



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

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

Space Above for Record's Use Only

WM 00869

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 28th day of Dec., 2017, by the West Haymarket Joint Public Agency ("JPA"), a political subdivision and corporate body politic of the State of Nebraska, as Grantor and Holder/Grantee, pursuant to the Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613, hereinafter the "Act."

RECITALS:

A. Grantor is the owner of certain real property located within the boundaries of the West Haymarket Redevelopment South Site (WHRSS) and legally described as Lot 1, Block 11 and Outlot "C", West Haymarket Addition in the NW ¼ of Section 26, Township 10N, Range 06 E of the 6th Principal Meridian, Lancaster County, NE (the "Property"). The location of the Property is shown on the Lancaster County/City of Lincoln GIS Maps attached hereto marked as Attachment "A-1" and Attachment "A-2". The Property is marked by an arrow and outlined on the maps.

B. Holder/Grantee (hereinafter "Holder") is JPA.

C. Prior to the JPA's acquisition of the Property, historical records show that the west portion of the Property was being used for bulk oil storage and railroad operations as far back as the 1880's. Scrap processing operations began in the early 1930's and continued until the JPA's acquisition of the property. The property previously was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the Alter South and Alter North Minor Parcels Investigation Report and Remedial Action Plan (Olsson Associates, February 2016, NDEQ Document ID # 20160017579). The Property is currently graded and stabilized and is being offered as a redevelopment project site for commercial development and potential parkland.

D. The Property is 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 (RAPMA) as well as the Toxic Substances Control Act (TSCA) administered by the United States Environmental Protection Agency.

WEST HAY

E. The Nebraska Department of Environmental Quality (NDEQ) and the United States Environmental Protection Agency (EPA) are each an Agency as defined in Neb. Rev. Stat. §76-2602.

F. The selected environmental response projects or actions which has heretofore been performed by Grantor, is documented in the Alter South and Alter North Minor Parcels Investigation Report and Remedial Action Plan (Olsson Associates, February 2016, NDEQ Document ID # 20160017579. 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. The NDEQ Facility ID number is 80731.

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, 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 each 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. Groundwater shall not be used as a potable drinking water source. Groundwater from the deeper portions of the aquifer (Dakota formation) may be utilized for irrigation purposes if tested for applicable contaminants and approved for such use by EPA and NDEQ.
- b. Contact with underlying 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 or the thickness prescribed and approved for the specific area in the remedial action plan.
- 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 for the WHRSS (Benesch, 2017).
- d. Prior to engaging in any construction activity in the areas exhibiting the potential for vapor intrusion into substructures (as depicted on Attachment B”), a plan must be submitted to and approved by NDEQ. In general, the plan shall describe how vapor intrusion will be evaluated and potentially mitigated prior to construction.
- e. The following information is provided in accordance with 40 CFR 761.61(a)(8):
 - i) Portions of the property have been used for disposal of PCB remediation waste. The property is not subject to low occupancy restrictions defined in 40 CFR 761.3 due to EPA’s approval of a risk based disposal plan for the site on February 26, 2015 (NDEQ Document ID #20150018281) as allowed under 40 CFR 761.61(c).
 - ii) The risk based disposal plan approval assumes continued maintenance of a minimum of a three foot thick soil cap or 6 inch thick hard surface over the defined PCB remediation waste disposal area or the thickness prescribed and approved for the specific area in the remedial action plan.
 - iii) PCB waste remaining at the site which is to remain covered by soil cap or hard surface consists of soil containing less than 20 parts per million (ppm) PCBs (the approved cleanup level).

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 each 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 each 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 each 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 each 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 each 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 each Agency's right of entry and access or such 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 each 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:

- a. Groundwater shall not be used as a potable drinking water source. Groundwater from the deeper portions of the aquifer (Dakota formation) may be utilized for irrigation purposes if tested for applicable contaminants and approved for such use by EPA and NDEQ.
- b. Contact with underlying 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 or the thickness prescribed and approved for the specific area in the remedial action plan.
- 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 for the WHRSS (Benesch, 2017).
- d. Prior to engaging in any construction activity in the areas exhibiting the potential for vapor intrusion into substructures (as depicted on Attachment B”), a plan must be submitted to and approved by NDEQ. In general, the plan shall describe how vapor intrusion will be evaluated and potentially mitigated prior to construction.
- e. The following information is provided in accordance with 40 CFR 761.61(a)(8):
 - i) Portions of the property have been used for disposal of PCB remediation waste. The property is not subject to low occupancy restrictions defined in 40 CFR 761.3 due to EPA’s approval of a risk based disposal plan for the site on February 26, 2015 (NDEQ Document ID # 20150018281) as allowed under 40 CFR 761.61(c).
 - ii) The risk based disposal plan approval assumes continued maintenance of a minimum of a three foot thick soil cap or 6 inch thick hard surface over the defined PCB remediation waste disposal area or the thickness prescribed and approved for the specific area in the remedial action plan.
 - iii) PCB waste remaining at the site which is to remain covered by soil cap or hard surface consists of soil containing less than 20 parts per million (ppm) PCBs (the approved cleanup level).

