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**NOTICE OF ENVIRONMENTAL REMEDIATION ACTIVITY  
AND COVENANTS RESTRICTING USE**

This Notice of Environmental Remediation Activity and Covenants Restricting Use (this "Instrument"), is made by the City of Omaha, Nebraska, a municipal corporation (the "City"), and Riverfront Campus Developers, LLC, a Delaware limited liability company, formerly a Nebraska limited liability company ("RCD").

**RECITALS**

The City and RCD entered into a Redevelopment Agreement dated as of April 19, 2001 (as heretofore and hereafter amended, the "Redevelopment Agreement") which was approved by Ordinance #35543 passed by the Omaha City Council on April 10, 2001, and approved by the Mayor of the City on April 19, 2001. The Redevelopment Agreement provides for the City to convey the property legally described as Lot 1 and Lots 6 through 10, inclusive, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and Lots 2 and 2A, Gallup University Riverfront Campus Replat 1, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (collectively, the "Property"), as well as additional real estate in the vicinity of the Property, to RCD.

As of the date hereof, the City owns Lots 1, 6, 8, and 10, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and Lot 2A, Gallup University Riverfront Campus Replat 1, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and the City has conveyed to RCD and RCD owns Lots 7 and 9, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska, and Lot 2, Gallup University Riverfront Campus Replat 1, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

The Redevelopment Agreement provides, in part, that the City will perform environmental remediation, subject to approval by RCD, at, on, under and with respect to the Property.

In the performance of its duties under the Redevelopment Agreement, the City has submitted to the Nebraska Department of Environmental Quality ("NDEQ") for its approval a Remedial Action Plan identified as "Remedial Action Plan for City of Omaha Ferer & Minor Properties, Riverfront Redevelopment Project, Abbott Drive, Omaha, Nebraska, February 2003, JHC Project No. 243-52, Revision 4" and by NDEQ as RAPMA Project #36-336-4919 (hereinafter referred to as "RAP 1") applicable to the Property. RAP 1, together with other related remediation documentation submitted to and approved by NDEQ pursuant to or in connection with RAP 1 will hereinafter be referred to as the "Remediation Documentation."

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RAP 1 provides that the City will record in the office of the Register of Deeds of Douglas County, Nebraska, an instrument containing the covenants and restrictions set forth in this Instrument.

NOW, THEREFORE, the City and RCD hereby declare that the Property shall be held, sold and conveyed subject to the terms, covenants, restrictions and easements set forth in this Instrument which shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any part thereof.

1. The Property shall not be used, developed or operated in any manner except in keeping with all applicable laws, governmental regulations and zoning regulations.
2. The Property shall not be used or developed in such a manner that shall have a reasonable degree of scientific probability of impairing, degrading or compromising the remediation performed pursuant to the Remediation Documentation. Changes in use or development of the Property previously identified in the Remediation Documentation (industrial, commercial and daycare in designated areas) will require submittal of additional documentation to NDEQ for review and approval that evaluates the need for any additional remedial actions prior to implementation of the changes. NDEQ will determine whether the changes in use or development of the Property will be protective of human health and the environment.
3. The City covenants that the City shall at all times comply with the obligations of the City with respect to the Property set forth in RAP 1 and the other Remediation Documentation, notwithstanding conveyance of any portion of the Property to RCD or to any other party. Neither RCD nor any subsequent owner of any portion of the Property shall have any duty to perform the duties of the City set forth in RAP 1 or the other Remediation Documentation; provided, however, that RCD and subsequent owners of the Property shall not take any action that would violate any of the covenants and restrictions set forth in paragraphs 1, 2, 5, 6, 7, 8, 9 or 10 hereof. The City reserves and shall have, and with respect to the portion of the Property owned by RCD, and RCD hereby grants to the City, a temporary easement from time to time to enter upon the Property to the limited extent and for such necessary and reasonable time as is required to perform the City's obligations under RAP 1 and the other Remediation Documentation. The City shall perform all work in a good and workmanlike manner with as little interference with any use or business being conducted on the Property as is reasonably possible under the circumstances existing at the time. The City shall give the owner of the portion of the Property on which the City will enter pursuant hereto as much advance notice as is reasonably possible under the circumstances existing at the time. The City shall repair and replace any damage to improvements and landscaping caused by the work performed by the City and its employees and contractors immediately upon completion of the work.
4. This Instrument, RAP 1 and the other Remediation Documentation shall in no way amend, modify, limit or release the City from the performance of the City's duties under the Redevelopment Agreement, including but not limited to the

duties of the City under the Redevelopment Agreement with respect to Hazardous Substances (as defined in the Redevelopment Agreement), environmental remediation and/or indemnification on account of Hazardous Substances set forth in the Redevelopment Agreement.

5. The Property shall not be used to store, treat or dispose of wastes of any kind, except garbage, rubbish, trash or wastes generated in the ordinary course of the occupant's business and stored, treated and disposed of in accordance with all applicable laws, rules and regulations of governmental authorities.
6. The Property shall have no development where foundation loads shall be increased above loads specified in any engineering plans approved by the Permits and Inspections Division of the City of Omaha Planning Department or its successor agency.
7. Domestic, irrigation and water wells of any type shall not be drilled or maintained on the Property, except for groundwater monitoring wells. Groundwater beneath the Property shall not be used as a source of drinking water or for other direct contact purposes.
8. If the soil capping system described in RAP 1 is penetrated to a depth that has a reasonable degree of scientific probability of interfering with or impairing the integrity of the soil capping system, additional engineering steps will be taken to protect human health and the environment until the integrity of the capping system is restored.
9. Any party, prior to a planned penetration of the soil capping system, shall develop a protocol for testing and proper management of any contaminated environmental media (e.g. soils, and ground water) that may be encountered. The protocol will be provided to NDEQ for review and approval prior to implementation.
10. No actions or development shall be allowed on the Property that will have a reasonable degree of scientific probability of altering the drainage patterns such that the integrity of the soiling capping system would be compromised, or resulting in unstable slopes on the Property or damaging the rip rap and shoreline armoring.
11. This Instrument may be amended or terminated only with the written approval of the City, NDEQ, and the fee simple titleholders of not less than seventy-five percent (75%) of the land area of the Property. Any such amendment or termination of this Instrument shall be set forth in writing and recorded in the office of the Register of Deeds of Douglas County, Nebraska.
12. No waiver of any default of any obligation by any party under this Instrument shall be implied from any omission by any other party to take any action with respect to such default, nor shall any breach of any provision of this Instrument constitute a waiver of a subsequent breach of the same or any other provision of this Instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Instrument on the dates set forth beneath their respective signatures, the later of which dates shall be deemed the date hereof for reference purposes.

THE CITY OF OMAHA, NEBRASKA,  
a municipal corporation

ATTEST:

*Bonny Brown*  
City Clerk

By: *Mike Fahey*  
Mike Fahey, Mayor

Date: *September 30, 2003*

Approved as to Form

*[Signature]*  
Special Projects Attorney - City

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on *Sept 30*, 2003, by Mike Fahey, who is Mayor of the City of Omaha, Nebraska, on behalf of the City of Omaha, Nebraska.



*Cynthia L. Ford*  
Notary Public

My Commission expires: *8/16/07*

