AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD TUESDAY, SEPTEMBER 25, 2018 AT 2:30 P.M.

CITY-COUNTY BUILDING
COUNCIL CHAMBERS, 1ST FLOOR
555 S. 10TH STREET
LINCOLN, NE 68508

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

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

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

3. Approval of the minutes from the JPA meeting held August 23, 2018 (Chair Beutler)
   ➢ (Staff recommendation: Approval of the minutes as presented)

4. Approval of August 2018 Payment Register and review of August 2018 Expenditure Report (Brandon Kauffman)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval of the Payment Register)
   ➢ No action is required on the Expenditure Reports

5. WH 18-17 Resolution approving the proposed operating budget for the West Haymarket Joint Public Agency for September 1, 2018 to August 31, 2019. (Brandon Kauffman)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval)

6. WH 18-18 Resolution approving the West Haymarket Joint Public Agency Capital Improvement Program. (Brandon Kauffman)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval)

7. WH 18-19 Resolution approving the O Street and Canopy Street Project Redevelopment Agreement between the West Haymarket Joint Public Agency, the City, and Project Oscar 2.0, LLC, for the redevelopment of property generally located west of Canopy Street and north of O Street. (Tim Sieh)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval)

8. WH 18-20 Resolution approving the Energy Service Pipeline Easement between the West Haymarket Joint Public Agency and the District Energy Corporation on property generally located in Lot 4, Block 7, West Haymarket Addition. (Chris Connolly)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval)
9.  WH 18-21 Resolution approving Equipment Lease between SMG and the West Haymarket Joint Public Agency to allow SMG to lease surplus trucks for use at Pinnacle Bank Arena. (Tom Lorenz)
   ➢ Public Comment
   ➢ (Staff recommendation: Approval)

10. Set Next Meeting Date: The next meeting date will be Thursday, October 25, 2018 at 2:30 p.m. in the County-City Building, Council Chambers, First Floor.

11. Motion to Adjourn
WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
August 23, 2018

Meeting Began At:  2:33 P.M.
Meeting Ended At:  3:12 P.M.
Members Present:  Chris Beutler, Carl Eskridge, and Tim Clare

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

Beutler advised that the open meetings law posted at the entrance to the room is in effect.

Item 2 - Public Comment and Time Limit Notification

Beutler advised the audience that public comment is welcome and explained the time limit.

Item 3 – Approval of the minutes from the JPA meeting July 26, 2018

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

Item 4 – Approval of July 2018 Payment Register and review of July 2018 Expenditure Report (Brandon Kauffman)

Brandon Kauffman, JPA Treasurer, presented the July 2018 payment register. Kauffman stated for July the operating budget had $650,516.71 in expenditures and the capital budget had $9,108.56 in expenditures. Kauffman explained the major payments listed in the July operating expenditure report include payments to CEIA USA for the metal detectors; a payment for $14,756.96 to SMG for maintenance contracts; $23,700.00 payment to SMG to purchase the ice makers as approved by the Board; $206,674.00 to District Energy Corporation (“DEC”) of which 62% is then billed to the West Haymarket private customers or approximately $128,000.00; a payment to SMG for $202,280.00 for annual management; and a payment in the amount of $155,977.37 for parking management services. Capital expenditures for July consisted of payments for the canopy design, ongoing environmental monitoring, and the PC Sports contract. Clare asked where the portion of the DEC payment that is collected from the private customers is reflected in the records. Kauffman explained the West Haymarket Funds Statement of Revenues, Expenditures, and Changes in Fund Balance for the period ending July 31, 2018 was included in the Board’s packet. This report shows DEC Customer Payments in the amount of $1,456,826.64 collected as of July 31, 2018; total revenues of $26,595,484.67; total expenditures of $23,798,078.15; for a surplus of $2,797,406.52 as of July 31st with an ending balance of $37,004,094.81. Occupation taxes were up 2.29% and remain ahead of the original projections by 25% corresponding with the year 2029. Jane Kinsey, Watchdogs of Lincoln Government, asked what the payment to SMG for management covers. Kauffman explained the management services payment to SMG is for repayment of the pre-opening loan or start-up loan with an interest rate of around .19%. Kauffman further explained that SMG advanced funds to the JPA
when it first began for operating expenditures since the JPA was not yet collecting occupation taxes before the Pinnacle Bank Arena opened. Kinsey asked if the loan is almost paid off. Kauffman explained there is an outstanding balance with a term of approximately 5 years remaining. Kinsey asked if this payment was yearly or monthly. Kauffman responded it is a yearly payment. There being no further discussion or public comment, Eskridge moved approval of the payment registers. Clare seconded the motion. Motion carried 3-0. No action was required on the Expenditure Reports.

**Item 5 – WH 18-13 Resolution authorizing the Purchasing Agent to enter into a Contract with the lowest responsible bidder for pigeon proofing of the pedestrian bridge located by the Pinnacle Bank Arena, pursuant to Bid No. 18-210. (Adam Hoebelheinrich)**

Adam Hoebelheinrich, PC Sports, explained this resolution seeks approval for the purchasing agent to enter into a contract with the lowest responsible bidder to complete pigeon proofing underneath the arena plaza on the north end of the arena and in areas surrounding the staircase that has pedestrian access. Hoebelheinrich stated since the arena opened there have been issues in this area with pigeons roosting and with keeping the area clean from pigeon droppings. Spikes were installed to deter the pigeons but this solution did not resolve the issue. Hoebelheinrich stated public bids were taken. The lowest bid was for $77,600.00 to address approximately 650 feet of ledge underneath the plaza. Clare commented that this has been an ongoing problem as you cannot walk through this area without watching where you step due to the pigeon droppings. He stated he is thrilled to see this issue is being resolved. Hoebelheinrich stated sheet metal panels will be installed to keep the pigeons from landing and roosting. Kinsey asked who was awarded the job. Hoebelheinrich explained the bid has not been officially awarded at this time and the contract is not final. Kinsey asked if this solution will work. Hoebelheinrich explained that this solution has worked in the past in areas under the Harris Overpass and in downtown parking garages. He added this would be a permanent solution. There being no further discussion or public comment, Clare moved approval of the resolution. Eskridge seconded the motion. Motion carried 3-0.

**Item 6 - WH 18-14 Resolution to approve payment in the amount of $6,730.65 to Electrical Engineering & Equipment Company for five light fixtures to be installed at Pinnacle Bank Arena to be reimbursed by the West Haymarket Joint Public Agency Endowment Fund. (Caleb Swanson)**

Caleb Swanson, PC Sports, introduced the resolution and requested approval to pay for 5 new light fixtures for the Harvest Art Sculpture south of the arena in the amount of $6,730.65. Swanson explained this resolution also authorizes the JPA to seek reimbursement from the Endowment fund and explained when the Endowment was set up, it specifically included maintenance and repair for the Harvest Art Sculpture and the lighting and amenities that go with the art piece. SMG will work to install the light fixtures with their own electrician to save money on installation costs. Clare asked if this will be paid out of the Endowment fund and Swanson confirmed that it will be. Eskridge asked what the issue was that required replacement of the lights and if it is being addressed. Swanson explained a couple of the fixtures failed due to water related issues and a couple of the fixtures failed because the glass lens that covers each fixture was damaged with snow removal. Clare asked how the fixtures were broken, if they just didn’t function properly, or if the snow removal actions damaged the fixtures. Swanson explained that because of a slight arc or curvature on the light fixture, the fixtures are slightly higher than the
surface of the concrete and can easily be chipped if hit with the wrong equipment at high enough rate of speed. A chip in the lens isn’t noticed right away like a complete shatter and this is believed to be a contributing factor to the water issue. Kinsey asked who requested that the endowment pay for the repairs. Swanson explained the art piece was included in the Endowment Fund Statement as a specific area that the Endowment would cover. Kinsey requested a copy of the Endowment Fund Statement showing the items covered by the Endowment Fund. There being no further discussion or public comment, Eskridge moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 7- WH 18-15  Resolution approving the Right of Entry Agreement between the West Haymarket Joint Public Agency and Olsson Associates to enter upon the property legally described as Lot 3, West Haymarket 1st Addition to conduct environmental and geotechnical testing on the property. (Tim Sieh)

Tim Sieh, City Law Department, stated this resolution requests approval of the Board for a Right of Entry Agreement with Olsson Associates to conduct survey work and a geotechnical study of the site located between the Olsson building and the Harris Overpass. This agreement allows Olsson Associates to enter onto the property to conduct the work. Kinsey asked if there were EPA issues. Sieh responded there is no indication of a problem. This is just a request by Olsson to go onto the property to survey the boundaries and test the soil conditions as part of a due diligence process for a potential buyer interested in the site. There being no further discussion or public comment, Clare moved approval of the resolution. Eskridge seconded the motion. Motion carried 3-0.

Item 8 - WH 18-16  Resolution approving the Amended Settlement Agreement between the City, TDP Phase One, LLC, and the West Haymarket Joint Public Agency. (Tim Sieh)

Sieh explained another version of the Settlement Agreement was approved in May of 2018. City Council approved an amended version of said Agreement at the City Council meeting held on August 20, 2018. The changes made to the Agreement are shown in Section 2 on page 3. The purpose of the changes were to make the language clearer as to the parties’ intent that the Use Restrictions found in Section 404 of the original Redevelopment Agreement will continue to apply to the Public Market area. The financial terms remain the same. The developer would be repaying $266,666.67. Kinsey commented that TDP’s management is not good, they are not good landlords, and that there are a lot of unhappy tenants. Richard Halvorson, resident of Lincoln, asked if the Use Restrictions are still in effect. Sieh stated there are no new use restrictions and the standard use restrictions approved in the Redevelopment Agreement remain in place. Halvorson commented that the developers have not acted in good faith to attract new tenants. He further commented there were four potential vendors willing to sign contracts and were turned down by the developers and the developers took the TIF money instead. He stated that at the City Council meeting it was discussed how the developers are charging above market rates making it impossible for a small business to survive. There being no further discussion or public comment, Eskridge moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.
Item 9 - Set Next Meeting Date

Without objection, Beutler stated the next meeting date is set for Tuesday, September 25, 2018 at 2:30 p.m. in the City-County Building, First Floor, Council Chambers.

Item 10 - Motion to Adjourn

Eskridge moved to adjourn. Motion seconded by Clare. The meeting adjourned at 3:12 p.m.

Prepared by: Kasey Simonson, City Law Department
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**Category: OP**

| Total                          | 601,048.97 |

**Category: PH1**

| Total                          | 14,566.34  |

**Grand Total**

| Total                          | 615,615.31 |
For the Period Ending August 31, 2018

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<td><strong>Excess (Deficiency) Of Revenues Over Expenditures</strong></td>
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<td><strong>Other Financing Sources (Uses):</strong></td>
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<tr>
<td><strong>Total Other Financing Sources (Uses)</strong></td>
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<td>Fund Balance Beginning Of Year</td>
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<td>Fund Balance End Of Year</td>
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### Operating Expenditure Report

**As of August 31, 2018**

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#### 11 Materials & Supplies
- **5221 Office Supplies**: 250.00
- **5261 Postage**: 2,000.00
- **5323 Bldg Maintain Supplies**: 500.00

#### 12 Other Services & Charges
- **5621 Misc Contractual Services**: 870,734.00
- **5624 Auditing Service**: 21,025.00
- **5631 Data Processing Service**: 963.00
- **5643 Management Services**: 2,068,762.00
- **5643.61 Deck 1 Mgmt Services**: 696,216.00
- **5643.62 Deck 2 Mgmt Services**: 382,688.00
- **5643.63 Deck 3 Mgmt Services**: 457,997.00
- **5683.04 Snow Removal**: 2,500.00
- **5683.05 Fire Alarm Monitoring**: 500.00
- **5685 VOIP Payments to I S**: 200.00
- **5762 Photocopying**: 250.00
- **5763 Printing**: 500.00
- **5784 Misc Insurance**: 33,695.00
- **5786 Property**: 175,232.00
- **5794 Public Officials**: 33,390.00
- **5795 Misc Insurance Floater**: 200.00
- **5821 Electricity - Bldg & Grnds**: 10,400.00
- **5825 Natural Gas**: 1,500.00
- **5829 Telephone**: 1,350.00
- **5830 Water**: 1,300.00
- **5835 Thermal Heating & Cooling**: 2,300,000.00
- **5856 City Share Linc Center Maint**: 31,000.00
- **5862 Grounds Maintenance**: 18,000.00
- **5870 Other Bldg Maintenance**: 422,300.00
- **5928 Rent of Co/City Bldg Space**: 1,014.00
- **5931 Parking Rent Bldg Comm**: 105.00
- **5952 Advertising/Media Serv**: 2,050.00
- **5993 Fees Paid to State of NE**: 25.00

**Total**
- **YTD EXPEND**: 2,062,510.00
- **PURCHASE ORDERS**: 77.90
- **AVAILABLE BALANCE**: 827.90

**City of Lincoln, NE**

**West Haymarket Joint Public Agency**

**Operating Expenditure Report**

**As of August 31, 2018**
As of August 31, 2018

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| 00950 West Haymarket Revenue

12 Other Services & Charges
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13 Capital Outlay - Equipment
6064 Cars & Trucks

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15 Debt Service
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6234 Bd Trustee Pmt-Principal

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16,780,041.00
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00950 West Haymarket Revenue
25,254,187.00
25,254,187.00
24,640,832.33
34,727.76
578,626.91
# Job Cost Report

**As of August 31, 2018**

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### Job Cost Report

**As of August 31, 2018**

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As of August 31, 2018

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As of August 31, 2018

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RESOLUTION NO.

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

That the attached Proposed Operating Budget for September 1, 2018 to August 31, 2019 is hereby adopted as the West Haymarket Joint Public Agency Operating Budget for FY 2018/2019.

Adopted this _____ day of September, 2018.

