

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

Norman H. Avena

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
Total		\$216.00
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

Space Above for Record's Use Only

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

This Environmental Covenant is executed this 19th day of November, 2015 by TDP Phase One, LLC, a Nebraska limited liability company, 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 real property located within the East Flank of the West Haymarket Redevelopment Site North (WHRSN) generally located on the NE 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 and legally described as Lot 2, Block 4, West Haymarket Addition (the "Property"). 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 is 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.

B. Holder/Grantee (hereinafter "Holder") is TDP Phase One, LLC.

C. The Property was acquired by the Grantor from The West Haymarket Joint Public Agency ("JPA"). The building constructed by Grantor on the Property is currently used for residential housing known as the Canopy Lofts. 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).

D. 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 Canopy Lofts Site on the Location of Free Product Areas Map attached hereto marked as Attachment "C".

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

F. 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, 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 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. 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 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 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. 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, 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 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 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 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 One, LLC
440 North 8th Street, Suite 140
Lincoln, NE 68508

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 SIM MACY who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL)

Cindy R. Wood
Notary Public



LEGEND

 Site Boundary

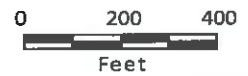
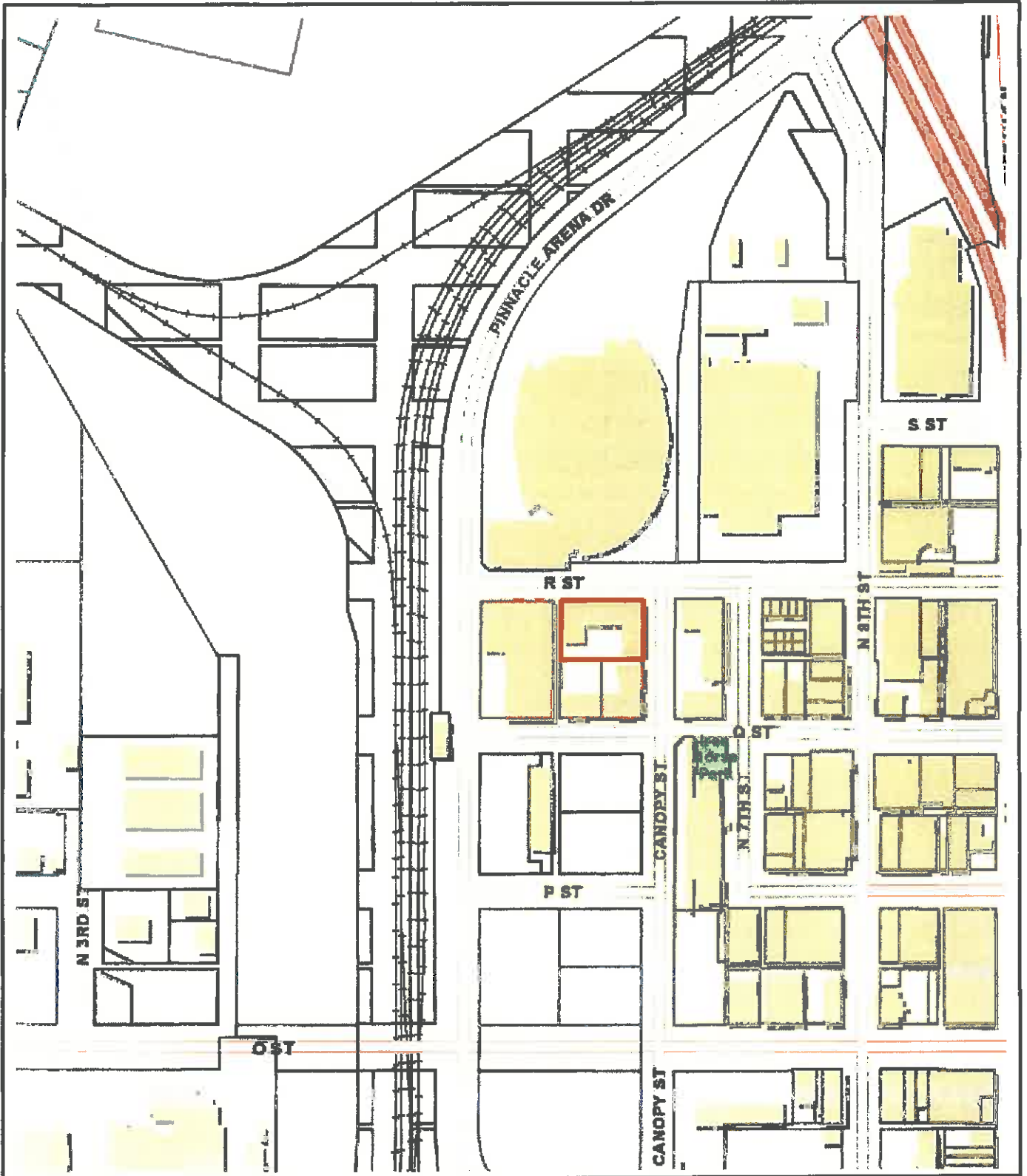


