

**CITY OF LINCOLN
REDEVELOPMENT AGREEMENT**

(Block 68)

THIS REDEVELOPMENT AGREEMENT (“Agreement”) is entered into between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska (“City) and **ACHER ARMS, LLC**, a Nebraska limited liability company, and its successors and assigns (“Redeveloper”).

RECITALS

A. The City 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 approved the Lincoln Center Redevelopment Plan a copy of which, together with any and all amendments thereto (collectively “Redevelopment Plan”), is on file in the Office of the City Clerk of the City (“City Clerk”). The Redevelopment Plan has been adopted in compliance with the Nebraska Community Development Law codified at *Neb. Rev. Stat.* §§18-2101 through 18-2144 (the “Act”).

B. The Redevelopment Plan calls for the City to support commercial/residential redevelopment efforts (“Redevelopment Project”) on real estate owned by the Redeveloper (“Redeveloper Property”) and legally described as:

Acher Arms Condominium, including Units 1, 2, 3 & 4, and all common area as described in the Acher Arms Condominium Master Deed and Declaration filed of record as Instrument No. 2009-050824 in the Register of Deeds of Lancaster County, Nebraska, which encompasses the following described real estate:

Parcel 1:

Lot A, Brock’s Subdivision of Lots 11 and 12, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lost 4, 5, 6, 7, 8, 9 and 10, Block 68,

Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lots A, B, C, D, E, and F, Cropsey's Subdivision of Lots 1, 2, and 3, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lots B, C, D, E, and F, Brock's Subdivision of Lots 11 and 12, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon.

Parcel 2:

Lots 4, 5 and 6, Block 68, Original Plat of the City of Lincoln, Lancaster County, Nebraska.

C. The Redevelopment Project area ("Project Site" or "Project Area") consists of the Redeveloper Property, and the adjacent right-of-way to the property lines on the north side of N Street, the south side of M Street, the west side of 10th Street, and the east side of 11th Street; all located in the Northeast Quarter of Section 26, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska.

D. Redeveloper is willing to enter into this Agreement and through a minimum investment of Thirty Million Dollars (\$30,000,000) to carry out the Redevelopment Project on the Project Site through the construction of approximately 110 residential apartment units with associated first-floor commercial/retail space; approximately 110 hotel rooms; and approximately 220 parking spaces (collectively referred to as "Private Improvements") and related public improvements and streetscape (collectively referred to as "Public Improvements"). Public Enhancements are to include exterior facade improvements to the Private Improvements which exceed the requirements of the Downtown Design Standards, as approved by the City in the review of the Design and Construction Documents. The Private Improvements, Public Enhancements, and Public Improvements are collectively known as the "Redevelopment Project Improvements" and are generally shown on the Site Plan in Exhibit "A", which is attached hereto and incorporated herein by this reference. The costs of the Redevelopment Project Improvements are collectively known

as the “Redevelopment Project Costs” and are shown on the Sources and Uses of Funds in Exhibit “B”, which is attached hereto and incorporated herein by this reference.

E. *Neb. Rev. Stat. § 18-2103(12)* (Reissue 2007) authorizes the City to carry out plans for a program of compulsory repair and rehabilitation of buildings and other improvements in connection with redevelopment of the Project Site and to pay for the same from TIF Proceeds (as defined herein).

F. *Neb. Rev. Stat. § 18-2107* (Reissue 2007) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

G. In order to help remove blight and substandard conditions and improve conditions in an economically underutilized area, the City is willing to enter into this agreement and to make grants to the Redeveloper as its agent to be used to carry out the Public Improvements.

H. The City and Redeveloper agree that such assistance is deemed essential to the preparation of the Project Site for the Redevelopment Project.

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

J. Pursuant to *Neb. Rev. Stat.* § 18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the Redevelopment Project for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the effective date of such provision by the governing body (“Tax Increment Period”) as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and
- That portion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle of the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the “Ad Valorem Tax Provision.”

K. *Neb. Rev. Stat.* § 18-2107 and § 18-2150 authorize the City to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Project Site in accordance with the Redevelopment Plan. In order to make the grant or grants to the Redeveloper, the City intends to issue tax increment financing indebtedness in tax exempt and taxable series bonds (collectively “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 Redevelopment Project for the above purposes and in accordance with the Redevelopment Plan.

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

NOW, THEREFORE, 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:

1. Design Documents. The Redeveloper shall prepare or cause to be prepared, at Redeveloper's expense, preliminary and final design plans for the Redevelopment Project Improvements (hereinafter "Design Documents"), including streetscape on 11th Street and "M" Street, unless the City obtains supplemental funds to design the streetscape. The Design Documents shall be consistent with the visual representation attached hereto marked as Exhibit "C" and will conform with the Lincoln Downtown Design Standards and the Downtown Master Plan. The Design Documents shall be submitted to the City's Urban Design Committee for review and comment as to conformance with the Downtown Design Standards and Downtown Master Plan, and then to the Mayor for approval. The City shall review and submit any comments to the Redeveloper within sixty (60) days of receipt thereof, otherwise such documents shall be deemed approved. Such approval does not apply to building permit review process. Approval by the City is not a substitute for and does not eliminate the Redeveloper's requirements to apply for and receive the necessary building permit for construction of the Redevelopment Project Improvements.

2. Construction Documents.

A. Private Improvements/Public Enhancements. The Redeveloper shall prepare or cause to be prepared, at the Redeveloper's expense, detailed construction plans and specifications for the Private Improvements and the Public Enhancements (hereinafter "Construction Documents").

