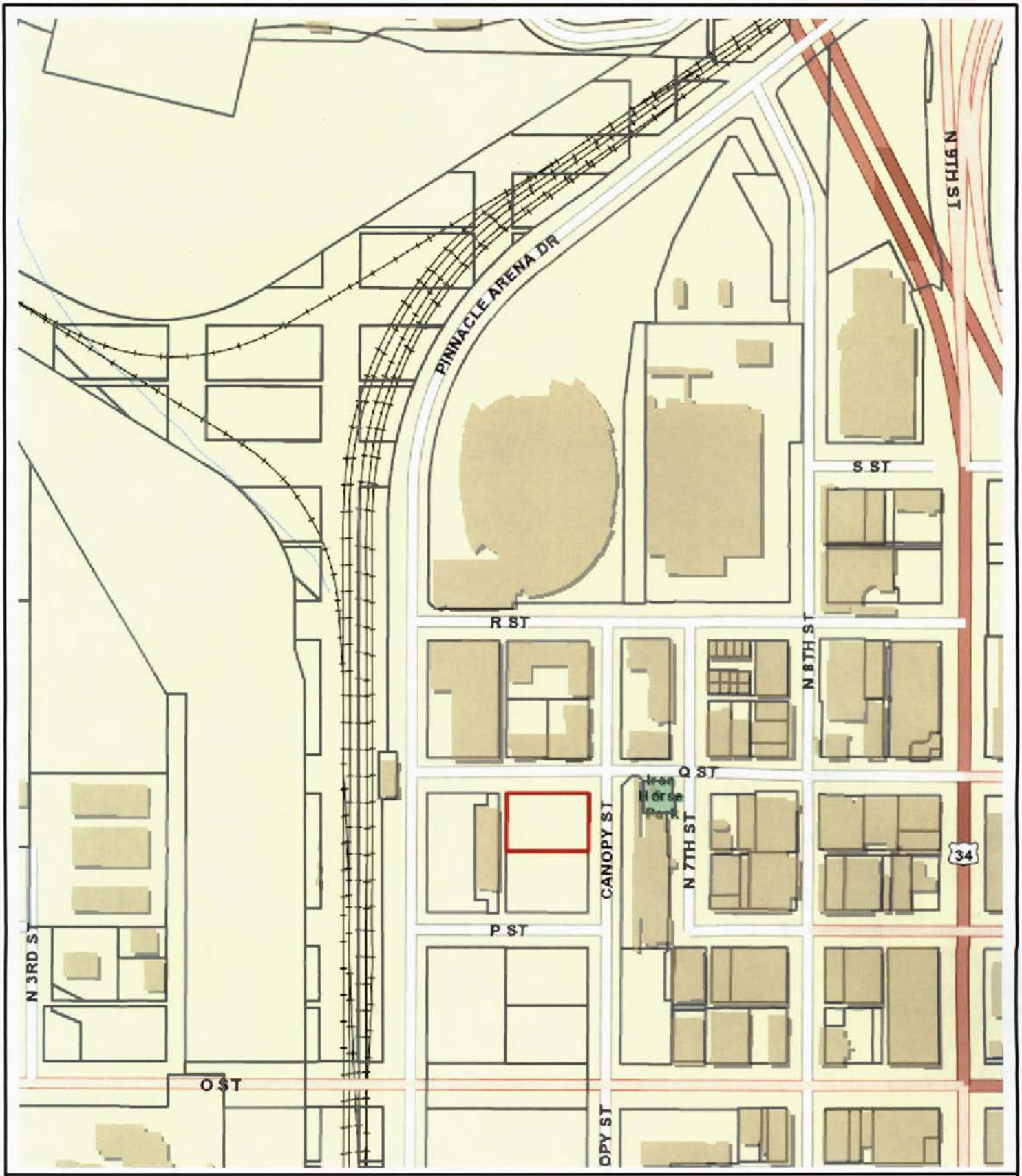
Site Boundary

0 200 400
Feet

benesch
engineers · scientists · planners

FIGURE 6 - EAST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE

ATTACHMENT 'B'



Lancaster County/City of Lincoln GIS Map

N
W E
S

PROPERTY

Lot 1, West Haymarket 2nd Addition

Printed: Oct 15, 2015

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

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
(East Flank-West Haymarket Redevelopment Site North)

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 certain real property located within the boundaries of the East Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described as Lot 1, Block 4, West Haymarket Addition (the "Property"). The boundaries of the East Flank of the West Haymarket Redevelopment Site North are shown on the East Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property is shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is outlined in red on the map.

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

C. Prior to the JPA's acquisition of the Property, the Property was 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." The Property includes land overlying a free product diesel plume ("Free Product Location") associated with diesel spill

(07116-MBS-1100). The Free Product Location is shown as the Deck 1 Site on the Location of Free Product Areas Map attached hereto marked as Attachment "C".

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 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, 2015).
d. Prior to engaging in any construction activities at the Free Product Location that will penetrate the three-foot cap, a plan must be submitted to and approved by the Agency. In general, the plan shall describe how petroleum free product and/or vapor intrusion will be evaluated and potentially mitigated prior to new surface construction.
e. Any ground intrusive work in the Free Product Location must be conducted so as not to disturb the existing free product monitoring well and recovery system.

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. This right of access also grants the Agency, its agents, contractors, and employees access to the Free Product Location for continued implementation of free product recovery and performance of future remedial action which may be necessary. 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, 2015).
> 4) Prior to engaging in any construction activities at the Free Product Location that will penetrate the three-foot cap, a plan must be submitted to and approved by the Agency. In general, the plan shall describe how petroleum free product and/or vapor intrusion will be evaluated and potentially mitigated prior to new surface construction.
> 5) Any ground intrusive work in the Free Product Location must be conducted so as not to disturb the existing free product monitoring well and recovery system.