Introduced by:

___________________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency

Board of Representatives

___________________________________

Legal Counsel for

West Haymarket Joint Public Agency

___________________________________

Chris Beutler, Chair

Tim Clare

Carl Eskridge
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<th>Actual 2016-17</th>
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<th>Budget 2018-19</th>
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|                         |               |               |               |
| **Materials & Supplies**|               |               |               |
| Office Supplies         | -             | $250          | $250          |
| Postage                 | $1,532        | $2,000        | $2,000        |
| Bldg Maint Supplies     | $478          | $500          | $500          |
| **Materials & Supplies**| $2,011        | $2,750        | $2,750        |

|                         |               |               |               |
| **Other Services & Charges**|           |               |               |
| Misc Contractual Services| $746,203     | $870,734      | $832,747      |
| Auditing Service        | $21,000       | $21,025       | $21,575       |
| Data Processing Service | $901          | $963          | $2,543        |
| Management Services     | $1,863,868    | $2,068,762    | $2,005,981    |
| Parking Deck 1 Mgmt Services| $692,793    | $696,216      | $903,909      |
| Parking Deck 2 Mgmt Services| $381,349    | $382,688      | $490,907      |
| Parking Deck 3 Mgmt Services| $452,777    | $457,997      | $578,418      |
| Snow Removal            | $632          | $2,500        | $2,500        |
| Fire Alarm Monitoring   | $407          | $500          | $500          |
| VOIP Payments to I S    | $203          | $200          | $200          |
| Photocopying            | $11           | $250          | $500          |
| Printing                | $124          | $500          | $250          |
| General Liability       | -             | $25,085       |               |
| Misc Insurance          | $30,632       | $33,695       | -             |
| Property                | $162,763      | $175,232      | $166,897      |
| Public Officials        | $24,362       | $33,390       | $32,500       |
| Misc Insurance Floater  | $200          | $200          | $935          |
| Electricity - Bldg & Grnds| $10,292      | $10,400       | $9,900        |
| Natural Gas             | $1,422        | $1,500        | $1,850        |
| Telephone               | $1,247        | $1,350        | $1,350        |
| Water                   | $1,210        | $1,300        | $1,425        |
| Thermal Heating & Cooling| $2,167,945   | $2,300,000    | $2,450,000    |
| City Share Linc Center Maint| $29,742     | $31,000       | $31,000       |
| Grounds Maintenance     | $10,307       | $18,000       | $18,000       |
## West Haymarket Joint Public Agency
### Operating Budget
**September 1, 2018 - August 31, 2019**

<table>
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<tr>
<th>Description</th>
<th>Actual 2016-17</th>
<th>Budget 2017-18</th>
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West Haymarket Joint Public Agency
Operating Budget
September 1, 2018 - August 31, 2019

Arena/JPA Revenue Distribution Schedule

**JPA Revenues (Operating and Program Budget)**

1. Suites
2. Loge Boxes
3. Club Seats
4. Parking (decks 1,2,3)
5. Occupation Taxes
6. Energy payments from private tenants
7. County lodging tax
8. Land Sales
9. IMG Sponsorship (Transfer Guaranteed Rights Fee to Arena)
10. Naming rights
11. Property taxes from TIF
12. UNL Rent
13. Private donations
14. Interest earnings
15. Rental income
16. Turnback tax surplus

**Legal Authority**

Premium seating and Facilities agreement
Premium seating and Facilities agreement
Premium seating and Facilities agreement
Facilities agreement
Facilities agreement, City ordinance
Energy Service agreements b/t JPA/Tenants
Grant contract b/t JPA and County
JPA has fee title
Contract between JPA and IMG
JPA/Pinnacle Bank agreement
TIF note holder is the JPA, JPA resolution
UNL Lease and Operating Agreement/Facilities Agreement, Memorandum of Understanding
Donor designation, terms of gift
Facilities agreement
Rental agreements
Facilities agreement, Convention Center
Facility Financing Act
City/SMG agreement
Facilities agreement, City acting as an agent for the JPA
Facilities agreement, City acting as an agent for the JPA
Facilities agreement, City acting as an agent for the JPA, City/SMG agreement
Facilities agreement, City acting as an agent for the JPA, City/SMG agreement

**Arena Revenues**

1. Arena event revenue including food, beverage, merchandise and other
2. $200,000 annual repayment of preopening loan from SMG (Transferred from JPA)
3. IMG Guaranteed Rights Fee. (Transferred from JPA)
4. Festival parking and events, attached garage
5. Operational Increment (Transferred from JPA)

**City Revenues**

1. Turnback Tax

Facilities agreement to pay Turnback Tax bonds
RESOLUTION NO.

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

That the attached West Haymarket Joint Public Agency Capital Improvement Program is hereby adopted.

Adopted this _____ day of September, 2018.

Introduced by:

___________________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency

Board of Representatives

___________________________________

Legal Counsel for West Haymarket Joint Public Agency

______________________________

Chris Beutler, Chair

______________________________

Tim Clare

______________________________

Carl Eskridge
## Assumptions:

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## DETAILED CIP AND REPAIR PROGRAM

### Repairs:

#### Annual Maintenance Agreements
165 | 1 | 7,850 | 165 | 170 | 175 | 180 | 186 | 191 | 197 | 203 | 209 | 215 | 222

#### Garage 1,2,3 5-year maintenance prog
5 | 7,825 | 1,125 | 130

#### Arena Garage 5-year maintenance prog
5 | 783 | 113 | 130

#### Interior paint, minor maint., 5-year cycle
150 | 5 | 1,384 | 179

#### Replace carpeting
100 | 10 | 496 | 119

#### Repair Irrigation system
5 | 1 | 238 | 5 | 5 | 5 | 6 | 6 | 6 | 6 | 6 | 7 | 7

#### Maintain streetscape including bridge
10 | 1 | 476 | 10 | 10 | 11 | 11 | 11 | 12 | 12 | 12 | 13 | 13 | 13

#### Relocate heating unit for dock area
100 | - | 100 | 100

#### Replace operational equipment
120 | 1 | 5,709 | 120 | 124 | 127 | 131 | 135 | 139 | 143 | 148 | 152 | 157 | 161

#### Replace IPTV's, routers, etc.
175 | 1 | 8,326 | 175 | 180 | 186 | 191 | 197 | 203 | 209 | 215 | 222 | 228 | 235

#### Annual inspections/maintenance
71 | 1 | 3,378 | 71 | 73 | 75 | 78 | 80 | 82 | 85 | 87 | 90 | 93 | 95

#### Miscellaneous repairs
90 | 1 | 4,282 | 90 | 93 | 95 | 98 | 101 | 104 | 107 | 111 | 114 | 117 | 121

**Total Repairs**
40,845 | 736 | 2,047 | 675 | 695 | 716 | 737 | 2,488 | 782 | 806 | 830 | 855

### Capital Improvements

#### Replace basketball Floor and Stanchions
150 | 5 | 1,344 | 150 | 174 | 202

#### Replace retractable seating
1,000 | 10 | 4,955 | 1,194

#### Replace permanent seating
4,000 | 25 | 7,441 |

#### Roof membrane replacement
2,000 | 25 | 3,721 |

#### Replace Overhead doors
250 | 10 | 1,239 | 299

#### Replace Scoreboard and Ribbon Boards
5,000 | 10 | 24,777 | 5,970

#### Metal Detectors
250 | 5 | 2,260 | 210 | 299

#### Security Equipment
80 | - | 80 | 80

#### Heat pump for suite area
100 | - | 100 | 100

#### Refresh Club Area
100 | 5 | 923 | 103 | 119

#### Refresh Suite & Loge Areas
250 | 7 | 1,531 | 273 | 336

#### LED Lighting for arena bowl
700 | - | 700 |

#### Jacobson Addition, Lot 1 purchase
2,900 | - | 2,900 | 2,900

#### Olsson Phase II Streetscape
350 | - | 350 | 350

**Total Capital Improvements**
52,320 | 3,790 | 803 | 0 | 273 | 0 | 174 | 7,881 | 0 | 0 | 0 | 538

**Total Repairs and Capital Improvements**
93,166 | 4,526 | 2,850 | 675 | 968 | 716 | 911 | 10,369 | 782 | 806 | 830 | 1,392

**Cumulative Repairs and Cap Improvements**
4,526 | 7,376 | 8,051 | 9,019 | 9,735 | 10,646 | 21,015 | 21,797 | 22,603 | 23,432 | 24,825
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RESOLUTION NO.

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

That the attached O Street and Canopy Street Project Redevelopment Agreement between the City of Lincoln, PROJECT OSCAR 2.0, LLC, and West Haymarket Joint Public Agency relating to the redevelopment of property generally located west of Canopy Street and north of O Street on land owned by the West Haymarket Joint Public Agency and described as Lot 3, West Haymarket 1st Addition and the adjacent rights of way in the West Haymarket area of Lincoln, upon the terms and conditions set forth in said Redevelopment Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Redevelopment Agreement on behalf of the JPA.

Adopted this _____ day of September, 2018.

Introduced by:

______________________________

Approved as to Form & Legality:

West Haymarket Joint Public Agency Board of Representatives

______________________________

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

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Tim Clare

______________________________

Carl Eskridge
CITY OF LINCOLN
REDEVELOPMENT AGREEMENT
(O Street and Canopy Street Project)

THIS WEST HAYMARKET REDEVELOPMENT AGREEMENT (O Street and Canopy Street Project) (“Redevelopment Agreement”) is entered into as of the ____ day of ____________ 2018, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as “City”), the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska (hereinafter referred to as “JPA”), and PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company (hereinafter referred to as “Redeveloper”).

RECITALS

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan, as amended (the “Redevelopment Plan”), pursuant to the Community Development Law of the State of Nebraska, Chapter 18, Article 21, Sections 18-2101-18-2144, as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended as may be amended from time to time (“Community Redevelopment Law”). The Redevelopment Plan provides for the West Haymarket Redevelopment Project in an area generally bounded on the west by the BNSF and UP railroad lines, by approximately 7th Street on the east, the south interior roadway of Haymarket Park and the Bereuter Pedestrian Bridge on the north, and “M” Street on the south (“West Haymarket Redevelopment Area”) as shown on Exhibit A. A copy
of the Redevelopment Plan, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the “City Clerk”).

B. Redeveloper has submitted a proposal for Redeveloper Improvements (defined below) designated as the “O Street and Canopy Street Project” to acquire property owned by the JPA located in the West Haymarket Redevelopment Area and legally described as Lot 3 West Haymarket First Addition, Lincoln, Lancaster County, Nebraska, and to construct certain Redeveloper Improvements (defined below) thereon (“Project Site”). The Project Site is located immediately east of the existing Blue 3 JPA Parking Garage (“Blue 3”) and is shown on Exhibit B.

C. The Redeveloper’s O Street and Canopy Street Project provides for the JPA to provide secondary access to the Project Site through a twenty (20) foot wide public access easement permitting two-way vehicular access and pedestrian access (“Access Easement”) as described on Exhibit “C.

D. The Redevelopment Project sub-area for the O Street and Canopy Street Project (“Redevelopment Project Sub-area”) is shown on Exhibit D.

E. The Redeveloper undertakings (“Redeveloper Undertakings”) for the O Street and Canopy Street Project consist of the following activities:

(1) Land acquisition of the Project Site;

(2) Preparation of a demolition and removal plan for the Project Site that sets the limits of hard surface removal areas without diminishing the functionality of the parking lot south of the Project Site (“Removal Plan”), site grading and environmental site remediation and improvements (collectively “Site Preparation”);

(3) Design and construction of a four-story building containing approximately 67,000 square feet of office space and approximately 5,800 square feet of retail and related
exterior improvements, including, but not limited to, eighteen (18) surface parking stalls in the northwest quadrant of the Project Site, west alley improvements connecting the north/south alley and Canopy streetscape, and five feet (5’) of temporary parking lot sidewalk along the south side of the Building. The four-story building and the exterior improvements directly associated with it and described in this Section are shown on Exhibit E and shall be referred to throughout this Agreement as the “New Building”.

(4) Design and construction of a skywalk bridge over the Access Easement connecting the New Building and the JPA Blue 3 Parking Garage (“Skywalk Bridge”).

(5) Design and construction and installation of certain upgraded improvements to the New Building and Project Site to the greater good of the community, which are beyond the requirements of City standards, regulations or codes consisting of Façade Enhancements and Energy Enhancements (collectively “Public Enhancements”) as defined in Section 303.A. below.

(6) Design of the JPA Streetscape Improvements as defined in Section 303.B. below (“Streetscape Design”). The New Building and the Skywalk Bridge are hereinafter collectively referred to as the “Private Improvements.” The Public Enhancements and Streetscape Design are collectively referred to as the “Redeveloper Public Improvements.” The Private Improvements and the Redeveloper Public Improvements are sometimes collectively referred to as the “Redeveloper Improvements.”

F. The JPA undertakings for the O Street and Canopy Street Redevelopment Project consist of the following activities:

(1) Cause the demolition and removal of parking improvements from the Project Area as defined in Section 310.A.
(2) Construct and install certain streetscape improvements primarily along, but not limited to, Canopy Street and within an area between the New Building and the existing building on the adjacent lot to the north of the Project Site that extends sixty feet (60’) west of the west right of way line of Canopy Street ("Public Access Area") including but not limited to decorative hardscape, landscaping, and pedestrian lighting ("JPA Streetscape Improvements"). The area in which the JPA Streetscape Improvements are to be installed is shown on Exhibit F which is attached hereto.

G. The JPA and the District Energy Corporation ("DEC") have entered into an Energy Services Agreement dated October 1, 2011 wherein the JPA and DEC agreed for the DEC to construct a district energy plant and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other buildings and facilities in the West Haymarket Redevelopment Area, including the New Building.

H. Under the Energy Services Agreement, the JPA is and will remain the DEC’s sole customer and it is the JPA’s responsibility to split off the proportional cost of the DEC bill to the Arena and the other buildings and facilities, including the New Building receiving heating and cooling from the Energy Services provided by the DEC to the JPA.

I. This Redevelopment Agreement implements the O Street and Canopy Street Project and sets forth the terms and conditions for the Project.

J. 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.

K. The City and JPA are willing to support the above described redevelopment of the Project Site provided Redeveloper is willing to (1) restrict the use of the Project Site to certain
approved uses, (2) agree to covenants and conditions regarding compulsory maintenance and upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions, and (3) agree to covenants and conditions regarding environmental use restrictions.

L. 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 O Street and Canopy Street Project for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the Effective Date as identified herein as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project Area valuation as of January 1 of the year prior to the year that the ad valorem taxes are to be divided shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

- That portion of the ad valorem tax on real property as provided in the redevelopment contract or bond resolution in the Redevelopment Project Area in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle and the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority ("TIF Indebtedness") for financing or refinancing in whole or in part, the P Street and Canopy Street Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in the Redevelopment Project Area shall be paid into the funds of the respective public bodies.

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

M. The Redeveloper is willing to enter into this Redevelopment Agreement provided TIF Proceeds (defined below) are available to be used to pay for or reimburse the Redeveloper for Redeveloper Priority Expenses which are more particularly described Section 603.A below and summarized on Exhibit O, Sources and Uses of TIF. In order to pay for or reimburse Redeveloper for Redeveloper Priority Expenses, the City intends to issue tax increment financing
indebtedness to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision.

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

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I.

EVIDENCE OF REDEVELOPER'S ABILITY

Section 101. Evidence of Redeveloper's Ability.

A. Evidence of Redeveloper’s Financial Ability to Construct Private Improvements. Redeveloper shall, within sixty (60) days following the date of this Agreement, state the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan.

B. Timely Submittal of Evidence. Timely submittal of financial information required in subsection A above in a form satisfactory to the Finance Director of the City shall be a
condition precedent to the requirement of the JPA and the City to proceed with their respective obligations under this Redevelopment Agreement.

Section 102. Evidence of Redeveloper’s Ability to Timely Commence Construction of the Private Improvements. Redeveloper shall, prior to Closing (defined below) of the Project Site, provide satisfactory documentation to the JPA and the City that Redeveloper has entered into a construction contract and is ready, willing and able to timely commence construction of the Private Improvements as provided in Section 302. below. Submittal of such information and documentation in a form satisfactory to the City shall be a condition precedent to the requirement of the JPA to proceed with its obligation to convey the Redevelopment Project Area to Redeveloper under this Redevelopment Agreement.

ARTICLE II
CLOSING

Section 201. Conveyance of Project Site. The JPA agrees to sell and Redeveloper agrees to buy the Project Site prior to the start of construction of the Private Improvements. The purchase price for the Project Site shall be the sum of One Million Three Hundred Seventy Thousand and No/100 Dollars ($1,370,000.00) which is arrived at by multiplying the square footage of the Project Site (32,464 square feet) times $42.20/square foot (“Purchase Price”). The City agrees to assist in such acquisition of the Project Site by providing a grant of TIF Proceeds (defined below) to the Redeveloper in the amount of One Million Three Hundred Seventy Thousand and No/100 Dollars ($1,370,000.00) to be applied to the Purchase Price (“Land Purchase Assistance”) which assistance is essential to implementation of the Redevelopment Project. Redeveloper’s payment of the Purchase Price to the JPA shall be evidenced by a cash payment of $1,370,000.00 to the JPA at Closing.
Section 202. Closing.

