

**CITY OF LINCOLN
REDEVELOPMENT AGREEMENT**

(Aspen Heights)

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

A. The City, pursuant to Neb. Rev. Stat. §§ 18-2101 to 18-2144 (“Community Development Law”) and Neb. Rev. Stat. §§ 18-2145 to 18-2154, has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program, the City has prepared and adopted the Antelope Valley Redevelopment Plan as amended which in part provides for the Aspen Heights Redevelopment Project (“**Project**”) in an area generally bounded by “Q” Street on the north, “O” Street on the south, 17th Street on the west, and Antelope Valley Parkway on the east, including abutting public right-of-ways as shown on Exhibit “A” (collectively “**Redevelopment Area**”). The Project includes the redevelopment of a portion of three underutilized blocks with existing surface parking lots and deteriorating structures into three five-story residential buildings and a seven-story parking garage facility which includes a liner building containing townhome dwelling units on its northern face. A copy of said Redevelopment Plan, together with any and all amendments thereto (collectively “**Redevelopment Plan**”), is on file in the Office of the City Clerk of the City of Lincoln, Nebraska (“**City Clerk**”).

B. Redeveloper has submitted a redevelopment proposal to the City which involves the acquisition of properties from the following owners:

- (i) Pickering Auto is the owner of Lots 11 and 12, Block 11, Kinneys O Street Addition, Lincoln, Lancaster County, Nebraska (“Pickering Auto Property”);
- (ii) AV, LLC is the owner of Lots 1 and 2, Block 11; Lot 2, except the East Part (i.e. remaining portion of Lot 2); and Lots 3 – 6, Block 29, all in Kinneys O Street Addition, Lincoln, Lancaster County, Nebraska, and Lot 1, Hancock Addition, Lincoln, Lancaster County, Nebraska (“AV LLC Property”);
- (iii) B & J Partnership, Ltd is the owner of Lots A, B, C, and D, Mickey’s Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8 - 10, and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. # 2009-20222), Block 12, Kinneys O Street Addition, all in Lincoln, Lancaster County, Nebraska (“B & J Property”);

Redeveloper intends to implement the Project by acquiring the Pickering Auto Property, the AV LLC Property and the B & J Property (hereinafter “Redeveloper Property”) and constructing the following improvements thereon:

- 1. **“Garage”**: Construction of a seven-story private garage containing approximately 600 parking stalls (“Private Garage”);
- 2. **“Residential Housing”**: Construction of approximately 182 residential units (632 beds) contained in three five-story buildings consisting of two-, three- and four-bedroom units, plus seven townhomes in a liner building on the north side of the Private Garage along P Street (collectively “Residential Housing”);

Acquisition of the Redeveloper Property is sometimes referred to herein as the “Site Acquisition.” The Private Garage and the Residential Housing are collectively referred to as the “Private Improvements.”

C. As part of its Residential Housing, the Redeveloper is committed to promoting the use of bicycles as an alternate mode of transportation and has included bicycle facilities in each of its buildings for residential housing where its tenants can lock and store their bicycles.

Redeveloper is aware, however, that perceived comfort and safety are major factors holding back prospective cyclists and that the building of protected bikeways is one method of encouraging its tenants to bicycle. Therefore, Redeveloper is requesting that the City support its efforts by constructing the City's proposed "N" Street Cycle Track (a protected bikeway) from Arena Drive on the west to South 23rd Street on the east. Redeveloper recognizes that the City may not have sufficient funds available for the extension of the "N" Street Cycle Track as designed and, therefore, Redeveloper is requesting that the City use a portion of the available TIF Bond Proceeds to be set aside for Other City Public Improvements as provided for in Section 304 below to fund all or a portion of any shortfall in the City's revenues to construct the "N" Street Cycle Track. The Redeveloper further recognizes that the Redevelopment Area for the Aspen Heights Redevelopment Project does not include "N" Street and that in order for TIF Bond Proceeds to be utilized by the City to construct the "N" Street Cycle Track, the Redevelopment Area, at a minimum, must be expanded south along Antelope Valley Parkway to "N" Street and thence west and east to South 17th Street and South 23rd Street, respectively. The City is willing to support the Redeveloper's request that the City construct the "N" Street Cycle Track as the City believes the bikeway will make Downtown Lincoln safer and more enjoyable, not only for bikers but also for motorists and pedestrians and that construction of the "N" Street Cycle Track will connect tenants in the Redeveloper's Residential Housing to trails to the east and west, Downtown businesses, the Haymarket area, Pinnacle Bank Arena, and the University of Nebraska. In order to implement the Redeveloper's request, the City Administration will seek an amendment to the Antelope Valley Redevelopment Plan to expand the boundaries of the Aspen Height Redevelopment Project in order to include the "N" Street Cycle Tract as an eligible Other City Public Improvement.

Redeveloper has further requested the grant of easement from the City for the location of footings for the Residential Housing and Private Garage otherwise encroaching in the abutting public right-of-way as shown on Attachment "A" to the Foundation Easement and Hold Harmless Agreement ("Foundation Easement Agreement"). The City is willing to grant such Foundation Easement pursuant to the Foundation Easement and Hold Harmless Agreement as provided in Section 102 below.

D. The Site Acquisition, Site Preparation (defined below), Private Improvements, and the Redeveloper Public Improvements (defined below) are collectively known as the "**Redevelopment Project Undertakings**." The costs of the Redevelopment Project Undertakings are collectively known as the "**Redevelopment Project Costs**" and are shown on the Uses and Sources of Funds in Exhibit "B".

E. Neb. Rev. Stat. § 18-2103(12) (Reissue 2012) authorizes the City to carry out plans for the redevelopment of substandard and blighted areas in connection with redevelopment of the Redeveloper Property and to pay for the same from TIF Proceeds (as defined herein).

F. Neb. Rev. Stat. § 18-2107 (Reissue 2012) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

G. Redeveloper is willing to enter into this Agreement and through an anticipated Minimum Investment (defined below) of approximately Forty-Five Million and No/100 Dollars (\$45,000,000.00) to redevelop the Redeveloper Property by constructing the Private Improvements. The term "**Minimum Investment**" in this Agreement shall include all costs incurred by Redeveloper when constructing the Private Improvements, including but not limited to design costs, permits, impact fees, and financing costs.

H. In order to help remove blight and substandard conditions and improve conditions in this economically underutilized Redevelopment Area, the City is willing to enter into this Agreement and to make grants to the Redeveloper to be used to carry out the Redevelopment Project Undertakings. Specifically, the City is willing to assist the Redeveloper in acquiring the Redeveloper Property, performing Site Preparation, constructing the Public Enhancements, and constructing the City Public Improvements (all defined below). The Site Preparation, Public Enhancements, and City Public Improvements are collectively the **“Redeveloper Public Improvements”** and are more particularly described below:

1. **“City Public Improvements”:**

(i) City Utility Installation/Removal/Relocation. Installation of a new City sanitary sewer manhole, conversion of public sanitary sewer line to become private sanitary sewer line, and relocation of a storm sewer as generally shown on Exhibit “C-1”, which is attached hereto and incorporated herein by this reference;

(ii) Dry Utilities. Removal and relocation of an existing City of Lincoln, Nebraska d/b/a Lincoln Electric System (“LES”) overhead power line and other utility related improvements and amenities (collectively “Dry Utilities”) as generally shown on Exhibit “C-1” in the event any of the Dry Utilities are not removed and relocated at the applicable utility company’s own cost and expense.

(iii) “Streetscape Improvements.” Installation of streetscape improvements within the public right-of-way of the public streets within the Redevelopment Area as generally shown on Exhibit “C-2”, including, without limitation, off-street parking, sidewalk construction, landscaping, irrigation, benches, pedestrian decorative lighting, bike plaza, and other streetscape amenities.

2. **“Public Enhancements”**: Construction and installation of certain upgraded improvements to the Private Improvements for the greater good of the community and which exceed the requirements of City standards, regulations or codes (“Public Enhancements”) consisting of Façade Improvements and Energy Efficiency Enhancements as defined in Section 105 below.

3. **“Site Preparation”**: Removal of the existing surface parking lots, asbestos and environmental remediation, demolition of existing structures from and regrading of the Redeveloper Property to accommodate the Private Improvements.

The City and Redeveloper agree that such assistance is deemed essential to the success of the Redevelopment Project.

I. The City is willing to support the above described redevelopment of the Redevelopment Area and Redeveloper Property in accordance with the Redevelopment Project; provided that, Redeveloper is willing to restrict the use of the Redeveloper Property to certain approved uses; and further provided that, the Redeveloper is willing to agree to (i) covenants and conditions regarding compulsory maintenance and upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions; and (ii) restrict the use of the grants provided hereunder for the sole purpose of Site Acquisition and design, construction and implementation of the Redeveloper Public Improvements on behalf of the City and in the manner contractually described herein.

J. The Redevelopment Plan contains a provision dividing ad valorem property taxes upon property in the Redevelopment Area for the benefit of any public body for a period not to exceed fifteen (15) years after the effective date of such provision, as provided for in Neb. Rev.

Stat. § 18-2147, et seq. Said provision is hereinafter referred to as the “**Ad Valorem Tax Provision.**”

K. Neb. Rev. Stat. § 18-2107 and § 18-2150 (Reissue 2012) authorize the City to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan. In order to make the grant or grants to the Redeveloper, the City intends to issue a tax increment financing indebtedness instrument or instruments in tax exempt and/or taxable series (individually and collectively “**TIF Bond**”) and to incur indebtedness (“**TIF Indebtedness**”) upon the sale of the TIF Bond to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“**TIF Tax Revenues**”).

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

M. The City and Redeveloper mutually agree that the redevelopment of the Redevelopment Area and Redeveloper Property is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

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

ARTICLE I

REDEVELOPER’S AND CITY’S RESPONSIBILITIES

Section 101. Redeveloper to Provide Evidence of Financial Ability. The Redeveloper shall, no later than sixty (60) days following the execution of this Redevelopment

Agreement, provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of the Redeveloper in connection with acquisition of the Redeveloper Property and construction of the Private Improvements. To the extent allowed by law, the City agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to the Redeveloper for use in the Redevelopment Project; and shall state the amount and source of debt financing which is available, or irrevocably committed, to the Redeveloper for use in acquiring the Redeveloper Property and completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City, and evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

Section 102. City to Grant Foundation Easement. To assist Redeveloper in construction of the Residential Housing and Private Garage, City shall grant Redeveloper a permanent Foundation Easement in, on, and under abutting street and alley right-of-way for construction of the underground foundation, pursuant to the Foundation Easement and Hold Harmless Agreement, the form of which is attached hereto marked as “Exhibit D”.

Section 103. Site Acquisition. Redeveloper at its own cost and expense, subject to reimbursement as provided in Section 304 (Use of TIF Proceeds) below, shall acquire title or possession pursuant to a Ground Lease of the Redeveloper Property on or before May 1, 2015.

Section 104. Design/Construction/Installation of Private Improvements.

A. Schematic Drawings. The preliminary size, shape and location of the Private Improvements are schematically outlined on Exhibit “E” (“**Schematic Drawings**”). The Schematic Drawings except for the south and west facades of the Private Garage have been approved by the City. The south and west elevations will be redesigned to provide additional exterior screening albeit to a lesser standard than that shown for the north and east elevations. The Redeveloper shall prepare and submit revised schematic drawings of the south and west elevations to the Mayor for this approval. The approved south and west elevation schematic drawings (“Exhibit “E” Revisions”) shall be signed by the Mayor and Redeveloper and made a part of this Agreement by a written amendment hereto as Exhibit “E-1”. Exhibit “E” as revised by Exhibit “E-1” will serve as the basis for development of preliminary plans and specifications for the Private Improvements to be constructed by the Redeveloper. Redeveloper has presented the design of the Project to the City’s Urban Design Committee and received its recommendation as to approval.

B. Construction Documents.

1. Private Improvements. Based upon the Schematic Drawings as revised, the Redeveloper shall prepare or cause to be prepared, at Redeveloper’s own cost and expense, detailed final construction plans and specifications (hereinafter “**Construction Documents**”) for the Private Improvements. The Construction Documents for the Private Improvements shall be in compliance with the City of Lincoln Design Standards including, but not limited to, the Lincoln Downtown Design Standards and Design Standards for Pedestrian Circulation in Commercial and Industrial Areas and based upon the Schematic Drawings. Such Construction Documents shall include elevation views of the exterior of the Private Improvements (“**Exterior Drawings**”) and delineation of the construction materials to be used for the exterior walls of the Private

Improvements. The Construction Documents for the Private Improvements will be submitted to the City for review and approval as provide in Subsection C below.

C. City Approval of Construction Documents.

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

(ii) Approval Limitation. City review and approval of the Schematic Drawings and Construction Documents does not apply to the building permit review process and is not a substitute for nor an elimination of the requirement that the Redeveloper apply for and receive any necessary building permits for construction of the Private Improvements and Public Enhancements.

D. Construction of Private Improvements. The Redeveloper, through an anticipated Minimum Investment of Forty-Five Million and No/100 Dollars (\$45,000,000.00), shall construct the Private Improvements substantially in conformance with the Schematic Drawings and the Construction Documents. All Private Improvements shall be constructed in compliance with all applicable local, state, and federal building and construction laws and codes. Redeveloper agrees to secure and maintain all permits and licenses necessary for its use of the

Redevelopment Project including, but not limited to, necessary building permits and inspections. All Private Improvements shall have architectural or engineering features, detailing, and design elements in accordance with this Agreement and the approved Construction Plans. All accessory building walls, screening walls or fences, and canopy columns shall be in substantial conformity with the applicable City design standards.

E. Commencement/Completion of Private Improvements. Redeveloper agrees to use commercially reasonable efforts to commence construction of the Private Improvements on or before May 1, 2015, as provided in this Agreement and to complete said construction on or before August 1, 2016, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements and in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct said improvements. If requested by City, the Redeveloper shall, in addition to this promise to pay, obtain and supply the City with lien waivers obtained by Redeveloper's title insurance company responsible for construction disbursements in favor of the Redeveloper from all persons, firms, or organizations performing any work on the Private Improvements or furnishing any materials, equipment, or supplies for construction of the said improvements. In addition, the City shall be entitled to inspect at reasonable times all records of the Redeveloper or its agents regarding such lien waiver procedures.

F. Certificate of Completion. Promptly after the Redeveloper provides the City the proper documentation that all persons, firms or organizations who performed labor or furnished materials, equipment, or supplies in the prosecution of the Private Improvements has been properly paid or satisfactorily secured, the City shall upon request by the Redeveloper

cause a final inspection to be made of the of the Private Improvements. If the work has been completed according to this Agreement, the City shall execute and deliver to Redeveloper the City's acceptance of the Redeveloper's Certificate of Completion, the form of which is shown on Exhibit "F". Such certification by the City shall be a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of Redeveloper to construct the Private Improvements and the effective date of the Ad Valorem Provision for the Redevelopment Project shall be as defined in Section 716 below. If the City shall refuse or fail to provide the certification in accordance with the provisions of this Section after being requested to do so by Redeveloper, the City shall, within fifteen (15) days after written request by Redeveloper, provide Redeveloper with a written statement indicating in what respect Redeveloper has failed to complete the Private Improvements subject to such certification in accordance with the provisions of this Section 104 and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such certification. As used herein, the term "**completion**" shall mean substantial completion of the Private Improvements so that they may be reasonably used for their intended purposes but need not include the tenant finish improvements required for occupancy by such tenant.