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

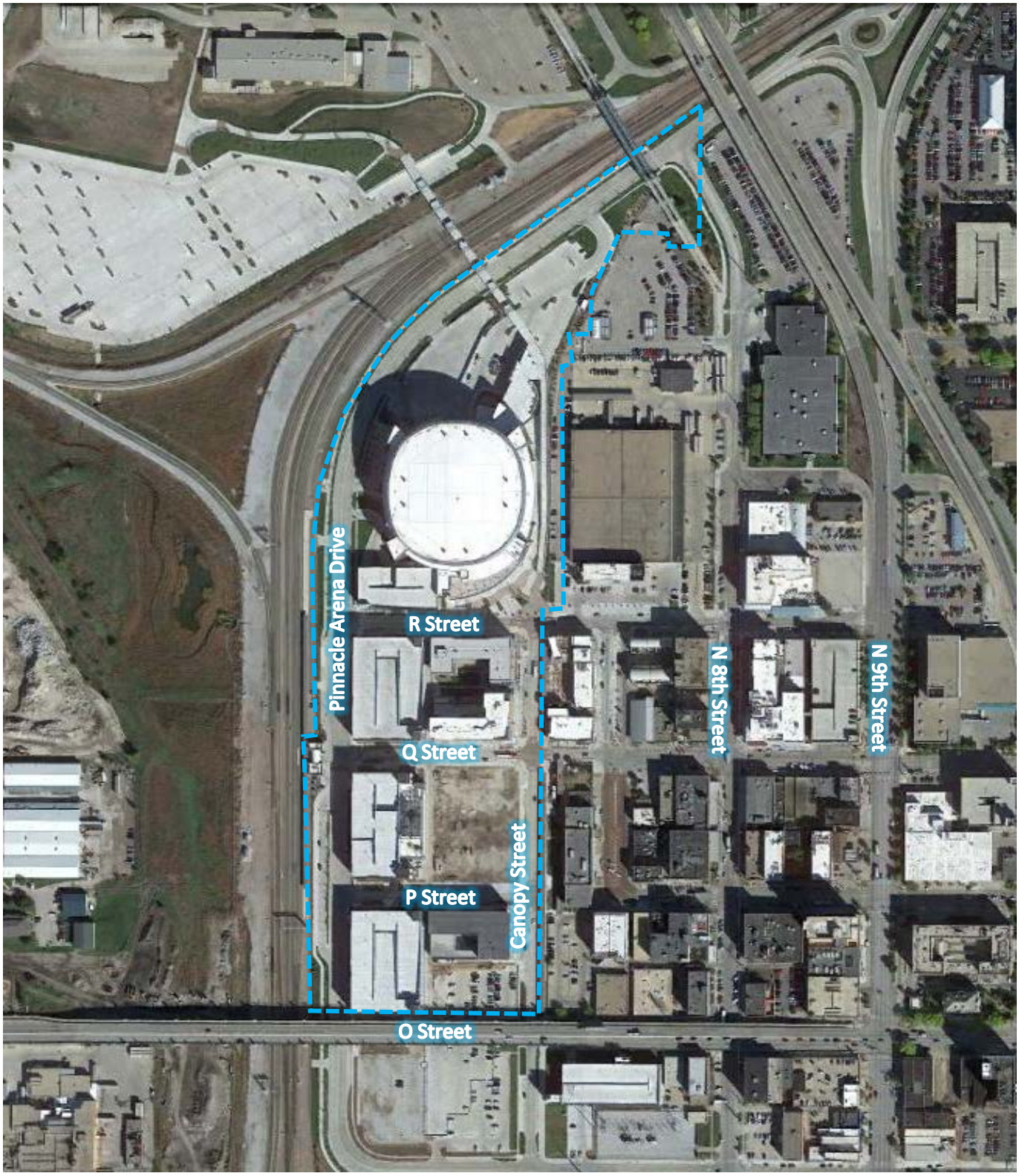
By: _____
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th of October, 2015, by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL)
GENERAL NOTARY - State of Nebraska
LINDA L. ROHN
My Comm. Exp. November 12, 2016

_____
Notary Public



LEGEND

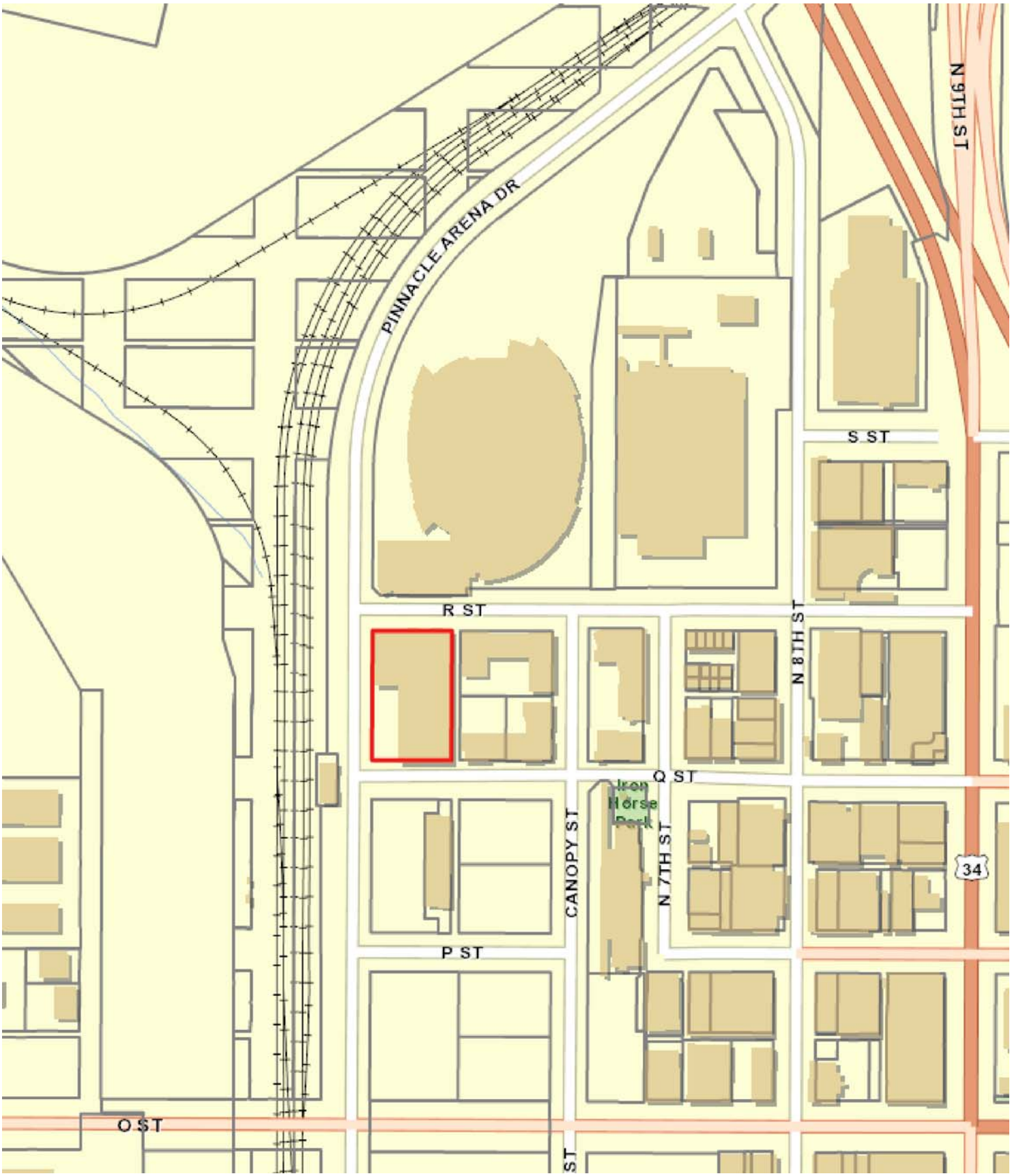
Site Boundary

0 200 400
Feet

benesch
engineers · scientists · planners

FIGURE 6 - EAST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE

ATTACHMENT 'B'