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 last 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 Lancaster 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 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 applicable 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

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

United States Environmental Protection Agency
Attn: Director, Air and Waste Management Division
11201 Renner Boulevard
Lenexa, KS 66219

ACKNOWLEDGEMENTS

GRANTOR:

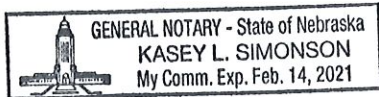
IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 28th day of December, 2017.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: 
Chris Beutler, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 28th of December, 2017, by Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, who acknowledged said Environmental Covenant on behalf of Grantor/Holder.



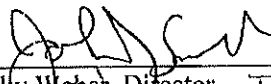
(SEAL)


Notary Public

EPA:

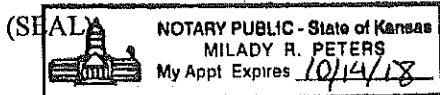
IN WITNESS WHEREOF, EPA, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is EPA a Holder under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

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

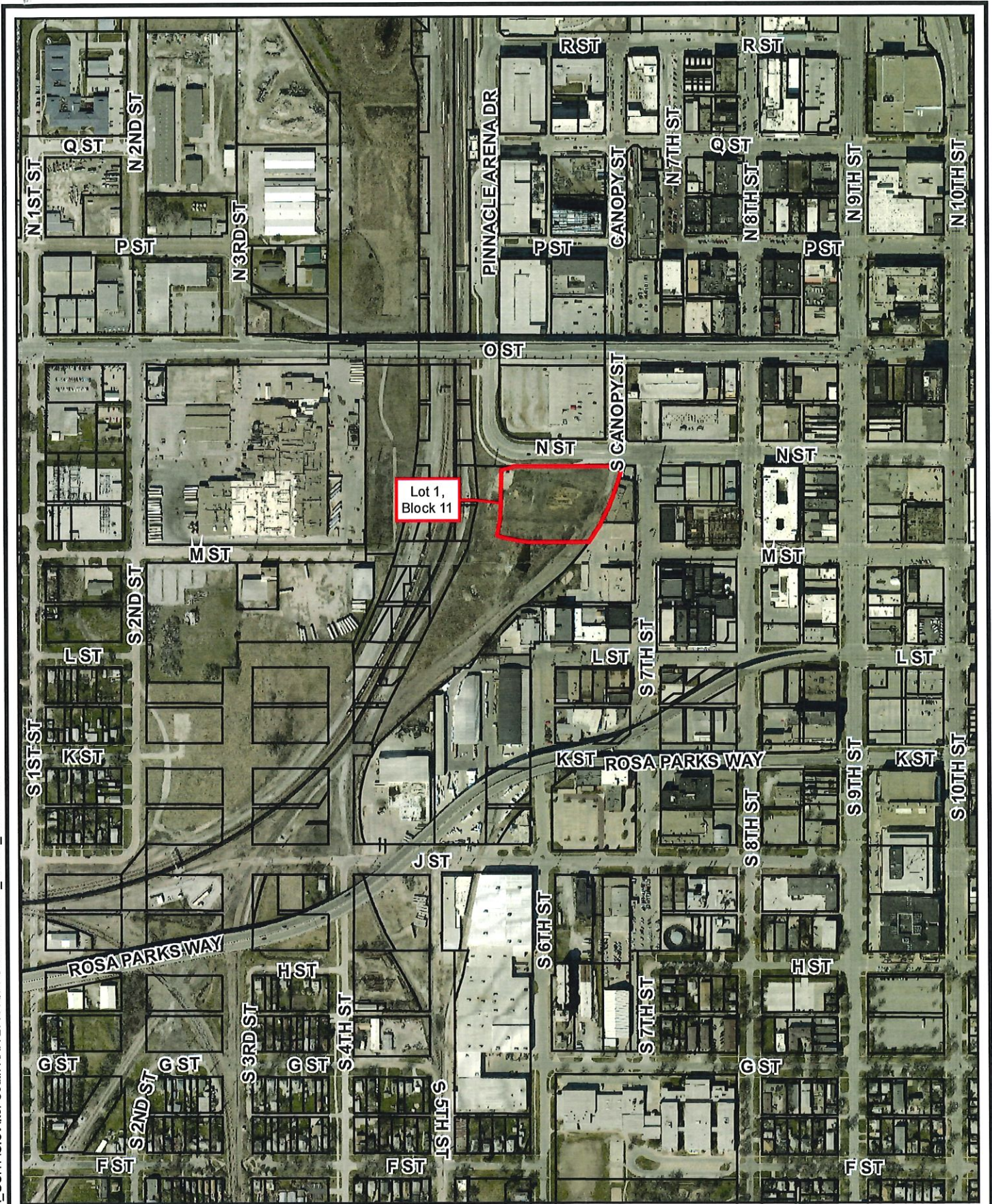
By: 
~~Becky Weber~~ Director JOHN J. SMITH, ACTING
Air and Waste Management Division