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

Section 105. Construction/Installation of Redeveloper Public Improvements. Redeveloper, at its own cost and expense, subject to reimbursement as provided in Section 304 (Use of TIF Proceeds) below shall construct/install or cause the following Redeveloper Public Improvements to be competitively bid, installed, and constructed through the City's Purchasing

Division or in accordance with the “Redeveloper Bidding Requirements” attached hereto as Exhibit “G”:

(a) City Public Improvements.

(i) City Utility Removal/Relocation & Streetscape Improvements.

Redeveloper shall cause the City Utility Removal/Relocation and Streetscape Improvements to be designed and constructed in accordance with the City’s Standard Specifications. Final construction documents for the City Public Improvements shall be submitted to the Director of the Public Works and Utilities Department for review and approval. The City Public Utilities and the Streetscape Improvements shall be constructed through the City’s executive order construction process. Prior to May 1, 2015, the City retains the right to partially modify the Streetscape/Landscape plan, approved as part of the Schematic Drawing pursuant to Section 104 (A) above, as it relates to the approved plans for the “P” Street corridor, to comply with the unified streetscape design for the “P” Street corridor from approximately Centennial Mall on the west to Antelope Valley Parkway on the east. In such event, the City shall notify Redeveloper of the proposed modification to the Streetscape/Landscape Plan and the estimated cost of such modification. If such modification does not change the cost of the amount designated for Streetscape/Landscape by more than 10% as reflected on Exhibit “B”, the Redeveloper shall incorporate such revised “P” Street plan into its Streetscape/Landscape plan. The Redeveloper reserves the right to adjust the amount of the Fourth Priority and Fifth Priority of the TIF funds as contained in Section 304 and Exhibit “B” in order to incorporate such modification to its Streetscape/Landscape plan. If the modification to the Streetscape/Landscape Plan increases the cost of the amount designated for streetscape/landscape by more than 10% as reflected on Exhibit “B”, the Redeveloper shall incorporate such revised P Street Plan into its Streetscape/

Landscape Plan, provided that the City funds the cost in excess of the 10% increase from the City's Second Priority TIF funds or from other funds of the City.

(ii) Dry Utilities. In the event that LES does not remove and relocate its dry utility at its own cost and expense, subject to reimbursement as provided for in Section 304 (Use of TIF Proceeds) below, Redeveloper shall cause the removal and relocation of the Dry Utility.

(b) Site Preparation. The Redeveloper shall cause the Redeveloper Property to be cleared of substandard and blighted conditions by the removal of existing surface parking lots, demolition of existing buildings, and performance of site grading essential to the preparation of the Redeveloper Property for uses in accordance with the Redevelopment Plan and this Agreement.

(c) Public Enhancements. Redeveloper shall construct the following Public Enhancements:

(i) Façade Enhancements.

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

B. Private Garage Façade Enhancements consisting of façade materials and design for the Private Garage, stair towers, and associated improvements which exceed the requirements of the Downtown Design Standards.

(ii) Energy Efficiency Enhancements including, but not limited to, energy efficient roof materials, mechanical unit placements, electrical fixtures which use LED lighting, increased levels of insulation in exterior walls, and triple pane windows. Payment of TIF funds to reimburse the Redeveloper for the cost of Energy Enhancements shall occur only

after Redeveloper provides a timely certification from the project's architect or engineer to the City that Energy Enhancements have been included in the design, construction, and/or operation of the project. Such certification shall include, at a minimum, a description of the Energy Enhancements included and the amount or percentage of estimated energy savings to be realized from the energy enhancements over the reasonably anticipated life of the building compared to a similar building constructed according to minimum standards found in the existing state building code. (i.e., 2009 International Building Code (including Chapter 13 Energy Efficiency)). To the extent required by law, contracts for construction/installation of the Redeveloper Public Improvements shall be bid in accordance with City procedures.

Section 106. City Funding of Redeveloper Public Improvements. The City shall not have any obligations to fund the Redeveloper Public Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Any reimbursement shortfall resulting from costs incurred for construction of any Redeveloper Public Improvements that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder shall be borne entirely by the Redeveloper without recourse of any kind against the City.

Notwithstanding the above, to the extent that TIF Proceeds are insufficient to fully pay for the Energy Efficiency Enhancements, Redeveloper reserves the right to re-design or substitute other energy efficiency products for the Energy Efficiency Enhancements in order to meet the sources and uses of funds.

Section 107. Cost Certification. The Redeveloper shall submit authentic documentation to the City on approved forms or format for reimbursement of any expenses related to site acquisition and construction of the eligible Redevelopment Project Costs. The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for

reimbursement of eligible Redevelopment Project Costs. The City shall approve or reject the same with reasons stated, based on the review within ten (10) days of receipt of the same.

Section 108. Duty to Maintain.

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

B. Streetscape Improvements. Upon completion of the Streetscape Improvements, the Redeveloper shall have the duty and responsibility to maintain and repair the Streetscape Improvements located on or adjacent to the Redeveloper Property, at its own cost and expense and no responsibility thereof shall accrue to the City by reason of its benefits from the Streetscape Improvements pursuant to the general terms and provisions of the Streetscape Maintenance Agreement, the form of which is attached hereto as Exhibit “I”. The parties will prepare, execute and file of record the Streetscape Maintenance Agreement upon substantial completion of said improvements and as a condition precedent to the City reimbursing the Redeveloper for the cost of the Streetscape Improvements. In the event the City Council for the City of Lincoln, Nebraska adopts a Resolution of Intent to create a business improvement district that includes the maintenance of the Streetscape Improvements, then the Redeveloper agrees to and does hereby waive its right to protest the creation of the district(s), provided the work to be performed and the specific improvements proposed to be made or maintained for such districts and the method of assessment to pay the cost and expenses thereof are substantially the same as those included in the Downtown Business Improvement Maintenance District.

Section 109. City Purchase/Installation of Other City Public Improvements. The City and Redeveloper agree that the City may use a portion of available TIF Bond Proceeds as provided in Section 304 below to fund the purchase and/or installation of the N Street Cycle Track (contingent upon the City Council expanding the Redevelopment Area to include N Street from approximately South 17th Street to South 23rd Street) and such other Redevelopment Project Improvements (as defined in Section 12-2103(12) of the Community Development Law (“Other City Public Improvements”)) which the City determines to be beneficial for the elimination of substandard and blighted conditions during the TIF Period to be located within the Redevelopment Area.

ARTICLE II

SECURITY, RESTRICTIONS, AND OTHER CITY PROJECT AMENITIES

Section 201. Bonds.

A. Penal Bond – Redeveloper Public Improvements. Pursuant to *Neb. Rev. Stat.* §§ 18-2151 and 52-141, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the City Public Improvements through the City’s executive order construction process, a penal bond in the amount of the contract sum for such improvements with a corporate surety authorized to do business in the State of Nebraska. The form of the penal bond is attached hereto as Exhibit “J”.

B. Payment and Performance Bond – Private Improvements. Prior to commencing Site Preparation and construction of the Private Improvements, Redeveloper shall submit proof to the City that Redeveloper’s general contractor has furnished Redeveloper with a construction performance and construction payment bond in a sum not less than the contract sum for the Site Preparation and Private Improvements, including the contract sum for the Public Enhancements. Such bonds shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to each person, as defined in *Neb. Rev. Stat.* §49-801, that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements.

C. Disbursement Agreement. The City shall accept in lieu of the requirement in Sections 201.A and 201.B above a fully executed Disbursement Agreement in the form attached hereto as Exhibit “K” and a Redeveloper cash deposit for the purposes set forth in Section 201.A and 201.B to be held by the City in the amount of \$10,000. The cash deposit shall be refunded upon issuance of the Certificate of Completion for the Private Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

J. Any Cell Tower.

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

Section 204. Construction Administration.

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

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

Section 205. Timely Site Acquisition and Construction of Private Improvements.

Timely acquisition of the Redeveloper Property and commencement of construction of the Private Improvements shall be a condition precedent to the requirement of the City to issue TIF

Indebtedness as provided for and defined in Section 301 below and to reimburse the Redeveloper for the cost of the Redeveloper Public Improvements as provided in Sections 303 and 304 below.

Section 206. City's Option of Terminate this Agreement. In the event Redeveloper fails to timely acquire the Redeveloper Property and commence construction of the Private Improvements on or before May 1, 2015 in accordance with Section 104.E above, the City shall be entitled to terminate this Agreement.

Section 207. Condominium Regime. Redeveloper reserves the right to subject all or a portion thereof the Private Improvements to a condominium regime to facilitate the separation and financing of the Private Improvements. Redeveloper shall obtain the City's consent to the initial Declaration of Condominium Regime, which consent shall be granted if such condominium regime is consistent with the terms of this Agreement.

ARTICLE III

TAX AGREEMENT

Section 301. Issuance of TIF Indebtedness. As soon as is practicable following the commencement of construction of the Private Improvements (but no earlier than thirty (30) days) following the Commencement Date of this Agreement and as set forth in the first paragraph of this Agreement, the City shall issue TIF Indebtedness evidenced by the City's bond in the estimated amount of the tax increment to be generated on the Redevelopment Project ("**TIF Bond**") to be purchased by the Redeveloper or Redeveloper's Lender ("**TIF Bond Purchaser**") and shall receive proceeds from the sale of the TIF Bond ("**TIF Proceeds**") from the TIF Bond Purchaser to be deposited into a City fund account (the "**City Project Account**") and expended in the priority set forth in Section 304 below. Redeveloper understands and acknowledges that the TIF Bond shall specifically provide that any shortfall in anticipated TIF Tax Revenues from the Private Improvements for any reason whatsoever, specifically including a decline in taxable

valuation of the Redeveloper Property and improvements thereon, shall be borne entirely by the TIF Bond Purchaser, except as provided in Section 306.B below and in either event without recourse of any kind against the City. The City and Redeveloper agree that the City Finance Director on behalf of the City shall have the authority to determine all the other necessary and reasonable details and mechanics of the TIF Indebtedness, TIF Bond, TIF Tax Revenues, City Project Account and the grant of funds for the eligible TIF cost of the Redevelopment Project Improvements that do not materially affect the amount of the TIF Proceeds obtained by Redeveloper or Redeveloper's obligations hereunder.

Section 302. Valuation of Private Improvements. The City intends to use the Ad Valorem Tax Provision to generate approximately Seven Million and No/100 Dollars (\$7,000,000.00) which is the estimated amount of the tax increment (“**TIF Tax Revenues**”) to be derived from the increased valuation of the Redeveloper Property, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Law which will be attributable to the construction of the Private Improvements under this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property and Private Improvements thereon which does not exceed the following values, commencing on the effective date of the Ad Valorem Tax Provision and continuing for a period of not to exceed fifteen (15) years after said effective date or so long as any portion of the TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter:

Not to Protest Total	\$35,465,077.00
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Section 303. Grant of Funds from TIF Bond Proceeds. In order to support redevelopment of the Redevelopment Area and as an inducement for the Redeveloper to construct the

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

Section 304. Use of TIF Proceeds. The TIF Proceeds deposited into the City Project Account shall be expended in the following priority and in the sums described in Exhibit "B" attached hereto and incorporated herein by this reference:

FIRST PRIORITY: Reimburse the City for the cost of issuing the TIF Bond, including but not limited to bond counsel fees, City's Administrative Fee, fiscal advisory fees, placement fees, capitalized interest, and reserves and for the cost of recording the Private Garage

Foundation Easement Agreement, Façade Agreement, Streetscape Maintenance Agreement, and Memorandum of Agreement and Use Restrictions;

SECOND PRIORITY: Fund the City project account for the Other City Public Improvements in the amount of \$650,000;

THIRD PRIORITY: Reimburse Redeveloper for costs of the Façade Enhancements.

FOURTH PRIORITY: Reimburse Redeveloper for costs of the Landscaping/ Streetscaping;

FIFTH PRIORITY: Reimburse Redeveloper for costs of the City Utility and Dry Utility installation and relocation;

SIXTH PRIORITY: Reimburse Redeveloper for a portion of the Costs of Site Acquisition; and

SEVENTH PRIORITY: Reimburse Redeveloper for demolition/asbestos remediation.

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

Section 306. Tax Increment Deficiency on TIF Bond.

A. Redeveloper Purchased TIF Bond. If the Redeveloper purchases the TIF Bond, any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property and the Private Improvements located thereon shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the Redeveloper as purchaser of the TIF Bond agrees to defer payment of such deficiency or shortfall for each year that there exists a deficiency of such TIF Tax Revenues during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred plus interest (at the same interest rate of the then outstanding TIF Bond) if and when TIF Tax Revenues do become available during the TIF Period from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness and any interest that has accrued thereon shall be forgiven. In the event that any deficiency payments made by the Redeveloper as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Redeveloper agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

B. Lender Purchased TIF Bond. If Redeveloper's Lender purchases the TIF Bond, the Redeveloper shall be liable to cover any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property and any improvements located thereon. Specifically, in the event of and to the extent of any deficiency in annual TIF Tax Revenues from

the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the Redeveloper agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request from the City. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes plus interest (at the same interest rate of the then outstanding TIF Bond) to the extent TIF Tax Revenues do become available during the TIF Period from the Ad Valorem Provision to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event that any deficiency payments made by the Redeveloper as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Redeveloper agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

Section 307. Reimbursement of Grants. Subject to the notice and cure rights of Section 501 (Remedies) below, Redeveloper agrees to repay the City the grant or grants of funds as provided for in Section 304 (Use of TIF Proceeds) above in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 104.E (Timing of Construction) above and, upon such repayment of the of the grant funds, this Agreement shall be null and void in regards to the Redeveloper and the Redeveloper Property and the improvements located thereon.

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

transfer to any entity whose real property is exempt from ad valorem taxes, any transferee shall be obligated to pay in full any outstanding principal and interest balance of the TIF Bond.

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

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

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

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

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

ARTICLE IV

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 401. Definitions.

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

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

Section 402. Financing Creating Encumbrances Restricted. Prior to completion of Private Improvements, neither Redeveloper, nor any successors in interest with respect to the Redeveloper Property or any part thereof shall engage in any financing or any other transaction creating any Mortgage upon the Redeveloper Property or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to

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

Section 403. Mortgage Holder Obligations. Each Mortgage Holder who obtains title to the Redeveloper Property or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempt from those provisions of this Agreement which require construction and completion of the Private Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the Holder of the Mortgage; nor in favor of any person who subsequently obtains title to the Redeveloper Property or any part thereof from the Holder of the Mortgage;

provided, however, no person, including the Holder of a Mortgage authorized by this Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Agreement.

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

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

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

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

ARTICLE V

REMEDIES

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

Section 502. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting or prosecuting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

Section 503. Delay in Performance For Causes Beyond Control of Party ("Force Majeure"). The parties and their successors or assigns shall not be in default of their obligations

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

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

ARTICLE VI

REPRESENTATIONS OF THE REDEVELOPER AND CITY

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

Section 602. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of the Private Improvements provided for above there shall be no sale or transfer of the Redeveloper Property or assignment of Redeveloper's rights or obligations under this Agreement to any party without the prior written approval of the City

(which shall not be unreasonably withheld, conditioned, or delayed), other than Mortgages and involuntary transfers by reason of death, insolvency, or incompetence. The City shall be entitled to require, as conditions to any required approval, that:

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

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

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

D. Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion. This restriction on transfer or assignment shall not apply to the transfer of the condominium unit containing 200 parking stalls to the adjacent property owner, AV, LLC.

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

A. **Organization; Power; Good Standing.** Redeveloper is a Texas limited liability company duly organized and validly existing in good standing under the laws of Texas. Redeveloper is qualified to do business in the State of Texas and has all requisite power and

authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

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

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

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

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

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

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

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

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

ARTICLE VII

MISCELLANEOUS

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

make ministerial alterations, changes or additions to the foregoing described City Public Improvements and to this Agreement.

