

**Lancaster County, NE  
Assessor/Register of Deeds**

Norman H. Agena

Receipt: 318636

Product	Name	Extended
AGRMT	Agreement	\$70.00
	# Pages	11
	Document #	2016001488
	# Lots	1
	Return Address	RICK PEO-CO ATTORNEY
	eRecording Submitter	n/a
Filing Fee		\$62.50
Tech Fund		\$7.50
AGRMT	Agreement	\$58.00
	# Pages	9
	Document #	2016001489
	# Lots	1
	Return Address	RICK PEO-CO ATTORNEY
	eRecording Submitter	n/a
Filing Fee		\$51.50
Tech Fund		\$6.50
AGRMT	Agreement	\$88.00
	# Pages	14
	Document #	2016001490
	# Lots	1
	Return Address	RICK PEO-CO ATTORNEY
	eRecording Submitter	n/a
Filing Fee		\$79.00
Tech Fund		\$9.00
<b>Total</b>		<b>\$216.00</b>
Tender (Check)		\$216.00
Check#	27674	
Paid By	CITY OF LINCOLN	

Thank You

County-City Building  
Lincoln, Nebraska 68508-2864

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

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

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Space Above for Record's Use Only

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

This Environmental Covenant is executed this 2<sup>nd</sup> day of December, 2015, by Canopy Street Condominium Association, an unincorporated association, TDP Phase Two, LLC, a Nebraska limited liability company and Hobson Place Condominium Association, a Nebraska nonprofit corporation (hereinafter individually "Grantor" and collectively "Grantors") and TDP Phase Two, LLC, also as Holder/Grantee, pursuant to the Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613, hereinafter the "Act."

**RECITALS:**

A. In 2013 TDP Phase Two, LLC, as the then owner of Lot 3, Block 4, West Haymarket Addition (the "Property"), established the Canopy Street Condominium Regime on said property by filing a Declaration of Canopy Street Condominium Regime dated January 9, 2013, and recorded with Lancaster County Register of Deeds as Instrument Number 2013001486 on January 10, 2013. The Canopy Street Condominium Regime consists of three (3) condominium units (i.e., Unit One, Unit Two, and Unit Three). TDP Phase Two, LLC, currently is the sole owner of Unit One and Unit Two, and the Unit One and Unit Two Limited Common Elements. The Unit One and Unit Two Limited Common Elements include the courtyard area and ground areas located outside of the building depicted as a Limited Common Element on the ground floor level of the Plats and Plans attached to the Declaration.

B. Under the Declaration establishing the Canopy Street Condominium Regime, the Canopy Street Condominium Association has been formed to govern, manage, maintain, administer and regulate the Canopy Street Condominium Regime Project. The Declaration grants the Board of Directors of the Canopy Street Condominium Association the authority to grant easements, leases, licenses and concessions over the Common Elements for the installation and maintenance of utilities and for such other purposes the Board of Directors deem to be in the best interest of the Canopy Street Condominium Regime. Common Elements is defined in the Declaration to collectively mean, all portions of the Property (i.e., Lot 3, Block 4, West

Haymarket Addition) other than the Units (i.e., Units One, Two and Three, and their Limited Common Elements).

C. The Declaration of Canopy Street Condominium Regime anticipated that Unit Three would be further subdivided into its own condominium regime. The Declaration specifically provides that the Voting Member of Unit Three shall be a condominium association or other governing body of the Unit Three condominium regime, and no owner of a condominium unit within the Unit Three condominium regime shall have any direct voting rights in the association.

D. In 2013 TDP, Phase Two, LLC, as the then owner of Unit Three, Canopy Street Condominium Regime established the Hobson Place Condominium Regime on said Unit Three by filing a Declaration of Hobson Place Condominium Regime dated January 9, 2013, and recorded with the Lancaster County Register of Deeds as Instrument Number 2013001494 on January 11, 2013. Pursuant to the Declaration of the Hobson Place Condominium Regime, the Hobson Place Condominium Association, was formed and designated for the entire, Hobson Place Condominium Regime as the Unit Three Voting Member with respect to decisions regarding the Canopy Street Condominium Regime.