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 13th day of MARCH, 2018, before me a Notary Public in and for said state, personally appeared ~~Becky Weber~~ JOHN J. SMITH, ACTING, Director of the United States Environmental Protection Agency's Air and Waste Management Division, known to me to be the person who executed the within Covenant on behalf of said Agency and acknowledged to me that ~~she~~ executed the same for the purposes therein stated.




Notary Public



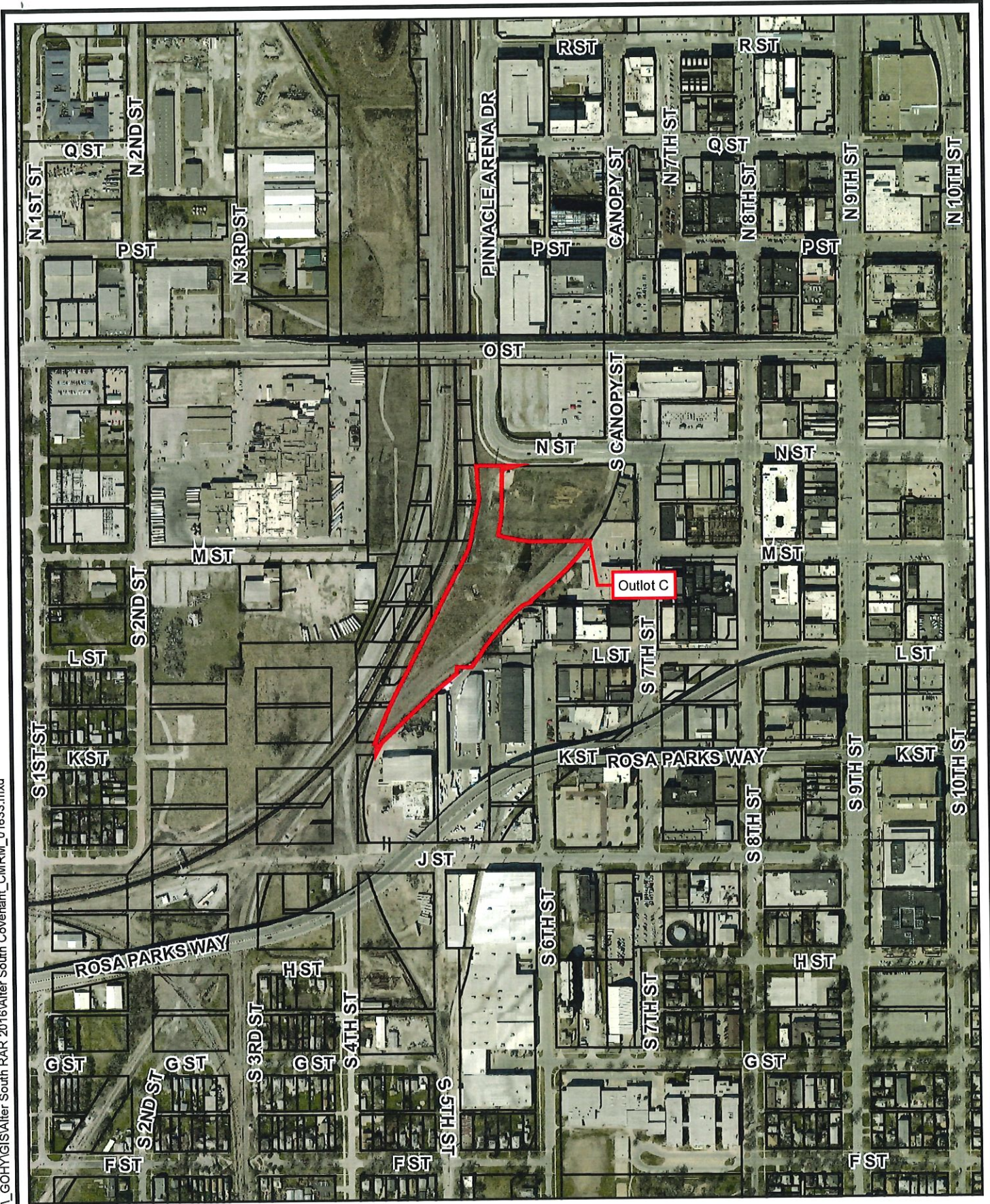
PROJECT: 010-1633
DRAWN BY: RD
DATE: October 06, 2017