Lancaster County/City of Lincoln GIS Map

PROPERTY

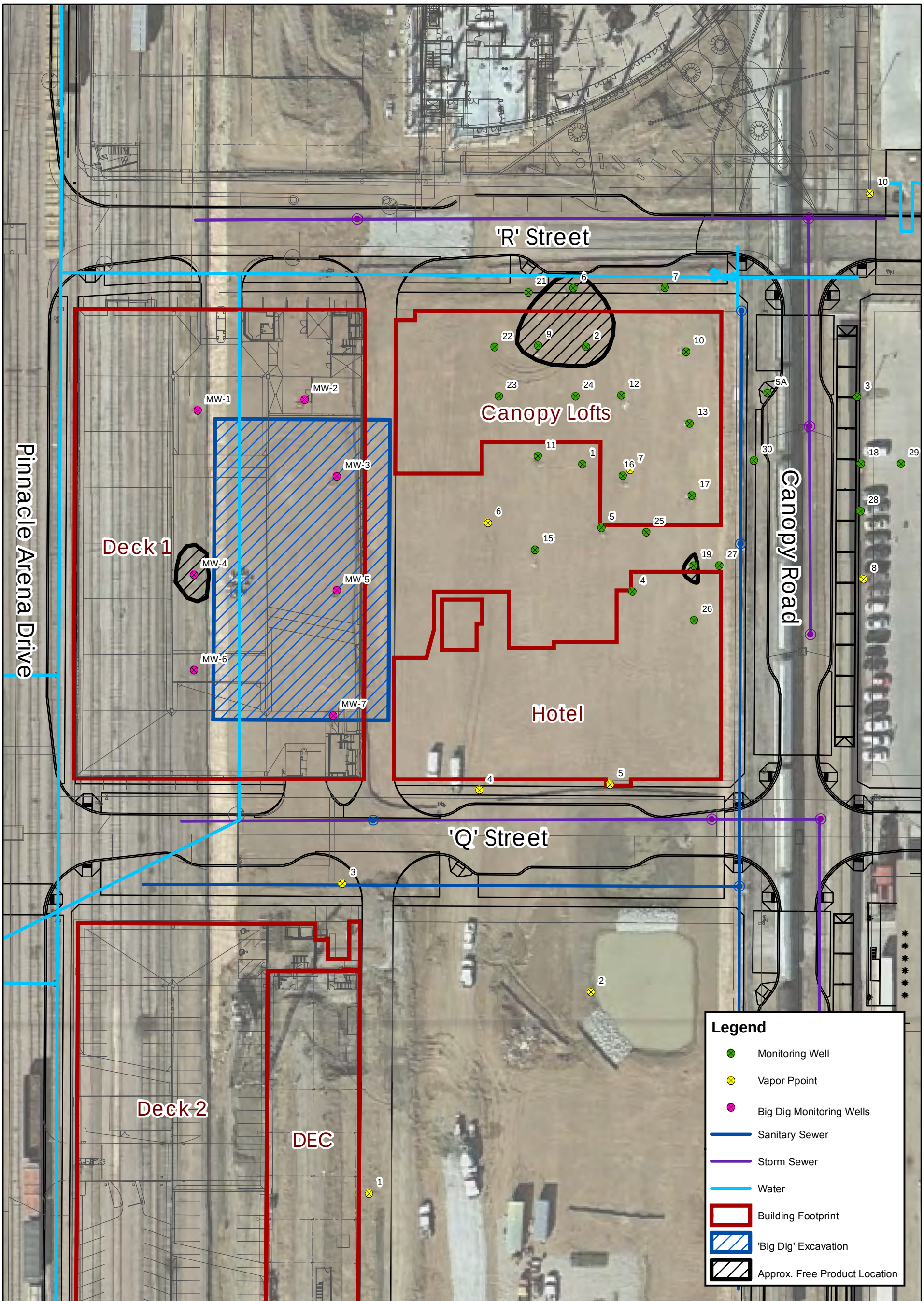
Lot 1, Block 4, West Haymarket Addition

N
W E
S

Printed: Oct 16, 2015

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

ATTACHMENT 'C'



2007 Lancaster County Aerial Imagery

N W E S

0 30 60 120 Feet

1 inch = 60 feet

benesch
engineers · scientists · planners

West Haymarket Redevelopment Site South Block 1 & Festival Block Location of Free Product Areas

W:\GIS_Projects\West Haymarket Arena\Map documents\JayLynn\Fig 1 Jaylynn Proposed Free Product0_10-15-2012.mxd

October 2012

Figure 2

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
(East Flank-West Haymarket Redevelopment Site North)

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 certain real property located within the boundaries of the East Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described as Lots 1 and 2, Block 3; Lots 1 and 2, Block 6 and Outlot E, West Haymarket Addition; Lots 1 and 3, West Haymarket 1st Addition (f/n/a Lots 1 and 3, Block 7, West Haymarket Addition) (collectively the "Property"). The boundaries of the East Flank of the West Haymarket Redevelopment Site North are shown on the East Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property is shown on the West Haymarket Property Tracts and Ownership Map attached hereto marked as Attachment "B". The Property is identified on the map as tracts 1, 9, 10, 14, 16 and 18.

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

C. Prior to the JPA's acquisition of the Property, the Property was 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 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, 2015).

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, 2015).

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

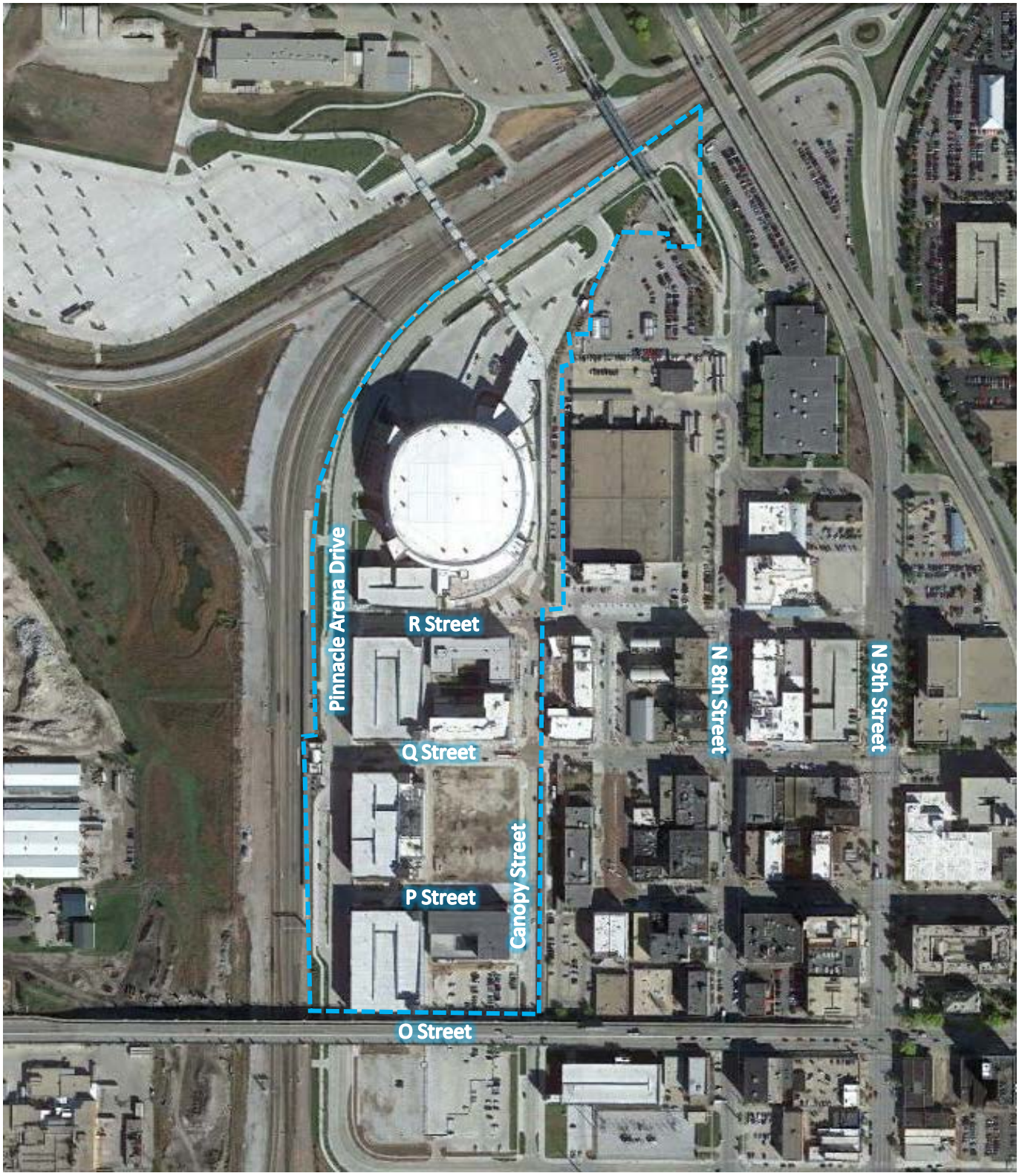
By: _____
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th of October, 2015, by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) GENERAL NOTARY - State of Nebraska LINDA L. ROHN My Comm. Exp. November 12, 2016