E. TDP Phase Two, LLC, as the sole owner of Unit One and Unit Two (including their Limited Common Elements) desires to and hereby agrees, as a Grantor to subject Unit One and Unit Two (including the Unit One and Unit Two Limited Common Elements) to this Environmental Covenant. The Canopy Street Condominium Association, as the manager and administrator of the Canopy Street Condominium Regime desires to and hereby agrees as a Grantor to subject the Common Elements of the Property to this Environmental Covenant.

F. The Hobson Place Condominium Regime consists of 32 separate condominium units located within Unit Three Canopy Street Condominium Regime. All units are located on the 5th floor or above and have no ownership and/or rights relating to the land of the Property, other than through the Hobson Place Condominium Association. The Hobson Place Condominium Association as the Voting Member for Unit Three decisions under the Canopy Street Condominium Regime desires to and hereby agrees as a Grantor to subject Unit Three, including the Unit Three Limited Common Elements to the Environmental Covenant.

G. The Property, (i.e., Lot 3, Block 4, West Haymarket Addition) the Canopy Street Condominium Regime and the Hobson Place Condominium Regime, are located within the East Flank of the West Haymarket Redevelopment Site North (WHRSN) generally located on the SE corner of the block bounded by R Street on the north, Canopy Street on the east, Q Street on the south, and Pinnacle Arena Drive on the west. The boundaries of the East Flank of the West Haymarket Redevelopment Site North are shown on the East Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property and the two Condominium Regimes are shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is outlined in red on the map.

H. Holder/Grantee (hereinafter "Holder") is TDP Phase Two, LLC.

I. The Property was acquired by TDP Phase Two, LLC, from The West Haymarket Joint Public Agency (“JPA”). The buildings constructed by TDP Phase Two, LLC, on the Property are currently used for hotel and residential housing. Prior to the JPA’s acquisition of the Property, the Property was used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the “West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan” (Benesch, 2012).

J. The Property is the subject of environmental response projects or actions pursuant to enrollment by the JPA in the Nebraska Department of Environmental Quality’s Voluntary Cleanup Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Release Remedial Action Act and includes land overlying a free product diesel plume (“Free Product Location”) associated with diesel spill (07116-MBS-1100). The Free Product Location is shown as the Hotel Site on the Location of Free Product Areas Map attached hereto marked as Attachment “C”.

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

L. The selected environmental response projects or actions which has heretofore been performed by the 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.

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

1. Representations and Warranties. The Grantors warrant to the other signatories to this Covenant that:

- a. The Grantors are the sole fee title owners of the Property with rights relating to the land;
- b. The Grantors hold sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantors have identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

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

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder real property rights that will run with the land, and gives to the Agency the right to

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

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

- a. Groundwater shall not be used as a potable drinking water source.
- b. Contact with contaminated soils shall be prevented by maintaining hard surface (building floor slabs, roadways, sidewalks, etc.) and/or a minimum of three ft. thick soil cover (East Flank).
- c. Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).
- d. Prior to engaging in any construction activities at the Free Product Location that will penetrate the three-foot cap, a plan must be submitted to and approved by the Agency. In general, the plan shall describe how petroleum free product and/or vapor intrusion will be evaluated and potentially mitigated prior to new surface construction.
- e. Any ground intrusive work in the Free Product Location must be conducted so as not to disturb the existing free product monitoring well and recovery system.

5. Reserved Rights of Grantors. The Grantors hereby reserve unto themselves and their successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

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

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

8. Rights of Access. The Grantors and any then-current owner hereby grant to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. This right of access also grants the Agency, its agents, contractors, and employees access to the Free Product Location for continued implementation of free product recovery and performance of future remedial action which may be necessary. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

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

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED \_\_\_\_\_, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF LANCASTER COUNTY, NEBRASKA ON \_\_\_\_\_, AS INSTRUMENT NO. \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- 1) Groundwater shall not be used as a potable drinking water source.
- 2) Contact with contaminated soils shall be prevented by maintaining hard surface (building floor slabs, roadways, sidewalks, etc.) and/or a minimum of three ft. thick soil cover (East Flank).
- 3) Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).