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

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

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

If to Redeveloper: Breckenridge Group Lincoln Nebraska, LLC
1301 S. Capital of Texas Highway
Suite B-201
Austin, TX 78746
Attn: _____

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

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

Section 703. Approval Not Unreasonably Withheld and Timely Approval. Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the

requesting party as to whether all necessary information has been received. If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

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

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

Section 706. Equal Employment Opportunity. Pursuant to requirements of Section 11.08.160 of the Lincoln Municipal Code and Neb. Rev. Stat. § 48-1122 (Reissue 2010),

Redeveloper, and its successors and transferees, agree that, during the performance of this Agreement, it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of race, religion, sex, color, national origin, ancestry, disability, age or marital status. Redeveloper further agrees to require that its contractor and subcontractors shall agree to conform to said requirements.

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

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

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

Section 710. Certain Redeveloper Public Improvements. Notwithstanding any contrary provisions herein, certain Public Enhancements will include design costs, improvements

and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Public Enhancements with the Private Improvements. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's estimates for said Public Enhancements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and appropriate, the Redeveloper shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the City in advance of incurring the same. The Redeveloper agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same.

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

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

Section 713. Purpose of Agreement. This Agreement has been entered into by the City to provide financing for the Aspen Heights Project, an approved project within the Redevelopment Plan.

Section 714. Expiration. Except for the duty to maintain the Façade Enhancements, Streetscape Improvements and the Use Restrictions as provided in Sections 107.A, 107.B and 203, respectively, applicable to the Redeveloper, its successor and permitted assigns, and as otherwise provided herein, this Redevelopment Agreement shall terminate and expire upon (i) the completion of the Private Improvements, and (ii) the expiration of the Tax Increment Provision.

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

Section 716. Effective Date of the Ad Valorem Tax Provision. At the request of the Redeveloper, the effective date of the Ad Valorem Tax Provision shall be January 1, 2016 (the year of Substantial Completion of the Private Improvements as opposed to January 1 of the year of Site Acquisition and the City will deliver written notice to the County Assessor on or before August 1, 2016 to divide the property taxes in the Project Area and use the last certified valuation for 2015 to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147(3). In consideration of the City approving the above request, Redeveloper agrees to defend, indemnify, and hold harmless the City of Lincoln against any claims, damages, losses, expenses, or challenges, including associated litigation costs and attorney fees, arising out of the establishment of the Effective Date as set forth in this Section.

Further, to the extent that this provision is deemed invalid, void, unconstitutional, or otherwise unenforceable, the Redeveloper agrees to assume any and all risk associated with such an outcome and any effect it might have on the availability of proceeds otherwise allowed for repayment of indebtedness associated with this Agreement as described in Article III of this Agreement without any recourse against the City of Lincoln.

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

- Exhibit A - Redevelopment Area
- Exhibit B - Uses and Sources of Funds
- Exhibit C-1 - City Utility Removal/Relocation
- Exhibit C-2 - Streetscape Improvements
- Exhibit D - Foundation Easement and Hold Harmless Agreement
- Exhibit E - Schematic Drawings
- Exhibit E-1 - Exhibit E Revisions (To be added later)
- Exhibit F - Certificate of Completion
- Exhibit G - Redeveloper Bidding Requirements
- Exhibit H - Façade Agreement
- Exhibit I - Streetscape Maintenance Agreement
- Exhibit J - Penal Bond
- Exhibit K - Disbursement Agreement
- Exhibit L - Memorandum of Agreement and Use Restrictions

Section 718. Purpose of Agreement. This Agreement has been entered into by the City to provide financing for the Project, an approved redevelopment project under the Nebraska Community Development Law and Neb. Rev. Stat. §§ 18-2145 to 18-2154.

[SIGNATURE PAGES FOLLOW]

Exhibit "A"
Redevelopment Area

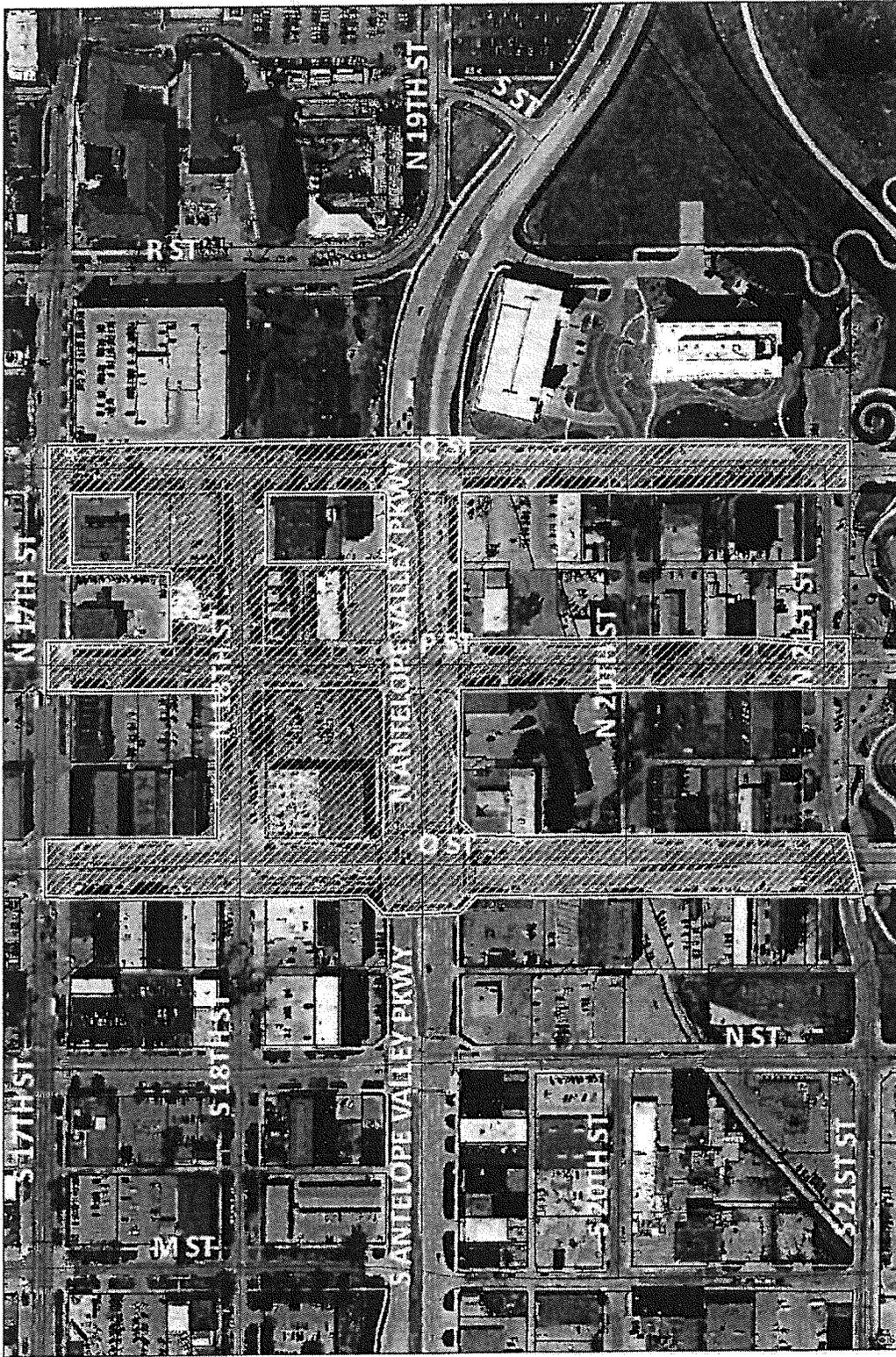


Exhibit 74P: 18th & P Multifamily Housing: Redevelopment Project Area

 18th & P Multifamily Housing Area



EXHIBIT "B"

Sources and Uses of Tax Increment Financing Proceeds

A. Sources.

- \$7,000,000.00

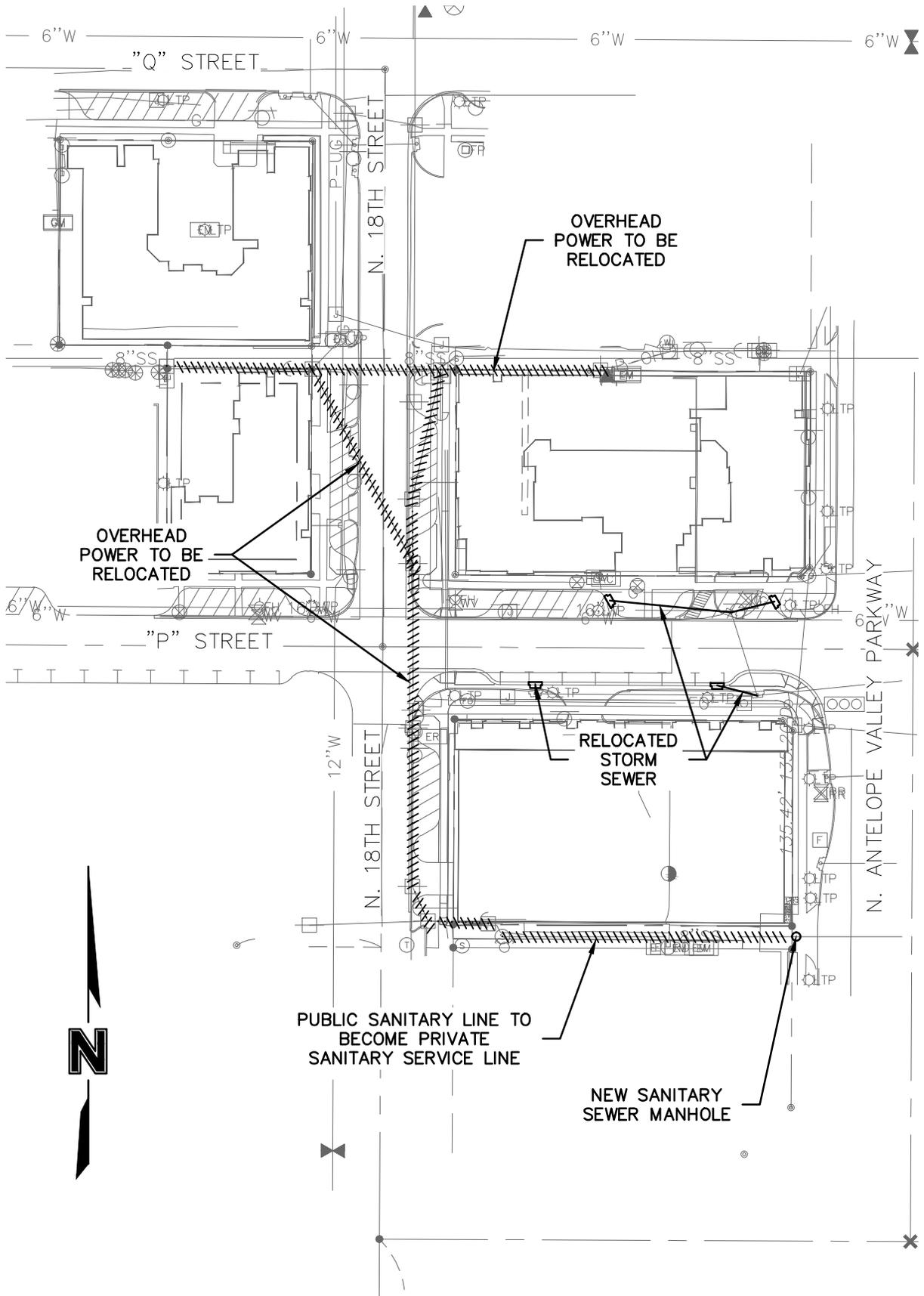
B. Uses.

1. Cost of Bond Issuance:
 - a. Counsel: \$10,000.00
 - b. Administrative Fee: \$70,000.00
 - c. Capitalized Interest: \$140,000.00Subtotal: \$220,000.00
 2. Other City Public Improvements: \$650,000.00
 3. Façade improvements above the requirements of the Downtown Design Standards for: \$660,000.00
 - a. Residential improvements: \$350,000.00
 - b. Garage improvements: \$310,000.00
 4. Landscaping and streetscaping in the public right-of-way: \$500,000.00
 5. Utility Relocation: \$220,000.00
 6. Portion of Site Acquisitions Costs: \$4,500,000.00
 - a. Pickering Auto: \$740,000.00
 - b. AV, LLC: \$2,315,000.00
 - c. B&J Partnership: \$1,445,000.00*
 7. Demolition/Asbestos Remediation: \$250,000.00
- Subtotal: \$7,000,000

Additional public benefit will be delivered through additional tax-increment financing eligible costs which will be incurred, but not funded, with TIF which includes:

- a. On-Street Parking Reconstruction: \$250,000.00
 - b. Excess Land Costs: \$1,600,000.00
 - i. Pickering Auto: \$210,000.00
 - ii. AV, LLC: \$885,000.00
 - iii. B&J Partnership: \$505,000.00
 - c. Additional Façade Improvements: \$200,000.00
- Subtotal: \$2,050,000.00

* Equal to the present value of the ground lease payments payable over a fifteen (15) year lease term discounted at an eight percent (8%) discount rate. The value of the land subject to the ground lease has been valued at \$2 M and the annual payment is thus \$160,000.