_____
Notary Public



LEGEND

Site Boundary

0 200 400
Feet

benesch
engineers · scientists · planners

FIGURE 6 - EAST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE

ATTACHMENT 'B'

TRACTS AND OWNERSHIP

1. WEST HAYMARKET JPA
2. CITY OF LINCOLN
3. WEST HAYMARKET JPA
4. TDP PHASE ONE LLC
5. CANOPY STREET CONDOMINIUM BASE
6. HOBSON PLACE CONDOMINIUM BASE
7. TDP PHASE ONE LLC
8. WEST HAYMARKET JPA
9. WEST HAYMARKET JPA
10. WEST HAYMARKET JPA
11. WEST HAYMARKET JPA
12. LINCOLN DEPOT LTD PARTNERSHIP
13. CITY OF LINCOLN
14. WEST HAYMARKET JPA
15. PROJECT OSCAR LLC
16. WEST HAYMARKET JPA
17. LINCOLN DEPOT LDT PARTNERSHIP
18. WEST HAYMARKET JPA
19. WEST HAYMARKET JPA
20. CITY OF LINCOLN & WEST HAYMARKET JPA
21. WEST HAYMARKET JPA
22. WEST HAYMARKET JPA

LEGEND

- PUBLIC OWNED PARCELS
- PRIVATELY OWNED PARCELS

WEST HAYMARKET PROPERTY TRACTS AND OWNERSHIP

WH 15-23 Introduce: 10-29-15

RESOLUTION NO. WH- _____

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

That the attached Second Addendum to the Energy Service Agreement between the JPA and District Energy Corporation (WH00210, October 6, 2011) to include service to 600 P Street, Lincoln, Nebraska, is hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute said Second Addendum to the Energy Service Agreement between the JPA and District Energy Corporation on behalf of the West Haymarket Joint Public Agency.

Adopted this _____ day of October, 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

SECOND ADDENDUM TO ENERGY SERVICE AGREEMENT

This Second Addendum to Energy Service Agreement ("Second Addendum") dated _____ 2015, is entered into by and between the West Haymarket Joint Public Agency ("Customer"), and the District Energy Corporation ("DEC").

RECITALS:

I.

The Customer and DEC have previously entered into an Energy Service Agreement dated October 6, 2011 ("Agreement") pursuant to which DEC furnishes energy services, as therein defined, to the Customer at the Pinnacle Bank Arena and such as other buildings and facilities as are listed on Exhibit C to the Agreement.

II.

The Customer has requested that DEC provide service to an additional energy delivery point, being the new Hudl Building at 600 P Street, and DEC is willing to provide service to such additional delivery point.

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

1. The Agreement is hereby amended by adopting the revised "Exhibit C" which is attached hereto that adds 600 P Street as an energy delivery point.

2. All other terms and conditions of the agreement, including the First Addendum thereto, shall remain in full force and effect except as specifically amended herein.

IN WITNESS WHEREOF, this Second Addendum has been executed as of the date first written above.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Chair

ATTEST:

By: _____
Secretary

DISTRICT ENERGY CORPORATION

By: _____
President

ATTEST:

By: _____
Secretary/Treasurer

1240298

EXHIBIT C
(Revised per Second Addendum)

District Energy Corporation
West Haymarket Thermal Energy System
Energy Delivery Points
_____, 2015

Pursuant to the Energy Service Agreement, Addendum and Second Addendum thereto, District Energy Corporation is to provide thermal energy service(s) as defined in the Agreement to the following addresses from the West Haymarket Thermal Energy Plant located at 550 "O" Street:

Pinnacle Bank Arena
600 "R" St.
Lincoln, NE 68508

Canopy Lofts
Canopy Rd & "R" St.
Lincoln, NE 68508

Rail Yard
7th St. & "Q" St.
Lincoln, NE 68508

Hyatt Regency Hotel
Canopy Rd. & "Q" St.
Lincoln, NE 68508

Woodbury Building #1
Canopy Rd. & "P" St.
Lincoln, NE 68508

Hudl Building
600 "P" St.
Lincoln, NE 68508

WH 15-24 Introduce: 10-29-15

RESOLUTION NO. WH- _____

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

That the attached Customer Services Agreement between TDP Phase Three, LLC, and the West Haymarket Joint Public Agency for energy services to the office/retail space at 600 P Street, Lincoln, Nebraska, is hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to execute said Customer Services Agreement between TDP Phase Three, LLC, and the West Haymarket Joint Public Agency on behalf of the West Haymarket Joint Public Agency.

Adopted this _____ day of October, 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

CUSTOMER ENERGY SERVICE AGREEMENT

Between

West Haymarket Joint Public Agency

And

TDP Phase III, LLC

Energy Services to Lot 2, West Haymarket 2nd Addition, Lincoln, Nebraska

October 29, 2015

CUSTOMER ENERGY SERVICE AGREEMENT

This Customer Energy Service Agreement ("Agreement") is entered into as of this _____ day of October, 2015, by and between West Haymarket Joint Public Agency, and its successors and assigns ("JPA") and TDP Phase III, LLC, a Nebraska limited liability company, and its successors and assigns ("Customer").

WITNESSETH:

WHEREAS, the Customer desires Energy Services (herein defined) be delivered to its building to be constructed with approximately 150,000 square feet of office space and retail improvements, located on Lot 2, West Haymarket 2nd Addition, Lincoln, Lancaster County, Nebraska ("the Premises"); and

WHEREAS, District Energy Corporation, a nonprofit Nebraska corporation organized by The City of Lincoln, Nebraska and The County of Lancaster, Nebraska pursuant to (a) the Nebraska Interlocal Cooperation Act and (b) the Nebraska Nonprofit Corporation Act, and its successors and assigns ("DEC") will provide Energy Services for sale to such buildings and projects as may be authorized from time to time; and

WHEREAS, the JPA and the 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 on Lot 1, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska ("Plant Site") and distribution system equipment within public right-of-ways or easements and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other private buildings and facilities in the West Haymarket Redevelopment Area, including the Premises, with the JPA being the sole customer of DEC for thermal energy produced by the Plant Site; and

WHEREAS, the DEC will charge the JPA the following monthly charges (defined in Art. I) pursuant to the Energy Services Agreement:

Demand Charge - Facilities Financing
Demand Charge - Other
Commodity Charge; and

WHEREAS, 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 Points of Delivery to other buildings and facilities receiving heating and cooling from the Energy Services provided by the DEC to the JPA; and