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

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

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

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

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

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

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantors shall record the Environmental Covenant, in the same manner as a deed to the property, with the Lancaster County Register of Deeds. Grantors shall cause the Environmental Covenant to be indexed against the Property (i.e. Lot 3, Block 4, West Haymarket Addition, Unit One, Unit Two and Unit Three Canopy Street Condominium Regime and the 32 separate condominium units in the Hobson Place Condominium Regime (i.e. units 501, 502, 503, 504, 505, 506, 507, 508, 509, 511, 512, 514, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 703, 705, 707, 708, 709, 710, 711, 712)).

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

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

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

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

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

TDP Phase Two, LLC  
440 North 8th Street, Suite 140  
Lincoln, NE 68508  
Canopy Street Condominium Association  
c/o WRK Real Estate, LLC  
440 North 8th Street, Suite 140  
Lincoln, NE 68508

Hobson Place Condominium Association  
c/o WRK Real Estate, LLC  
440 North 8th Street, Suite 140  
Lincoln, NE 68508

ACKNOWLEDGEMENTS

GRANTORS:

IN WITNESS WHEREOF, Grantors, as the owners of the Property and TDP Phase Two, LLC, as the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 2nd day of December, 2015.

TDP PHASE TWO, LLC, a Nebraska limited liability company

By: WRK MANAGEMENT, LLC, Manager of TDP Phase Two, LLC

By: WRK, LLC, Manager of WRK Management, LLC

By: [Signature] William D. Scott, Co-Manager

By: [Signature] Robert E. Scott Co-Manager

STATE OF NEBRASKA ) ) ss. COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 19th day of November, 2015, by William D. Scott, Co-Manager of WRK, LLC, Manager of WRK Management, LLC, Manager of TDP Phase Two, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(SEAL) [Notary Seal: GENERAL NOTARY-State of Nebraska EMILY E GROSS My Comm. Exp. April 24, 2018]

[Signature] Notary Public

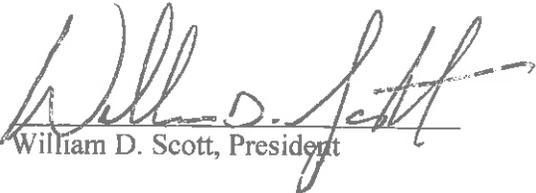
STATE OF NEBRASKA ) ) ss. COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 19th day of November, 2015, by Robert E. Scott, Co-Manager of WRK, LLC, Manager of WRK Management, LLC, Manager of TDP Phase Two, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(SEAL) [Notary Seal: GENERAL NOTARY-State of Nebraska EMILY E GROSS My Comm. Exp. April 24, 2018]

[Signature] Notary Public

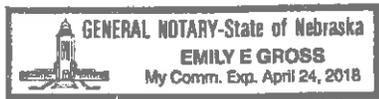
**CANOPY STREET CONDOMINIUM  
ASSOCIATION, an unincorporated  
association**

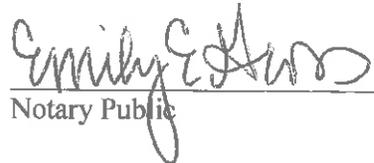
By:   
William D. Scott, President

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November,  
2015, by William D. Scott, President, of Canopy Street Condominium Association, an  
unincorporated association, on behalf of the association.

(SEAL)



  
Notary Public

**HOBSON PLACE CONDOMINIUM  
ASSOCIATION**, a Nebraska nonprofit  
corporation

By:   
John Brasch, President

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December,  
2015, by John Brasch, President, of Hobson Place Condominium Association, a Nebraska  
nonprofit corporation, on behalf of the association.