PROJECT NO: 014-0571
 DRAWN BY: JEF
 DATE: 11.13.2014

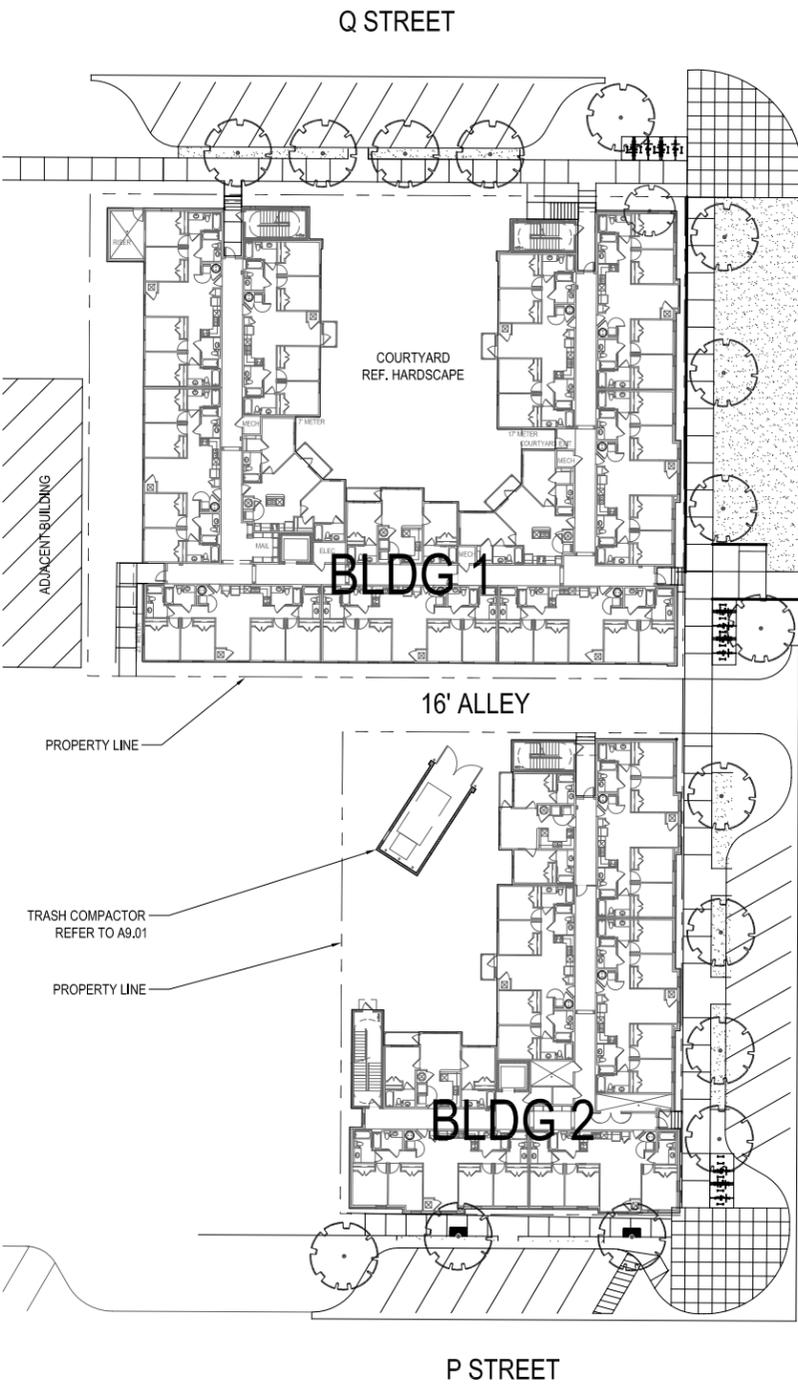
ASPEN HEIGHTS
 UTILITY REMOVAL & RELOCATION



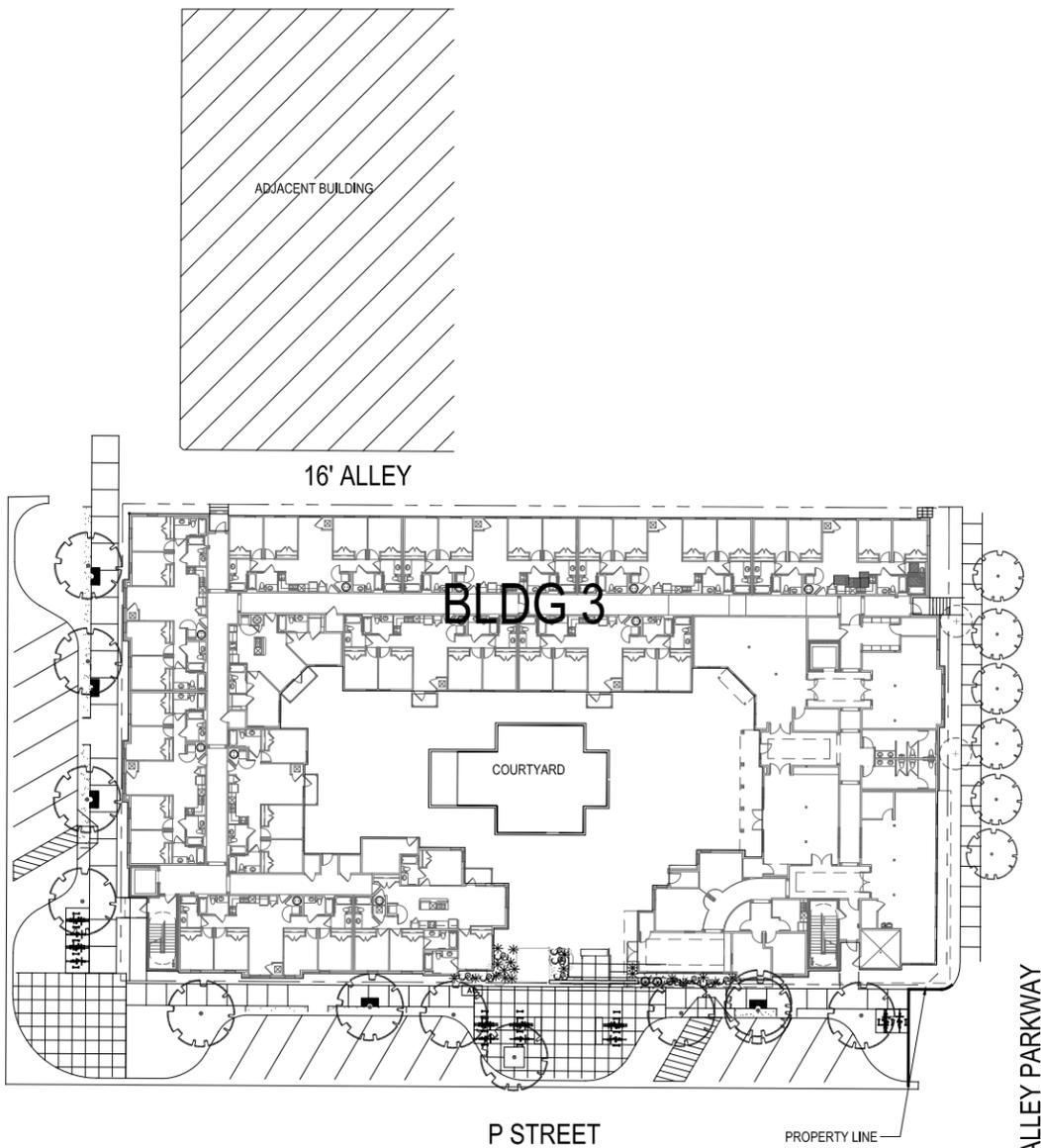
601 P Street, Suite 200
 P.O. Box 84608
 Lincoln, NE 68508
 TEL 402.474.6311
 FAX 402.474.5160

EXHIBIT
C-1

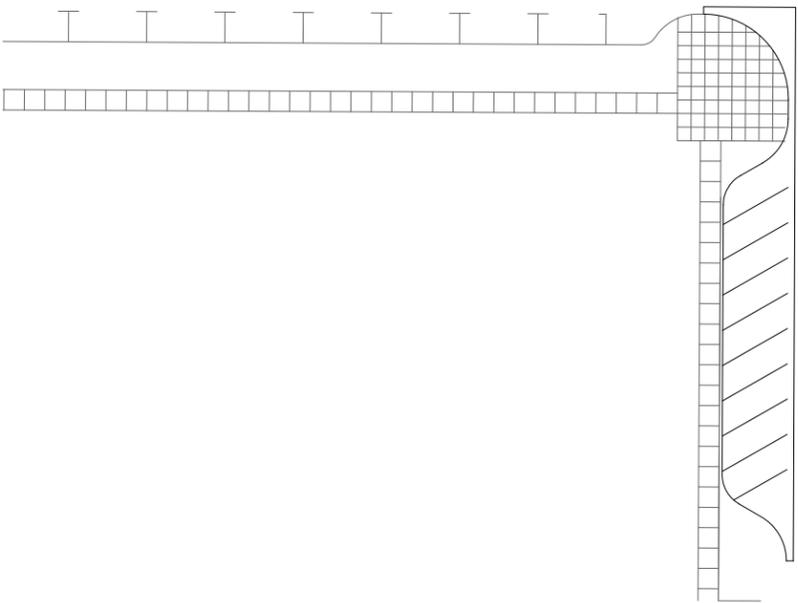
EXHIBIT "C-2"



N 18TH STREET



N 18TH STREET



N 18TH STREET

1 ARCHITECTURAL SITE PLAN
SCALE: N.T.S.



LANDSCAPE PLAN



- P Street Master Plan
- Continuous sidewalks
- Street parking
- Townhome entrances
- Multiple bike parking locations
- Secure bike parking
- Additional parking on 18th street

Exhibit “D”

FOUNDATION EASEMENT AND HOLD HARMLESS AGREEMENT

THIS FOUNDATION EASEMENT AND HOLD HARMLESS AGREEMENT (“Agreement”) is entered into by and between the **City of Lincoln, Nebraska**, a municipal corporation (“City”), and **Breckenridge Group Lincoln Nebraska, LLC**, a Texas limited liability company, (“Redeveloper”).

RECITALS

A.

Redeveloper has entered into a Redevelopment Agreement with the City to construct a mixed-use development consisting of a multi-level parking facility (“Private Garage”) along with a liner building for seven townhomes and three five-story buildings for residential housing (collectively the “Private Improvements”) to be located on the property legally described as:

- (i) Lots 11 and 12, Block 11, Kinneys O Street Addition, Lincoln, Lancaster County, Nebraska;
- (ii) Lots 1 and 2, Block 11; Lot 2, except the East Part (i.e. remaining portion of Lot 2); and Lots 3 – 6, Block 29, all in Kinneys O Street Addition, Lincoln, Lancaster County, Nebraska, and Lot 1, Hancock Addition, Lincoln, Lancaster County, Nebraska; and
- (iii) Lots A, B, C, and D, Mickey’s Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8 - 10, and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. # 2009-20222), Block 12, Kinneys O Street Addition, all in Lincoln, Lancaster County, Nebraska;

(collectively “Redeveloper Property”).

B.

In order to construct the Private Improvements, individually identified as Building 1, Building 2, Building 3, and Building 4, with zero setbacks from certain public rights-of-way as shown on the Aspen Heights Footing Exhibit attached hereto as Attachment "A", Redeveloper has requested the City to grant Redeveloper a permanent foundation easement for the construction of an underground foundation system ("Foundation") for the purpose of supporting said Buildings.

C.

The City is agreeable to granting Redeveloper the above described permanent foundation easement upon the terms and conditions below.

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

1. Grant of Easement. The City agrees to and does hereby grant Redeveloper a permanent foundation easement ("Building Foundation Easement") for Building 1, Building 2, Building 3, and Building 4 over those specific portions of the public street and alley rights-of-way abutting each Building ("Easement Area") as shown on Attachment "A" to construct, maintain and repair the Foundation of each Building below the ground surface. For example, the Aspen Heights – Footing Exhibit Building 1 (Attachment "A", page 1 of 4 pages) shows an Easement Area for Building 1 of 1.72' x 139.12' abutting North 18th Street. The Building Foundation Easement is granted in connection with and for the benefit of Redeveloper's construction and use of the Private Improvements. Redeveloper has the right of ingress and egress to (enter, exit and re-enter by vehicle or otherwise) each Easement Area at all times and in such places as may be necessary or convenient to construct, maintain and repair the applicable Foundation for such building as permitted in this Agreement. Redeveloper may temporarily use

such additional portions of the applicable right-of-way as may be reasonably required to access the Easement Area and to construct, maintain or repair the Foundation as permitted in this Agreement, provided prior written notice is given to and written approval is received from the City for any such temporary use of public right-of-way outside the Easement Area, which approval will not be unreasonably withheld.

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

(i) In the exercise of Redeveloper's rights under the Building Foundation Easement, Redeveloper is subject to any and all design, construction, or safety permits and the conditions of such permits required for the Foundation by the City, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work to construct, maintain or repair the Foundation for each Building, Redeveloper shall obtain all requisite governmental approvals and permits necessary for such work. All such work shall be completed in accordance with the governmental approvals and permits issued to Redeveloper and shall be made at Redeveloper's sole cost and expense. Redeveloper shall perform all work so as to cause no unnecessary damage or disturbance to any existing utilities located in the public right-of-way. Following completion of each Foundation, Redeveloper shall cause all debris and materials incident to such activity to be removed; fill any excavations and to the extent reasonably possible cause any damage to public right-of-way to be repaired and restored to a condition fully equal to that existing before construction operations were commenced. Such restoration work shall be performed in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Redeveloper's sole cost and expense.

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

(iii) Redeveloper shall be responsible for any damages caused to the public utilities located in the public rights-of-way. Redeveloper further agrees that if such utilities are damaged or destroyed by construction, maintenance or repair of the Foundation for any 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 to the utilities, Redeveloper shall be responsible for such reasonable increased costs. Redeveloper shall pay said increased cost to the City within thirty (30) days from the date Redeveloper receives a request from the City for payment of said costs.

(iv) The City shall not be responsible for any damages to the Redeveloper's Property or the Private Improvements, or injuries to persons resulting from a damaged public utility in the public rights-of-ways, or any subsequent repair or maintenance thereof, except for damages or injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation of each Building. Redeveloper agrees to make no claim against the City for and expressly waives all rights and claims Redeveloper may have against the City for loss or damage to the Redeveloper Property or the Private Improvements or the Redeveloper's business operations due to the loss of use thereof arising or resulting from a damaged public utility in the public rights-of-way or any other failure of such utility, except for damages or

injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation of each Building.

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

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

The City is not divesting itself of title and ownership of the rights to use and enjoy an 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 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 Areas for the Foundations to support the Private Improvements. Further, City shall have no liability for any latent, hidden, or patent defect as to the Easement Area or the City's rights-of-way adjacent thereto.

(vii) Redeveloper shall maintain in effect throughout the term of this Agreement comprehensive general liability insurance with an A rated insurance carrier, or better,

qualified to transact business in the State of Nebraska, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Easement and Agreement in an amount not less than \$2,000,000 each occurrence and \$5,000,000 aggregate. The City shall be named as an additional insured on such insurance policy.

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

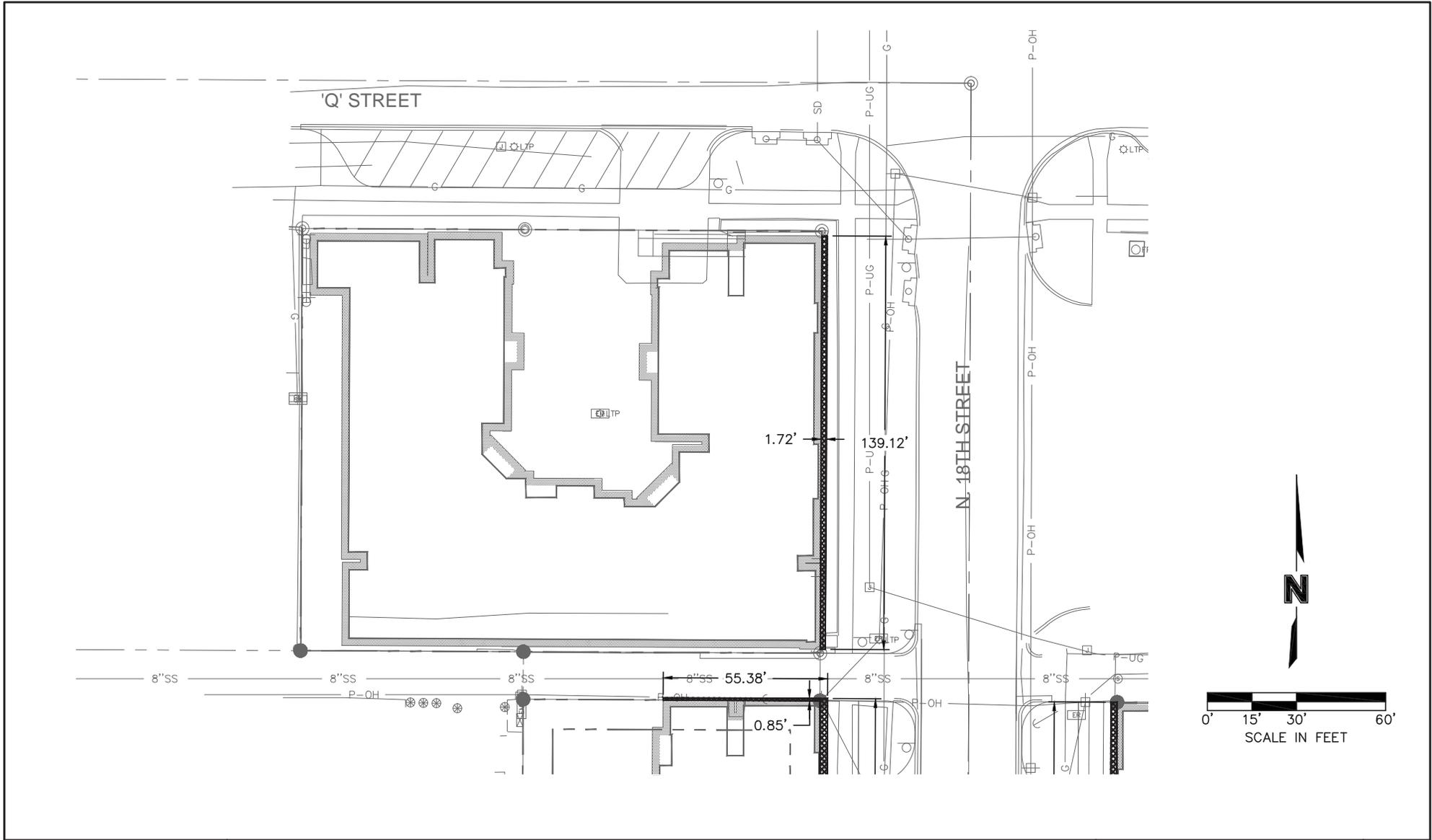
3. Covenant Running with the Land. This Agreement and the duties imposed hereunder shall run with the Redeveloper Property including the Private Improvements and the Easement Area and shall be binding and obligatory upon the parties, and their successors and assigns, and shall terminate only at such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