WHEREAS, the Energy Services provided to the JPA is being developed in phases. The initial allocation of charges for providing Energy Services to the JPA was based upon a first phase service capacity of 845,000 sq. ft. (460,000 sq. ft. public and 385,000 sq. ft. private, including the Premises). During the first phase of Energy Services, the Demand Charge - Facilities Financing, Demand Charge - Other, and the Commodity Charge will be allocated to end users on a square foot basis, except that for the Demand Charge - Facilities Financing, the end user percentage of total cost will be split 69% public and 31% private; and

WHEREAS, the JPA has developed Rate Class 1 (set forth in Exhibit A) as a pass-through rate that enables JPA to recover its actual capital costs as well as its actual operating costs, without including any JPA or DEC profits; and

WHEREAS, the JPA and DEC have entered into an Addendum to the Energy Service Agreement ("Addendum") dated January 24, 2013 wherein DEC agrees to provide Energy Services to the Points of Delivery identified in Exhibit B attached to the Addendum, including the Premises, to read the Meter at each Point of Delivery and record such readings on a consistent monthly basis, calculate the amount to be billed to each Point of Delivery and mail monthly statements for JPA Customer Energy Services in the amounts calculated pursuant to Section 4.01 of this Agreement for each Point of Delivery to the address provided by the JPA; and

WHEREAS, in order for JPA to furnish such Customer Energy Services to the Customer, it is necessary, desirable and advisable that the Customer and JPA enter into this Agreement for such service.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

Unless the context otherwise requires, the terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

1.01 <u>DEC</u>

means District Energy Corporation acting through its duly appointed board members and agents acting within the scope of their duties and responsibilities, and its successors and assigns.

1.02 <u>Energy Services</u>

means the delivery of thermal energy by DEC to the JPA, through the generation, transmission, and distribution system and facilities operated by DEC (thermal energy

system), for the purpose of heating and cooling public and private buildings and facilities in the West Haymarket Redevelopment Area.

1.03 Customer Energy Services

means the delivery of thermal energy by JPA to the Customer through the thermal energy system for the purpose of heating and cooling the Premises.

1.04 Service Piping

means the piping connecting the DEC distribution facilities to Customer's service pipe flange.

1.05 Point of Delivery

means the point where the JPA supplies thermal energy to the Premises and which, unless otherwise agreed between the JPA and Customer, shall be the point where DEC Piping is joined to the Customer's Service Piping and DEC thermal metering is installed.

1.06 Meter

means the device or devices including all auxiliary equipment necessary to measure and register a thermal quantity (energy or demand) that is supplied by JPA to the Point of Delivery.

1.07 Facilities

means the property and thermal energy system equipment used by DEC to provide Energy Services to the JPA and the Customer.

1.08 Parallel Production

means all forms of thermal energy that could be operated by JPA or the Customer in parallel with the Facilities or Customer Energy Services. Such equipment may include, but is not limited to, heat-pumps, chillers or boilers, or geothermal loop field systems or facilities.

1.09 JPA Demand Charge - Facilities Financing

means the monthly charge the DEC will charge the JPA for DEC's Total Annual Cost of Debt Service on the Total Indebtedness.

1.10 JPA Demand Charge - Other

means the monthly charge DEC will charge the JPA to provide Energy Services to the JPA. Demand Charge - Other includes the monthly electrical demand charge that LES charges the DEC to provide power at peak demand points, and also includes a charge for operation and maintenance which is comprised of (1) the cost of operating and maintaining the Facilities (O&M), (2) administrative and general cost of managing the Facilities (A&G), and (3) the cost of debt service coverage to generate funds for future capital needs.

1.11 JPA Commodity Charge

means the monthly charge DEC will charge the JPA for energy used to produce and deliver thermal energy to the JPA.

1.12 JPA Total Charge

means the sum total of the JPA Demand Charge - Facilities Financing, the JPA Demand Charge - Other, and the JPA Commodity Charge.

1.13 Total Indebtedness

means the total cost of construction of the Facilities as incurred by DEC and payable by JPA.

1.14 Total Annual Cost of Debt Service

means principle, interest, fees, and costs of financing Total Indebtedness incurred by DEC and payable by JPA on an annual basis.

1.15 Private Sector Area

means the total square footage of buildings and structures owned by entities other than JPA or other government entities that is receiving heating and cooling from JPA.

1.16 Public Sector Area

means the total square footage of buildings and structures owned by JPA or other government entities that is receiving heating and cooling from JPA.

1.17 Private Sector Share

means the JPA determined portion of the Total Indebtedness allocated to the Private Sector Area for purposes of calculating JPA Demand Charge-Facilities Financing.

1.18 Customer Area Ratio

means the square footage of the Premises divided by the Private Sector Area.

1.19 Total Area

means the sum of the Private Sector Area and the Public Sector Area.

ARTICLE 2
AGREEMENT TERM

2.01 This Agreement shall remain in effect and binding upon the Customer and JPA and their assigns for thirty-five (35) years from the Effective Date (defined below); provided that, the Customer shall have the exclusive option to extend this Agreement for three (3) additional five (5) year terms. The Customer shall provide written notice of exercising an option not less than one year prior to expiration of the Agreement or an option term.

2.02 This Agreement shall become effective on the date of substantial completion of any floor or other portion of the Premises ("Effective Date") unless, prior to the Effective Date, another Effective Date is agreed to by both the JPA and the Customer.

2.03 In the event the building improvements located on the Premises are destroyed and not rebuilt, then the Customer may terminate this Agreement by providing sixty (60) days written notice of termination of this Agreement, where upon this Agreement shall terminate.

ARTICLE 3
SERVICE

3.01 JPA will provide Customer Energy Services to Customer and Customer will accept and use Customer Energy Services for all of Customer's heating and cooling purposes at the Premises throughout the Term specified in Article 2, subject to Section 3.02 and Section 11.02.

3.02 The parties acknowledge that the Customer and/or its tenant(s) or lender, may require or elect to have Parallel Production system(s) for redundant, back-up or supplementary heating and/or cooling system(s) and/or alternative energy source(s) to heat and/or cool the Premises and/or a tenant's space and shall be operated pursuant to Section 11.02.

3.03 JPA reserves the right to interrupt the supply of Customer Energy Services to enable DEC to make any necessary repairs or connections to its Facilities. JPA will attempt to give Customer 24 hours advance notice of such interruption.

3.04 JPA will use commercially reasonable efforts at all times to provide Customer with a regular and uninterrupted supply of Customer Energy Services throughout the year on a twenty-four-hour-a-day basis except as interruptions may be required by DEC to make any necessary repairs, upgrades, modifications or connections to its Facilities, but JPA does not warrant or guarantee uninterrupted service, and JPA shall not be liable for any special, indirect or consequential damages relating to or arising from an interruption in service. In the event of any interruption of service, both parties shall be prompt and diligent in attempting to remove and overcome the cause of the interruption, and nothing contained herein shall be construed as permitting JPA to refuse to deliver, or Customer to refuse to accept, Customer Energy Services after the cause of interruption has been removed.

3.05 The Customer agrees and acknowledges that DEC currently owns all of the Facilities and is responsible for the operation, repairs, and maintenance of such Facilities on behalf of JPA. The parties further agree and acknowledge that the DEC is the agent of the JPA with regard to delivery of the Customer Energy Services. The Customer shall contact the JPA or a designated agent regarding all issues of billing and customer service. For purposes of this Agreement, the Customer consents to allowing JPA, DEC, or any of their employees, agents or contractors on or in the Premises, to the extent necessary, and at all times that are reasonable in order to repair or maintain the Facilities.