(SEAL)



  
Notary Public

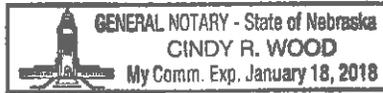
**AGENCY:**

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

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_  
Director

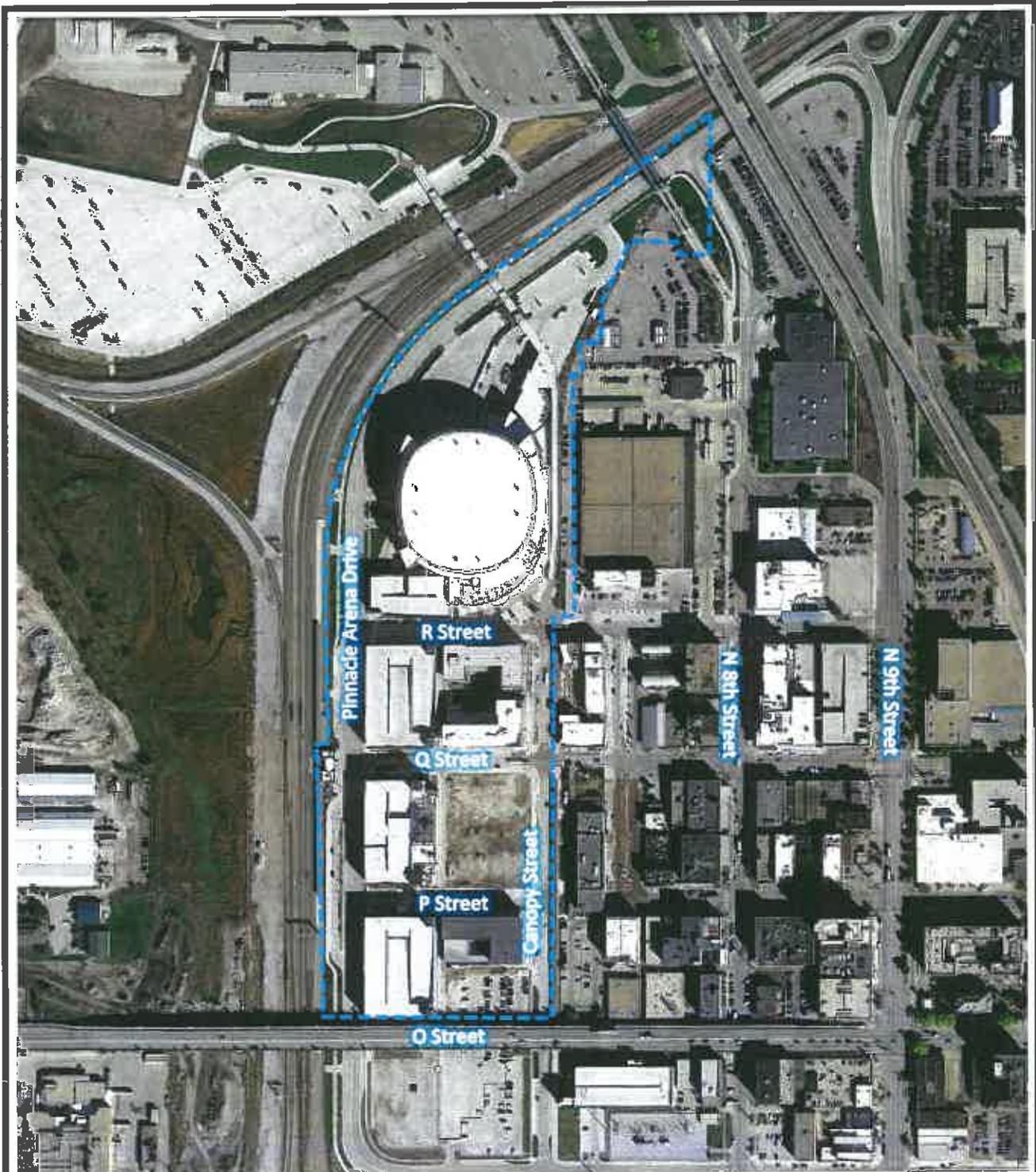
STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )



The foregoing instrument was acknowledged before me this 18 of DECEMBER 2015, by Jim Masch who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL)