The Construction Documents shall be submitted to the City for review and comment as to conformance with the Downtown Design Standards and Downtown Master Plan, and then to the Mayor for approval. The City shall review and submit any comments to the Redeveloper within thirty (30) days of receipt thereof, otherwise such documents shall be deemed approved. Such approval does not apply to building permit review process. Approval by the City is not a substitute for and does not eliminate the Redeveloper's requirements to apply for and receive the necessary building permit for construction of the Redevelopment Project Improvements.

B. Public Improvements. The Redeveloper shall prepare or cause to be prepared, at Redeveloper's expense for Public Improvements, detailed final construction plans and specifications for the Public Improvements (hereinafter "Construction Documents"). The Public Improvements shall be designed in accordance with the City's Standard Specifications and shall be submitted to the City for review and approval pursuant to the City's executive order construction process.

3. Construction of Redevelopment Project Improvements.

A. Construction of Private Improvements. The Redeveloper, through a minimum investment of Thirty Million Dollars (\$30,000,000), shall at its own cost and expense construct the Private Improvements substantially in conformance with the Design Documents and the Construction Documents. Redeveloper agrees to use commercially reasonable efforts to substantially complete construction of the Private Improvements, and to pay in a timely manner Redeveloper's contractor(s), or his or her subcontractors who performed labor, supplied or applied materials performed or used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct the Private Improvements and

Public Enhancements, and promptly after the Redeveloper provides the City the proper documentation that Redeveloper's contractor(s), or his or her subcontractors who performed labor, supplied or applied materials performed or used in the prosecution of the Private Improvements have been properly paid, the City shall upon request by the Redeveloper furnish a Certificate of Completion, the form of which is shown on Exhibit "D", which is attached hereto and incorporated herein by this reference. 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. The Certificate of Completion shall be recorded by the City in the office of the Register of Deeds for Lancaster County, Nebraska. If the City shall refuse or fail to provide the certification in accordance with the provisions of this paragraph 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 each such certification in accordance with the provisions of this Agreement 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.

B. Construction of Public Enhancements. The City agrees to make a grant from available TIF Proceeds to reimburse Redeveloper for the cost of Public Enhancements. Upon completion of the Public Enhancements, the Redeveloper shall have the duty and responsibility to maintain and repair the Public Enhancements at its own cost and expense and no responsibility thereof shall accrue to the City. The Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any changes to the facade of the residential/retail

space and hotel space, including any of the following without the prior written consent of the City Director of the Urban Development Department: any material change in the facade including the alternation, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the residential/retail space and hotel space; any significant reconstruction, repair, repainting or refinishing of the facade upgrades that alters its state from the Construction Documents, wear and tear accepted.

C. Construction of Public Improvements. To the extent allowed by law and then only to the extent TIF Proceeds are lawfully available and granted to the Redeveloper as described in Paragraph 12 below, the Redeveloper shall use the TIF Proceeds to construct the Public Improvements through the City's executive order construction process. The City shall not have any obligations to fund the Public Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Redeveloper, at its election, shall use its own funds to fund any Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder. To the extent required by law, contracts for construction of the Public Improvements shall be bid in accordance with City procedures.

D. Public Art. The selection of Public Art and its cost, location, and maintenance shall be mutually agreed upon by the parties.

4. Easement. Redeveloper agrees to convey to the City without any additional consideration for any easements necessary for the Public Enhancements and/or Public Improvements as determined by the City.

5. Prohibited Use of M Street. The Redeveloper agrees that M Street shall not be used for commercial loading or unloading, trash removal, or other similar services.

6. Penal Bond. Pursuant to *Neb. Rev. Stat.* § 18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Redevelopment Project Improvements, a penal bond in an amount equal to the costs of the Redevelopment Project Improvements with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons supplying or furnishing the Redeveloper, or his or her subcontractors who performed labor, supplied or applied materials performed or used in the prosecution of the Redevelopment Project Improvements. Proof of such penal bond shall be supplied to the City prior to the start of construction of the Redevelopment Project Improvements.

If requested by City, the Redeveloper shall, in addition to such penal bond, obtain and supply the City with lien waivers from all contractors, subcontractors and suppliers performing any work on the Redeveloper Improvements or supply any good for construction of the Redevelopment Project 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.

7. Indemnification. Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Redevelopment Project Improvements that the City may be required to make for failure of Redeveloper or its contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper's contractor(s), or his or her subcontractors who performed labor, supplied or applied materials performed or used in construction of the Redevelopment Project Improvements.

8. Duty to Maintain. Redeveloper shall, following construction, operate the Private Improvements in a safe and sanitary manner and shall take all action necessary to maintain, in good order and condition and state of repair, all interior and exterior portions of all buildings including

the routine preventive maintenance of the building and its service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors.

9. Use Restrictions. Redeveloper agrees that during the Tax Increment Period no portion of the Redeveloper Property shall be used for any of the following uses:

A. A liquor store selling alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sells alcoholic beverage 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 the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any salvage or recycling operation, 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 keno, bingo, and the retail sale of lottery tickets as permitted by applicable law.

G. Any business involving the sale or display of weapons, self-service laundromats for nonresidents or non-occupants of the Redeveloper Property, 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.