A. Closing Date. The conveyance and delivery of the Project Site by the JPA to the Redeveloper shall occur at closing (“Closing”) which shall be January 3, 2019, unless the parties mutually agree to another Closing date (“Closing Date”); provided, however, the parties shall pre-close into escrow no later than November 15, 2018 (“Escrow Closing Date”). On the Escrow Closing Date, JPA and Redeveloper shall place all documents and funds necessary and contingent for the Closing into escrow to be held by Nebraska Title Company (“Escrow Agent”) until the Closing Date, at which time the Escrow Agent shall disburse the documents and funds to the appropriate parties. If the pre-closing on the Project Site does not occur by the Escrow Closing Date, neither party shall have any further obligations with respect to the O Street and Canopy Street Project.

B. Closing Contingencies.

1. Redeveloper Closing Contingencies. Redeveloper’s obligation to close shall be contingent upon the following:

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

   (ii) Execution and delivery of the Access Easement between the JPA and Redeveloper pursuant to Section 309.A; and

   (vi) Execution and delivery of the Skywalk Bridge Easement between the JPA and Redeveloper pursuant to Section 309.C.

   (vii) Availability of city water, city sanitary sewer, city storm sewer, electrical, cable/data and natural gas utilities within the public right-of-way and/or within the Access Easement or other Easement abutting the Project Site.
2. **JPA Closing Contingencies.** The JPA’s obligation to close shall be contingent upon the following:

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

   (ii) Execution and delivery of the Skywalk Bridge Easement Agreement between the Redeveloper and JPA pursuant to Section 309.C. below.

   (iii) Delivery of the Purchase Price to the JPA.

C. **Closing Documents.**

1. **Deliveries at Closing by the JPA.** At Closing, the JPA shall deliver to Redeveloper, and Redeveloper shall accept from the JPA, the following:

   (a) A Special Warranty Deed conveying to Redeveloper fee simple title to the Project Site, subject to the Permitted Exceptions. JPA shall pay Nebraska Documentary Stamp taxes, if not exempt, relating to the transfer of the Project Site. For purposes hereof, “Permitted Exceptions” shall mean (i) covenants, conditions and restrictions of record which shall be approved by Redeveloper if they do not unreasonably interfere with Redeveloper’s intended use of the Project Site; (ii) taxes not yet due and payable; (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which JPA is willing to and does so remove at Closing; (iv) title exceptions caused by the acts or omissions of Redeveloper; (v) easements, licenses and use restrictions granted under this Redevelopment Agreement; and (vi) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by Redeveloper. Risk of loss or damage to the Project Site shall rest with the JPA until the time of delivery of possession at Closing.
(b) Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper’s Title Commitment, including the JPA executing at Closing an affidavit on the title insurance company’s form which will remove all standard exceptions to Buyer’s title insurance policy, including without limitations (i) representing that there are no unpaid special assessments levied against the Property as of the Closing, except as provided in Section 203 below, (ii) representing that there are no outstanding unpaid bills for labor, material, or utilities furnished to the Project Site as of the Closing, and (iii) agreeing to indemnify and hold harmless the Redeveloper and title insurance company against all payments and expenses, including court costs and attorney’s fees, if the above representations prove inaccurate in whole or in part.

2. **Documents to be Delivered by Redeveloper.** At Closing, Redeveloper shall deliver to the JPA, and the JPA shall accept from Redeveloper cash proceeds in the amount of $1,370,000.00, such sum being the Purchase Price agreed to for the Project Site, as well as such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper’s Title Commitment.

3. **Evidence of Title.** The Redeveloper shall obtain (i) a title commitment (the “**Title Commitment**”) from Nebraska Title Company for an ALTA owner’s title insurance policy issued by a title insurance company duly authorized to do business in Nebraska acceptable to Redeveloper (the “**Title Company**”) covering title to the Project Site and showing fee simple title in the JPA and (ii) an ALTA Survey of the Project Site by the Engineer to be coordinated with the Title Commitment. A copy of the Title Commitment and ALTA Survey shall be delivered to the City Attorney’s Office no later than fifteen (15) days after the date of this Redevelopment Agreement and shall include copies of the underlying exception documents which affect the Project Site. Redeveloper agrees to review the Title Commitment and ALTA
Survey and advise the JPA whether the Title Commitment and ALTA Survey discloses exceptions to title, title matters or encroachments other than Permitted Exceptions or discloses matters that render title to the Project Site unmarketable. Redeveloper shall notify JPA of such title defects within fifteen (15) days after receipt of the Title Commitment and Survey. JPA shall have ten (10) days after written notice of such defects from Redeveloper to have the exceptions removed from the Title Commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or defects. Provided, however, in the event that JPA shall be unable or unwilling to correct such title defects within the ten (10) day period, Redeveloper shall have the option, by written notice delivered to JPA and the City to either (i) terminate this Redevelopment Agreement or (ii) take title to the Project Site subject to such exceptions or defects. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event Redeveloper elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions.

Section 203. Property Taxes and Assessments. All real and personal property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years’ taxes, interest and other charges, if any, shall either be exempt or paid in full by the JPA at or prior to Closing. If no tax values have been established by the Lancaster County Assessor for the Project Site, the tax proration shall be based on the Purchase Price for the Project Site and the most recent Lancaster County tax levy. Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement.
Section 204. **Title and Possession of Project Site.** At the Closing, title to and possession of the Project Site shall be conveyed by the JPA to Redeveloper under the terms and conditions set forth herein.

Section 205. **JPA’s Option to Purchase Project Site.** In the event Redeveloper fails to timely commence construction of the Private Improvements in accordance with Section 302.C., the JPA, subject to the Redeveloper's right to cure in Section 901 and/or any delay of performance for cause beyond the control of the Redeveloper pursuant to Section 903, shall be entitled, at its option, to purchase the Project Site upon payment to the Redeveloper the Purchase Price set forth in Section 201.

Section 206. **Full Disclosure.** The parties represent that no party was used as an agent or finder to bring about this sale.

Section 207. **Right to Effectuate Exchange.** JPA and the City acknowledge that the Redeveloper may undertake an Internal Revenue Code Section 1031 tax deferred exchange of their interest in the all or any portion of the Project Site. The Redeveloper’s rights and obligations under this Agreement may be assigned to facilitate such exchange(s) under an assignment and assumption agreement approved and consented to by the JPA and the City. Each party agrees to cooperate with the other party and any assignee of the other party to enable the Redeveloper to qualify for such exchange(s); provided that such cooperation shall not require the JPA or the City to incur any additional costs or liability and the JPA and the City shall be able to realize all intended benefits of this Redevelopment Agreement.
ARTICLE III

CONSTRUCTION OF REDEVELOPER IMPROVEMENTS

Section 301. Private Improvements - Schematic Drawings; Exterior Drawings & Specifications; Final Exterior Construction Documents; Approval; Changes.

A. Conceptual Plans and Drawings. Overall conceptual plans and drawings ("Project Schematic Drawings") have been prepared by the Redeveloper. The Project Schematic Drawings are based upon the West Haymarket Integrated Development Plan - July 30, 2009 ("IDP"), a copy of which is on file in the office of the City's Director of Planning. The Project Schematic Drawings shall serve as the basis for development of the plans and specifications for the Private Improvements. The Project Schematic Drawings attached as Exhibit E have been reviewed and approved by the Mayor and are deemed approved by the City and the JPA upon approval of this Redevelopment Agreement by each entity respectively. The Project Schematic Drawings shall serve as the basis for development of the plans and specifications for the Private Improvements.

B. Design Development Plans. Design development plans and specifications ("Design Development Plans") will be prepared by Redeveloper for the Private Improvements to be constructed by Redeveloper on the Project Site. Prior to the finalization of the New Building’s finished floor elevations and right-of-way elevations, Redeveloper must receive City approval that these grades are in concert and achieve the proper grades. This will require the streetscape elevations to be completed concurrently with the finished floor elevations. Such Design Development Plans shall be based upon the Project Schematic Drawings and shall show all the exterior faces of the Private Improvements to be constructed by Redeveloper as part of the O Street and Canopy Street Project, the construction materials to be used for the exterior walls, elevations views of the exterior faces of the Private Improvements, and the attachment of the
Skywalk Bridge to the Blue 3 Parking Garage (“Exterior Drawings”). The Exterior Drawings shall be submitted to the Mayor for his review and approval as provided in subsection E. below.

The Design Development Plan shall also include a site plan (“Site Plan”) that clearly demonstrates how ingress and egress to and from the Project Site from the public streets is to be achieved upon completion of the Project. Such plans for ingress and egress to and from the Project Site shall be subject to City approval based upon Chapter 14.75 of the Lincoln Municipal Code and the City’s Access Management Policy.

The Exterior Drawings shall be submitted to the Urban Design Committee, in accordance with the submittal requirements in Section 4.36.040 of the Lincoln Municipal Code, for its review and submittal of their recommendation to the City no later than thirty (30) days following Redeveloper’s submittal of the Exterior Drawings. The Exterior Drawings shall be approved if they are in substantial conformity with the Project Schematic Drawings and this Redevelopment Agreement.

C. Exterior Construction Documents. Upon approval of the Exterior Drawings by the City, Redeveloper shall prepare or have prepared the exterior construction documents (“Exterior Construction Documents”). Such Exterior Construction Documents shall be based upon the Project Schematic Drawings and be consistent with the Exterior Drawings and this Redevelopment Agreement. The Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Exterior Drawings, and in substantial conformity with this Redevelopment Agreement. They shall include and show, (i) all the exterior faces of the New Building from the adjoining sidewalk or ground surface to the highest point of the capping of the flat roof, (ii) the construction materials to be used for the exterior walls, and (iii) the elevation views of the exterior faces of the New Building in relation to the adjoining sidewalk or ground.
surface. The Exterior Construction Documents shall also include the following signature block (hereinafter “Exterior Construction Drawings Mayoral Approval”):

“These Exterior Construction Drawings are in substantial conformance with the approved Schematic Drawings and are hereby approved this _____ day of ____________, 2018.

________________________________________
Chris Beutler, Mayor of the City of Lincoln

Mayor’s approval of the Exterior Construction Drawings shall not be unreasonably withheld.

D. City and JPA Approval. City and JPA, acting through the Mayor, shall so approve or reject the Exterior Drawings and Exterior Construction Documents within fourteen (14) days. Such Exterior Drawings and Exterior 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 in substantial conformity with this Redevelopment Agreement. Failure of the City and/or the JPA to reject the applicable documents within said fourteen (14) days shall be deemed as approval by such party. The foregoing sentence notwithstanding, in the event the Exterior Drawings and/or the Exterior Construction Documents deviate substantially from the Project Schematic Drawings, said Exterior Drawings and/or Exterior Construction Documents shall be subject to review by the Urban Design Committee prior to the City and JPA indicating its approval or rejection of said drawings. If either the City or the JPA rejects the applicable plans, the said party shall deliver to Redeveloper notice thereof accompanied by an explanation of the reasons for such rejection based on the standards for this O Street and Canopy Street Project. If rejected, Redeveloper shall work with the Architect to submit corrected Exterior Drawings and Exterior Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Exterior
Drawings and Exterior Construction Documents shall be approved or rejected by both the City and the JPA as provided above for original submittals.

F. Approval Limitation. Approval of the Exterior Drawings and Exterior Construction Documents is not a substitute for and does not eliminate the requirement that Redeveloper apply for and receive necessary building permits for construction of the Private Improvements. Likewise, approval of a building permit for construction of the exterior walls and the attachment of the Skywalk Bridge to the Blue 3 Parking Garage is not a substitute for and does not eliminate the requirement that Redeveloper submit the Exterior Drawings and Exterior Construction Documents to the Mayor for his review and approval.

G. Changes. If the Site Plan, Exterior Drawings, or Exterior Construction Documents are substantially and materially modified after Mayoral approval, any such modification shall be resubmitted to the Mayor for review and approval provided that such Exterior Drawings or Exterior Construction Documents shall first be submitted to the Urban Design Committee for its review and submittal of recommendations to the Mayor.

Section 302. Construction of Private Improvements.

A. Construction. Redeveloper, following the request for and receipt of the City’s Notice to Proceed (defined below), shall, at its own cost and expense, through a minimum investment of Sixteen Million and No/100 Dollars ($16,000,000.00), construct the Private Improvements as described in Recital F above in conformity with the approved Exterior Construction Documents, building permits and this Redevelopment Agreement.

1. Architecture. All Private Improvements shall have consistent architectural features, detailing, and design elements in accordance with the Project Schematic Drawings and the IDP. All accessory building walls, screening walls or fences shall use the same primary material, color, and detailing as on the main building.
2. **Energy Efficiency.**

   (a) General. Construction of the Private Improvements shall utilize energy efficient building practices. Redeveloper shall use the standard established by U.S. Green Building Council through its Leadership in Energy and Environmental Design (“**LEED**”) Green Building Rating Systems as a guideline for the design and construction of the Private Improvements.

   (b) Heating and Cooling. JPA, at its expense, will cause DEC to design and install any and all DEC equipment and controls needed in order for the DEC to deliver energy services to the New Building, on or before September 1, 2019 and in accordance with DEC requirements. The Point of Delivery, including service tap location and location of the meter shall be in a reasonable location as determined by DEC in coordination with the Redeveloper.

   (c) Redeveloper Energy Services Agreement. Redeveloper agrees to purchase all Energy Services as defined in the Energy Services Agreement for the Private Improvements from the JPA, subject to the terms and conditions of a Redeveloper Energy Services Agreement between JPA and the Redeveloper, which shall be prepared and negotiated with terms and conditions reasonably acceptable to JPA and the Redeveloper as soon as reasonably possible and entered into between JPA and the Redeveloper prior to Closing Date (defined below), provided, however, Redeveloper understands and acknowledges that such terms and conditions shall include Redeveloper agreeing to pay Redeveloper’s allocated share of the Demand Charge – Facilities Financing, the Demand Charge – Other, and the Commodity Charge the DEC will charge the JPA on a monthly basis for Energy Services under the Energy Services Agreement between DEC and the JPA.

3. **Height of Private Improvements.** Private Improvements constructed in the Redevelopment Project Area shall have a maximum height of 75 feet. The minimum height of
the Private Improvements shall be of a sufficient height to adequately screen the adjacent Blue 3 Parking Garage, but in no event less than 65 feet.

4. **Landscaping and Screening.** All mechanical units and condensing units shall be visually screened from public view. Large trash receptacles for business use and any outside storage areas shall be screened on three sides with a masonry screen wall. Redeveloper shall submit a landscape plan to the Mayor for his review and approval which will not be unreasonably withheld. Any parking constructed on the Project Site must meet or exceed applicable Downtown Design Standards.

5. **Staging.** Redeveloper, City, and JPA agree to assist and cooperate to provide adequate staging for all JPA Projects and other Redevelopment Projects within the West Haymarket Redevelopment Area. The staging plan showing the staging area for the O Street and Canopy Street Project and the other West Haymarket Redevelopment Projects as a whole is reflected on Exhibit G. The Redeveloper and its contractor, subcontractors and material suppliers, shall have a right of entry subject to the terms and conditions of Exhibit G to exclusively use the surface and air right space of the Staging Area 1 during the construction of the Private Improvements, without additional consideration. Upon completion of the Redeveloper’s Undertakings, the Staging Area is to be left in the same or better condition as it was before Redeveloper’s use, and any damage to permanent paving in the Staging Area caused by Redeveloper or its contractor(s) shall be repaired at Redeveloper’s own cost and expense. Likewise, any damage to the public right-of-way abutting either the Staging Area or the Project Site shall be repaired at Redeveloper’s own costs and expense.