\_\_\_\_\_  
Notary Public

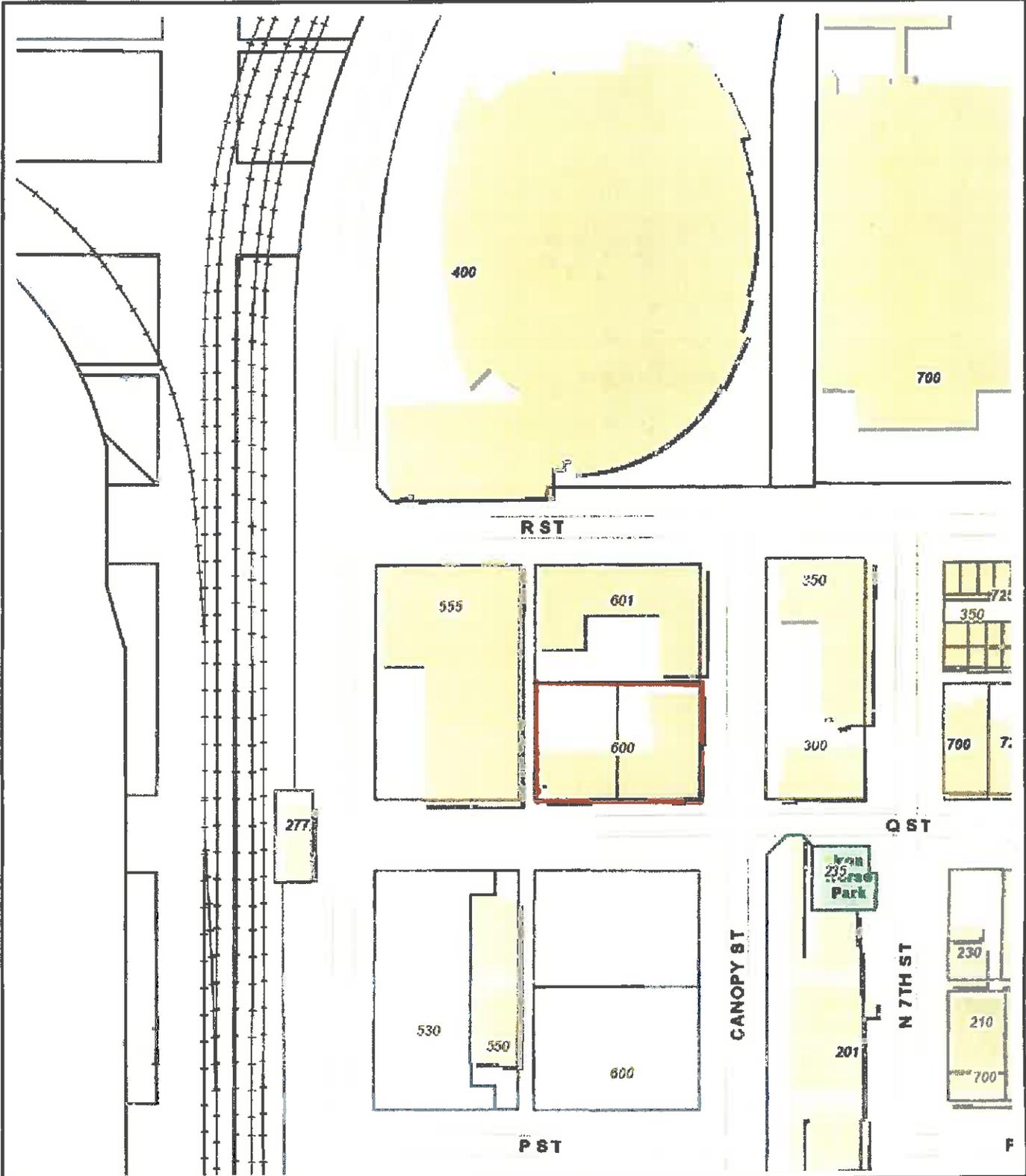


**LEGEND**

 Site Boundary



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



**Lancaster County/City of Lincoln GIS Map**

**PROPERTY**

**Units One, Two and Three Canopy Street Condominium Regime**



Printed: Oct 19, 2015

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

ATTACHMENT 'C'