West Haymarket Redevelopment Site
Alter South Parcel
Lincoln, Nebraska



ATTACHMENT

A-1



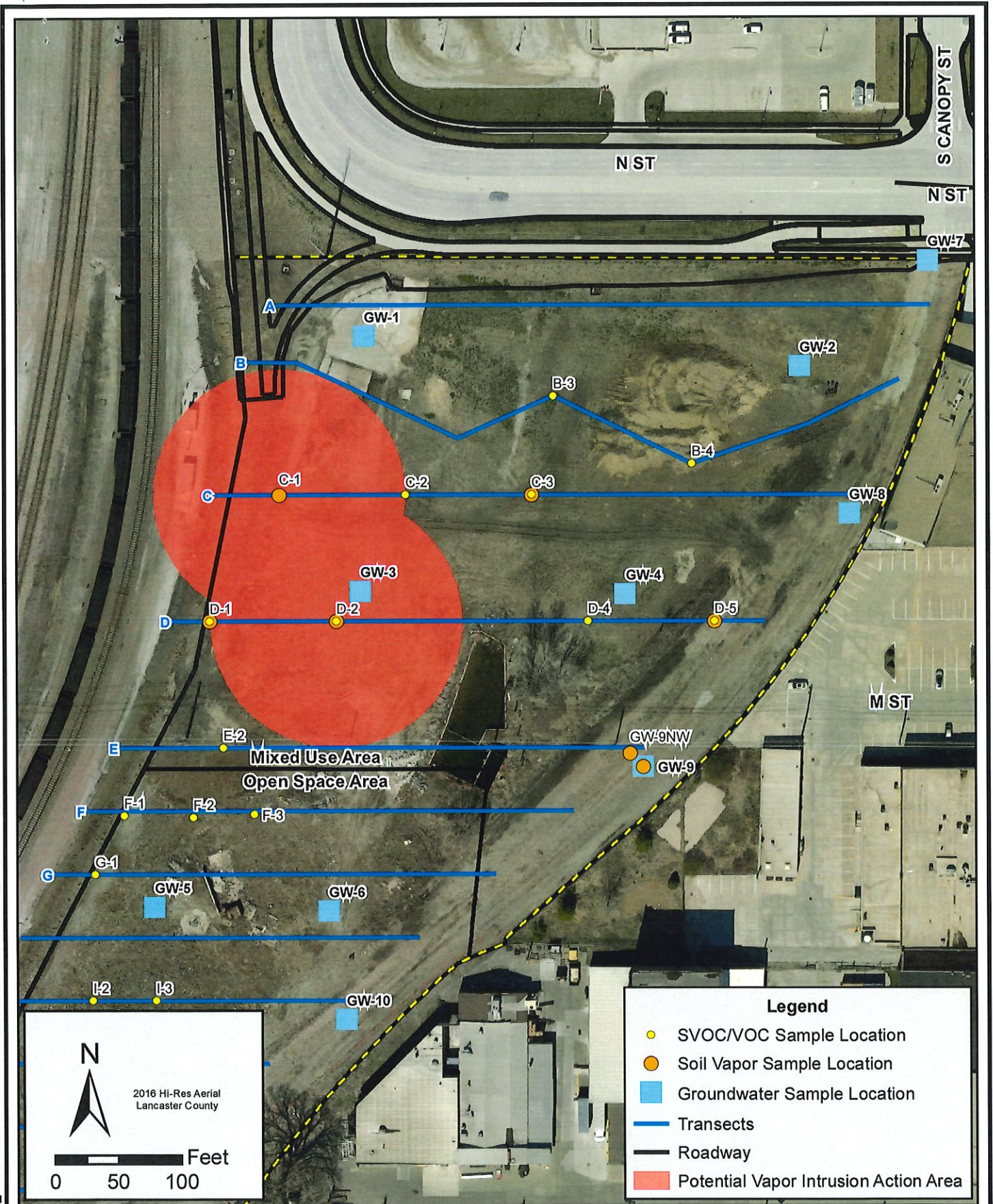
PROJECT: 010-1633
DRAWN BY: RD
DATE: October 06, 2017

West Haymarket Redevelopment Site
Alter South Parcel
Lincoln, Nebraska



ATTACHMENT
A-2

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Legend

- SVOC/VOC Sample Location
- Soil Vapor Sample Location
- Groundwater Sample Location
- Transects
- Roadway
- Potential Vapor Intrusion Action Area

PROJECT: 010-1633
 DRAWN BY: RD
 DATE: October 09, 2017

Sample Locations
 West Haymarket Redevelopment Site - South
 Alter South Parcel
 Lincoln, Nebraska



ATTACHMENT
 B