B. **Permits and Approvals.** Redeveloper agrees to secure all permits and licenses necessary for construction of the Private Improvements and its intended use of the Project Site including, but not limited to, necessary building permits and inspections.
C. Commencement and Completion Deadline for Private Improvements. Redeveloper shall commence construction of the Redeveloper Private Improvements and Redeveloper Public Improvements on the Project Site within thirty (30) days following receipt of a notice to proceed (“Notice to Proceed”) issued by the Urban Development Department Director. The Notice to Proceed shall only be issued upon receipt of the Redeveloper’s request for the Notice to Proceed, certifying that all conditions precedent to commencement of the work have been completed and requested to commence the work. The form of the Request for Notice to Proceed is attached hereto as Exhibit H. Redeveloper shall use its best efforts to substantially complete the Private Improvements and Redeveloper Public Improvements on or before February 1, 2020.

Section 303. Construction of Redeveloper Public Improvements. Redeveloper shall, at its own cost and expense, except as otherwise provided in this Agreement, design and construct/install the Redeveloper Public Improvements as follows:

A. Construction of Public Enhancements. Redeveloper shall, at its own cost and expense, subject to reimbursement with available TIF Proceeds as set forth in this Redevelopment Agreement, construct the Façade Enhancements and Energy Enhancements. The City shall not have any obligation to reimburse Redeveloper for the cost of the Façade Enhancements and Energy Enhancements in excess of available TIF Proceeds as provided for in this Redevelopment Agreement. Redeveloper shall use its own funds to fund any Façade Enhancements and Energy Enhancements costs that exceed the TIF Proceeds that are lawfully available and granted to Redeveloper under this Redevelopment Agreement. To the extent required by law, the Public Enhancements shall be competitively bid, subject to Section 1021.

1. For the purpose of this Redevelopment Agreement, “Façade Enhancements” shall mean those materials and treatments designed for and installed on the
vertical exterior façade of the New Building as shown on Exhibit E, excluding signage, that exceed the applicable City of Lincoln Downtown Design Standards.

2. For the purpose of this Redevelopment Agreement, “Energy Enhancements” shall consist of the following: Redeveloper’ cost, after deducting any Lincoln Electric System or other rebates, to construct and/or upgrade to the energy, cooling, heating, lighting, insulation, controls, equipment, hardware and/or software improvements and systems made to the Private Improvements including, but not limited to, air handling units and associated piping in the New Building necessary to accommodate the DEC heating and cooling piping for the greater good of the community for the reason that they reduce energy consumption in the New Building and exceed energy efficiencies otherwise required by the International Building Code, 2012 Edition, and in particular Chapter 13, Energy Code (“State Building Code”) or the City of Lincoln Building Code.

B. Streetscape Design. For purposes of this Redevelopment Agreement, “Streetscape Design” shall include overall conceptual plans and drawings for the JPA Streetscape Improvements that shall be prepared by the Redeveloper, at its own cost, subject to reimbursement with available TIF Proceeds as set forth in this Redevelopment Agreement. The Streetscape Design shall be submitted to the City’s Urban Development Department for review and submittal of a recommendation to the Mayor. Likewise, the Streetscape Design shall be reviewed by the Urban Design Committee who shall make a recommendation with respect to the design to the Mayor. Upon receipt of the latter of either the Department’s or the Urban Design Committee’s recommendation, the Mayor shall approve or reject the Streetscape Design within fourteen (14) days after receipt of said recommendation. Upon approval of the Streetscape Design, the Redeveloper shall prepare or cause to be prepared final Streetscape Construction
Documents in accordance with City Design Standards and Specifications which shall be submitted to the Mayor for review and approval as provided above.

C. **Completion of Redeveloper Public Improvements.** The Redeveloper shall commence construction/installation of the Redeveloper Public Improvements in coordination with its construction of the Private Improvements on the Project Site. The Public Improvements shall be substantially completed no later than February 1, 2020.

**Section 304. Payment of Costs for Private Improvements.** Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Redevelopment Agreement, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Redevelopment Agreement relating to the obligations of Redeveloper to construct said improvements. If requested by City, the Redeveloper shall, in addition to this promise to pay, obtain and supply the City with lien waivers in favor of the Redeveloper from all persons, firms, or organizations performing any work on the Private Improvements or furnishing any materials, equipment, or supplies for construction of the said improvements. In addition, the City shall be entitled to inspect at reasonable times all records of the Redeveloper or its agents regarding such lien waiver procedures.

**Section 305. Redeveloper’s Certificate of Completion of Redeveloper Improvements.**

A. Promptly upon substantial completion by Redeveloper of the Private Improvements in accordance with all provisions of the this Redevelopment Agreement, and promptly after the Redeveloper provides the City with the proper documentation that
Redeveloper’s contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Private Improvements have been properly paid, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements. If the work has been completed in conformance with this Redevelopment Agreement, the City shall execute and deliver to Redeveloper the City's acceptance to the Redeveloper's Certificate of Completion of Improvements, the form of which is attached hereto as Exhibit I. The acceptance to the Redeveloper’s Certificate of Completion of Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Redevelopment Agreement with respect to the obligations of Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term “completion” shall mean substantial completion of the required Private Improvements. Substantial completion is the stage in the construction progress of the Private Improvements when they are sufficiently complete in accordance with the Exterior Construction Documents and when the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the Private Improvements for their intended use. With respect to the retail and office components of the Private Improvements, substantial completion need not include the tenant finish improvements required for occupancy by such tenants.

B. The Redeveloper’s Certificate of Completion of Improvements shall be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska against the Project Site. If the City shall refuse or fail to execute the acceptance to a Redeveloper’s Certificate of Completion of Improvements after a final inspection has been requested and performed, the City shall, within fourteen (14) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Redevelopment Agreement or is
otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such acceptance.

Section 306. Duty to Maintain. Redeveloper at its own cost and expense shall, following construction of the Private Improvements, keep the same in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the buildings including the routine and reasonable preventive maintenance of the buildings and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes. With regard to the Façade Enhancements, the Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any material change to the Façade Enhancements including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Façade Enhancements that alters their state from the Construction Documents, wear and tear excepted.

Section 307. Construction Administration. Redeveloper shall be responsible for all components of the Private Improvements constructed by Redeveloper including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper and its contractor(s) shall reasonably cooperate with other JPA contractors
performing work in the West Haymarket Redevelopment Area including, but not limited to, Redeveloper's scheduling of its work to provide for a smooth sequence of operations. The JPA shall insert a similar duty of cooperation in its contracts for construction of the JPA's West Haymarket Project improvements. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements. With the City’s consent and approval, which shall not be unreasonably withheld, Redeveloper and its general contractor shall be entitled, subject to the terms and conditions of the Staging Plan (Exhibit G), to make use of the designated West Haymarket Redevelopment Areas not needed for the staging or construction of other JPA West Haymarket Projects and/or JPA/City Public Improvements as staging areas for construction of the Private Improvements.

Section 308. Cost Certification. Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to reimbursement for the cost to construct the Redeveloper Priority Expenses. Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for reimbursement of Redeveloper Priority Expenses. The City shall approve or reject the request for reimbursement with reasons stated, based on the review within ten (10) days of receipt of the same; provided, however, the City shall generally approve requests for reimbursement made by Redeveloper that are consistent with Section 603 of this Redevelopment Agreement. Once the Redeveloper Priority Expense evidence or invoices have been approved by the City, the City shall pay such expense or authorize such payment to Redeveloper within ten (10) business days from the Project Account (defined below) established by the City for the Project.

Section 309. Grant of Easements, Licenses and Consents.

A. Access Easement. JPA will grant to the Redeveloper on or before the Closing Date a twenty (20) foot wide non-exclusive public Access Easement, without additional
consideration in the form attached hereto as Exhibit C which is substantially similar to the Access Easement granted by the JPA and recorded April 30, 2013 with the Office of the Lancaster County Register of Deeds as Instrument No. 2013022090.

B. Façade Easement. Redeveloper shall grant to the City a Façade Easement in the form attached hereto as Exhibit J related to certain Façade Enhancements.

C. Skywalk Bridge Easement. The JPA agrees to convey to Redeveloper a Skywalk Bridge Easement over portions of Lot 1, West Haymarket First Addition, Lincoln, Lancaster County, Nebraska, for the Skywalk Bridge connecting the New Building to the Blue 3 Parking Garage. The Skywalk Bridge Easement shall be in the form attached hereto as Exhibit K. JPA, at its expense, will cause the design and construction of the Deck 3’s footings, foundation and exterior walls to permit the connection of the Skywalk Bridge to Deck 3. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Skywalk Bridge Easement Premises as generally shown on Exhibit K. Redeveloper, at its expense, shall, prior to commencing construction of the Private Improvements, submit a complete set of construction drawings for the Skywalk Bridge to the JPA for JPA and its engineer(s) to review for compatibility with the Blue 3 Parking Garage so as to make certain that the structural integrity and day to day operations of the Blue 3 Parking Garage will not be compromised by attachment of the Skywalk Bridge.

Section 310. JPA Improvements.

A. Demolition and Site Preparation. JPA agrees to cause the demolition and removal of the parking improvements currently constructed on Lot 3, West Haymarket First Addition in accordance with the Removal Plan, at its cost and expense, but in no event shall said cost exceed $79,000. The JPA shall competitively bid the demolition work outlined in the Removal Plan,
and if the amount bid by lowest responsible bidder identified through the public bidding process exceeds $79,000, the Redeveloper shall pay such excess costs.

B. Streetscape. The JPA agrees expend up to $245,000 to cause the Streetscape Improvements as described in Recital F. above to be constructed as part of the O Street and Canopy Street Redevelopment Project. The JPA shall competitively bid the construction of said improvements through the City’s Purchasing Division awarding said bid to the lowest responsible bidder. The parties acknowledge and agree that under no circumstances shall the JPA be required to expend an amount greater than $245,000 for the Streetscape Improvements. The JPA, acting through its contractor, shall coordinate with Redeveloper and Redeveloper’s general contractor for the project in order to complete the Streetscape Improvements in a way consistent with the construction operations being conducted on the Project Site by Redeveloper.

ARTICLE IV.
SECURITY AND RESTRICTIONS

Section 401. Penal Bond.

A. Penal Bond Amount. Pursuant to Neb. Rev. Stat. § 18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Private Improvements, a penal bond in an amount of Two Million Eight Hundred Thousand and No/100 Dollars ($2,800,000.00) with a corporate surety authorized to do business in the State of Nebraska. The form of the Penal Bond is attached hereto as Exhibit L. Such penal bond shall stay in place until the City executes the Certificate of Completion of Improvements for the Private Improvements and shall be conditioned upon Redeveloper or Redeveloper’s contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper’s contractor, or his or her subcontractors with labor or materials performed or used in the prosecution of the Private Improvements. Proof of such penal bond
shall be supplied to and approved by the City prior to the construction of the Private Improvements. The City’s Notice to Proceed authorizing the Redeveloper to proceed with construction of the Redeveloper Undertakings shall not be issued before proof of such penal bond has been supplied to the City.

B. Payment and Performance Bond Alternative. The City shall accept, in lieu of the requirements in Section 401.A. above, a payment bond supplied by Redeveloper’s general contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the general contractor. The penal amount of the bond shall be Two Million Eight Hundred Thousand Dollars ($2,800,000). As required by Neb. Rev. Stat. § 52-141, recorded notice of the bond must be filed of record against the Project Site. If this alternative is used, proof of said payment and recording shall be provided to the City prior to the start of construction of the Private Improvements. The lien waiver shall be provided upon completion of the Private Improvements. Further, the City’s Notice to Proceed shall not be issued until such time as the City receives and approves the proof of payment and recording provided by Redeveloper.

C. Disbursement Agreement. The City shall accept in lieu of the requirement in Sections 401.A and 401.B above a fully executed Disbursement Agreement in the form attached hereto as Exhibit M and Redevelopers cash penal bond for the purposes set forth in Sections 401.A and 401.B to be held by the City in the amount of $10,000. If this alternative is used, the City’s Notice to Proceed authorizing the Redevelopers to proceed with construction of the Redeveloper Undertakings shall not be issued before the Disbursement Agreement and the $10,000 cash deposit have been provided to and approved by the City. The cash deposit shall be refunded upon issuance of the Certificate of Completion for the Redeveloper Undertakings.

Section 402. Indemnification. Redeveloper agrees to indemnify and hold the City and the JPA harmless to the extent of any payments in connection with carrying out construction
of the Private Improvements the City may be required to make for failure of Redeveloper or Redeveloper’s contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper’s contractor or his or her subcontractors with labor or materials performed or used in construction of Private Improvements.

Section 403. Use Restrictions. Redeveloper hereby represents and agrees that neither all nor any portion of the Redevelopment Project Area shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(c) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);
(d) any business operated or held out to the public as a sexually oriented business
including any business in sexually oriented entertainment or materials such as any: sexually
oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or
other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic
dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication,
internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari
mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

(g) the leasable retail square footage identified on Exhibit N will have users whose minimum normal hours of operation, six days a week, are from 11:00 a.m. to 8:00 p.m.;

(h) no freestanding cell towers, excluding a cell antenna on top of the New Building located on the Project Site.

The parties hereto agree and acknowledge that the Use Restrictions identified herein are solely for the purpose of preventing the recurrence of blighted and substandard conditions in the community and therefore to protect the general health, safety, and well-being of the public. Said restrictions are not intended to benefit any tenant of the New Building or any private property owners.

Section 404. Environmental.

A. History. JPA is the owner of real property, including the Project Site, located within the East Flank of the West Haymarket Redevelopment Site North (WHRSN). The Project
Site has been used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the “West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan” (Benesch, 2012). The Project Site is now the subject of environmental response projects or actions pursuant to enrollment in the Nebraska Department of Environmental Quality’s Voluntary Cleanup Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. The selected environmental response projects or actions which has heretofore been performed by JPA, is documented in “West Haymarket North Investigation Report and Remedial Action Plan,” (Benesch, 2012). The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400; Lincoln, NE.

B. Environmental Covenant. Redeveloper understands and agrees that the Project Site will be bound by, held, sold, and conveyed subject to the terms, conditions, obligations, and restrictions set forth in an NDEQ approved Environmental Covenant which was recorded against Lot 3, West Haymarket 1st Addition on September 14, 2016 in the Office of the Lancaster County Register of Deeds as Instrument No. 2016-037768. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Project Site and to ensure that the Project Site is not developed, used, or operated in a manner incompatible with the approved remediation.

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

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

3. Any ground intrusive work (including, but not limited to excavation, digging and drilling) conducted must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, XXX) (“O & M Plan”). A copy of the draft O & M Plan has been provided to the Redeveloper.

D. No Further Action Letter. JPA has received a “No Further Action Letter” from the Nebraska Department of Environmental Quality (“NDEQ”) verifying that based upon NDEQ’s investigation and required remediation, the area of concern or areas of concern at that Project Site, as applicable, and at any other site to which a discharge originating at the Project Site has migrated, or that any contaminants present at the Project Site or that have migrated from the Project Site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations.

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

F. Redeveloper Environmental Tests. The Redeveloper is hereby granted the right prior to the Escrow Closing, at its own expense, to enter the Project Site to undertake an environmental audit, testing, samplings, clean-up soil tests, core drillings, engineering tests and studies, and floodplain analysis (collectively “Tests”) of and affecting Project Site, subject to the following conditions:
1. Any ground intrusive Test (including, but not limited to, excavation, digging, and drilling) must be conducted in accordance with NDEQ approved O & M Plan.

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

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

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

5. Redeveloper shall restore the Project Site to the same condition as before any Tests occurred. A copy of the results of the Tests shall be provided to the JPA and City as soon as such Test results are reasonably available.

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

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

Redeveloper shall provide Employer’s Liability Insurance with minimum limits or $500,000 for bodily injury by accident or disease for each accident and each employee placed with an insurance company authorized to write such insurance in all states where Redeveloper will have employees located in the performance of this contract, and Redeveloper shall require each contractor and subcontractor similarly to maintain Employer’s Liability Insurance on the contractor’s and subcontractor’s employees.