ARTICLE 4
TOTAL CHARGE RATES AND CHARGES

4.01 Upon the Effective Date, the Customer shall pay on a monthly basis the formula rate charges calculated by JPA for all customers in Rate Class 1 based upon the Rate Class 1 formula rate charge attached hereto and marked as Exhibit A. Under no circumstances shall JPA derive a profit from the Customer. JPA reserves the right to include administrative costs and overhead expenses necessary for performing this Agreement. The formula rate charges for Rate Class 1 shall be included in the books and records of the JPA. The Customer agrees that the Appendix to Exhibit A is an illustration of the formula rate charges for Rate Class 1 and is provided for informational purposes only. The Customer further agrees that the amount of each of the JPA Charges in said Appendix is not a representation or warranty by the JPA as to the actual amount of the JPA Charges to be billed to Customer and Customer understands and acknowledges that the cost for the JPA Charges in said Appendix are only estimated budget forecasts which are not guaranteed and which are subject to change.

4.02 The JPA shall have the right to amend, modify, or change the rate schedule for Rate Class 1, subject to this Section, following forty-five (45) days' notice to the Customer and an opportunity for the Customer to contest the amendment, modification, or change at a hearing of the JPA Board of Representatives. A request for a hearing must be made within thirty (30) days of the notice of amendment, modification, or change of the rate schedule. Any amendment, modifications or changes by JPA to the rate schedule will not discriminate against the Customer and will be based on necessary adjustments to any or

all elements of the JPA Total Charge and will be based upon the actual pass-through costs without including any JPA or DEC profits.

4.03 Energy Services provided by JPA to any building or other structure belonging to a third party that begins after execution of this Agreement by both parties shall not result in an increase in any costs to the Customer and the Customer's monthly charges under this Agreement shall be recalculated pursuant to the formula established for Rate Class 1.

4.04 JPA shall not charge the Customer nor shall the Customer pay for any Demand Charge-Facilities Financing as defined in Rate Class 1 (Exhibit A) for any month in which the Customer did not use or consume any Customer Energy Services from JPA.

ARTICLE 5
DELIVERY POINT

5.01 JPA rates are based upon the supply of Energy Services to the entire Premises through a single delivery and metering point. If JPA agrees to supply Energy Service to more than one Point of Delivery at the Premises, each Point of Delivery will be considered a separate service, provided however, meter readings shall be combined for billing purposes. Equipment which can transfer load between separately metered Energy Services may be allowed with the consent of the JPA.

5.02 The location of the connection point on the Premises between DEC's system and the Customer's system shall be agreed upon by the JPA and Customer and must be approved by DEC.

ARTICLE 6
PAYMENT AND BILLING

6.01 Charges for Customer Energy Services shall be calculated monthly in accordance with Article 4 above.

6.02 JPA shall be paid monthly for Customer Energy Services made available to the Customer. Payment is due and payable at the accounting office of JPA at 555 S. 10th Street, Suite 103, Lincoln, NE 68508 upon the Customer's receipt of the monthly billing statement and is delinquent if not paid to JPA within thirty (30) days from the date the invoice is placed with the United States Postal Service or delivered to the Customer in any other manner. Billing statements for the Premises Point of Delivery shall be sent to TDP Phase III, LLC,_____, unless the Customer provides a different party or address. Any overdue balance is subject to a late charge of one percent per month.

6.03 Termination of Customer Energy Services may occur for nonpayment of an undisputed bill over sixty (60) days in arrears. JPA will provide written notice of delinquency status and termination thirty (30) days prior to termination of Customer Energy Services.

6.04 JPA may disconnect the Customer Energy Service to the Premises for the following causes:

a. Without notice in the event of a condition determined by JPA or DEC to be hazardous or unsafe to the general public or any part of the thermal energy system.

b. Without notice in the event of JPA or DEC determining that Customer equipment is being used in such a manner as to adversely affect the Facilities or Energy Services to the JPA.

c. Without notice in the event of any unapproved Parallel Production installations by the Customer.

d. Without notice in the event of a violation of the provisions of Article 12 of this Agreement.

e. Upon 30 days' written notice in the event of any other violation or noncompliance with this Agreement, except as set forth in Section 6.03.

f. Upon 30 days' notice for failure of the Customer to provide and maintain unobstructed access to the Facilities by JPA or DEC.

6.05 JPA may terminate the Customer Energy Service to the Premises for the causes in Section 6.04(e) and (f) after providing the Customer written notice and such failure continues for more than thirty (30) days after written notice thereof from JPA unless such failure cannot reasonably be cured within such thirty (30) day period and Tenant shall within such period commence and diligently pursue the curing of such failure.

6.06 In the event this Agreement is terminated under any provision of Article 6 herein, the JPA reserves the right to seek damages from Customer to compensate JPA for all actual losses, costs, expenses and damages, but not indirect, special, incidental or consequential damages, suffered by JPA as a result of Customer's breach of this Agreement.

6.07 Upon termination of this Agreement under this Article 6, JPA and DEC shall have the right to enter the Premises and remove all of DEC's equipment including, without limitation, all meters installed therein.

6.08 If the Premises is reconnected after disconnection, JPA may include a reconnection charge covering the cost of restoring Customer Energy Services including labor, material and equipment billed to the JPA by the DEC.

6.09 If the Customer questions the accuracy of the calculations of any monthly statement for Customer Energy Services, it shall be deemed to be a disputed bill. The Customer must present the disputed points in writing within thirty (30) days to avoid termination for

nonpayment pursuant to Section 6.03. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made not less than ten (10) days prior to the next meeting of the JPA Board of Representatives.

6.10 DEC's standard rules and regulations for providing Energy Services to the JPA as in effect during the Term of this Agreement and as may be amended shall be applicable to the provision of Customer Energy Services under this Agreement and are incorporated herein by this reference. JPA, will provide the Customer a copy of the DEC's standard rules and regulations, including any amendments thereto. If there is a dispute regarding the DEC's standard rules and regulations, the Customer must present the disputed points in writing within thirty (30) days. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made within ten (10) days of receipt of JPA's written response.

6.11 The Customer shall be responsible for payment of all applicable taxes due as a result of the service provided under this Agreement. The JPA shall include such taxes in the billing statement.

ARTICLE 7
SERVICE INSTALLATION

7.01 Prior to connection of the Premises to the Facilities, the Customer's piping and other equipment and controls must conform to DEC requirements or such other requirements of applicable governmental authorities or local utilities. It is the Customer's responsibility to obtain from applicable governmental authorities or local utilities, all information needed for the Customer's design of the Customer's heating and cooling equipment including but not limited to all required mechanical and control equipment, and the maximum pressure, flow and temperature available at the Point of Delivery.

7.02 The location of the Service Piping and Meters shall be determined by JPA in coordination with the Customer. Any piping installed without first determining the Point of Delivery shall be brought into conformance by the Customer upon notification by JPA or DEC. It is the Customer's responsibility to provide and maintain unobstructed access to the Meters for JPA. JPA, at its expense, (i) will cause the DEC to extend the Facilities under an Access Easement abutting the Premises' Point of Delivery, including causing DEC to make the service tap connection, to the Premises 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 Premises, 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 Customer.

7.03 JPA has obtained and will continue to have the necessary fee title or easements for the Facilities to provide Customer Energy Services to the Premises during the Term of this Agreement.

7.04 JPA will authorize the connection of Service Piping as soon as practical after final inspection by the appropriate authority(s) and DEC.