FIGURE 6 - EAST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE



Lancaster County/City of Lincoln GIS Map

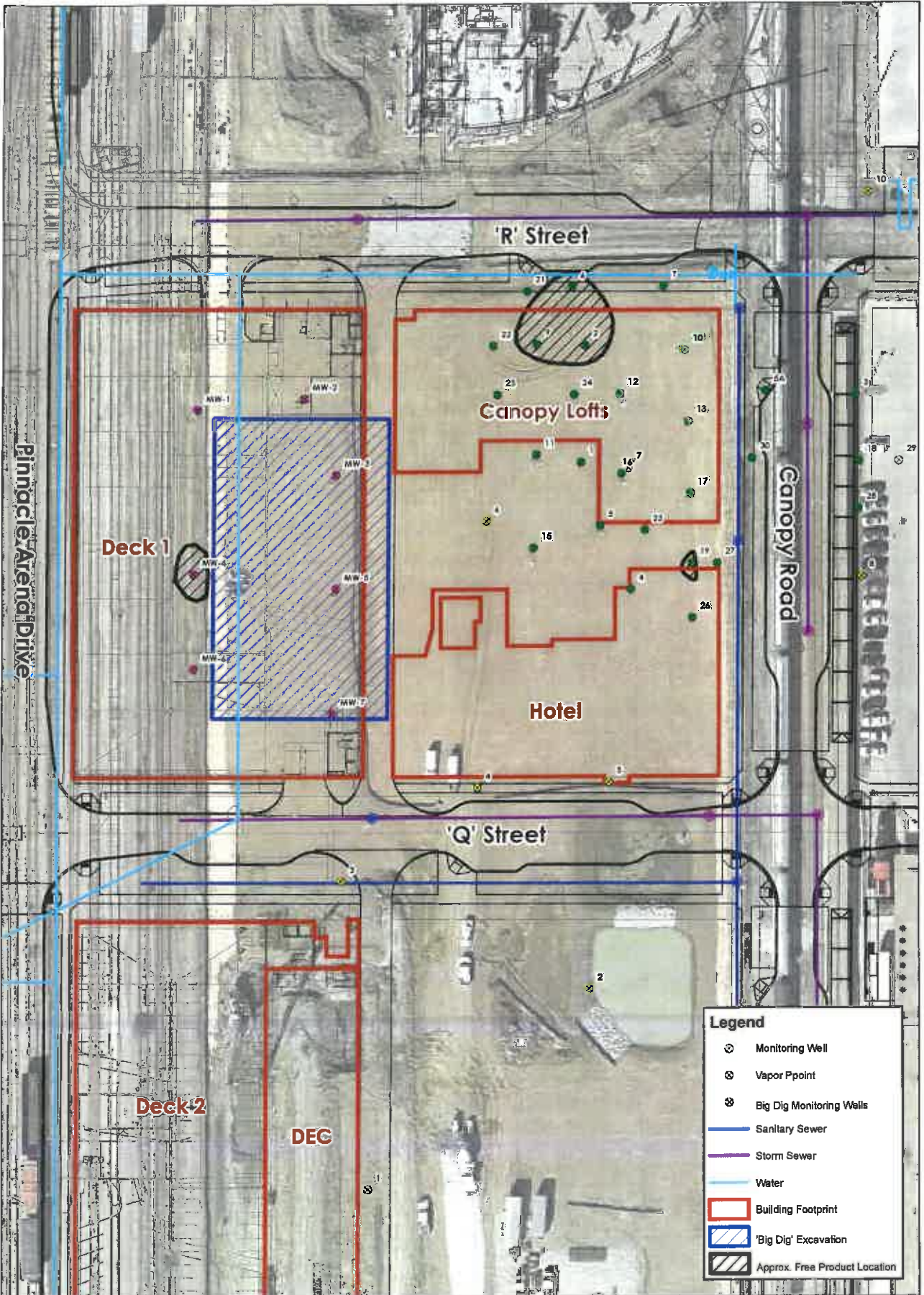
PROPERTY

Lot 2, Block 4 West Haymarket Addition



Printed: Oct 15, 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 and you will be directed to the appropriate department.



2017 Lancaster County Aerial Imagery



West Haymarket