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

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

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

G. **Right to Terminate Redevelopment Agreement.** Prior to the Escrow Closing, the Redeveloper shall have the right to notify JPA and City that based upon the results of the Tests, the Redeveloper has determined, in its sole discretion, that the condition of the Project Site is not suitable for its intended uses. In the event of such notice from the Redeveloper to the JPA and the City on or before the Escrow Closing, Redeveloper shall have the option, by written notice delivered to JPA and the City to terminate this Redevelopment Agreement. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another.

H. **Indemnification.** The JPA shall, from and after the conveyance of the Project Site to Redeveloper, indemnify and hold Redeveloper harmless from and against any claim, demand, cost or liability arising out of or attributable to the environmental condition of the Project Site conveyed to Redeveloper by the JPA, except to the extent such claim, demand, cost or liability arises out of, or is attributable to the Redeveloper's failure to comply with the post-acquisition due diligence requirements in 42 USC § 9601(40), the Environmental Covenant and/or the O & M Plan.

**Section 405. Article IV - Run with the Land.** It is intended that each of the restrictions set forth in Section 403 and Section 404 shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other
interest in the Project Site, except for tenants of the New Building, 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. At Closing, the Redeveloper shall record permanent covenants against the Project Site with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit N.

ARTICLE V

PARKING RIGHTS

Section 501. Office & Retail Monthly Parking; Redeveloper’s Right to Lease.

After completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Blue 3:

A. Monthly Parking Stalls. For office and retail uses, Redeveloper shall have the right to lease up to three hundred seventeen (317) parking stalls (“Monthly Parking”). The Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Blue 3 parking stalls allocated for monthly parkers. The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

B. Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Blue 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology
in calculating overall parking demand. The City’s shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

C. **Duration.** The parking rights outlined in this Section 501 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

**Section 502. Failure to Exercise Parking Rights.** If Redeveloper does not exercise any or all of the above rights to lease parking stalls by January 1, 2021, Redeveloper shall have the following continuing right to lease parking stalls:

If Monthly Parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for permits at the head of the applicable Reserved Parking, Monthly Parking and Event Parking waiting list to be compiled by the City or its agent operating the Deck 3 (collectively “Waiting Lists”). Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing Reserved Parking, Monthly Parking and Event Parking permit to accommodate Redeveloper’s request for parking permits.

**ARTICLE VI. TAX AGREEMENT**

**Section 601. Valuation of Project Site.** The City intends to use the Tax Increment Provision to generate a tax increment in the estimated amount of Fourteen Million Three Hundred Fifty Thousand and No/100 Dollars ($14,350,000.00) which tax increment revenues (“TIF Tax Revenues”) when collected shall be used to pay debt service of the TIF Indebtedness
to be incurred as provided below. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Law which will be attributable to the construction of the Private Improvements and redevelopment contemplated under this Redevelopment Agreement. The TIF Tax Revenues which are to be used to pay debt service for the TIF Indebtedness will be derived from the increased valuation from redeveloping the Project Site as provided in this Redevelopment Agreement.

Redeveloper further agrees not to contest any taxable valuation assessed for the Project Site which does not exceed Sixteen Million and No/100 Dollars ($16,000,000.00) commencing the first tax year following the completion of the Private Improvements and continuing for a period of not to exceed fifteen (15) years after the Effective Date or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter.

Section 602. **Tax Increment Financing.** Issuance of TIF Indebtedness. Not earlier than thirty (30) days following the later date of the approval and execution of this Redevelopment Agreement or the date the issuance of the TIF Bond (defined below) has been authorized, which date is after the remonstrative period in Neb. Rev. Stat § 18-2142.01 or as soon thereafter as is practicable, the City shall issue TIF Indebtedness in an amount not to exceed Two Million Eight Hundred Five Thousand and No/100 Dollars ($2,805,000.00) in order to reimburse the City for the First Priority Use of TIF Bond Proceeds and to allow the City to timely make a grant or grants from the TIF Bond Proceeds to the Redeveloper to fund the Redeveloper Public Improvements. The TIF Indebtedness shall be referred to herein as “**TIF Bond**” and the purchaser of said bond, be it the Redeveloper, Redeveloper’s Lender, or an Investor, are individually and collectively referred to herein as “**TIF Bond Purchaser**”. The
total dollar amount of the TIF Bond is the estimated amount of debt that can be repaid by ad
valorem tax revenue generated by the tax increment collected over a maximum of fifteen years
from the Effective Date to be generated on the Project Site and Private Improvements based
upon an estimated taxable valuation of $16,000,000.00 after completion of the Private
Improvements and an interest rate not to exceed 6%. The Redeveloper or Redeveloper’s Lender,
shall have the option to buy the TIF Bond.

Section 603. Use of TIF Proceeds.

A. TIF Bond A. TIF Proceeds from the sale of the TIF Bond A shall be expended in
the following priority in accordance with those cost estimates listed on Exhibit O. Only costs
incurred after the execution of this Redevelopment Agreement by all parties hereto shall be
eligible for payment.

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF
Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, and reserves;
SECOND PRIORITY: Reimburse the Redeveloper for Land Purchase
Assistance.
THIRD PRIORITY: Fund the Redeveloper Public Improvements.

The Third Priority Items are hereinafter referred to as the “Redeveloper Priority
Expenses.” The cost for the Uses items in Exhibit O are estimates and reimbursement will be
based upon the actual design, inspections, project administration, construction and
implementation costs. The Redeveloper is authorized to reduce or increase the scope, scale, size
or phasing of a Third Priority item or items, subject to City approval, so long as the overall
available Total TIF Uses amount is not exceeded. In the event there is not enough available
Grant Funds (defined below) from TIF Proceeds to complete the Third Priority item(s) as shown
above, then the Redeveloper is authorized to reduce the scope, scale, size or phasing of a Third Priority item or items or eliminate a Third Priority item or items subject to City approval.

B. Authority of City Finance Director. Subject to the terms of this Redevelopment Agreement, the City Finance Director on behalf of the City shall have the authority to determine the timing of issuance of the TIF Indebtedness and all other details of the TIF Indebtedness, TIF Bond, TIF Tax Revenues, Project Account and Grant of Funds for the eligible TIF Cost of the Redeveloper Undertakings; provided that, the semi-annual TIF Tax Revenues shall first be applied toward payment of the annual debt service of the TIF Bond. All such arrangements made by the Finance Director shall be subject to approval of the Mayor.

Section 604. Debt Service for TIF Indebtedness. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of and/or interest on the TIF Bond with interest as provided in the TIF Bond Ordinance(s) with interest at a rate not to exceed six percent (6.0%) per annum. Any unpaid debt service on the TIF Indebtedness (including interest) is not payable from any other source whatsoever and shall not constitute a general obligation or debt of the City.

A. Redeveloper Purchased TIF Bond; Deferral/Forgiveness of Tax Increment Deficiency. 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, but not limited to, a decline in taxable valuation of the Project Site which impedes the City's ability to pay debt service on the TIF Bond, shall be borne entirely by the Redeveloper without recourse of any kind against the City. Specifically, in the event of and to the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond, the Redeveloper agrees to defer payment of the same for each year that there exists a deficiency
in such TIF Tax Revenues during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse Redeveloper for 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 from the Ad Valorem Tax Provision to meet current debt service. In the event the TIF Bond is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness on such Bond shall be forgiven.

B. Lender Purchased TIF Bond; Redeveloper Payment of Tax Increment Deficiency. If Redeveloper’s Lender purchases the TIF Bond, the Redeveloper shall be liable to cover 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 Project Site and Private 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, Redeveloper agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request for such payment from the City. If Redeveloper is required to pay any such deficiency, the City shall reimburse Redeveloper for all sums paid by 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 Tax Increment Period (defined below) 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 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.

C. Adjustments for any Payments of Tax Increment Deficiency. If Redeveloper makes one or more payments to cover a deficiency in the required debt service payments on the
TIF Bond as provided in paragraph A and paragraph B of Section 604, the City shall maintain a record of the aggregate amount of said payments, which shall include interest (at the same interest rate of the then outstanding TIF Bond) (“Redeveloper’s Aggregate Deficiency Payments”). If the TIF Tax Revenues from the Tax Increment Provision for any year exceeds the amount necessary to meet current debt service of the TIF Indebtedness, then the excess TIF Tax Revenues shall be paid to Redeveloper and deducted from the Redeveloper’s Aggregate Deficiency Payments until Redeveloper’s Aggregate Deficiency Payments have been fully reimbursed.

Section 605. Grant of Funds.

A. Grant of Funds. In order to support redevelopment of this O Street and Canopy Street Project and as an inducement for Redeveloper to construct the Private Improvements and JPA to construct the JPA Improvements identified in Section 310, the City agrees to the extent allowed by law and then only to the extent funds are lawfully available from issuance of the TIF Indebtedness to the Redeveloper up to the total amount of the remaining TIF Proceeds, less the amounts expended on the First Priority Item, to pay the Land Purchase Assistance and reimburse Redeveloper for the cost of the other Redeveloper Priority Expenses. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the Private Improvements have been substantially completed and that the expenditures were made for eligible Redeveloper Priority Expenses. The City shall maintain a record of all expenditures of the TIF Proceeds to determine the total amount of TIF Proceeds expended on Redeveloper Priority Expenses.

B. Reimbursement of Grants. Subject to Section 901 (Remedies) below, Redeveloper agrees to repay the City for the aid to construction and any grant or grants of funds to Redeveloper as provided for in Section 603.A. (Use of TIF Proceeds) and Section 605.A.
(Grant of Funds) above in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 302.C. (Commencement and Completion Deadline for Private Improvements) above and, upon such repayment of the of the grant funds, this Redevelopment Agreement shall be null and void in regards to Redeveloper’s obligation to construct the Private Improvements located upon the Project Site. Subject to Section 901 (Remedies) below, in the event Redeveloper fails to maintain the Private Improvements as provided in Section 306 (Duty to Maintain) above, then said Redeveloper shall reimburse the City 1/15 of the grant funds granted Redeveloper for construction of the Private Improvements as provided for in Section 605.A. (Grant of Funds) above, for each year a Redeveloper fails to maintain the Private Improvements.

Section 606. **Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to Redeveloper the Redeveloper’s Certificate of Completion of the Private Improvements, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the “**Tax Increment Period**”), convey the Project Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries.

Section 607. **Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the Project Site and Private Improvements prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Project Site and improvements for tax purposes except as provided in Section 601.
Section 608. **Damage or Destruction of Redeveloper’s Property.** During the Tax Increment Period, Redeveloper agrees to keep the Project Site and the Private Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders’ risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 609 may, at Redeveloper’s option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to use reasonable efforts to restore the Private Improvements to their prior condition within eighteen (18) months from the date of the damage or destruction and shall diligently pursue the same to completion.

Section 609. **Condemnation.** In the event that during the Tax Increment Period all or a substantial portion of the Project Site and Private Improvements is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

Section 610. **Termination of Provisions.** The provisions of this Article VII shall terminate upon the end of the Tax Increment Period.
ARTICLE VII.

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 701. Limitation Upon Encumbrance of Property. Prior to issuance of the Redeveloper’s Certificate of Completion of Improvements by the City for the Private Improvements, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Project Site and Private Improvements, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to such Project Site and Private Improvements, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Redeveloper Improvements, and to finance, operate, maintain, repair, replace and insure said Redeveloper Improvements. All such mortgages, financial encumbrances, or monetary liens shall be subject to the terms and conditions of this Redevelopment Agreement and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Project Site and Redeveloper Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site and Redeveloper Improvements whether by voluntary act of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Project Site and Redeveloper Improvements and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the Clerk of the district court pursuant to Neb. Rev. Stat. § 52-142 to avoid or prevent foreclosure of such encumbrance or lien.
Section 702. **Mortgage Holder Obligations.** Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Redeveloper Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the holder of the mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the holder of the mortgage; provided, however, no person, including the holder of a mortgage authorized by this Redevelopment Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement.

Section 703. **Copy of Notice of Default to Mortgage Holder.** Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the Register of Deeds of Lancaster County, Nebraska or as provided to the City by such mortgage holder.

Section 704. **Mortgage Holder’s Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 703, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper’s Certificate of Completion) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand.
as referred to in Section 703, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Redevelopment Agreement.

Section 705. City’s Option to Purchase Property. In any case where the holder of any mortgage obtains title to the Project Site and any Private Improvements as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper’s Certificate of Completion of Improvements for the Private Improvements, the City shall (and any additional mortgage instrument made after the date of this Redevelopment Agreement with respect to the Project Site prior to issuance by the City of the Redeveloper’s Certificate of Completion of Improvements shall so provide) be entitled, at its option, to a conveyance to it of the Project Site upon payment to such holder of an amount equal to the sum of:

(1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(2) All expense with regard to foreclosure;

(3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Project Site;

(4) The depreciated cost of any improvement made by such holder;

(5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and
(6) All other reasonable holding costs actually incurred as to the Project Site.

The City’s option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to said Project Site and notifies the City, unless the City waives the option prior to the end of such 90-day period. In the event the City exercises its option under this Section, then the City shall also be required to repay in full any and all outstanding TIF Bonds and TIF indebtedness and shall be entitled to receive the TIF Proceeds.

Section 706. Mortgage Rights Applicable to Other Forms of Encumbrance. The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site prior to issuance of the Redeveloper’s Certificate of Completion of Improvements for the Private Improvements thereon shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

Section 707. Termination of Provisions. The provisions of this Article VII shall terminate upon issuance by the City to the Redeveloper the Redeveloper’s Certificate of Completion of Improvements for all the Private Improvements.
ARTICLE VIII.

REPRESENTATIONS

Section 801. Development of Project. Redeveloper represents and agrees that its undertakings, pursuant to this Redevelopment Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

Section 802. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to issuance of the Redeveloper’s Certificate of Completion of Improvements by the City, there shall be no sale or transfer by Redeveloper or assignment of its rights or obligations under this Redevelopment Agreement to any party without the prior written approval of the City Administration, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Redevelopment Agreement, as conditions to any such approval, that:

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

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds of Lancaster County, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Redevelopment Agreement and agreed to be subject to all of the conditions and restrictions to which Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper’s interest in the Project Site or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Redevelopment Agreement with respect to the Project Site and
the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper’s Certificate of Completion. The restrictions set forth in this Section 802 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper’s Certificate of Completion of Improvements by the City.

Section 803. Change in Scope, Termination of Project. City and Redeveloper agree that any material change in the scope of the O Street and Canopy Street Project including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Sources and Uses of Funds for the Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of Redeveloper to obtain
the necessary governmental approvals and permits from the City prior to Closing to construct the Private Improvements as reflected on the Project Schematic Drawings, Redeveloper may terminate this Redevelopment Agreement by delivering written notice to the City.

ARTICLE IX.

REMEDIES

Section 901. In General. Except as otherwise provided in this Redevelopment Agreement, in the event of any default in or breach of this Redevelopment Agreement, or any of its terms or conditions by the City, the JPA, Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

Section 902. Other Rights and Remedies: No Waiver by Delay. The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Redevelopment Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Redevelopment
Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 903. Delay in Performance For Causes Beyond Control of Party (“Force Majeure”).** For the purpose of any provisions of this Redevelopment Agreement, the City, the JPA, and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government (except the imposition of tariffs on foreign goods), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

**Section 904. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Redevelopment Agreement, whether provided by law or by this Redevelopment Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Redevelopment Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.
ARTICLE X.

MISCELLANEOUS

Section 1001. **Conflicts of Interest; City Representatives Not Individually Liable.**

No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Redevelopment Agreement.