7.05 The Customer shall notify JPA and DEC of any expected changes in Customer Energy Services which requires delivery of thermal energy for heating or cooling purposes at a level which exceeds 120% of the Customer's prior maximum level of thermal energy delivered for heating or cooling purposes. Such notice shall be given at least twelve (12) months prior to the expected change.

7.06 The Customer shall provide any devices necessary to protect the Customer's equipment from loss or damage due to disturbances in Customer Energy Services. It is expressly understood that the JPA has no liability for any such loss or damage and Customer shall bear the risk of all such loss or damage.

7.07 The Customer shall provide unrestricted access to a location on the JPA side of the Point of Delivery for the installation, maintenance and operation of DEC operated cutoff valves and thermal energy metering equipment.

ARTICLE 8
METERING

8.01 The JPA shall cause DEC to furnish all Meters required to measure the Customer Energy Services supplied, and to keep such Meters accurate within the limits specified in 8.02.

8.02 Either party at its own cost and expense may, at any reasonable time, request that any Meter used for billing purposes installed pursuant to the Agreement be tested by DEC. If a Meter is found to violate tolerances set by equipment manufacturer's specifications or to be otherwise defective, the JPA shall cause the Meter to be repaired or replaced by DEC and at no cost to the Customer. Customer shall be afforded an opportunity to have its representative present during all testing which has been requested by the Customer.

8.03 If any test of the Meters discloses inaccuracy in excess of the equipment manufacturer's specifications, the Customer's billing statement shall be adjusted for:

a. If the period can be determined, the actual period during which inaccurate measurements were made;

b. If the period cannot be determined, the adjustments shall be made for the previous month or from the date of the latest test (if within the previous month) and for the elapsed period in the month during with the test was made. Overpayment shall be refunded to the Customer.

8.04 Should any Meter at any time fail to register or should the registration thereof be so erratic as to be meaningless, the amounts of Customer Energy Services provided shall be determined from the best data available.

ARTICLE 9
CONSTRUCTION AND GRADE CHANGES

9.01 The Customer shall be liable to JPA for (i) all costs incurred in the relocation and repair of Facilities necessitated by construction work or grade changes on the Premises or (ii) the Customer Area Ratio as defined in herein required by other changes to the Energy Services or circumstances beyond the control of JPA and/or DEC.

ARTICLE 10
SYSTEM DISTURBANCES

10.01 Customer will install corrective equipment, to be approved by DEC and meeting the specifications of local utilities, if DEC has reasonably determined the operation of the Customer's equipment would result in a violation of DEC's standard rules and regulations for providing Energy Services to the JPA.

10.02 The Customer will protect DEC's distribution systems from accidental or intermittent contamination from the Premises. No mixing of DEC thermal energy water and Customer potable water shall be permitted or tolerated by the Customer. DEC will not supply either hot or cold potable water for consumption by Customer.

10.03 The Customer shall be responsible for the isolation of Customer's potable water system from possible contamination contained from DEC's distribution system equipment.

ARTICLE 11
CUSTOMER PARALLEL OPERATION

11.01 The Customer shall only be allowed to interconnect thermal production equipment with the Facilities upon meeting written DEC's Parallel Production requirements which shall be part of DEC's standard rules and regulations for providing Energy Services to the JPA.

11.02 A Parallel Production system(s) may be installed and operated by the Customer or tenant of the Customer in circumstances when: (a) the JPA cannot or is not supplying sufficient amounts of Customer Energy Services for any reason other than those set forth in Sections 6.03 and 6.04; (b) the Customer has heating and cooling needs in excess of the capacity of the Customer Energy Services; (c) when the Customer or a tenant of the Customer is experimenting or operating a different heating and cooling technology than the steam and chilled water supplied by the Customer Energy Services supplied by the JPA; or (d) certain uses or situations on or in the Premises that require a substantially

different cooling or heating requirement(s) than can be provided by JPA through the Customer Energy Services.

In the event that JPA cannot or is not supplying heating and cooling for any reason other than set forth in Sections 6.03 and 6.04, or is not due to (b) or (c) above, then the Customer may immediately begin operating a Parallel Production system(s). When Customer Energy Services are restored by JPA under (a) above, then the Customer shall cease operation of the Parallel Production system(s) unless (b), (c) or (d) above applies.

In the event the Customer anticipates that the Premises will need additional heating or cooling that may exceed the capacity of the Customer Energy Services under (b) above, then the Customer shall consult with JPA and DEC before operating any Parallel Production system(s). If the JPA and DEC can reasonably supply the needed heating and cooling, within the time reasonably needed by the Customer, then the Customer shall accept such Customer Energy Services from JPA as long as the Rate Class 1 formula is not increased. If the JPA and DEC cannot supply all necessary heating and cooling for the Premises, then the Customer shall accept and pay for the maximum amount of heating and cooling that can be supplied by the JPA and DEC and the Customer shall be permitted to supplement the heating and cooling with its Parallel Production System(s).

In the event the Customer or a tenant of the Customer seeks to experiment or operate a new heating and cooling technology on the Premises under (c) above, then the Customer or Customer and tenant shall consult with JPA and DEC before beginning any experiment or operation of the new technology that affects the heating and cooling system of the Premises. For purposes of experimentation or operation, the Customer may request a reduction in the amount of heating and cooling needed for the Premises during such experiment or operation. The Customer shall also be responsible for insuring that any such new heating and cooling technology complies with all applicable state and local statutes, codes, and rules for development or operation of heating and cooling equipment and facilities. If (c) above applies, then JPA may resume supply of Customer Energy Services on a date and time that the JPA and Customer or the tenant of the Customer may agree upon. The Customer agrees to indemnify and hold the JPA and DEC harmless from any direct damages to the operation, maintenance, repair to the Customer Energy Service, resulting from the negligent design, construction, installation, operation, maintenance, repair, or removal of any heating and cooling system owned or operated by the Customer or a tenant of the Customer.

ARTICLE 12
ASSIGNMENT AND SUCCESSORS

12.01 The Premises and Plant Site shall hereafter be held, transferred, sold, leased, conveyed and occupied, subject to this Agreement and shall inure to the benefit of, shall run with the land, an shall be binding upon the Premises and Plant Site (hereinafter referred to individually as a "Parcel" and collectively as the "Parcels") and each of which shall apply to and bind the heirs, assignees and successors in interest of each and every owner of a Parcel or Parcels. The provisions of this Agreement shall be binding upon the parties and their successors and assigns; provided, however, that the obligations of the parties pursuant to this Agreement shall be binding upon such party and its successors and assigns only during their respective periods of ownership.

12.02 Subject to Section 12.01, this Agreement shall not otherwise be assigned in whole or in part by either party without the prior written approval of the other party.

ARTICLE 13
INDEMNIFICATION

13.01 The Customer shall, to the extent necessary and as permitted by law, indemnify and hold JPA and DEC and their elected representatives, directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of the Customer or caused by the breach of any of the representations, warranties or covenants of the Customer herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall the Customer and its manager, members, directors, officers, employees, contractors, or agents, be liable to the JPA and DEC for any indirect, special, incidental or consequential damages.

13.02 The JPA shall, to the extent necessary and as permitted by law, indemnify and hold the Customer and its manager, members, directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of JPA or caused by the breach of any of the representations, warranties or covenants of the JPA herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall JPA and its directors, officers, employees, contractors, or agents, be liable to the Customer for any indirect, special, incidental or consequential damages. Nothing herein shall be construed to constitute a waiver of sovereign immunity to the extent applicable.