10. Construction Administration. Redeveloper shall be responsible for all components of the Redeveloper Project Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. The Redeveloper will be solely responsible for payment of all construction cost attributable to the Private Improvements regardless of any expectation for reimbursement hereunder. The Redeveloper will be solely responsible for payment of all construction cost attributable to the Public Improvements in the amount of the TIF Proceeds, less the City's cost to issue the TIF Bond and subject to reimbursement as provided in this Agreement.

11. Timing of Construction. Redeveloper will use commercially reasonable efforts to complete the Redeveloper Improvements within twenty (24) months following City Council's approval and the Mayor's execution of this Agreement.

12. Grant of Funds. In order to support redevelopment of the Project Site and as an inducement for the Redeveloper to construct the Redevelopment Project Improvements, the City agrees, to the extent allowed by law and then only to the extent funds are lawfully available from the issuance of the TIF Bond ("TIF Proceeds") as shown in Exhibit "B", to make a grant or grants to Redeveloper in the total amount of the TIF Proceeds less the City's cost to issue the TIF Bond, subject to reimbursement as provided in this Agreement for Public Improvements ("Grant Funds"). In order to receive reimbursement of Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the expenditures were eligible Redevelopment Project Costs. Any ineligible use of the grant shall immediately be repaid to the City.

13. Issuance of Redeveloper Purchased TIF Bond. On or after the date of this Agreement, the City shall issue one or more TIF Bond, in one or more tax exempt and taxable series, in the total contracted amount of Four Million Three Hundred Eighty-Three Thousand Dollars (\$4,383,000.00) for net funds available (collectively "TIF Indebtedness") to be purchased by Redeveloper or Redeveloper's lender ("TIF Bond Purchaser"), in a written form acceptable to Redeveloper's attorney, and receive Bond Proceeds from TIF Bond Purchaser in said amount. The City and Redeveloper agree that the form of the TIF Bond and funding mechanism of the Bond Proceeds will be set up similar to a line of credit so that the TIF Bond Purchaser is required to pay the Bond Proceeds to the City on or before the date the City needs funds in the Project Account in order for the City to timely make a grant or grants from the Bond Proceeds to the Redeveloper as described herein. Subject to the terms of this Agreement, the City Finance Director on behalf of the

City shall have the authority to determine the timing of issuing the TIF Indebtedness and all the other necessary details of the TIF Indebtedness.

14. Use of TIF Proceeds. The TIF Proceeds shall be deposited into a fund account (“Project Account”) to be used for payment of the City’s TIF Bond cost of issuance and the grant or grants of funds for the costs of the Public Improvements. TIF Proceeds shall be expended, in the project area as shown in Exhibit “E”, in the following priority:

- A. **FIRST PRIORITY:** Reimburse the City for the cost of issuing the TIF Bond, including but not limited to bond counsel fees, fiscal advisory fees, placement fees, capitalized interest, and reserves.
- B. **SECOND PRIORITY:** Payment of grant to reimburse Redeveloper for costs of the following Public Improvements:
 - i. Utility work, including design and inspection fees, sanitary and storm sewer relocation and construction, water line relocation and construction, electric line improvements and other dry utility improvements as generally shown on Exhibit “E” and Exhibit “F”, which are attached hereto and incorporated herein by this reference, but excluding utility service lines;
 - ii. Public art, streetscape, and right-of-way improvements, including design and inspection fees; paving of streets; construction of sidewalks, curb and gutters; traffic signals and pedestrian lighting; signage; landscape and irrigation materials and other street and sidewalk improvements within the Redevelopment Project Improvements;
- C. **THIRD PRIORITY:** Payment of grant to reimburse Redeveloper for costs of site preparation, demolition, surveys, and excavation.
- D. **FOURTH PRIORITY:** Payment of grant to reimburse Redeveloper for costs of Public Enhancements for public facade upgrades whereby grant funds shall be applied between the residential/retail space and hotel space as mutually agreed upon by the City and Redeveloper; and
- E. **FIFTH PRIORITY:** Payment of grant to reimburse Redeveloper for costs of Public Enhancements for energy efficiency improvements beyond what is required by building codes and which were approved by the City in the construction documents review phase.

To the extent TIF proceeds are insufficient to pay all the costs of the Second Priority items, the Redeveloper shall be responsible for the payment of any shortfall therefor. The grants are restricted

and earmarked for the funding of Public Improvements/Public Enhancements as described herein and the Redeveloper does not have discretionary judgment over the applications of said grant funds. When Redeveloper has met City's expectations in the Second Priority and if the Redeveloper's actual expenditures are less than estimated in Exhibit "B", such funds shall be available for the remaining priorities.

15. Valuation of Property Within the Redeveloper Property. The City intends to use the Ad Valorem Tax Provision to generate tax increment financing funds which shall be used to finance the issuance of the TIF Bond and to make the grant or grants to Redeveloper in accordance with this Redevelopment Agreement. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service for on the TIF Indebtedness from the sale of the TIF Bond will be derived from the increased valuation from redeveloping the Redeveloper Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property and improvements thereon which does not exceed the following values commencing tax year 2009 and continuing for a period of not to exceed fifteen (15) years after the effective date hereof 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:

Total	\$30,000,000
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16. 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 not to

exceed ten percent (10.0%) per annum. 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. Only costs incurred after the effective date of this Agreement shall be eligible for payment. The City shall not be liable nor be required to reimburse Redeveloper for any costs incurred by Redeveloper in the event this Agreement is not approved for any reason, including for reasons alleged to be the fault of the City. Any excess TIF Revenues resulting from the Tax Increment Provision on the Redeveloper Property not needed or required to pay the TIF Bond Purchaser for the TIF Indebtedness shall be expended by the City or returned to the applicable taxing authorities as provided in the Community Development Law. Any shortfall in anticipated TIF funds from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper without recourse of any kind against the City.