Section 1002. **Persons Authorized to Issue Approvals.** For purposes of this Redevelopment Agreement and the approvals and disapprovals required hereunder, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, or the Mayor, or the Director of the Department of Urban Development or its successor as authorized in this Redevelopment Agreement, as constituting the approval or disapproval required by the City. The Mayor is hereby authorized to amend or modify the Order of Priority and use of TIF Proceeds for the Priority items as shown in Section 603.A. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of Brad Strittmatter or Jeff Jenkins as constituting the approval or disapproval of Redeveloper.

Section 1003. **Equal Employment Opportunity.** Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Redevelopment Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race,
religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 1004. Notices and Demands. A notice, demand, or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

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

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

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

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

If to Redeveloper: Project Oscar 2.0, LLC
601 P Street
Lincoln, Nebraska 68508

With a copy to: Seacrest & Kalkowski, PC, LLO
Attn: DaNay Kalkowski
1128 Lincoln Mall, Suite 105
Lincoln, Nebraska 68508
or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

Section 1005. Approval Not Unreasonably Withheld and Timely Approval.
Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Redevelopment Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Redevelopment Agreement submits any item to another party to this Redevelopment Agreement for approval pursuant to this Redevelopment Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

Section 1006. Access to Project Site. Redeveloper shall permit the representatives of the City to enter Project Site at any and all reasonable times, as the City may deem necessary for the purposes of this Redevelopment Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, the City shall permit Redeveloper such entry upon the public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this section. The City’s right of access granted under this Section shall terminate upon issuance by the City of the Redeveloper’s Certificate of Completion. Notwithstanding the above, Redeveloper shall not be relieved of the provisions
contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

Section 1007. Termination of Provisions; Provisions Run With the Land. This Redevelopment Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest. Except as otherwise provided herein, the provisions and covenants of this Redevelopment Agreement shall terminate upon issuance by the City of the Redeveloper’s Certificate of Completion of Improvements for the Private Improvements.

Section 1008. Federal Immigration Verification System Requirements. In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Redeveloper agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Redeveloper shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 USC 1324b. The Redeveloper shall require any contractor constructing the Private Improvements on behalf of Redeveloper to comply with the provisions of this section.

Section 1009. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Redevelopment Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 1010. Mutual Cooperation. The parties agree to mutually cooperate in constructing the various improvements each is to construct in the West Haymarket
Redevelopment Area so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time.

**Section 1011. Integrated Contract; Severance of Provisions; Interpretation; Governing Law.** It is intended by the parties that this Redevelopment Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Redevelopment Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Redevelopment Agreement but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to the Redeveloper as reimbursement for the cost of the City Public Improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61). This Redevelopment Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 1012. Definitions.**

A. For the purpose of this Redevelopment Agreement, the term “holder” in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. The term “mortgage” shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.
C. The term “minimum investment” shall include all costs incurred by Redeveloper when constructing the Private Improvements and Public Enhancements, including but not limited to construction costs, fees, financing costs, and land costs.

Section 1013. Audit. Redeveloper shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Redevelopment Agreement, as allowed by law. City shall be subject to audit by Redeveloper with regard to the collection, disbursement, and/or funding of any of the uses set forth in Section 703 B. and shall make available to Redeveloper and/or any auditor working on behalf of Redeveloper copies of all financial and performance-related records and materials germane to this Redevelopment Agreement and the use of the Tax Increment Financing Proceeds for the Priority Expenses described in Section 603.B.

Section 1014. Effective Date of Ad Valorem Tax Provision. The Effective Date of the Ad Valorem Tax Provision of the Private Improvements portion of the O Street and Canopy Street Project shall be July 1, 2020, unless otherwise agreed to in writing by the Redeveloper and the City (the “Effective Date”). The City will deliver written notice to the County Assessor on or before August 1, 2020 to divide the property taxes in the Project Area and use the last certified valuation for 2019 to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147 (3) of the Nebraska Revised Statutes.

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

Section 1016. Recording. A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit N) shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site, at the Redeveloper’s expense.
Section 1017. **Representations and Warranties of Parties.**

A. Redeveloper represents and warrants to City as follows:

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

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

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

iv. **State Incentives.** That Redeveloper certifies that it (i) has not filed, nor does it intend to file, and application with the Nebraska Department of Revenue to receive tax incentives under the Nebraska Advantage Act for a project located or to be located in the
redevelopment project area; (ii) has not requested, nor does it intend to request, a refund of the
city’s local option sales tax revenue; and (iii) has not received any approval of any application
for any project in the redevelopment project area under the Nebraska Advantage Act.

B. City represents and warrants to Redeveloper as follows:

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

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

C. JPA represents and warrants to Redeveloper as follows:

   i. Authority Relative to Agreement. This Redevelopment Agreement has been
duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA,
enforceable in accordance with its terms, except as the same may be limited by bankruptcy,
insolvency, reorganization, or other laws affecting the enforcement of creditor’s rights generally,
or by judicial discretion in connection with the application of equitable remedies.
ii. **Effect of Agreement.** The execution, delivery and performance of this Redevelopment Agreement by JPA has been duly authorized by all necessary action by JPA and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to JPA, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which JPA is a party.

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

**Section 1019. Successors and Assigns.** The provisions of this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

**Section 1020. Purpose of Agreement.** This Redevelopment Agreement has been entered into by the City to provide financing for the P Street and Canopy Street Project, an approved redevelopment project as defined in Neb. Rev. Stat. § 18-2103(12) within the Lincoln Center Redevelopment Plan.

**Section 1021. Certain Public Enhancements and JPA Improvements.** Notwithstanding any contrary provisions herein, certain Public Enhancements and JPA Improvements will include design costs, improvements and construction that the City and JPA determine 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 and JPA Improvements with the New Building and Skywalk. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor’s competitive bids for
said Public Enhancements and JPA Improvements in advance of requesting payment for the same to enable the City and JPA to obtain an independent review of the same by a qualified professional or contractor. The City and/or JPA shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and appropriate, Redeveloper shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the City and/or JPA in advance of incurring the same. Redeveloper agrees to assist and make any and all pertinent documents available for inspection and copying by the City and JPA or its auditors in support of the same.

**Section 1022. Authority.** The Mayor is hereby authorized to take such action as the Mayor may deem necessary or advisable in order to carry out this Redevelopment Agreement, including, but not limited to, the authority to make ministerial alterations, changes or additions to the Agreement and the Exhibits.

**Section 1023. Exhibits.** The following Exhibits are attached to this Redevelopment Agreement and are incorporated herein by this reference:

- Exhibit A - West Haymarket Redevelopment Area
- Exhibit B - Project Site
- Exhibit C – Access Easement
- Exhibit D - Map of the Redevelopment Project Area
- Exhibit E - Project Schematic Drawings
- Exhibit F – Area of JPA Streetscape Improvements
- Exhibit G – Staging Plan
- Exhibit H – Request for Notice to Proceed
- Exhibit I – Request for Certificate of Completion
- Exhibit J – Façade Easement
- Exhibit K – Skywalk Easement
- Exhibit L – Penal Bond
- Exhibit M – Disbursement Agreement
- Exhibit N – Memorandum of Redevelopment Agreement and Use Restrictions
- Exhibit O – Sources & Uses
Executed by City this _____ day of _________________, 2018.

“City”

ATTEST: CITY OF LINCOLN, NEBRASKA
a municipal corporation

________________________________________
Chris Beutler, Mayor of Lincoln

“JPA”

WEST HAYMARKET JOINT PUBLIC AGENCY

_____________________________________
Chris Beutler
Chairperson of the West Haymarket Joint
Public Agency Board of Representatives

STATE OF NEBRASKA ) ) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of __________, 2018, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City of Lincoln, Nebraska.

_____________________________________
Notary Public

STATE OF NEBRASKA ) ) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of __________, 2018, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives, on behalf of the Joint Public Agency.

_____________________________________
Notary Public
Executed by Redeveloper this ____ day of __________________, 2018.

“Redeveloper”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ________________________________
Title: Manager

STATE OF NEBRASKA
 )
 ) ss.
COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this ____ day of __________, 2018, by __________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

__________________________________
Notary Public
EXHIBIT A

West Haymarket Redevelopment Area
EXHIBIT B

Project Site
EXHIBIT C

ACCESS EASEMENT

Return the Original to:

City Attorney’s Office
Attention: Tim Sieh
555 South 10th Street
Lincoln, NE 68508

ACCESS EASEMENT

THIS ACCESS EASEMENT is made and entered into this ____ day of ______________, 2018 by and between the WEST HAYMARKET JOINT PUBLIC AGENCY, herein called “JPA or “Grantor”, and PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company, herein called “Redeveloper”.

RECITALS

A. The JPA is the current owner of Lot 1 (“Lot 1”), West Haymarket 1st Addition, and Lot 4 (“Lot 4”), Block 7, West Haymarket Addition, and Outlot E, Block 7, West Haymarket Addition (“Outlot E”), all in Lincoln, Lancaster County, Nebraska.

B. Redeveloper is the owner of Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska.

C. JPA and Redeveloper have entered into a Redevelopment Agreement for the Redeveloper’s development of Lot 3, West Haymarket 1st Addition (“Project Site”) and the construction thereon of a new building (“New Building”) consisting of approximately 67,000 square feet of office space and 5,800 square feet of retail space.

D. Redeveloper is desirous of obtaining secondary vehicular/pedestrian access from P Street and Canopy Street to the Project Site to enable motor vehicle deliveries to the New Building and the JPA is willing to grant such secondary access.

NOW, THEREFORE, in consideration of the above Recitals and performance of the covenants and agreements between Redeveloper and JPA in the Redevelopment Agreement, it is hereby agreed as follows:
1. JPA does hereby grant and convey unto Redeveloper, its successors and assigns a permanent non-exclusive easement for two-way vehicular access and pedestrian access in, upon, and over all of the following described property to wit:

“North Section Easement Premises”: The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska

and

“South Section Easement Premises 1”:

(collectively “Easement Premises”) for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site from P Street and N Street. The Easement Premises (North Section Easement Premises and South Section Easement Premises 1) is shown on Exhibit 1, which is attached hereto and incorporated herein by this reference.

Notwithstanding the above, the JPA shall reserve the right at any time to remove the Easement Premises from Lot 4 and change the above-described portion of Outlot E by filing an amendment to this Easement Agreement which shall remove and delete South Section Easement 1 with the following South Section Easement 2:
“South Section Easement Premises”:

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT “E”, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT “E”, THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT “E”, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT “E”, A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT “E”; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT “E”, A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OR LESS.

for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site between P Street and Canopy Street. South Section Easement Premises 2 is shown on Exhibit 2, which is attached hereto and incorporated herein by this reference.

Upon filing said amendment to this Easement Agreement the Easement Premises shall include the North Section Easement Premises and South Section Easement Premises 2.

The Easement Premises is subject to the following terms and conditions:

(1) The Easement Premises is subject to the utility easement on the east twenty (20) feet of Lot 1 and the utility easement on south ten (10) feet of Lot 2 and the north ten (10) feet of Lot 3, dedicated on the final plat of West Haymarket 1st Addition, filed of record with the Lancaster County Register of Deeds as Instrument No. 2013015674 on March 29, 2013, and the blanket utility easement over Outlot E, dedicated in the final plat of West Haymarket Addition filed of record with the Lancaster County Register of Deeds as Instrument No. 2012057225 on November 9, 2012.

(2) Responsibility for the cost of construction, maintenance, or repair of the Easement Premises shall rest with JPA and no responsibility thereof shall accrue to the Redeveloper by reason of the benefits from this Easement. The services to be provided by the Grantor shall include hard surface repairs and replacement, but not snow removal and cleaning.

(3) This Easement shall be permanent and shall be appurtenant to and run the Project Site.

(4) This Easement shall be exclusively used by Redeveloper for motor vehicle and pedestrian ingress and egress.

JPA covenants that JPA is the owner of the Easement Premises and has legal right, title and capacity to grant the Easement granted herein.
JPA is granting the uses herein specified without divesting the JPA of title and ownership of the right to use and enjoy the Easement Premises for any purpose except the construction thereof of permanent buildings, subject only to the right of Redeveloper to use the same for the purposes herein expressed, and subject to any easements of record heretofore granted to other parties.

It is further agreed that this Access Easement shall be filed with the office of the Register of Deeds of Lancaster County, Nebraska, and indexed against Lots 1-3, West Haymarket 1st Addition, and Outlot E, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska and shall thereafter run with the land and be finding upon all parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, JPA has executed this Easement as of this ____ day of __________, 2018.

“JPA”

West Haymarket Joint Public Agency
a political subdivision and body corporate politic of the State of Nebraska

By: _________________________________
Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this ___ day of __________, 2018, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

__________________________________
Notary Public
“Redeveloper”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ____________________________________
Title: Manager

STATE OF NEBRASKA )
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this _____ day of ________, 2018, by _________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

____________________________________
Notary Public
North Section Easement Premises

The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County Nebraska.
South Section Easement Premises 1

Access Easement
South Section Easement Premises 1

PERMANENT EASEMENT

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E" & LOT 4, BLOCK 7, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FROM THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF SOUTH 14 DEGREES 03 MINUTES 08 SECONDS EAST, A DISTANCE OF 90.81 FEET TO A POINT; THENCE SOUTH 0 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 322.73 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 15 MINUTES 31 SECONDS EAST, A DISTANCE OF 320.22 FEET TO A POINT; THENCE NORTH 14 DEGREES 03 MINUTES 08 SECONDS WEST, A DISTANCE OF 93.40 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 59 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,272 SQUARE FEET MORE OF LESS.
South Section Easement Premises 2

Access Easement
South Section Easement Premises 2

PERMANENT EASEMENT

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT “E”, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT “E”; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT “E”, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT “E”, A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT “E”; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT “E”, A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OR LESS.
EXHIBIT D

Map of the Redevelopment Project Area
EXHIBIT E

PROJECT SCHEMATIC DRAWINGS
EXHIBIT G

STAGING PLAN AND MAP

STAGING PLAN – TERMS AND CONDITIONS

1. Redeveloper may make use of the area depicted as the OSCAR 2.0 Project staging area on the map attached hereto as Attachment A to coordinate construction efforts and store materials and equipment necessary for the construction of the New Building to be constructed on Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska. The JPA, however, may order the Redeveloper and anyone acting on its behalf to remove all materials, equipment, and fencing from the staging area upon sixty (60) days written notice from the JPA. In the event the JPA orders Redeveloper and those acting on its behalf to vacate the staging area, the JPA shall coordinate with the Developer to determine the suitability of an alternative staging area in the West Haymarket.

2. There will need to be a high level of coordination and teamwork in order to accomplish all projects in the area. Coordination with other projects in the West Haymarket area shall be managed on behalf of the JPA by PC Sports.

3. All non-building site areas (roads, staging areas, parking lots, etc.) are to be left in the same or better condition vs. before their use. The cost of repairs necessary to return the staging area and/or any other non-building site areas utilized by Redeveloper to the same condition it was in prior to Redeveloper’s use shall be borne by Redeveloper.

4. Public access from Canopy Street shall continue to be utilized to provide access to the parking areas on Lot 4, Block 7, West Haymarket Addition, Lincoln, Nebraska. Said access shall remain open at all times and is subject to the control of the JPA and those acting on its behalf. Further, coordination of any street closures must be coordinated with PC Sports for major Arena events. To the extent possible, any closure of Canopy Street shall occur only during working hours.

5. If additional rock/material is requested for access roads or construction entrances, Redeveloper will be required to add additional rock at its own cost and expense.

6. The project is to have and execute a SWPPP program. Special attention needs to be paid to track off cleanup and any potential run-off.

7. If any fences, job trailers, or items that are not easily moved are to be located in the staging or ROW areas their location must be coordinated with PC Sports. If such fences, job trailers or items need to be relocated it will be at no additional cost to the JPA.