ARTICLE 14
NOTICES

14.01 Except as otherwise provided herein, any notices or communications permitted or required herein shall be deemed given where sent in writing by first class mail with sufficient postage affixed thereto to the following addresses of the parties. Notice shall be deemed to be given 3 days following the date such notice is delivered to the United States Postal System or upon the date of actual delivery to the Party if another delivery system is used.

a. If to the JPA: 555 S. 10th Street
Suite 300
Lincoln, Nebraska 68508

b. If to Customer: : TDP Phase III, LLC
Attn: _____
_____
_____

With a copy to: _____
Attn: _____
_____
_____

ARTICLE 15
ENTIRETY

15.01 This Agreement is intended by the parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Notwithstanding any indication to the contrary in this Agreement, Customer acknowledges that DEC is not a party to this Agreement and that Customer's sole rights and remedies with respect to the matters contained and described in this Agreement are against the JPA and not DEC. All prior written or oral understanding, offers or other communications of every kind pertaining to the sale of Customer Energy Services to the Customer by JPA are hereby superseded and replaced.

ARTICLE 16
FORCE MAJEURE

16.01 If JPA shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through strikes, lightning, rain, wind, riots, fire, flood, invasion, insurrection, civil commotion, accident, equipment failures, the order of any court, judge or civil authority, war, any act of God, the public enemy, or any other similar

cause reasonably beyond its exclusive control and not attributable to its neglect, then in any such event, JPA shall be excused from whatever performance is prevented by such event to the extent so prevented, and JPA shall not be liable for any damage or loss resulting there from.

ARTICLE 17
ADDITIONAL PROVISIONS

17.01 Pursuant to Section 3.01 of the Energy Service Agreement, JPA warrants and represents the following:

a. DEC and JPA have determined that there will be, during the term of this Agreement, availability of Energy Services and Facilities to provide Customer Energy Services to the Premises.

b. DEC has advised JPA of the available capacity, pressure and temperature for Energy Services and JPA will cause DEC to provide the available capacity, pressure and temperature for Customer Energy Services to the Customer or Customer's design team.

17.03 It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

17.04 A Memorandum of this Agreement shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Premises and Plant Site, at the Redeveloper's expense.

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

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate politic of the State of Nebraska

ATTEST:

_____
Secretary

By: _____
Chair

TDP PHASE THREE, LLC, a Nebraska limited liability company

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

By: _____
Name Title

By:
_____
Title:_____

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of Nelnet Real Estate Ventures, Inc., a Florida corporation, Member and Authorized Signatory of TDP Phase Three, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

EXHIBIT A

RATE CLASS 1

DATED: APRIL 29, 2013

APPLICABILITY: This Rate Class shall be used for customers that contribute cash from any source for the use by the JPA and DEC in purchasing new plant equipment and/or infrastructure. The Customer will be placed on this rate upon the Effective Date of the Customer Service.

BILL: Invoices shall include Demand Charges-Facilities plus Demand Charge-Other plus Commodity Charge for Hot Water plus Commodity Charge for Chilled Water plus All Surcharges (if any).

BILLING PERIOD: Under normal conditions, BILLING PERIODS typically range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There will be twelve billing periods per year.

RATE: (Elements)

Demand Charge – Financing:	Set amount per Billing Period (See formula below)
Demand Charge – Other:	Variable amount per Billing Period (Pass through cost)
Commodity Charge for Chilled Water:	Variable amount per MMBTU for cooling thermal energy per Billing Period (Pass through cost)
Commodity Charge for Hot Water:	Variable amount per MMBTU for heating thermal energy per billing period (Pass through cost)
Applicable Taxes:	Variable amount based on how the taxes are calculated per billing period (Direct charge to customer or pass through cost to JPA)

Customer's Monthly Demand Charge – Facilities Financing formula shall be:

(Customer Area Ratio) x (Private Sector Share) x (Total Annual Cost of Debt Service) ÷ 12 = monthly payment.

Calculation of charge (Assumes the Premises is 168,000 SF, the Private Sector Area is 553,000 SF, the Public Sector Area is 460,000 SF, and TACDS is $1,127,687):

(Customer Area Ratio x Private Sector Share x TACDS) ÷ 12 = Monthly Payment
(.3038 x .45115 x $1,127,687.00) ÷ 12 = $12,880.00 per month

Calculation of Customer's Monthly Demand Charge – Other:

The Customer's Monthly Demand Charge-Other for each billing shall be the result of the monthly JPA Demand Charge – Other from DEC (DC-O) for the same billing period divided by the Total Area available to receive Energy Services times the total square feet of the Premises. These costs include, but are not limited to, administrative costs, insurance, labor (when necessary) and other out-of-pocket costs incurred by the JPA or DEC for the benefit of the Customer or all customers combined. There is no margin, mark-up, or profit for the JPA with these charges:

(DC-O) ÷ (Total Area) x (Total Premises Area) = Customer Demand Charge-Other
($65,504.16 ÷ 1,013,000) x 168,000 = $10,863.48 per month

Customer's Monthly Commodity Charge:

The Customer's Monthly Commodity Charge shall be the Customer's actual share of the JPA Monthly Commodity Charge based upon the meter reading at the Point of Delivery for the Premises. The Commodity Charge includes natural gas and electricity charges incurred by DEC in producing the thermal energy. There is no margin, mark-up, or profit for the JPA with these charges.

Upon request of Customer, JPA will, if practical, provide recorded energy consumption readings for the purpose of allocating Demand and Commodity Charges.

<u>MINIMUM BILL</u>: (Demand Charge – Facilities Financing) + (Demand Charge – Other) + applicable taxes. The minimum bill shall be subject to the limitations in Article 4.

SAMPLE BILLING STATEMENT

BILL: Demand Charges (Facilities Financing and Other) + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + applicable taxes; based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS will range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There are twelve billing periods per year.

RATE: (Elements)

Demand Charge – Financing:	$11,880.00 per Billing Period
Demand Charge – Other:	$10,863.48 per Billing Period
Commodity Charge for Chilled Water:	$4.00 per MMBTU for cooling thermal energy per Billing Period
Commodity Charge for Hot Water:	$7.75 per MMBTU for heating thermal energy per billing period
Applicable Taxes	$_____
TOTAL DUE:	$_____

APPENDIX TO EXHIBIT A

A. DEMAND CHARGE – FACILITIES FINANCING

Assumptions:	Square feet
TDP Phase III Premises	168,000
Other Private Sector Area	385,000
Public Sector Area	460,000
Total Area	1,013,000 Square Feet
Customer Area Ratio	168,000 ÷ 553,000 = .3038

Amount of Total Indebtedness	$ 19,500,000.00
Annual Interest Rate	4.0%
Term – Years	30
Total Annual Cost of Debt Service	$ 1,127,700.00
Private Sector Share	.45115

B. JPA DEMAND CHARGE – OTHER

Electrical Demand Charge (based upon LES Experience)	50%
O&M Demand Charge	50%

C. JPA COMMODITY CHARGE (estimated)

Estimate Chilled Water Commodity Charge	$ 128,157.00/year
Estimate Hot Water Commodity Charge	$ 210,592.00/year
TOTAL	$ 338,749.00/year,

The above JPA Demand Charge – Other and JPA Commodity Charge are estimated charges based upon budget forecasts for the 2014 operating year (first full year of DEC operation of the Facilities) using historical costs at other DEC facilities.

NEW OR EXPANDED SQUARE FOOTAGE: Any new or expanded private sector square footage greater than 553,000 square feet will result in a recalculation under the formula for Rate Class 1.