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

SIGNATURE PAGES TO FOLLOW

ATTACHMENT A

To Foundation Easement & Hold Harmless Agreement



PROJECT NO: 014-0571
 DRAWN BY: JEF
 DATE: 11.03.2014

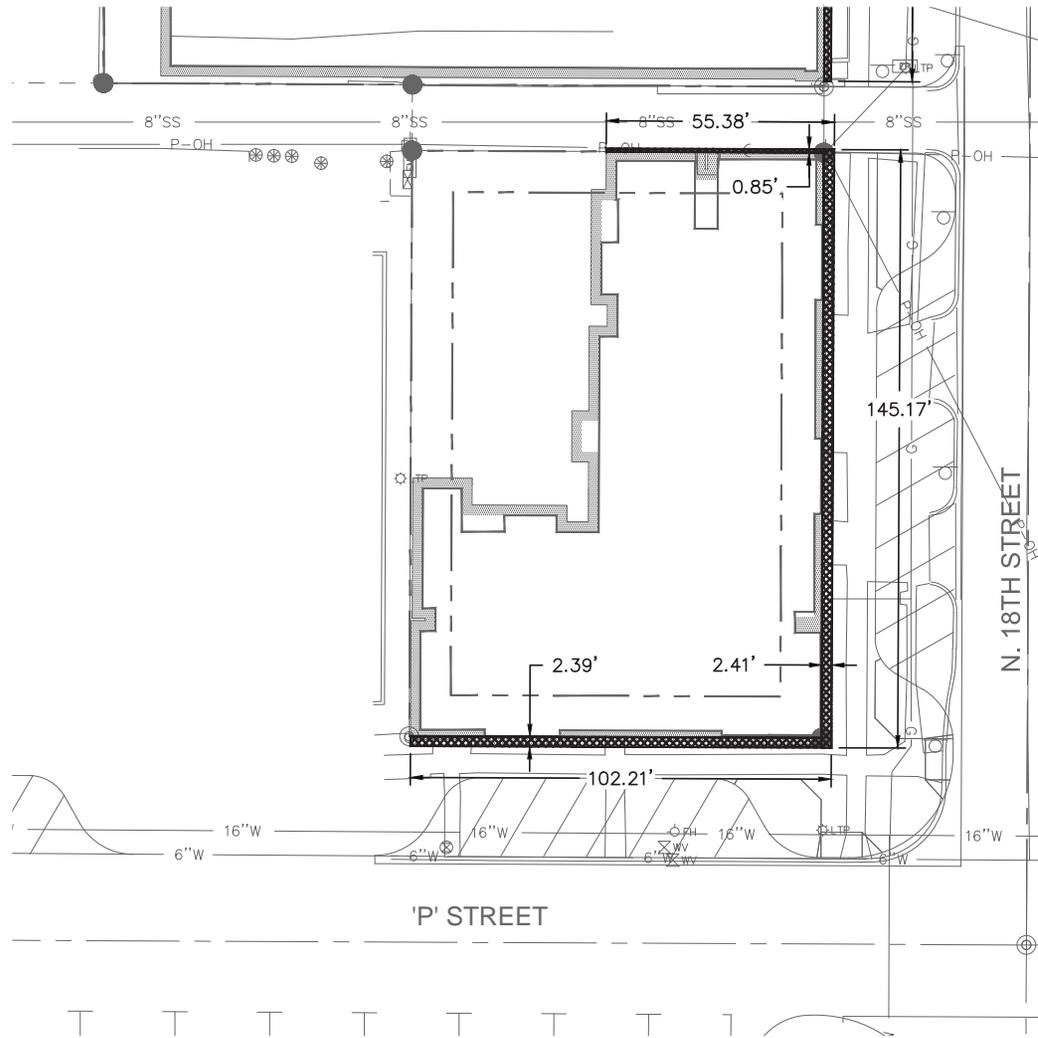
ASPEN HEIGHTS- FOOTINGS EXHIBIT BUILDING 1

MOLSSON ASSOCIATES
 601 P Street, Suite 200
 P.O. Box 84608
 Lincoln, NE 68508
 TEL 402.474.6311
 FAX 402.474.5160

EXHIBIT
 1

ATTACHMENT A

To Foundation Easement & Hold Harmless Agreement



PROJECT NO: 014-0571
 DRAWN BY: JEF
 DATE: 11.03.2014

ASPEN HEIGHTS- FOOTINGS EXHIBIT BUILDING 2

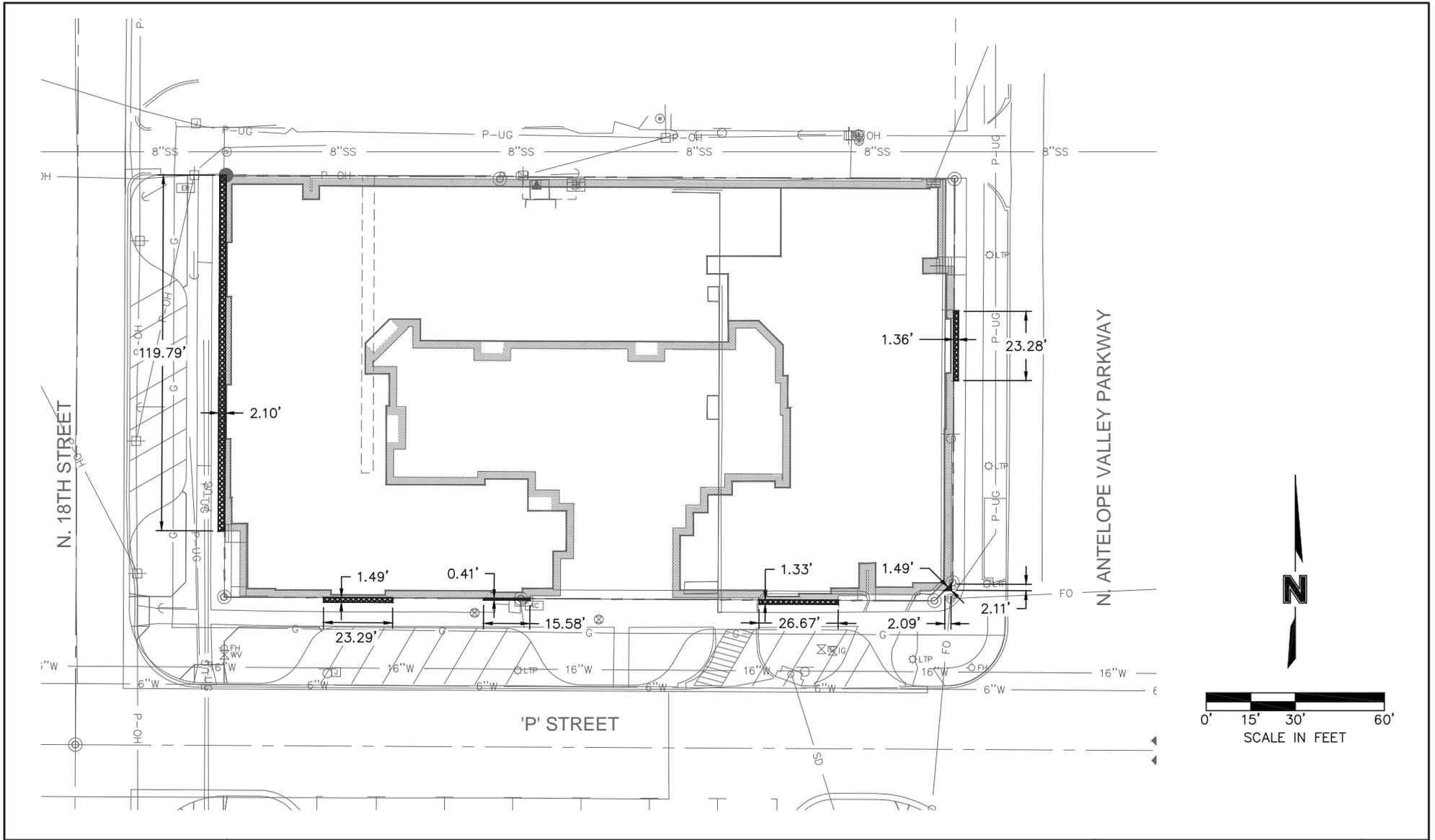
MOLSSON ASSOCIATES
 601 P Street, Suite 200
 P.O. Box 84608
 Lincoln, NE 68508
 TEL 402.474.6311
 FAX 402.474.5160

EXHIBIT

2

ATTACHMENT A

To Foundation Easement & Hold Harmless Agreement



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 DRAWN BY: JEF
 DATE: 11.03.2014

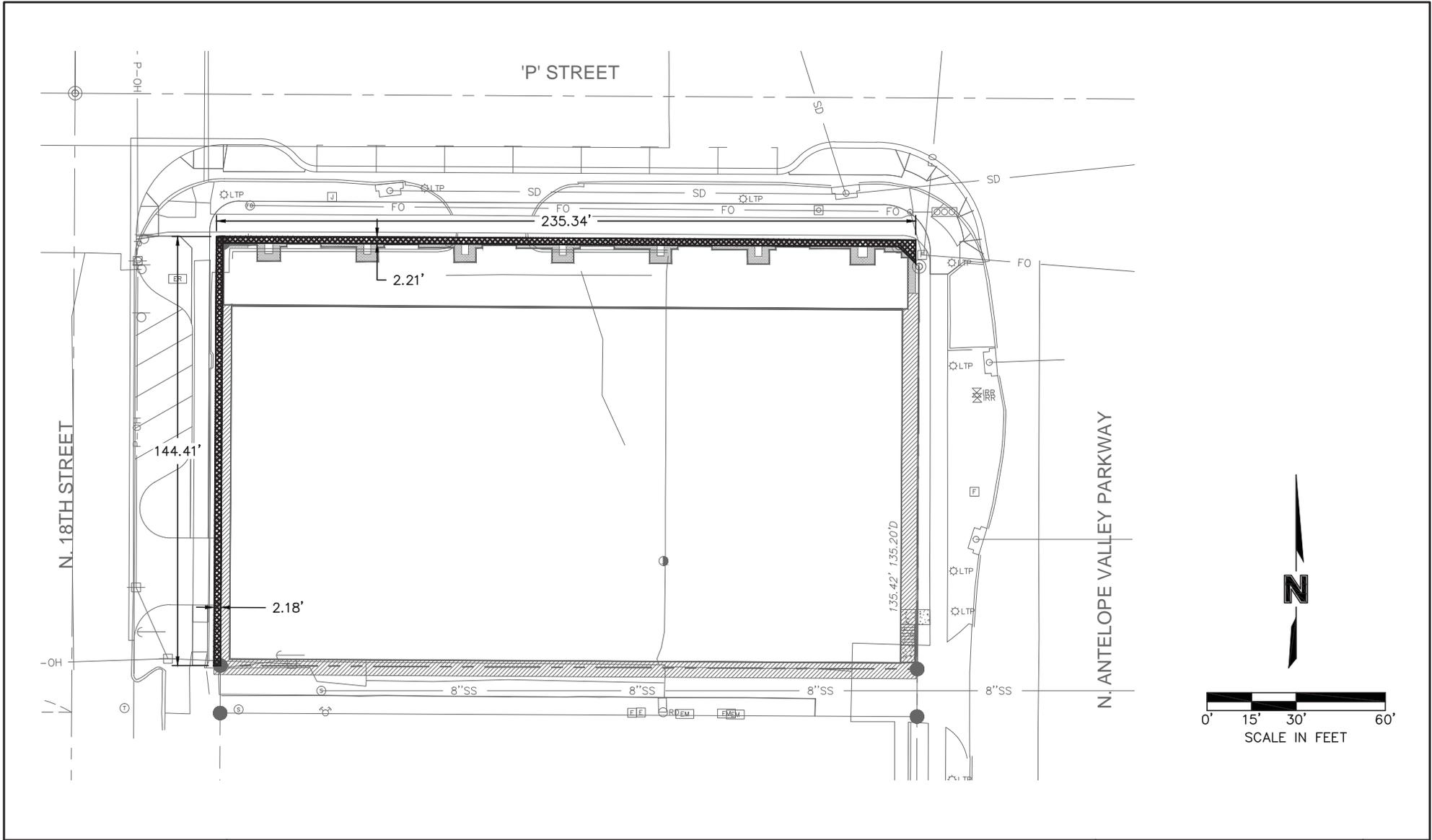
ASPEN HEIGHTS- FOOTINGS EXHIBIT BUILDING 3

MOLSSON ASSOCIATES
 601 P Street, Suite 200
 P.O. Box 84608
 Lincoln, NE 68508
 TEL 402.474.6311
 FAX 402.474.5160

EXHIBIT
3

ATTACHMENT A

To Foundation Easement & Hold Harmless Agreement



PROJECT NO: 014-0571
 DRAWN BY: JEF
 DATE: 11.03.2014

ASPEN HEIGHTS- FOOTINGS EXHIBIT BUILDING 4

MOLSSON ASSOCIATES
 601 P Street, Suite 200
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 Lincoln, NE 68508
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 FAX 402.474.5160

EXHIBIT
4

Exhibit "E" - Schematic Drawings

COLOR ELEVATIONS

18TH AND Q STREET



BLDG I NORTH ELEVATION

- Approach from Q Street
- Dog park linked to street
- Multiple entrances
- Highlight prominent corners



BLDG II EAST ELEVATION

BLDG I EAST ELEVATION

COLOR ELEVATIONS

18TH AND P STREET



BLDG II SOUTH ELEVATION



BLDG III SOUTH ELEVATION

- Clubhouse engages street
- Material variation
- Cornice variation
- Building articulation

COLOR ELEVATIONS

PARKING GARAGE AND TOWNHOMES



ANTELOPE PARKWAY ELEVATION

- Liner building/ townhomes
- Focus on east and north facades
- Continuation of materials
- Dynamic garage screening

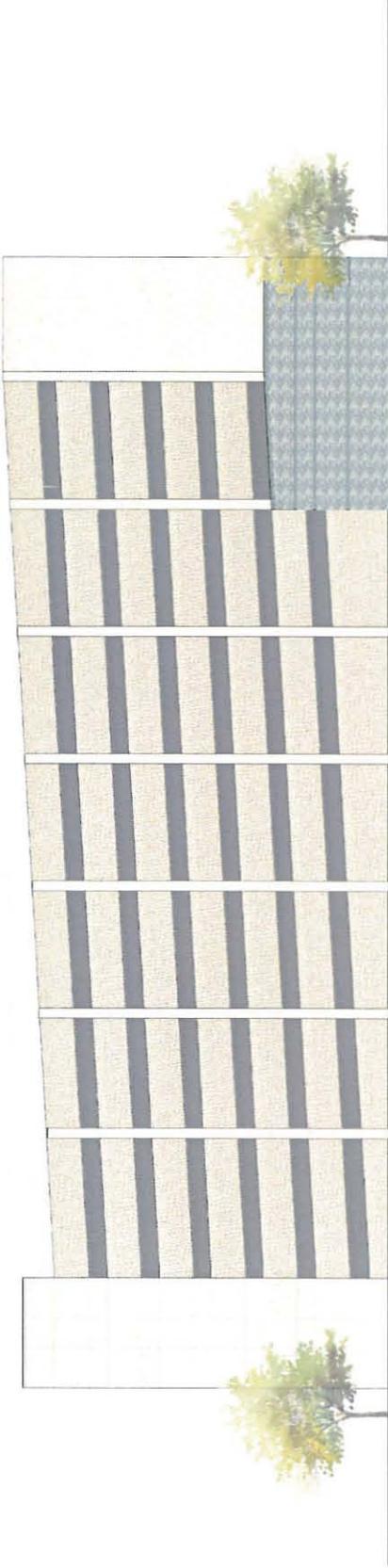


GARAGE NORTH ELEVATION



ASPEN
HEIGHTS

HUMPHREYS & PARTNERS ARCHITECTS, L.P.



