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AUG - 8 2013

Nebraska Dept of Environmental Quality  
By: \_\_\_\_\_ DEQ# 182 \_\_\_\_\_

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

Plaza North Station LLC  
Attention: Michael G. Leik  
11501 Northlake Drive  
Cincinnati, Ohio 45249

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Space Above for Record's Use Only

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is executed this 31st day of July, 2013, by Plaza North Station LLC, Grantor and Plaza North Station LLC, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

**RECITALS:**

A. Grantor is the owner of real property located at 5413 North 90<sup>th</sup> Street in Omaha, Douglas County, Nebraska, which is part of a larger parcel of real property owned by Grantor. Such larger parcel is legally described as follows:

Lots One (1) and Two (2), Plaza North, An Addition to the City of Omaha, Douglas County, Nebraska. SW¼ of SW¼ of SE¼ of Section 34, Township 16 North, Range 12 East.

B. Holder/Grantee is Plaza North Station LLC, as the fee simple owner of the real property described above.

C. A portion of the real property described above has been used as a Dry Cleaning Facility and was the site of a release of 10 to 40 Gallons of Chlorinated Solvents. Such portion of the real property is hereinafter referred to as the "Property," and is designated on the attached Exhibit A.

D. The Property is the subject of an environmental response project or action pursuant to the Nebraska Voluntary Cleanup Program authorized by the Remedial Action Plan Monitoring Act.

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

F. The selected environmental response project or action is documented in the Remedial Action Plan approved on October 26, 2012. The administrative record for this project is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400, Lincoln, NE.

**NOW, THEREFORE,**

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

1. Representations and Warranties. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has identified all other persons holding legal or equitable interests in the Property, including but not limited to contract buyers, mortgage holders, and other consensual lien holders (but excluding tenants of the Property), and secured their consent. The Grantor represents and warrants that no current tenant of the Property has the right, and no future tenant of the Property will be allowed, to violate the Activity and Use Limitations set forth in this Environmental Covenant.

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/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental

Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:
  - a. Land use limitations – The Property shall not be used for any use other than industrial or commercial use, excluding child care facilities, which shall be prohibited. This limitation is intended to protect human health and the environment. Notwithstanding the restrictions provided above in this Section 4(a), the following uses shall be permitted: any off-site dry cleaning operations for pick-up & drop-off only, any technical or secondary/post-secondary educational institution, any training facilities catering primarily to trainees including but not limited to beauty schools or cosmetology schools and any tutorial institutions including but not limited to Sylvan Learning Centers.
  - b. Ground water limitations – Domestic, irrigation, and other water wells of any type must not be drilled or maintained on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the property must not be used as a source of drinking water or for other direct contact purposes, including fountains.
  - c. Other limitations – It is required that the sub-slab depressurization system remain in operation in units 5413 and 5415 for the duration of the building existence.
  
5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.
  
6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this

Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

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

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a copy of said instrument and, if recorded, its recording reference in the Douglas 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 DOUGLAS COUNTY, NEBRASKA ON \_\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, BOOK \_\_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

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

- a. Land use limitations – The Property shall not be used for any use other than industrial or commercial use, excluding child care facilities, which shall be prohibited. This limitation is intended to protect human health and the

environment. Notwithstanding the restrictions provided above in this Section 4(a), the following uses shall be permitted: any off-site dry cleaning operations for pick-up & drop-off only, any technical or secondary/post-secondary educational institution, any training facilities catering primarily to trainees including but not limited to beauty schools or cosmetology schools and any tutorial institutions including but not limited to Sylvan Learning Centers.

- b. Ground water limitations – Domestic, irrigation, and other water wells of any type must not be drilled or maintained on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the property must not be used as a source of drinking water or for other direct contact purposes, including fountains.
- c. Other limitations – It is required that the sub-slab depressurization system remain in operation in units 5413 and 5415 for the duration of the building existence.

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

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

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

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

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

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Douglas County Register of Deeds.