8. Prior to moving to the staging site, a proposed site laydown plan is to be sent to PC Sports for review and approval.

9. The JPA may require a site fence to be assembled along the Canopy Street and “O” Street sides of the staging area in order to screen off construction activities. Redeveloper will be responsible to cover the costs of these sections of the fence.

Redeveloper and anyone acting on Redeveloper’s behalf shall follow the West Haymarket Environmental operating and maintenance requirements.
EXHIBIT G

MAP OF STAGING AREAS

WHJPA Staging Plan for Olsson 2.0  8.29.18
EXHIBIT H

REQUEST FOR NOTICE TO PROCEED

REQUEST FOR NOTICE TO PROCEED

Redeveloper hereby requests the City to issue Redeveloper a Notice to Proceed with commencement of the New Building and Redeveloper Public Improvements. In support of this request, Redeveloper certifies that the below conditions precedent to such issuance under the Redevelopment Agreement have been satisfied.

1. The TIF Bond Counsel Fee and TIF Admin. Fee required by Section 101.A. have been paid as evidenced by the attached receipt of payment.

2. The Exterior Construction Drawings have been submitted to and approved by the Mayor as required by Section 301.C. and evidenced by the Mayor’s Approval of Exterior Construction Drawings dated ____________________.

3. Security to guarantee construction of the New Building and Redeveloper Public Improvements have been submitted to the City and approved by the City Attorney’s office as required by Section 401.

4. The Memorandum of Redevelopment Agreement and Use Restrictions and the Façade Agreement have been recorded with the Register of Deeds as Instrument Nos. __________ and __________, and copies thereof have been provided to the City.

“Redeveloper”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: _________________________________
Title: Manager
NOTICE TO PROCEED

You are hereby notified that you are authorized to commence construction of the Private Improvements and Redeveloper Public Improvements.

______________________________
Director, Department of Urban Development
EXHIBIT I
CERTIFICATE OF COMPLETION OF IMPROVEMENTS

Return the Original to:

Project Oscar 2.0, LLC
601 P Street
Lincoln, NE 68508

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

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

Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska,

that the Private Improvements required to be constructed by the undersigned "Redeveloper" upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated as of the ____ day of ________________, 2018, between the City, the West Haymarket Joint Public Agency ("JPA"), and the Redeveloper, as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the ____ day of ________________, 2018 between the City, JPA and Redeveloper and recorded as Instrument No. _______________ in the office of the Register of Deeds for Lancaster County, Nebraska.
“Redeveloper”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ________________________________
Title: Manager

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of __________, 20__, by _________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

____________________________________
Notary Public

ACCEPTED by the City of Lincoln, Nebraska, this _____ day of ________________, 201__.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

____________________________________
City Clerk
____________________________________
Chris Beutler, Mayor

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of __________, 201__, by Chris Beutler, Mayor of the City of Lincoln.

____________________________________
Notary Public

- 87 -
EXHIBIT J

FAÇADE EASEMENT AGREEMENT

Return the Original to:

City Attorney’s Office
Attention: Tim Sieh
555 South 10th Street
Lincoln, NE  68508

FAÇADE EASEMENT AGREEMENT

THIS FAÇADE EASEMENT AGREEMENT (the “Agreement”) is made this as of this ___ day of __________, 2018 by and between Project Oscar 2.0, LLC, a Nebraska limited liability company (“Grantor”), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska (“Grantee”).

RECITALS

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

Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the “Property”).

B. Grantor entered into a Redevelopment Agreement, dated as of ________________, 2018 between the Grantor as Redeveloper, the Grantee as the City and the West Haymarket Joint Public Agency (“JPA”), as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the ___ day of ________________, 2018 between the Grantor, Grantee and JPA and recorded as Instrument No. _______________ in the office of the Register of Deeds for Lancaster County, Nebraska (the “Redevelopment Agreement”) for the redevelopment and renovation of the Property.

C. Pursuant to the Redevelopment Agreement, to ameliorate the blighted and substandard conditions of the Property and to enhance the aesthetics of the new building constructed on the Property (the “New Building”), Grantor agreed to make certain improvements to the vertical exterior façade of the New Building (the “Façade”) for the benefit of the public. Under the Redevelopment Agreement Grantor is receiving tax increment financing from Grantee to make certain public improvements including, but not limited to the improvements to the Façade.
This Agreement sets forth the parties’ rights and obligations with respect to the Façade.

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

1. Façade. In consideration of the benefits received by Grantor under the Redevelopment Agreement, Grantor hereby agrees to subject the façade of the Property to the restrictions described herein.

2. Façade Restrictions. Grantor agrees to observe and comply with the following restrictions:
   a. Grantor shall not demolish, remove or raze the Façade during the term of this Agreement.
   b. Grantor shall not undertake, or allow to be undertaken, any material changes to the Façade, without the express written consent of Grantee. Changes to the Façade include, but are not limited to:
      (i) Any material change in the Façade, including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Façade;
      (ii) Any significant reconstruction, repair, repainting or refinishing of any Façade feature that alters its state from the existing condition.
   c. This section shall not preclude Grantor from implementing any ordinary or necessary maintenance as set forth in Section 3 below or permitted signage.

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

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

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

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

7. **Term.** The term of this Agreement shall be fifteen (15) years from the date of completion of the improvements to the Façade. Provided, however, this Agreement shall terminate at any earlier date that the Redevelopment Agreement is terminated and is no longer in effect.

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

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

10. **Binding Effect.** This Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heir, executors, administrators, successors and assigns of Grantor.

[SIGNATURE PAGE FOLLOWS]
This Façade Easement Agreement is effective as of the date first stated above.

“Grantor”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: _____________________________________
Title: Manager

STATE OF NEBRASKA )
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this _____ day of ___________, 2018, by _________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

____________________________________
Notary Public
“Grantee”

THE CITY OF LINCOLN, Nebraska, a municipal corporation

Attest: ________________________
City Clerk

By: ________________________________
Chris Beutler, Mayor

STATE OF NEBRASKA  )
 ) ss.
COUNTY OF LANCASTER  )

The foregoing instrument was acknowledged before me this ___ day of _________________, 2018, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

________________________________________
Notary Public
EXHIBIT K

SKYWALK BRIDGE EASEMENT

Return the Original to:

City Attorney’s Office
Attention: Tim Sieh
555 South 10th Street
Lincoln, NE  68508

SKYWALK BRIDGE EASEMENT

That the WEST HAYMARKET JOINT PUBLIC AGENCY, herein called “JPA”, record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, and the further consideration of the performance of the covenants and agreements by Redeveloper as hereinafter set out and expressed, does hereby GRANT, REMISE and RELINQUISH unto PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company, and its successors and assigns, (collectively “Redeveloper”), the RIGHT, PRIVILEGE and NONEXCLUSIVE PERPETUAL SKYWALK BRIDGE EASEMENT to permit the design, construction, reconstruction, inspection, support, footings, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the Redeveloper’s New Building located on Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (“New Building Property”) and the JPA Parking Garage (“Deck 3”) located on Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (“Deck 3 Property”), and to permit pedestrian ingress and egress from the New Building over and through the JPA Parking Garage (Deck 3) including Deck 3 vertical access between street level and the private skywalk bridge and to permit the construction, maintain, repair and replace said skywalk bridge (collectively “Easement”).

The “Easement Premises” includes: (i) the width and location for said skywalk bridge and area necessary to construction, maintain, repair and replace said skywalk bridge between the New Building and the JPA Parking Garage (Deck 3) (“Skywalk Bridge Permanent Easement Area”) and (ii) the pedestrian vertical access between street level and the Skywalk Bridge Permanent Easement (“Vertical Access Permanent Easement Area”) and is shown on Exhibit A

Said Easement shall run with the land, New Building Property and Deck 3 Property for the benefit the New Building Property.

TO HAVE AND TO HOLD UNTO THE REDEVELOPER, its successors and assigns, so long as the JPA Parking Garage (Deck 3) is used as a parking garage and so long as the
private skywalk bridge shall be in existence, subject to early termination as provided below, together with the right of ingress and egress, for the purpose of designing constructing, reconstructing, inspecting, supporting, connecting, operating, maintaining, repairing and replacing the skywalk bridge and appurtenances thereto, located thereon, in whole or in part, at the will of Redeveloper, it being the intention of the parties hereto that JPA is hereby granting the uses herein specified without divesting JPA of title and ownership of the rights to use and enjoy the above described JPA Parking Garage (Deck 3).

This Easement shall be subject to the following terms and conditions:

(1) Prior to commencement of construction, reconstruction or repair of the skywalk bridge, Redeveloper shall submit for the JPA’s review and approval, architectural and engineering plans for the construction, reconstruction or repair of the skywalk bridge.

(2) Redeveloper shall cause the skywalk bridge to be constructed, reconstructed or repaired in substantial conformance with the skywalk bridge construction plans as approved by the JPA.

(3) Responsibility for the cost of the private skywalk bridge and corridors within the New Building shall rest with the Redeveloper and no responsibility thereof shall accrue to the JPA by reason of the Redeveloper’s benefits from this Easement. The services to be provided by the Redeveloper shall include, but not be limited to, the design, construction, reconstruction, inspection, support, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the New Building and the JPA Parking Garage (Deck 3).

(4) Redeveloper shall indemnify, defend and save harmless the JPA or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney’s fees arising out of the activities of Redeveloper or of Redeveloper’s contractors or their agents, employees or invitees, in constructing, maintaining, operating, repairing or reconstructing the skywalk bridge, or the negligent or wrongful use of the Easement by Redeveloper or Redeveloper’s employees, invitees or agents. In this connection Redeveloper shall maintain during the life of this Easement, Commercial General Liability Insurance, naming and protecting Redeveloper and the JPA against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from work under this Easement whether such work be by Redeveloper or by any contractor, or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of $2,000,000 and $5,000,000 aggregate.

i. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and

ii. The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of
The coverage required herein shall be subject to review and the minimum coverage amounts may be increased at any time by the JPA after a public hearing. At all times the Redeveloper shall keep on file with the City Clerk for the City of Lincoln, Nebraska a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for the City of Lincoln, Nebraska for conformance with this section evidencing the existence of valid and effective policies of insurance naming the JPA as an additional insured for the coverage required herein, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty (30) days’ notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declaration page of such policies.

(5) This Easement shall be permanent and shall be appurtenant to and run with the New Building Property. The JPA shall have the right to determine the location of the access corridor through the JPA Parking Garage (Deck 3).

(6) Upon completion of construction of the skywalk bridge the Redeveloper shall be responsible for managing, maintaining, operating, repairing, and cleaning the skywalk bridge, the same to be done in a good and workmanlike manner.

(7) This Easement shall not be released, terminated, revoked, amended, or modified, in any manner, without the express written consent of the City of Lincoln and the Redeveloper. Any purported release, termination, revocation, amendment, or modification of this Easement without such written consent shall be null and void and of no force or effect.

(8) JPA, at its expense, will cause the design and construction of Deck 3’s footings, foundation and exterior walls to permit the connection of the skywalk bridge to Deck 3.

(9) Notwithstanding any contrary provision herein, the City shall reserve all its rights to acquire by voluntary negotiation, and, if necessary, by the exercise of the power of eminent domain and payment of just compensation for the skywalk bridge and terminate this Easement for public purposes after the adoption by it of a resolution or ordinance declaring that the acquisition of skywalk bridge and terminate this Easement is necessary for such purposes.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.
IN WITNESS WHEREOF, we have hereunto set our hands as of this ___ day of __________, 2018.

“JPA”

**West Haymarket Joint Public Agency**
a political subdivision and body corporate
politic of the State of Nebraska

By: _________________________________

Chris Beutler, Chair of the Board of
Representatives of the West Haymarket
Joint Public Agency

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this ___ day of __________, 2018, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_________________________________
Notary Public
“Redeveloper”

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ______________________________
Title: Manager

STATE OF NEBRASKA )
 ) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of __________, 20__, by _________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

____________________________________
Notary Public
Exhibit “A”

Skywalk Bridge Permanent Easement
Area
LEGAL DESCRIPTION
SKYWAY EASEMENT

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10N NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION, SAID POINT BEING THE SOUTHWEST CORNER OF LOT 3, WEST HAYMARKET 1ST ADDITION; THENCE NORTHERLY ON THE EAST LINE OF SAID LOT 1, SAID LINE BEING THE WEST LINE OF SAID LOT 3, ON AN ASSUMED BEARING OF N00°19'51"E, A DISTANCE OF 30.00' TO THE TRUE POINT OF BEGINNING; THENCE N89°40'05"W, A DISTANCE OF 20.00' TO A POINT; THENCE N00°19'51"E, ON A LINE LOCATED 20.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID 1, A DISTANCE OF 30.00' TO A POINT; THENCE S86°40'09"E, A DISTANCE OF 20.00' TO A POINT OF INTERSECTION WITH THE EAST LINE OF SAID LOT 1; THENCE S00°19'51"W. ON THE EAST LINE OF SAID LOT 1, SAID LINE BEING A WEST LINE OF SAID LOT 3, A DISTANCE OF 30.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 600.00 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

Wednesday, August 22, 2016
F:\20180601-05000316-017214-Survey/5RVY\Final Plans\Documents\018-0172_Skywalk_Ease.docx
LEGAL DESCRIPTION
STAIRWELL EASEMENT

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10N NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION, SAID POINT BEING THE SOUTHWEST CORNER OF LOT 3, WEST HAYMARKET 1ST ADDITION; THENCE WESTERLY ON THE SOUTH LINE OF SAID LOT 1, ON AN ASSUMED BEARING OF N98°43'39"W, A DISTANCE OF 20.00' TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N98°43'39"W ON SAID LINE, A DISTANCE OF 30.00' TO A POINT; THENCE N00°19'51"E, ON A LINE LOCATED 50.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1, A DISTANCE OF 60.00' TO A POINT; THENCE S69°43'39"E, ON A LINE LOCATED 60.00' NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 30.00' TO A POINT; THENCE S00°19'51"W, ON A LINE LOCATED 20.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1, A DISTANCE OF 30.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 1,800.00 SQUARE FEET OR 0.04 ACRES, MORE OR LESS.

Wednesday, August 22, 2018
F:\2010\0001-0000\016-0172\40-Design Survey\3RY\Final Plans\Documents\016-0172_Stair-Well-Ease.docx
EXHIBIT L

PENAL BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company, as Principal, and ____________________________, a corporation organized under the laws of the State of _______ and authorized to transact business in the State of Nebraska, as Surety, are held and firmly bound unto the City of Lincoln, Nebraska, as Obligee, for the use of all persons entitled thereto, under Neb. Rev. Stat. § 18-2151, in the penal sum of Two Million Five Hundred Thousand Dollars ($2,500,000.00), 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 (P Street and Canopy Street Project), dated _______________, 2018 (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided in part for the building and construction of Private Improvements as defined in said Redevelopment Agreement to be funded in part by tax increment financing pursuant to the Nebraska Community Development Law, upon the condition that Principal at all times promptly make payment of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials used in the prosecution of said Private Improvements as require the execution of this Penal Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, Surety shall promptly indemnify and save harmless the Obligee to the extent any payment in connection with the carrying out of the prosecution of the Private Improvements provided for in the Redevelopment Agreement which Obligee may be required to make under the law, provided that the aggregate liability of Surety of any default(s) hereunder by the Principal shall in no event exceed the penal sum of this Bond.

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 used in the prosecution of the Private Improvements as require the execution of this Penal Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, Surety shall promptly indemnify and save harmless the Obligee to the extent any payment in connection with the carrying out of the prosecution of the Private Improvements provided for in the Redevelopment Agreement which Obligee may be required to make under the law, provided that the aggregate liability of Surety of any default(s) hereunder by the Principal shall in no event exceed the penal sum of this Bond.