GARAGE SOUTH ELEVATION



GARAGE EAST ELEVATION

SCALE: 3/32" = 1'-0" (24"x36" SHEET)



A407

18TH & P STREET
 ASPEN HEIGHTS
 LINCOLN, NEBRASKA

HPA#14017

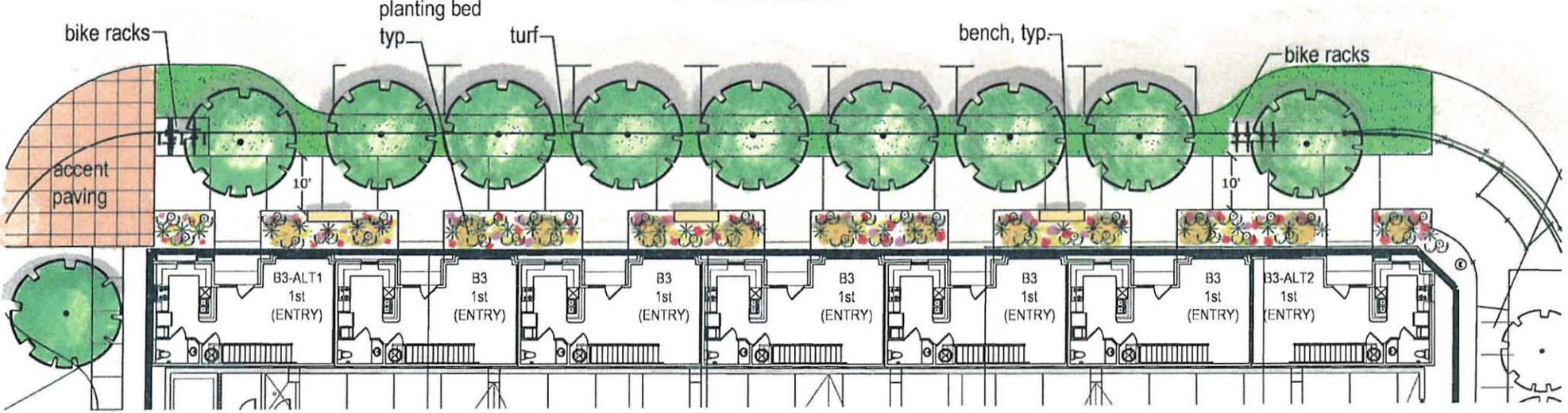
10/30/2014



HUMPHREYS & PARTNERS ARCHITECTS L.P.
 5339 Alford Road, Suite 300 Dallas, TX 75249 (972) 701-7633 (972) 701-9637
 5339 Alford Road, Suite 300 Dallas, TX 75249 (972) 701-7633 (972) 701-9637
 DALLAS NEW ORLEANS GRANDD OIRNE CHARLOTTE NORTHWEST PRODUK CHENNAI DUBAI

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P STREET



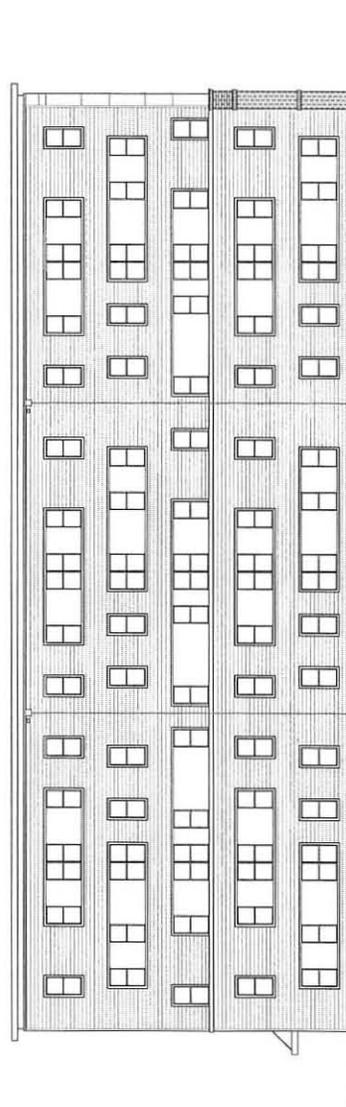
LANDSCAPE PLAN



- P Street Master Plan
- Continuous sidewalks
- Street parking
- Townhome entrances
- Multiple bike parking locations
- Secure bike parking
- Additional parking on 18th street



2 BUILDING TYPE I NORTH ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE I SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

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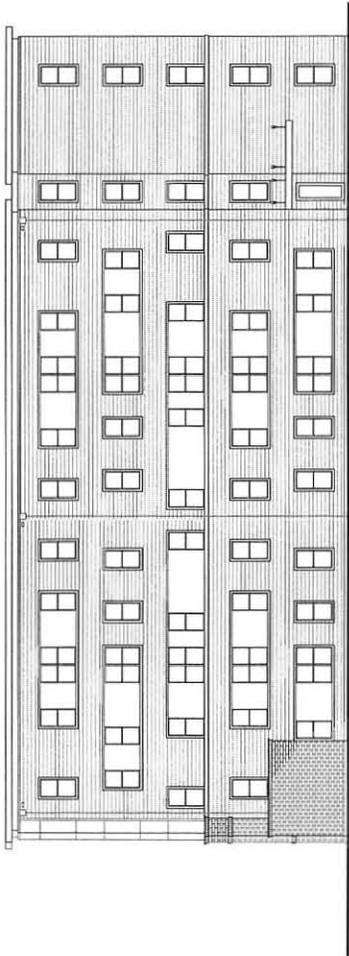
18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

11/14/2014

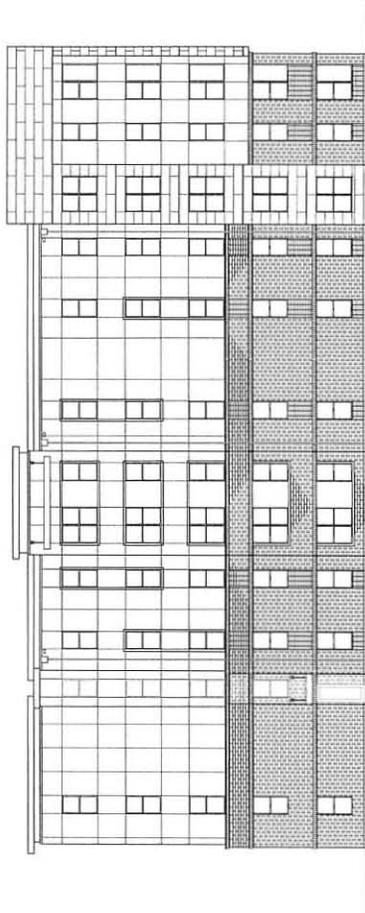
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www.humphreys.com marketing@hpa.com
DALLAS NEW ORLEANS ORLANDO IRVINE CHARLOTTE NORTHWEST PHOENIX CHENNAI DUBAI



2 BUILDING TYPE I WEST ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE I EAST ELEVATION
SCALE: 1/8" = 1'-0"

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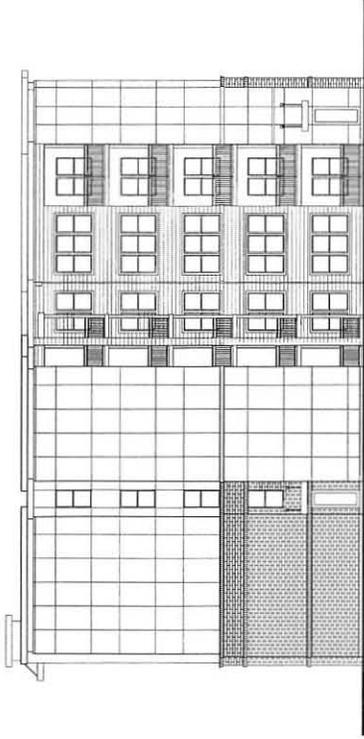
18TH & P STREET
 ASPEN HEIGHTS
 LINCOLN, NEBRASKA

11/14/2014

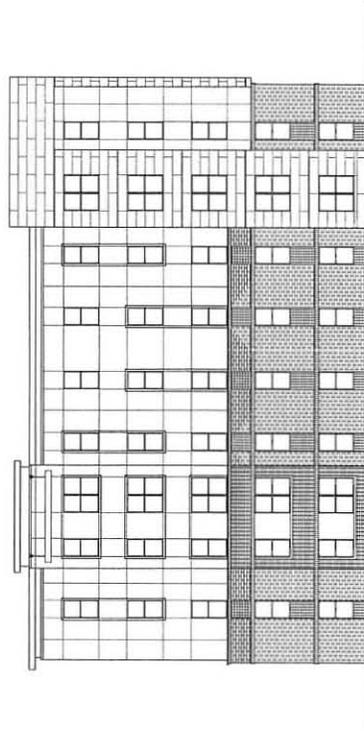
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 www.humpbreys.com marketing@humpbreys.com
 DALLAS NEW ORLEANS ORLANDO IRVINE CHARLOTTE NORTHWEST PHOENIX CHENNAI DUBAI



2 BUILDING TYPE II NORTH ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE II SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

HPA# 14017

11/14/2014

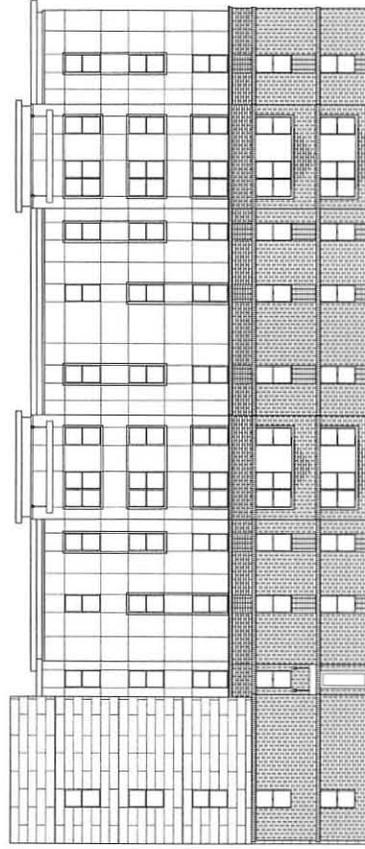
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DALLAS NEW ORLEANS ORLANDO IRVINE CHARLOTTE NORTHWEST PHOENIX CHENNAI DUBAI



2 BUILDING TYPE II WEST ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE II EAST ELEVATION
SCALE: 1/8" = 1'-0"

18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

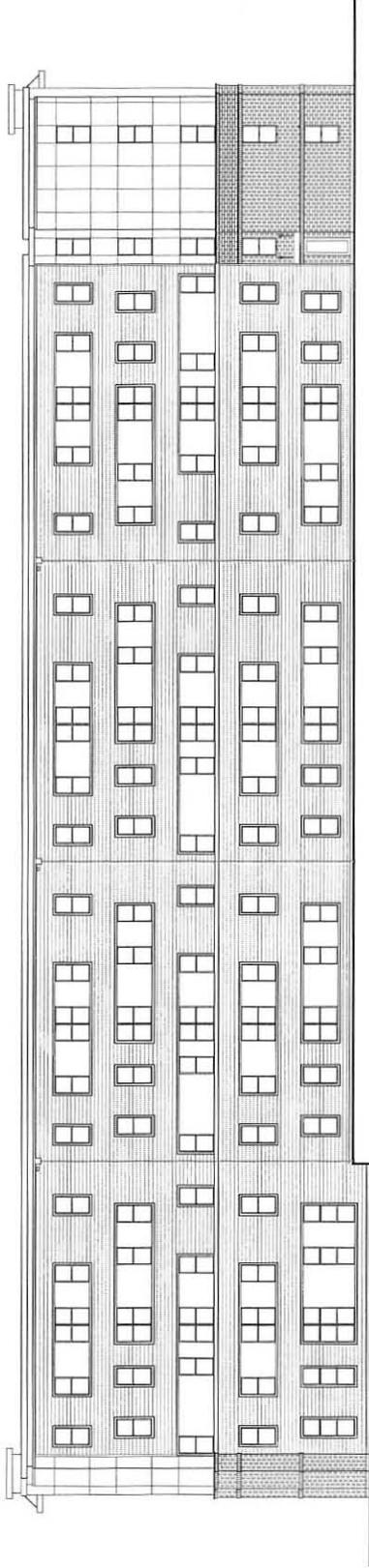
11/14/2014

HPA#14017

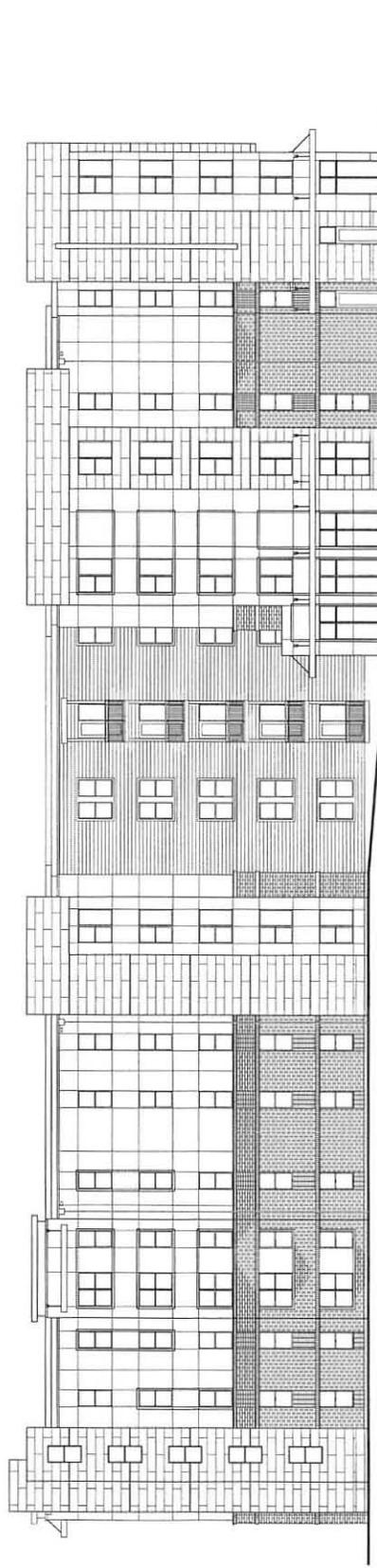


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2 BUILDING TYPE III NORTH ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE III SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