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

- (1) Each person that signed the covenant;
- (2) Each person holding a recorded interest in the real property subject to the covenant;
- (3) Each person in possession of the real property subject to the covenant;
- (4) Each municipality or other unit of local government in which real property subject to the covenant is located; and
- (5) Any other person the agency requires.

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

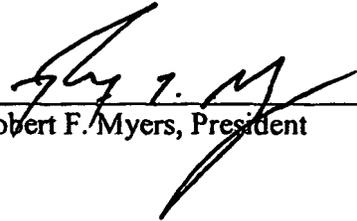
Register of Deeds  
Douglas County Nebraska  
1819 Farnam Street  
Suite H-09  
Omaha, Nebraska 68183

**ACKNOWLEDGEMENTS**

**GRANTOR / GRANTEE / HOLDER:**

**IN WITNESS WHEREOF**, Grantor, as the owner of the Property and the Grantee / Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 31<sup>ST</sup> day of July, 2013.

By: Plaza North Station LLC

  
\_\_\_\_\_  
Robert F. Myers, President

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this 31<sup>ST</sup> day of July, 2013, by Robert F. Myers, President of Plaza North Station LLC, who acknowledged said Environmental Covenant on behalf of Grantor / Grantee / Holder.

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

(SEAL)



**MICHAEL GERARD LEIK**  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Date. Section 147.03 O.R.C

**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:   
Michael J Linder  
Director

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

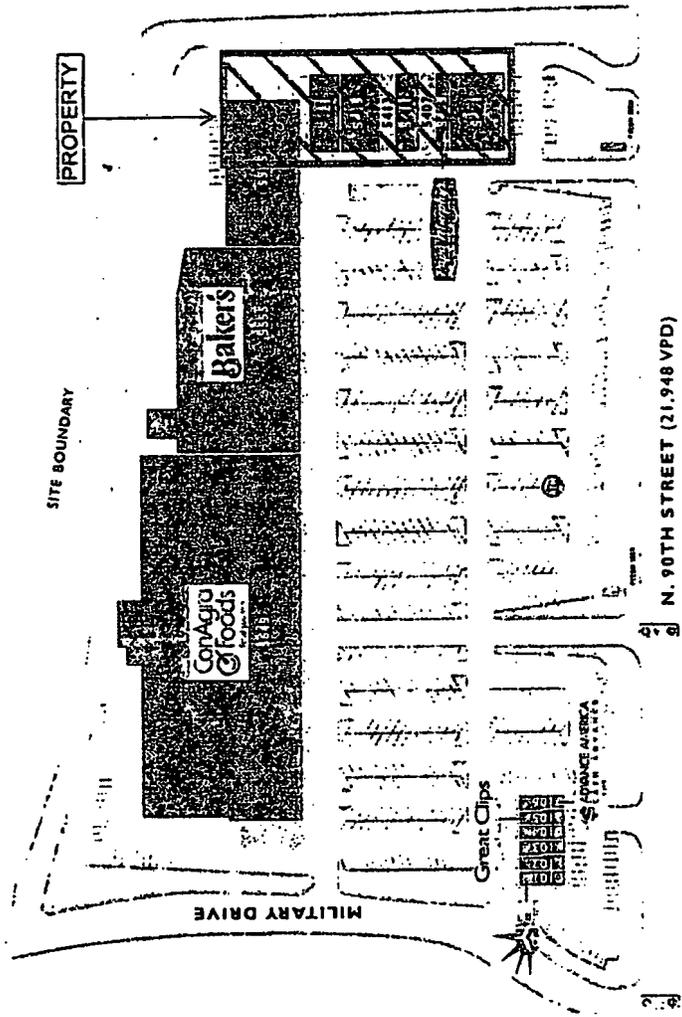
The foregoing instrument was acknowledged before me this 22<sup>nd</sup> of August, 2013 by Michael J. Linder who acknowledged said Environmental Covenant on behalf of the Agency.

  
Notary Public



**EXHIBIT A**

PLAZA NORTH SHOPPING CENTER



PHILLIPS EDISON & COMPANY