17. Tax Increment Deficiency on Redeveloper Purchased TIF Bond.

A. Redeveloper Purchased TIF Bond. If the Redeveloper purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, 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 the same for each year that there exists a deficiency during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred if and when TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Indebtedness is not

retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness shall be forgiven.

B. Lender Purchased TIF Bond. If Redeveloper's Lender purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, 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 agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes if and when TIF Tax Revenues do become available from the Ad Valorem Provisions to meet current debt service and reimburse Redeveloper for such deficiency payments.

18. Cost Certification. The Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to construction of the eligible Redevelopment Project Costs. The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for payment of Public Improvement 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; provided, however, the City shall generally approve request for payment made by Redeveloper that are consistent with this Agreement. Reimbursement by the City to the Redeveloper shall be made within ten (10) days after approval by the City.

19. Reimbursement of Grants Funds. Subject any other remedial provisions contained within this Agreement, the Redeveloper agrees to repay the City the Grant Funds in the event

Redeveloper fails to substantially complete the Redeveloper's Private Improvements 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.

Subject any other remedial provisions contained within this Agreement, in the event the Redeveloper fails to maintain the Redeveloper's Private Improvements as provided in Paragraph 7 above, then the Redeveloper shall reimburse the City the proportionate share (1/13) of the Grant Funds each the year the Redeveloper fails to maintain the Private Improvements.

20. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date hereof or so long as the TIF Bond remains outstanding whichever period of time is shorter (tax increment period), convey 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.

21. Financing Creating Encumbrances Restricted.

A. Prior to completion of Private Improvements, neither Redeveloper, nor any successors in interest with respect to the Redeveloper Property shall engage in any financing or any other transaction creating any Mortgage upon the Redeveloper Property, 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 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 City and Redeveloper's lender to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of 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 draw requests and bank approvals related to the Private Improvements to the Director of Urban Development in a timely fashion.

B. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time when any casualty damage to the Private Improvements has occurred and has not been fully restored, any party who obtains title to any portion of the Redeveloper Property from or through Redeveloper or the holder of any Mortgage or any other purchaser at foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said party and to complete construction or restoration within twenty-four (24) months from the date of such acquisition or, in lieu thereof, the holder of any Mortgage or any other purchaser at foreclosure sale shall pay to the City the amount necessary to fully retire the TIF Indebtedness within three (3) months from the date of acquisition of title.

C. Notice of Default. 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 at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

D. Option to Cure. 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 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 Redevelopment Project, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize the Holder to modify the Redevelopment Project approved by the City.

E. Rights Applicable to Other Forms of Encumbrance (Deed of Trust). 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.

22. Damage or Destruction of Private Improvements/Public Enhancements. During the construction period, Redeveloper agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Redeveloper agrees to restore the Private Improvements and Public Enhancements, to the prior condition within twelve (12) 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 in the preceding year times the number of years remaining in the Tax Increment Period. 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 its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

23. 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 the property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

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

25. 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; and

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; and

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.

26. Representations and Warranties of Parties.

A. Redeveloper represents and warrants to City as follows:

i. Organization; Power; Good Standing. Redeveloper is a limited liability company duly organized and validly existing in good standing under the laws of Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate their properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

ii. 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.

iii. Effect of Agreement. The execution, delivery and performance of this Agreement by Redeveloper have 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.

B. City represents and warrants to Redeveloper as follows:

i. 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.

ii. Effect of Agreement. The execution, delivery and performance of this Agreement by City have 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.

27. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Redeveloper, the party in default 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. In the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

28. 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 any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

29. Delay in Performance For Causes Beyond Control of Party. The parties or 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 twenty (20) 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.

30. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Redeveloper Property and Private Improvements 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.

31. 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.

32. 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 under the terms of this Agreement.

33. 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 Redeveloper c/o William E. Olson, Registered Agent, P. O. Box 81607, 134 South 13th Street, Suite 800, Lincoln, NE 68501; and to the City at: Mayor's Office, 555 South 10th Street, Lincoln, NE 68508, with a copy to City Attorney's Office, 555 South 10th Street,

Suite 300, 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.

34. Access to Redeveloper Property. During construction of the Private Improvements, Redeveloper shall permit the representatives of the City to enter all areas of the Redeveloper Property and 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 facility.

35. 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. This Redevelopment Agreement or a Memorandum hereof shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Redeveloper's Property, at the City's expense.

36. Headings. Headings of the sections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

37. Severance and Governing Law. Invalidation of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect. This Agreement shall be construed and governed by the laws of Nebraska.

38. Expiration of Agreement. Unless otherwise stated in this Agreement, this Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the TIF Bond, whichever first occurs; provided the City and the Redeveloper each agree to execute any release necessary to be filed of record to evidence such expiration or termination, unless otherwise stated herein.

39. 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 Public Improvements are for the benefit

of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61).

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

41. Equal Employment Opportunity. Pursuant to requirements of Section 11.08.160 of the Lincoln Municipal Code and *Neb. Rev. Stat.* § 48-1122 (Reissue 2004), 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.

42. 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.