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

Signed and dated this ___ day of _________________, 2018.
PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ________________________________
Title: Manager

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this ___ day of __________, 20__, by ______________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

__________________________________
Notary Public
EXHIBIT M

DISBURSEMENT AGREEMENT

DISBURSEMENT AGREEMENT

This Disbursement Agreement is entered into between the City of Lincoln, Nebraska, a municipal corporation (City) and Project Oscar 2.0, LLC, a Nebraska limited liability company (Redeveloper).

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

The Redevelopment Agreement requires the Redeveloper to construct a certain New Building as well as Redeveloper Public Improvements and to provide evidence of a penal bond or surety from the Redeveloper to insure that Redeveloper or its contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper’s contractor, or his or her subcontractors with labor or material, performed or used in prosecution of the New Building and Redeveloper Public Improvements. The Redevelopment Agreement as an alternative authorizes the City and Redeveloper to enter into this Disbursement Agreement in lieu of Redeveloper providing the Penal Bond or Surety Bond.

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 New Building and Redeveloper Public Improvements.

3. Construction Loan. Redeveloper shall, prior to commencement of the New Building and Redeveloper Public Improvements, provide evidence satisfactory to the City Attorney that the construction financing or title insurance for such work provides for construction draws only upon demonstration of work completed as being in accordance with the approved plans pursuant to the Redevelopment Agreement and that all persons having performed labor or furnished materials, equipment or supplies for such category of improvement have been paid and given lien waivers in exchange for payment.
4. **City Discretion.** The parties acknowledge that this Agreement is entered into in lieu of City requiring a penal bond or surety bond by the Redeveloper on the Project. The City’s decision as to whether a category of improvement has been completed in accordance with the approved plans shall be final up to completion of all work required under the Redevelopment Agreement.

Dated: ________________________, 201__. 

REDEVELOPER:

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: ____________________________
Title: Manager

CITY OF LINCOLN, NEBRASKA

a municipal corporation

By: ______________________________

Chris Beutler, Mayor of Lincoln
MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS

This Memorandum of Redevelopment Agreement & Use Restrictions ("Memorandum") is made as of this *** day of ____________, 2018 by and between the City of Lincoln, Nebraska, a municipal corporation ("City"), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska ("JPA"), and Project Oscar 2.0 LLC, a Nebraska limited liability company ("Redeveloper").

1. Redevelopment Agreement. The City, JPA, and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements being made by the City in the Redevelopment Area and the private improvements being made to real property owned by Redeveloper and legally described as:

Lot 3, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the “Project Site”).

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 Project Effective Date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the public improvements as described in the Redevelopment Agreement.

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.
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.** Redeveloper hereby represents and agrees that neither all nor any portion of the Project Site shall be used, directly or indirectly, for the following uses:

   (a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

   (b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

   (c) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

   (d) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

   (e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

   (f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

   (g) the leasable retail square footage shown on Exhibit 1 attached hereto will have users whose minimum normal hours of operation, Monday through Saturday, are from 11:00 a.m. to 8:00 p.m.;

   (h) no cell towers.
5. Environmental Use Restrictions on the Property. Redeveloper hereby represents and agrees that the Project Site is subject to the following Environmental Use Restrictions:

(1) The Project Site shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) Prior to beginning vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use, will require the approval of the Nebraska Department of Environmental Quality (“NDEQ”).

It is intended that each of the restrictions set forth herein shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Project Site and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

6. Office & Retail Monthly Parking; Redeveloper’s Right to Lease. After completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Deck 3:

A. Monthly Parking Stalls. For office and retail uses, up to three hundred seventeen (317) parking stalls (“Monthly Parking”).

(1) Two hundred fifty-five (255) of the Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Deck 3 parking stalls allocated for monthly parkers.
(2) Approximately sixty-two (62) of the Monthly Parking stalls will be signed and located within the third floor gated and nested area (west bay).

(3) The third floor nested area will be gated from 7:00 a.m. to 5:00 p.m. during the weekday; but the gate will be open for transient and Event parking after 5:00 p.m. The JPA shall cause its parking garage operator to take reasonable efforts to ensure that the third floor nested area is cleared of transient and Event parkers by 7:00 a.m. the next morning.

(4) The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

(5) Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Deck 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City’s shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

B. Duration. The parking rights outlined in this Memorandum shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

[SIGNATURE PAGES TO FOLLOW]
Executed by the City this ____ day of __________________, 2018.

ATTEST: CITY OF LINCOLN, NEBRASKA
a municipal corporation

________________________________________  ________________________________________
City Clerk                                               Chris Beutler, Mayor

“JPA”

WEST HAYMARKET JOINT PUBLIC AGENCY

_______________________________________
Chris Beutler
Chairperson of the West Haymarket Joint
Public Agency Board of Representatives

STATE OF NEBRASKA     )
) ss.
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this ____ day of
__________, 2018, by Chris Beutler, Mayor of the City of Lincoln.

________________________________________
Notary Public

STATE OF NEBRASKA     )
) ss.
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this ____ day of
__________, 2018, by Chris Beutler, Chairperson of the Joint Public Agency Board of
Representatives.

________________________________________
Notary Public
Executed by Redeveloper this _____ day of ________________, 2013.

"Redeveloper"

PROJECT OSCAR 2.0, LLC, a Nebraska limited liability company

By: HL Design Build, LLC, a Nebraska limited liability company, Manager

By: _____________________________
Title: Manager

STATE OF NEBRASKA )
 ) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this _____ day of ____________, 20__, by __________________, Manager of HL Design Build, LLC, a Nebraska limited liability company, Manager of Project Oscar 2.0, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

__________________________________
Notary Public
EXHIBIT I RETAIL LEASABLE SQUARE FOOTAGE
EXHIBIT O
USES AND SOURCES OF FUNDS

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<td>Streetscape Design</td>
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<td>g.</td>
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<td><strong>TOTALS</strong></td>
<td><strong>$ 2,805,000</strong></td>
<td><strong>$ 2,805,000</strong></td>
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RESOLUTION NO.

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

That the grant of the Energy Service Pipeline Easement to District Energy Corporation to construct, reconstruct, maintain, inspect, operate, and replace energy service pipelines, fittings, protective devices, and all other underground and above-ground appurtenances thereto belonging, on, under, across, above, and through property generally located in Lot 4, Block 7, West Haymarket Addition to provide energy service to the Lumberworks Lofts Building, is hereby approved and the Chair is hereby authorized to execute the Energy Service Pipeline Easement on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to send the original easement to Chris Connolly, Assistant City Attorney, for transmittal to District Energy Corporation for recording.

Adopted this _____ day of September, 2018.

Introduced by:

___________________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency

Board of Representatives

___________________________________

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

___________________________________

Tim Clare

___________________________________

Carl Eskridge
ENERGY SERVICE PIPELINE EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That, the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska, herein called “Grantor”, record owner of the real property hereinafter described, in consideration of the performance of the covenants and agreements by Grantee as hereinafter set out and expressed, does hereby GRANT, REMISE, and RELINQUISH unto the DISTRICT ENERGY CORPORATION, a Nebraska Non-Profit Corporation and Interlocal Joint Agency, its successors and assigns, herein called “Grantee”, a permanent right, privilege and easement to construct, reconstruct, maintain, inspect, operate and replace energy service (heating and cooling) pipelines, fittings, protective devices and all other underground and above-ground appurtenances thereto belonging, on, under, across, above, and through:

A tract of land located in Lot 4, Block 7, West Haymarket Addition, a platted and recorded subdivision, located in Section 26, Township 10 North, Range 6 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska, being more particularly described as follows:

Referring to the northeast corner of said Lot 4; thence S 0° 19’ 50” W on the east line of said Lot 4, a distance of 17.20 feet to the point of beginning; thence continuing S 00° 19’ 50” W on said east line, a distance of 49.65 feet; thence N 89° 40’ 42” W, a distance of 16.01 feet; thence N 0° 19’ 18” E, a distance of 23.39 feet; thence N 89° 40’ 42” W, a distance of 210.80 feet; thence N 0° 19’ 18” E, a distance of 26.25 feet; thence S 89° 40’ 42” E, a distance of 226.82 feet to the point of beginning.

Containing an area of 6.329 square feet (0.145 acres), more or less, as depicted on the attached Exhibit A,

all in Lincoln, Lancaster County, Nebraska (the “Easement Area”).
TO HAVE AND TO HOLD UNTO THE DISTRICT ENERGY CORPORATION, its successors and assigns, so long as such energy service pipelines or the appurtenances thereto shall be maintained, together with the right of ingress and egress to the Easement Area over and across Grantor’s property for the purpose of constructing, reconstructing, inspecting, repairing, maintaining, operating and replacing said energy service pipelines and appurtenances thereto, located thereon, in whole or in part, at the will of the Grantee.

Grantee shall have the right of reasonable ingress and egress to and from the Easement Area from the public streets abutting upon Grantor’s property for its employees, contractors, vehicles, and equipment, and shall have the right to remove, trim, and clear away any trees, rocks, shrubs, roots, limbs, or other surface or subsurface materials that now or at any future time are located on, overhead, or extend onto the Easement Area and that interfere with or jeopardize the activities or structures authorized to be conducted or installed by the terms of this easement.

It is the intention of the parties hereto that Grantor is granting the uses herein specified without divesting Grantor of title and ownership of the rights to use and enjoy the above-described property for any purpose except the construction thereon of permanent buildings or structures, water impoundment facility, or permanent or hard surfaces, subject only to the rights of the Grantee to use the same for the purposes herein expressed in accordance with the terms hereof, and subject to any prior leases or easements of record heretofore granted to other parties.

Immediately following completion of any construction by Grantee in the Easement Area, Grantee will cause to be removed from the property hereinafore described all debris, all surplus material and construction equipment and restore the premises to a neat and presentable condition to the extent practical. Surplus excavated earth will be mounded neatly over the trench, or used for filling and leveling on the premises, or hauled away at the option of the Grantee. Grantee shall reseed any grass areas in the easement area where such grass is disturbed by the activities of the Grantee, and shall restore drainage ways and terraces.

Grantor shall be responsible for removal of any fence or other improvement from the Easement Area prior to Grantee’s commencement of construction, and for replacement of such fence following completion of Grantee’s construction.

Grantor shall not place any building, permanent structure, water impoundment facility, or permanent improvement in the Easement Area.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the successors and assigns of the respective parties, and the easements, rights, obligations, and privileges of the Grantee created by this instrument shall not in any manner be released, waived or in any way terminated or affected by any delay, failure, or lack of use by the Grantee for any period of time.
IN WITNESS WHEREOF, the parties have hereunto set our hands on this ______ day of ______________, 2018.

WEST HAYMARKET JOINT PUBLIC AGENCY, a Political Subdivision and Corporate Body Politic of the State of Nebraska, GRANTOR

By: ____________________________________________
Chairman

STATE OF NEBRASKA  )
COUNTY OF LANCASTER ) ss.

Before me, a Notary Public, qualified for said county, personally came _______________, _______________ of WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska, known to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporate body.

Witness my hand and notarial seal on this _____ day of _____________. 2018.

___________________________________________
Notary Public
DISTRICT ENERGY CORPORATION,
A Nebraska Non-Profit Corporation and Interlocal Joint Agency, GRANTEE

By: ____________________________________
Jon Camp, President

STATE OF NEBRASKA    )
) ss.
COUNTY OF LANCASTER     )

Before me, a Notary Public, qualified for said county, personally came __________________________, __________________________ of the DISTRICT ENERGY CORPORATION, a Nebraska Non-Profit Corporation and Interlocal Joint Agency, known to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and notarial seal on this ______ day of ____________, 2018.

__________________________________________
Notary Public
RESOLUTION NO.

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

That the Chairperson of the Board of Representatives is hereby authorized to execute, on behalf of the West Haymarket Joint Public Agency, the attached Equipment Lease between the West Haymarket Joint Public Agency and SMG authorizing SMG to lease surplus vehicles from the JPA as identified in Exhibit A attached thereto and upon the terms and conditions as set forth in the Lease.

Adopted this _____ day of September, 2018.

Introduced by:

___________________________________

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

____________________  ___________

Legal Counsel for
West Haymarket Joint Public Agency

____________________

Chris Beutler

____________________

Tim Clare

____________________

Carl Eskridge
EQUIPMENT LEASE

This equipment lease ("the Lease") is dated this ___ day of September, 2018, by and between the West Haymarket Joint Public Agency, a Nebraska political subdivision ("the JPA") and SMG, a Pennsylvania General Partnership ("SMG").

RECITALS

WHEREAS, the JPA is the owner of Pinnacle Bank Arena ("PBA"), located in Lincoln, Nebraska; and

WHEREAS, the City of Lincoln, Nebraska ("City") is the agent for the JPA for operations of PBA; and

WHEREAS, SMG, pursuant to a management agreement with the City, operates and maintains PBA on behalf of the JPA; and

WHEREAS, the JPA has purchased surplus vehicles from the City, as identified in Exhibit A, attached hereto and incorporated by this reference; and

WHEREAS, the JPA wishes to lease said vehicles to SMG as part of its management and maintenance duties for PBA.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree to the following:

1. **Lease of Equipment.** The JPA hereby agrees to lease to SMG and SMG agrees to lease from the JPA the vehicles described in Exhibit A ("the vehicles").

2. **Lease Amount.** SMG shall pay to the JPA the sum of $1.00 per year for use of each vehicle shown in Exhibit A. Payment shall be made within thirty days after the beginning of each fiscal year for the JPA.

3. **Licensing, Maintenance, and Repairs.** The JPA shall be responsible for all licensing and registration of the vehicles. SMG shall be responsible for regular maintenance, and reasonable repairs to the vehicles. In the event SMG determines that repairs are not cost effective or exceed the fair market value of a vehicle, SMG may surrender such vehicle to the JPA for further disposition.

4. **Term.** This Lease shall become effective upon execution and shall expire on August 31, 2022, unless terminated earlier as set forth herein.

5. **Insurance.** SMG shall provide proof of insurance as deemed acceptable by the City’s Law Department and shall be in compliance with the insurance requirements of the JPA as shown in Exhibit B, attached hereto.
6. **Termination.** Either party may terminate this Lease by providing not less than thirty days’ notice to the other party. Termination may be for breach of the terms of this Lease or for convenience of either party.

7. **Audits.** This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and all parties 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.

8. **Indemnification.** To the fullest extent permitted by law, SMG shall indemnify, defend and hold harmless the JPA, its elected officials, officers, agents, and employees (collectively “the JPA”) from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of this Contract, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, or any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of SMG, or anyone for whose acts any of them may be liable. This section will not require SMG to defend, indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the JPA. The JPA 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 or expiration of this Contract.

9. **E-Verify.** 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. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. §1324b. The Contractor shall require any subcontractor to comply with the provisions of this section.

10. **Independent Contractor.** JPA is interested only in the results produced by this Agreement. SMG has sole and exclusive charge and control of the manner and means of performance. SMG shall perform as an independent contractor and it is expressly understood that neither SMG nor any of its staff are employees of City and are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers’ compensation, sick leave, injury leave, or other leave provisions.

11. **Applicable Law.** This Lease shall be construed pursuant to the laws of the State of Nebraska.
SMG, a Pennsylvania General Partnership

By:  

______________________________
Tom Lorenz
Title: ____________________________

WEST HAYMARKET JOINT PUBLIC AGENCY, a Nebraska Political Subdivision

By:  

______________________________
Chris Beutler
Chairperson of the West Haymarket Joint Public Agency Board of Representatives
EXHIBIT “A”

1. 1991 Ford 350 Utilimaster, 460-6580 Miles

2. 2004 Ford F-250, V10, 4X4, with snow plow, 43055 Miles

3. 2005 Chevy Silverado HD, 4x4, 6.0L, with snow plow, 75042 Miles