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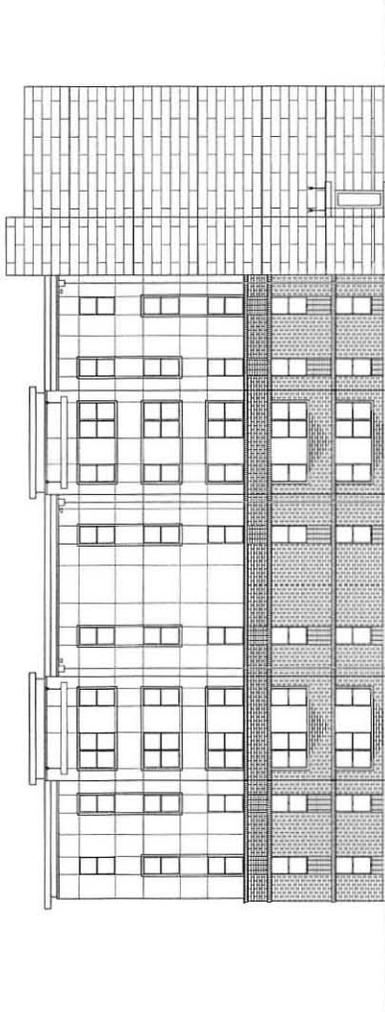
18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

11/14/2014

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2 BUILDING TYPE III WEST ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE III EAST ELEVATION
SCALE: 1/8" = 1'-0"

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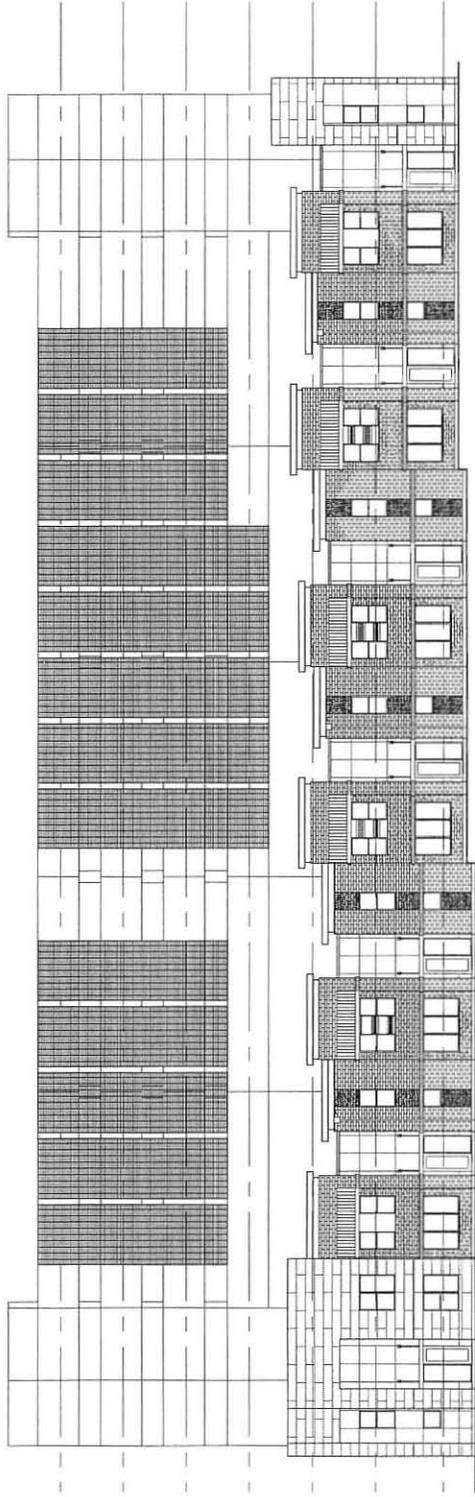
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 ASPEN HEIGHTS
 LINCOLN, NEBRASKA

11/14/2014

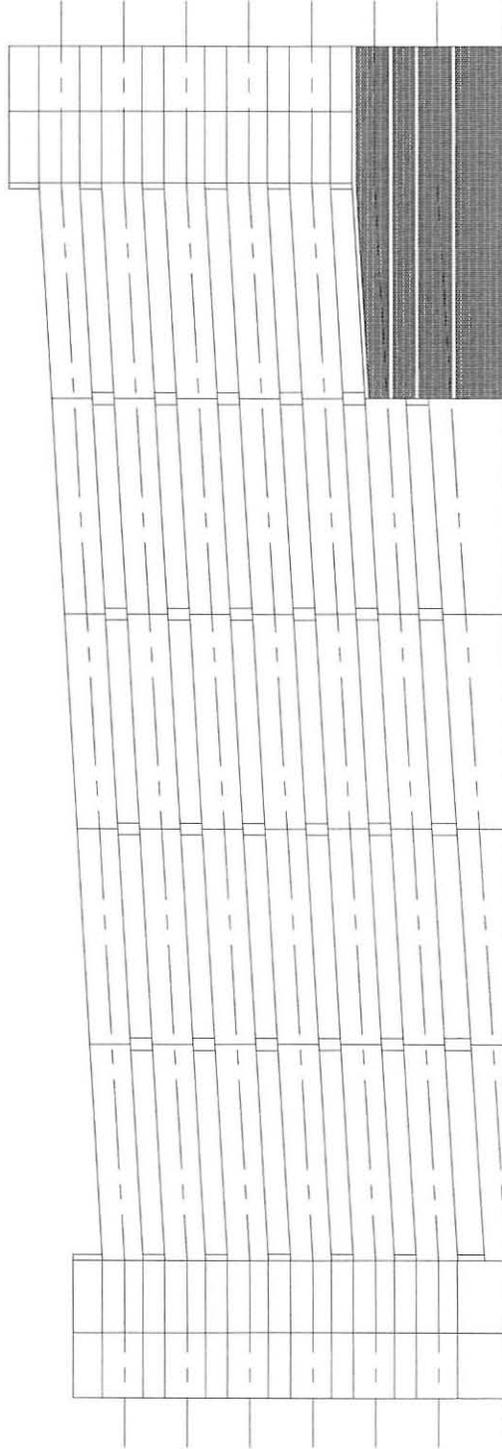
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2 BUILDING TYPE IV, NORTH ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE IV, SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

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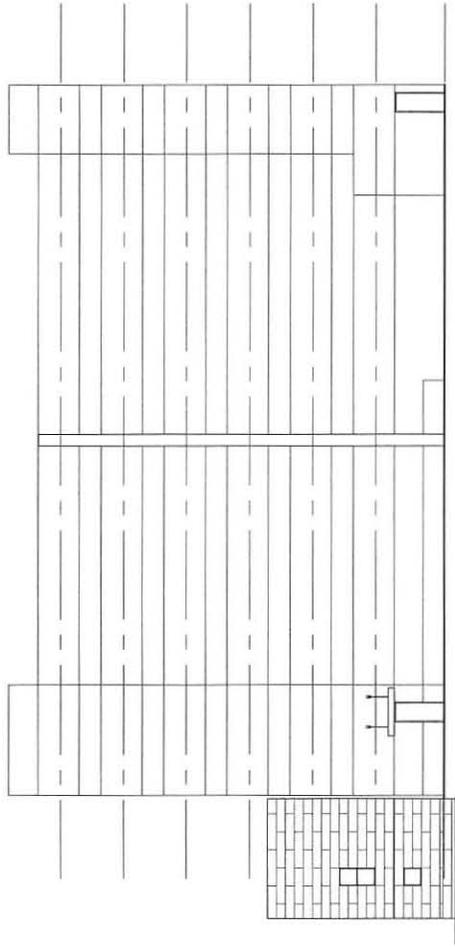
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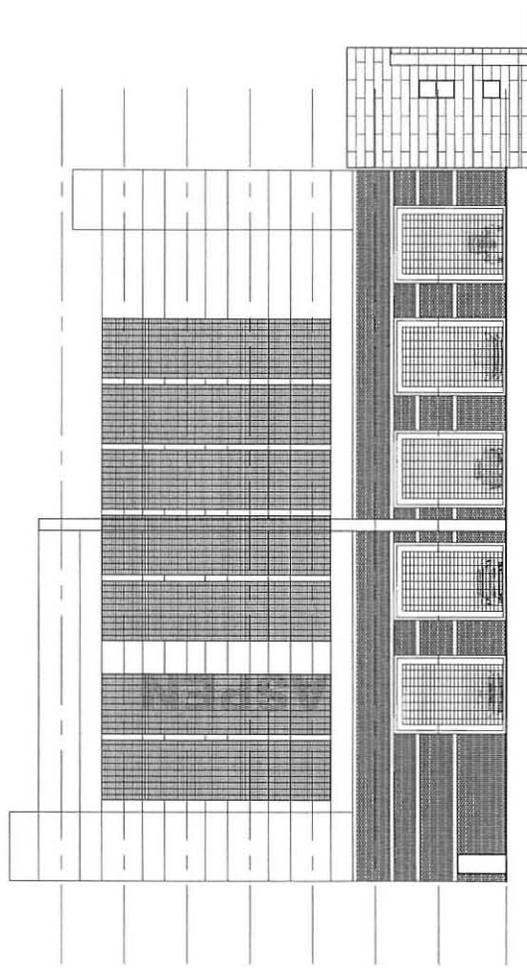
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2 BUILDING TYPE IV, WEST ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING TYPE IV, EAST ELEVATION
SCALE: 1/8" = 1'-0"

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18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

11/14/2014

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Exhibit "F"
Certificate of Completion

**CERTIFICATE OF COMPLETION OF
PRIVATE IMPROVEMENTS**

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

Lots 11 and 12, Block 11, Kinneys O Street Addition;

Lots 1 and 2, Block 11; Lot 2, except the east part (i.e., remaining portion of Lot 2) and Lots 3-6, Block 29, all in Kinneys O Street Addition; and Lot 1, Hancock Addition;

Lots A, B, C, and D, Mickey's Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8-10 and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. #2009-20222), Block 12, Kinney O Street Addition,

all in Lincoln, Lancaster County, Nebraska.

All the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT (Aspen Heights) ("**Agreement**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("**City**") and **BRECKENRIDGE GROUP LINCOLN NEBRASKA, LLC**, a Texas limited liability company, and its successors and assigns ("**Redeveloper**"), said Agreement dated as of

_____, 2014, and recorded as Instrument No. _____, in the office of the Register of Deeds for Lancaster County, Nebraska.

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

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

“City”

CITY OF LINCOLN, NEBRASKA, a municipal corporation

ATTEST:

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

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

Notary Public

“Redeveloper”

**BRECKENRIDGE GROUP LINCOLN
NEBRASKA, LLC**
a Texas limited liability company

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, _____ of Breckenridge Group Lincoln Nebraska, LLC, a Texas limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

Exhibit "G"

REDEVELOPER BIDDING PROCEDURES

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

GENERAL REQUIREMENTS

1. Any and all bid specifications need to be presented to the City at the time when the Notice to Bidders is published. They can be delivered to the Director of Urban Development.
2. The Notice to Bidders shall be published at least once per week for two consecutive weeks in a newspaper of general daily circulation in the City. Redeveloper shall be required to provide proof that proper publication of the Invitation for Bids has been completed prior to opening the bids. An Affidavit of Publication from the Journal Star would be deemed acceptable.
3. The Notice to Bidders itself must meet the following requirements:
 - A. Be open to all potential bidders;
 - B. State the date when sealed bids must be received and the location where the bids are to be delivered;
 - C. State that the bids will be publicly opened and read in the presence of all bidders who attend the opening;
 - D. State where plans and specifications may be examined; and
 - E. Inform bidders that the redeveloper has the right to reject all bids.
4. A City representative shall be present when the bids are opened by the Redeveloper or its representative.

EXCEPTIONS TO FORMAL BIDDING

1. Single purchases of materials, parts, supplies, and equipment with an estimated cost of less than \$3,000 may be purchased directly by the Redeveloper, provided that at least three informal bids shall be obtained and recorded with the Urban Development Department.
2. Executive Order Construction Contracts approved by the Mayor and specifically authorizing without formal sealed bids the construction of street paving, water mains, sanitary sewers, and storm sewers by Redeveloper or its contractor when the payment of reimbursement or subsidies for such construction does not exceed \$100,000.

3. Competitive bidding shall not be required in contracting for professional services (e.g. architects, engineers, etc.)
4. Contracts for Public Enhancements, which include reasonable and appropriate design, improvement, and construction costs that are unique and not-competitive or otherwise required to transition, coordinate and integrate with Public Enhancements with or into the Private Improvements. Prior to entering into contracts for such Public Enhancements, Redeveloper shall submit architect, engineer or other professional designer or contractor's estimates for the cost of the Public Enhancements. The City shall approve or reject said cost estimates within ten (10) days of receipt of the same.
5. The bid must be awarded to the lowest responsible bidder. Any claim by the developer that the lowest bidder is not the lowest responsible bidder must be submitted with evidence to support said claim to the City in writing no later than five days following the public opening of the bids. The City, acting through the Mayor, shall review said request and either approve or deny said request within ten days of receiving said request. In considering the developer's request, the Mayor shall consider the factors listed in Lincoln Municipal Code Section 2.18.030(j). Denial of developer's request shall result in the lowest bidder being declared the lowest responsible bidder. Approval of the developer's request shall result in the bidder shown to be the lowest responsible bidder being selected. Redeveloper shall be specifically prohibited from awarding the contract to a bidder of its choosing subject to limiting the amount of reimbursement to the amount submitted by the lowest responsible bidder. Copies of all bids submitted pursuant to each Notice to Bidders shall be provided to the City Urban Development Department prior to the redeveloper awarding a contract based on said bids.

PURCHASING AGENT APPOINTMENT

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

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

Exhibit “H”
Façade Agreement

FAÇADE AGREEMENT
(_____)

THIS FAÇADE AGREEMENT (the “Agreement”) is made this ____ day of _____, 2014 by and between Breckenridge Group Lincoln Nebraska, LLC, a Texas limited liability company, (“Redeveloper”), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska (“City”).

RECITALS

- A. Redeveloper is the owner of certain real estate (“Redeveloper Property”) located in Lincoln, Lancaster County, Nebraska, legally described as:

Lots 11 and 12, Block 11, Kinneys O Street Addition;

Lots 1 and 2, Block 11; Lot 2, except the east part (i.e., remaining portion of Lot 2) and Lots 3-6, Block 29, all in Kinneys O Street Addition; and Lot 1, Hancock Addition;

Lots A, B, C, and D, Mickey’s Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8-10 and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. #2009-20222), Block 12, Kinney O Street Addition,

all in Lincoln, Lancaster County, Nebraska.

- B. Redeveloper entered into a Redevelopment Agreement (the “Redevelopment Agreement”) with City for the redevelopment and renovation of the Redeveloper Property.