43. Certain Public Improvements Design and Construction. Notwithstanding any contrary provisions herein, certain Public Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Redevelopment Project Improvements to be consistent with the Downtown Master Plan. The City

and Redeveloper shall seek the input and recommendation of the Urban Design Committee on the visual design aspects of said Public Improvements. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's estimates for said Public Improvements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within sixty (60) 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.

44. Evidence of Financial Ability of Redeveloper. The Redeveloper shall provide to the City on a confidential and privilege basis evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of the Redeveloper in connection with the Project Site. Such information shall state the amount and source of liquid assets on hand or immediately available to the Redeveloper for use in the Project; and shall state the amount and source of debt financing which is available, or irrevocably committed, to the Redeveloper for use in the Project Site. 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 borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. 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.

45. Eligibility to Work. In accordance with *Neb. Rev. Stat.* §4-108 through §4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska.

Executed by City this ____ day of _____, 20__.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

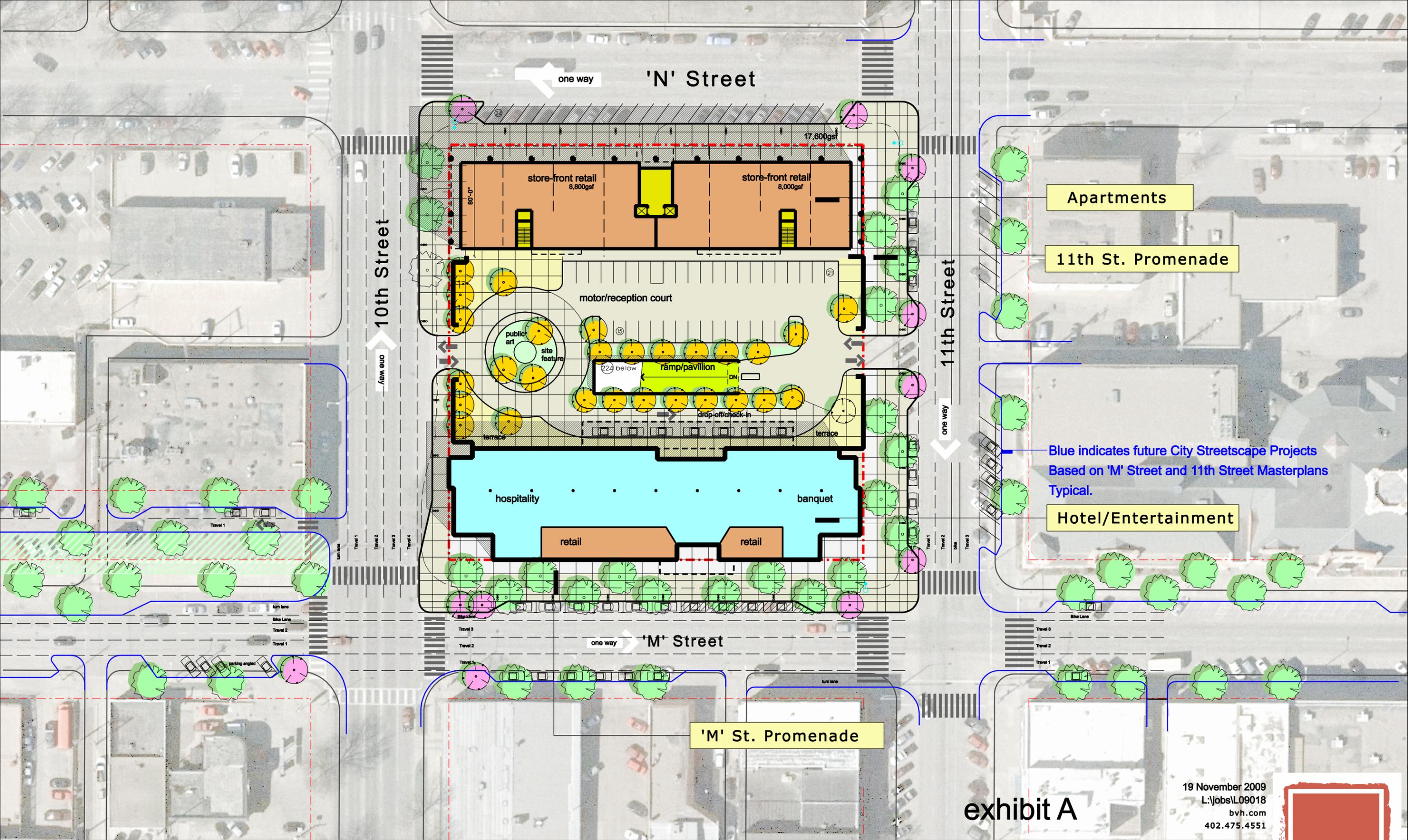
City Clerk

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 Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

Notary Public



Apartments

11th St. Promenade

Blue indicates future City Streetscape Projects Based on 'M' Street and 11th Street Masterplans Typical.