- C. Pursuant to the Redevelopment Agreement, to ameliorate the blighted and substandard conditions of the Redeveloper Property and to enhance the aesthetics of the Private Garage and Residential Housing constructed on the Redeveloper Property (the “Private Improvements”), Redeveloper agreed to make certain improvements to the façade of the Private Improvements (the “Façade”) for the benefit of the public. Under the Redevelopment Agreement, Redeveloper is receiving tax increment financing from City

to make certain public improvements including, but not limited to the improvements to the Façade.

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

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

1. Façade. In consideration of the benefits received by Redeveloper under the Redevelopment Agreement, Redeveloper hereby agrees to subject the façade on the Private Garage and Residential Housing located on the Redeveloper Property to the restrictions described herein.

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

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

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

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

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

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

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

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

5. Casualty Damage. In the event that the Private Improvements or any part thereof shall be damaged by fire or other casualty, then Redeveloper shall use reasonable effort to reconstruct the Façade to the condition required under this Agreement. If the Private

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

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

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

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

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

10. Binding Effect. This Agreement and the terms and conditions herein shall be appurtenant to and run with the Redeveloper Property and shall be binding upon the Redeveloper and its successors and assigns.

[SIGNATURE PAGE FOLLOWS]

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

“REDEVELOPER”

**BRECKENRIDGE GROUP LINCOLN
NEBRASKA, LLC**, a Texas limited liability
company

By: _____
Name: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, _____ of Breckenridge Group Lincoln Nebraska, LLC, a Texas limited liability company, on behalf of the limited liability company.

Notary Public

Exhibit "T"
Streetscape Maintenance Agreement

STREETSCAPE MAINTENANCE AGREEMENT

This STREETSCAPE MAINTENANCE AGREEMENT is made and entered into as of this ____ day of _____ 2014, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as the "City"), and BRECKENRIDGE GROUP LINCOLN NEBRASKA, LLC, a Texas limited liability company, and its successors and assigns (hereinafter referred to as "**Redeveloper**").

RECITALS

I.

WHEREAS, the City and Redeveloper on _____, 2014, entered into a City of Lincoln Redevelopment Agreement (Aspen Heights) ("Redevelopment Agreement") with respect to the redevelopment of the real property ("Redeveloper Property") located within the Aspen Heights Redevelopment Area bounded by Q Street on the north, P Street on the south, 17th Street on the west, and Antelope Valley Parkway on the east and legally described as:

Lots 11 and 12, Block 11, Kinneys O Street Addition;

Lots 1 and 2, Block 11; Lot 2, except the east part (i.e., remaining portion of Lot 2) and Lots 3-6, Block 29, all in Kinneys O Street Addition; and Lot 1, Hancock Addition;

Lots A, B, C, and D, Mickey's Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8-10 and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. #2009-20222), Block 12, Kinney O Street Addition,

all in Lincoln, Lancaster County, Nebraska.

In particular the Redevelopment Agreement defines the Redeveloper's responsibilities regarding the construction and maintenance of the on-street parking, sidewalks, landscaping, pedestrian decorative lighting, bike plaza, and other streetscape amenities in the public right-of-way abutting the Redeveloper Property (collectively "Streetscape Improvements").

II.

Capitalized terms used in this Streetscape Maintenance Agreement shall have the same definitions as contained in the Redevelopment Agreement unless specifically defined otherwise.

III.

WHEREAS, as an inducement for the City to enter into the Redevelopment Agreement and reimburse Redeveloper for its cost to construct the Streetscape Improvements the City requested that Redeveloper assume, and Redeveloper agreed to assume, responsibility for the maintenance and repair of the Streetscape Improvements as shown on Exhibit C-2 to the Redevelopment Agreement which is attached hereto as Attachment A and by this reference incorporated herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Replacement of Streetscape Improvements. Upon expiration of the useful life of the Streetscape Improvements as determined by the City (assuming the Streetscape Improvements have been kept in good order and state of repair) the City shall be responsible for all costs associated with any replacement of the Streetscape Improvements, in accordance with standard design requirements of the City and without the enhancements made thereto pursuant to the Redevelopment Agreement. Redeveloper, at its own cost and expense, may enhance the

replacement improvements subject to the same conditions provided for in the Redevelopment Agreement and this Streetscape Maintenance Agreement, except that the required amounts of insurance shall be adjusted to conform to the City's requirements then in effect.

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

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

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

16. Agreement Runs with the Redeveloper Property. This Agreement and the provisions hereof shall run with the Redeveloper Property and shall be binding upon Redeveloper and its successors and assigns.

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

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

Executed by City this _____ day of _____, 2014.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

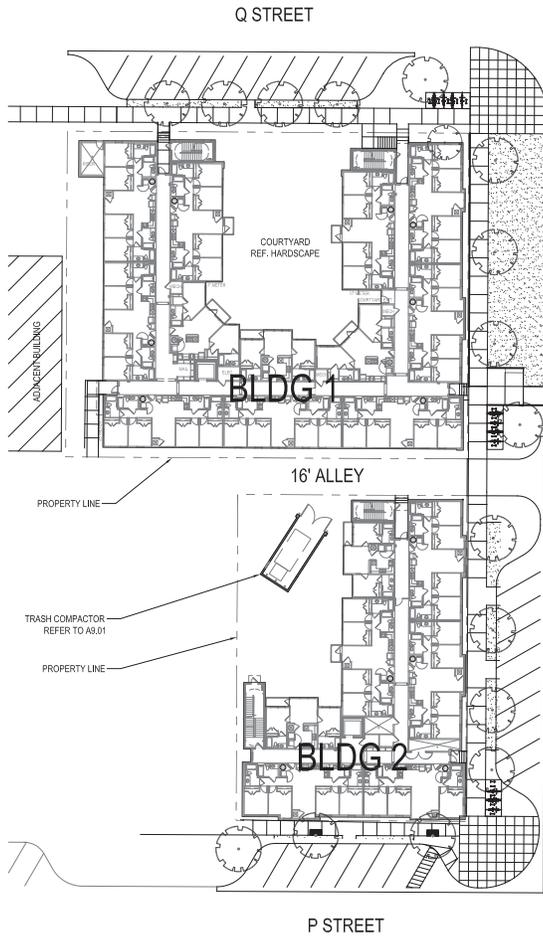
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
Chris Beutler, Mayor of the City of Lincoln.

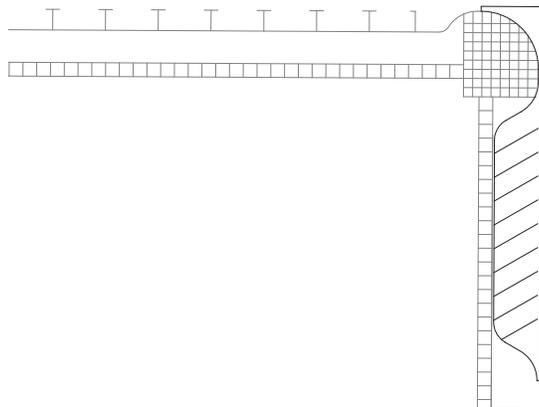
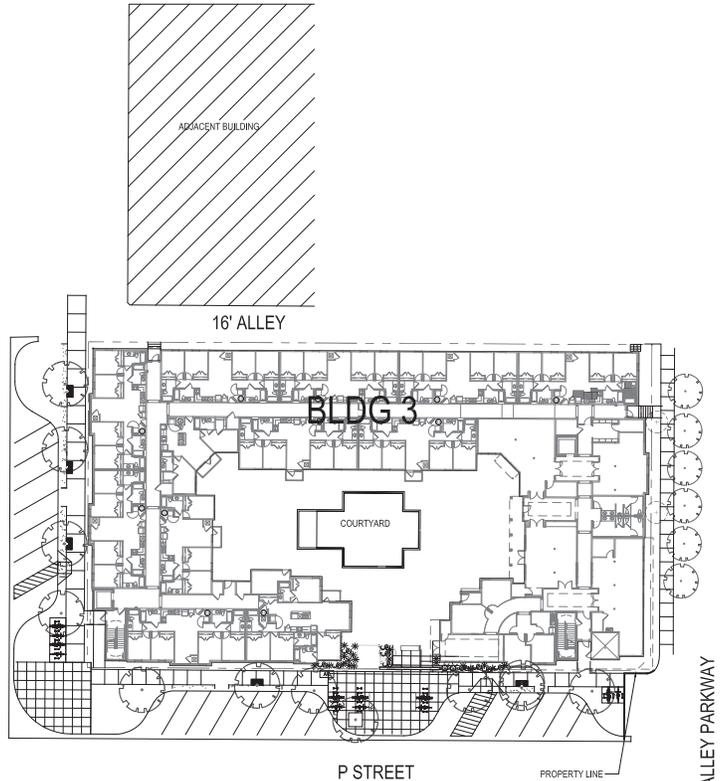
Notary Public

Attachment A" to Streetscape Maintenance Agreement

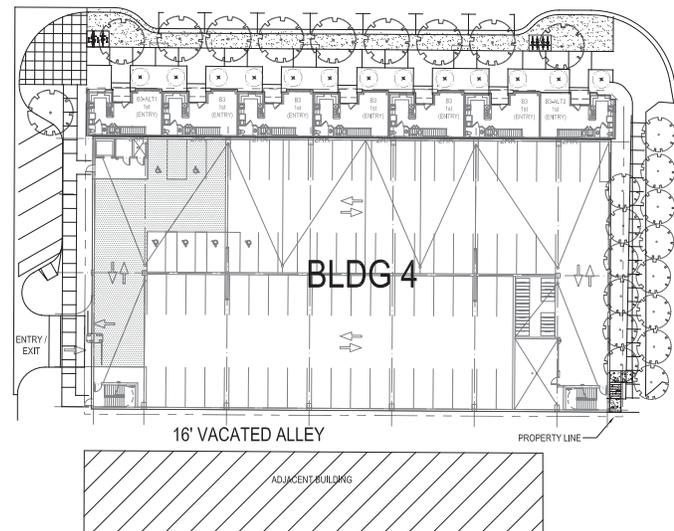


N 18TH STREET

N 18TH STREET



N 18TH STREET



1

ARCHITECTURAL SITE PLAN
SCALE: N.T.S.

18TH & P STREET
ASPEN HEIGHTS
LINCOLN, NEBRASKA

11/14/2014

HPA#14017



HUMPHREYS & PARTNERS ARCHITECTS L.P.
5339 Alpha Road, Suite 300 Dallas, TX 75240 (972) 701-9636 (972) 701-9639
www.humphreys.com marketing@humphreys.com
DALLAS NEW ORLEANS ORLANDO IRVINE CHARLOTTE NORTHWEST PHOENIX CHENNAI DUBAI

LANDSCAPE PLAN



- P Street Master Plan
- Continuous sidewalks
- Street parking
- Townhome entrances
- Multiple bike parking locations
- Secure bike parking
- Additional parking on 18th street

EXHIBIT J
Form of Penal Bond

Bond No. _____

PENAL BOND

KNOW ALL MEN BY THESE PRESENTS:

That we **Breckenridge Group Lincoln Nebraska, LLC**, a Texas limited liability company, as **Principal**, and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Nebraska, as **Surety**, are held and firmly bound unto the **City of Lincoln, Nebraska**, as **Obligee**, for the use of all persons entitled thereto, under Neb. Reb. Stat. §18-2151, in the penal sum of _____ **and No/100 Dollars** (\$_____.00), lawful money of the United States of America and to the faithful payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, or assigns, firmly by this presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that,

WHEREAS, Principal has entered into the City of Lincoln Redevelopment Agreement (Aspen Height), dated _____, 2014 (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided in part for the building and construction of Redeveloper Public Improvements as defined in said Redevelopment Agreement to be funded in part by tax increment financing pursuant to the Nebraska Community Development Law, upon the condition that Principal at all times promptly make payment of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials used in the prosecution of said Improvements provided for in the Redevelopment Agreement.

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

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

[SIGNATURE PAGE FOLLOWS]

Signed and dated this ___ day of _____, 2014.

Breckenridge Group Lincoln Nebraska, LLC,
a Texas limited liability company
Principal

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014,
by _____, _____ of Breckenridge Group Lincoln
Nebraska, LLC, a Texas limited liability company.

Notary Public

Signed and dated this ___ day of _____, 2014.

Surety

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014,
by _____, _____ of _____,
a _____.

Notary Public

EXHIBIT K

DISBURSEMENT AGREEMENT

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

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

The Redevelopment Agreement provides for the issuance of a TIF Bond in the amount of \$7,000,000.00 to be used in part to reimburse Redeveloper for the cost of the Redeveloper Public Improvements to the extent of availability of TIF proceeds.

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

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

1. Terms, definitions. Capitalized terms used in this Agreement shall have the same definitions as contained in the Redevelopment Agreement, unless specifically defined otherwise.
2. Guarantee of Performance and Payment. Redeveloper guarantees payment of all amounts lawfully due to each person, as defined in Neb. Rev. Stat. §49-801 that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements.
3. Construction Loan. Redeveloper shall, prior to commencement of the Private Improvements and Redeveloper Public Improvements, provide evidence that the construction financing or title insurance for such work provides for construction draws only upon demonstration of work completed as being in accordance with the approved plans pursuant to the Redevelopment Agreement and that all persons having performed labor or furnished materials, equipment or supplies for such category of improvement have been paid and given lien waivers in exchange for payment.
4. Grant of TIF Funds. Grants for reimbursement of the cost of the Redeveloper Public Improvements pursuant to the Redevelopment Agreement shall be made upon a showing satisfactory to the Urban Development Director of the City that the Redeveloper Public Improvements for which reimbursement is requested is entirely complete and that all

persons having performed labor or furnished materials, equipment or supplies for such work have been paid and given lien waivers in exchange for payment. City may, in its discretion withhold up to ten percent of the reimbursement for each category of improvement until completion of the entire Redevelopment Project and issuance of the Certificate of Completion of Private Improvements.

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

Dated: _____, 2014.

REDEVELOPER:
BRECKENRIDGE GROUP LINCOLN NEBRASKA, LLC

By: _____

CITY OF LINCOLN, NEBRASKA

By: _____

Exhibit "L"
Memorandum

MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS

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

1. **Redevelopment Agreement.** The City and Redeveloper entered into that certain Redevelopment Agreement dated as of this even date, describing the Redeveloper Public Improvements being made on behalf of the City in the Redevelopment Area and the Private Improvements being made to real property owned by the Redeveloper and legally as:

Lots 11 and 12, Block 11, Kinneys O Street Addition; and

Lots 1 and 2, Block 11; Lot 2, except the east part (i.e., remaining portion of Lot 2) and Lots 3-6, Block 29, all in Kinneys O Street Addition; and Lot 1, Hancock Addition; and

Lots A, B, C, and D, Mickey's Subdivision of Lot 7, Block 12, Kinneys O Street Addition; Lots 8-10 and Lot 11 except 671 square feet in the east part of Lot 11 (as described in Inst. #2009-20222), Block 12, Kinney O Street Addition,

all in Lincoln, Lancaster County, Nebraska.

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City of the Private Improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Redevelopment

Project effective date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to reimburse the Redeveloper for acquisition of the Redeveloper Property and construction of the Redeveloper Public Improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

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

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

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

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

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

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

F. Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video lottery machines, casino games, or off-site pari-

mutual wagering sites, but excluding live horse-racing, off-site pari-mutual and simulcast horse-racing, keno, bingo, and the retail sale of lottery tickets as permitted by applicable law;

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

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

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

J. Any Cell Tower.

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

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

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

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

If to Redeveloper: Breckenridge Group Lincoln Nebraska, LLC
1301 S. Capital of Texas Highway
Suite B-201
Austin, TX 78746
Attn: _____

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

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