Hotel/Entertainment

'M' St. Promenade

exhibit A



Block 68 ReDevelopment
Lincoln, NE

Proposed Site Plan

19 November 2009
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bvh.com
402.475.4551

440 N 8TH STREET STE 100
LINCOLN NE 68508

HR VERMEER HAECKER
ARCHITECTS



Exhibit B
Sources and Uses

Sources	Description	Amount
<i>TIF</i>		\$ 4,383,000
<i>Private Sources</i>		\$ 34,194,000
Total Sources		\$ 38,577,000
<hr/>		
Uses of Funds	Description	Amount
<i>Total Private Improvements</i>	<i>(i.e., Hotel/Entertainment Complex, Garage, Residential/Retail Complex, Courtyard)</i>	\$ 34,194,000
<i>Total Public Improvements and Enhancements</i>		\$ 6,485,000
<i>Public Improvements</i>		
	Utility Relocation and Improvements (i.e., Water, Sanitary Sewer, Storm Sewer, LES, Time Warner, Fiber)	\$ 1,210,000
	Streetscape/Right-of-Way Improvements and Public Art (i.e., Streets, Sidewalk, Traffic Signals, Pedestrian Lighting, Signage, Landscaping)	\$ 1,800,000
	Site Preparation (i.e., Demolition, Excavation, Surveys, and Remediation)	\$ 1,339,000
<i>Public Enhancements</i>		
	Reimbursement for Façade Upgrades to Residential Complex and Hotel	\$ 1,058,000
	Reimbursement for Energy Efficiency Improvements to Residential Complex and Hotel	\$ 1,078,000
	Costs in excess of TIF (to be covered through construction savings, private sources, and/or otherwise not be funded)	\$ (2,102,000)
Total Uses		\$ 38,577,000



Apartments

Hotel

11th St. Promenade

11th Street

'N' Street

exhibit C

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Block 68 ReDevelopment
Lincoln, NE

'N' Street, looking west



Hotel

Apartments

exhibit C

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Block 68 ReDevelopment
Lincoln, NE

'N' Street, looking west

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LINCOLN NE 68508
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Apartments

Hotel



Block 68 ReDevelopment
Lincoln, NE

11th Street, looking south

exhibit C

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ARCHITECTS





Block 68 ReDevelopment
Lincoln, NE

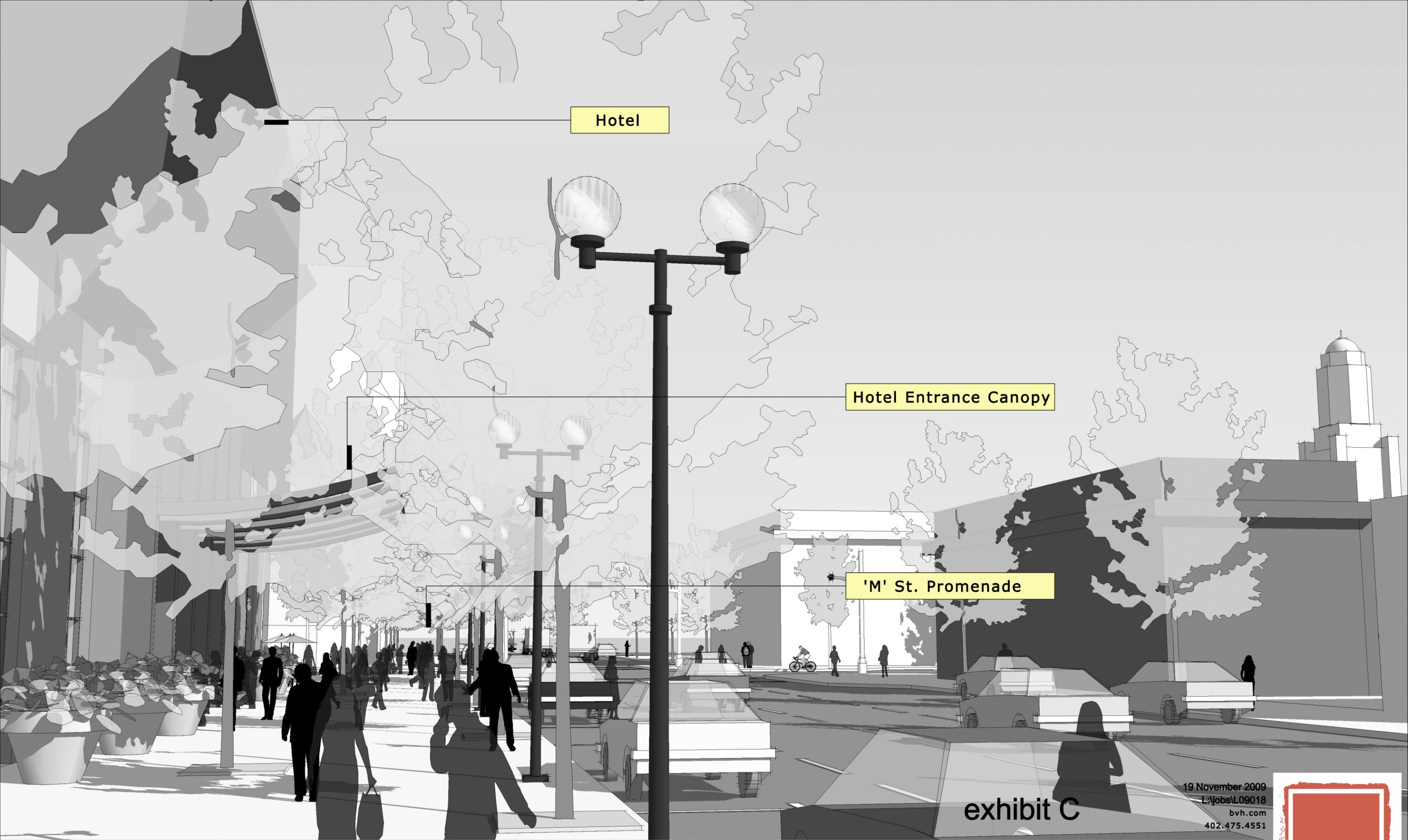
'N' Street, looking south

exhibit C

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Hotel

Hotel Entrance Canopy

'M' St. Promenade

Block 68 ReDevelopment
Lincoln, NE

'M' Street, looking east

exhibit C

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CERTIFICATE OF COMPLETION OF IMPROVEMENTS

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

Acher Arms Condominium, including Units 1, 2, 3 & 4, and all common area as described in the Acher Arms Condominium Master Deed and Declaration filed of record as Instrument No. 2009-050824 in the Register of Deeds of Lancaster County, Nebraska, which encompasses the following described real estate:

Parcel 1:

Lot A, Brock’s Subdivision of Lots 11 and 12, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lost 4, 5, 6, 7, 8, 9 and 10, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lots A, B, C, D, E, and F, Cropsey’s Subdivision of Lots 1, 2, and 3, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon; Lots B, C, D, E, and F, Brock’s Subdivision of Lots 11 and 12, Block 68, Original Plat, Lincoln, Lancaster County, Nebraska, together with vacated alleys abutting thereon;

Parcel 2:

Lots 4, 5 and 6, Block 68, Original Plat of the City of Lincoln, Lancaster County, Nebraska,

that the Redeveloper Improvements required to be constructed by the Redeveloper upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated the ____ day of _____, 20____, and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

ACHER ARMS, LLC

By: _____
Randall L. Acher
Managing Member

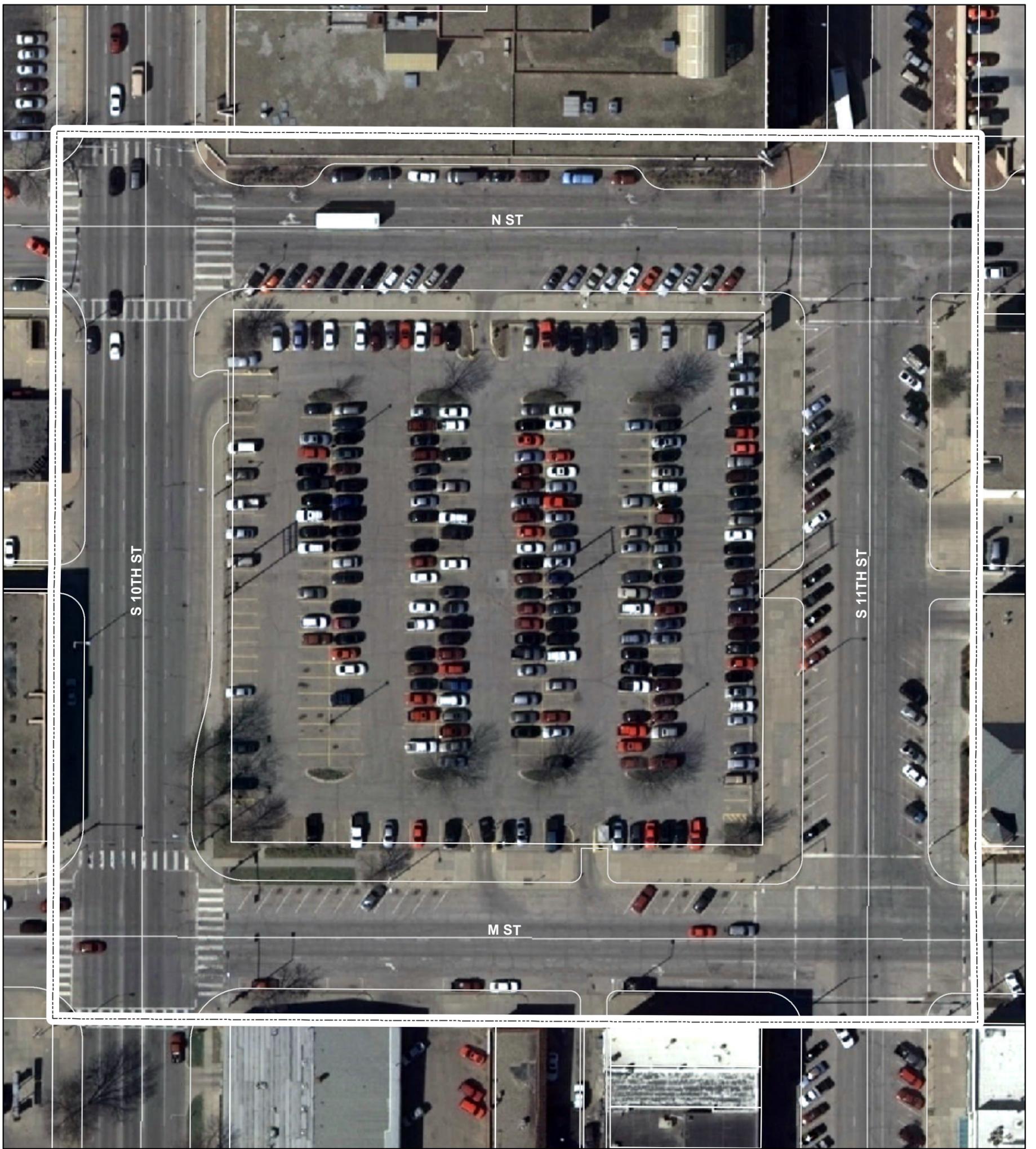


Exhibit - E

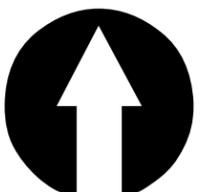
Existing Parcel Layout, (Via Assessors Dept)

-  Project Boundary
-  CurbLines
-  Streets
-  Parcels

Block 68 Redevelopment Project Area

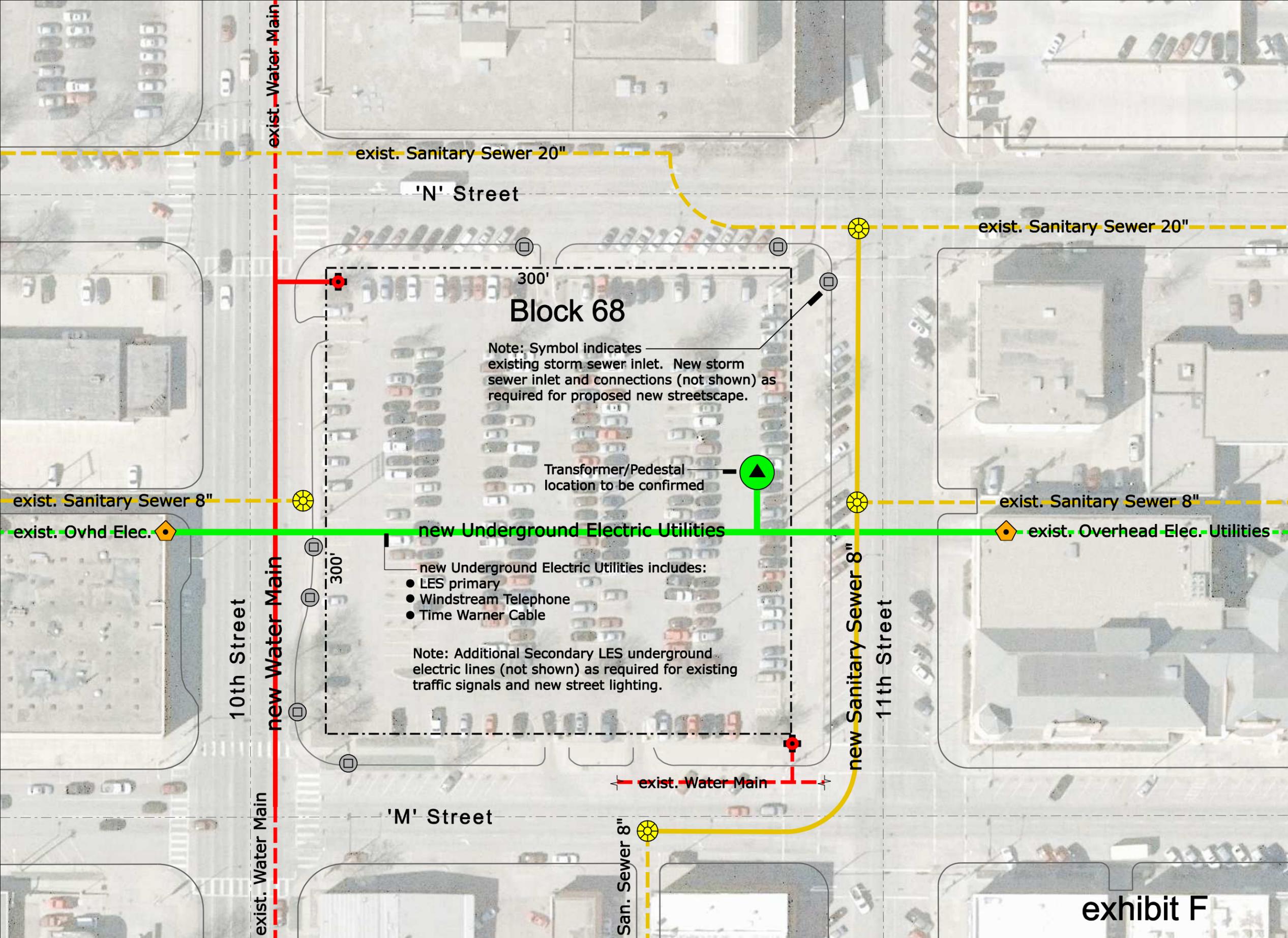
Lincoln Center Redevelopment Area

Created/Compiled by:
The City of Lincoln: UDD
Created on: 11/18/2009



Symbols/Legend

-  Elec. Overhead Primary existing
-  Elec Underground Primary proposed new
-  Sanitary Sewer existing
-  Sanitary Sewer proposed new
-  Water Main existing
-  Water Main proposed new
-  Public Works- Manhole proposed new
-  Electric Utility Pole existing
-  Electric Transformer/ Pedestal proposed new
-  Storm Sewer Inlet existing
-  Water- Hydrant existing



Note: Symbol indicates existing storm sewer inlet. New storm sewer inlet and connections (not shown) as required for proposed new streetscape.

Transformer/Pedestal location to be confirmed

- new Underground Electric Utilities includes:
- LES primary
 - Windstream Telephone
 - Time Warner Cable

Note: Additional Secondary LES underground electric lines (not shown) as required for existing traffic signals and new street lighting.

exhibit F



Block 68 ReDevelopment
Lincoln, NE

Proposed Utility Relocation

NOTE: This is not a final Utility Relocation Map

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