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REGISTRATION
RECORDS DIVISION
STATE OF NEBRASKA

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

UNION PACIFIC RAILROAD COMPANY
Attn: D. D. Brown
1800 Farnam Street
Omaha, Nebraska 68102

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DECLARATION OF RESTRICTIVE COVENANTS

Union Pacific Railroad Company, a Delaware corporation, ("Declarant"), being the owner of the real property located in Douglas County, Nebraska, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Premises"), hereby adopts the covenants, conditions, and restrictions set forth in this Declaration of Restrictive Covenants ("Declaration") and these covenants, conditions, and restrictions shall apply to and run with the Premises.

RECITALS

A. Background. The Premises were previously used to operate a railroad maintenance facility. Declarant currently is performing certain investigation and remediation activities (the "Remediation") with respect to contamination at the Premises. The Premises are being purchased by the City of Omaha ("City") for redevelopment purposes. Declarant is the owner of real property adjacent to the Premises.

B. Purpose. The covenants, conditions, and restrictions set forth herein are necessary to ensure that the Premises are not developed, used, or operated in a manner incompatible with the Remediation and to protect against uses of the Premises that are unsuitable in light of the Remediation. The terms, conditions, restrictions, and obligations contained herein are necessary and appropriate to reduce risks that the Premises otherwise might pose to third parties in the future and to protect human health and the environment.

DECLARATION

Declarant hereby states and declares as follows:

1. Prohibition Against Certain Uses. Neither the Premises, nor any portion thereof, shall be used now or hereafter for any residential, day care, preschool, playground, athletic field, picnic ground, dormitory or nursing home purposes, or for any industrial purposes which generate, treat, store or dispose of "hazardous waste" (as defined below). Notwithstanding the previous sentence, the Premises can contain (a) hotels or other types of short-term transient accommodations, (b) convention center/arena, and related buildings and facilities, and any

Box 3574
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educational activities incidental to the use of the Premises as a convention center/arena, and (c) playground, athletic field or picnic ground uses on any portions of the Premises (i) covered with hard surface by the City or its successors or assigns, or (ii) under the control of the City and covered with at least one foot of clean fill by the City or its successors or assigns and not located in areas delineated on the excavation management plan referred to Paragraph 2 of this Declaration. In no event shall the Premises or any portion thereof, be used now or hereafter for the generation, treatment storage or disposal of "hazardous waste" as defined in the federal Resource Conservation and Recovery Act, 42 USC Section 6901, *et seq.*, any successor statute, and any rules and regulations promulgated pursuant to such Act.

2. Restriction on Excavation. No excavation of the soil on the Premises shall be made except (a) in compliance with the excavation management plan attached as **Exhibit "B"** and incorporated herein by reference, with respect to the portions of the Premises delineated on such plan, and (b) as may otherwise be required by the United States Environmental Protection Agency or its successor ("EPA") and the Nebraska Department of Environmental Quality or its successor ("NDEQ").

3. Prohibition Against Use of Groundwater. Domestic, irrigation and other water wells of any type shall not be drilled or maintained on the Premises, except for groundwater monitoring wells, and temporary dewatering wells for construction purposes. Groundwater beneath the Premises shall not be used as a source of drinking water or for other direct contact purposes, or for fountains. No lakes or other surface impoundments are allowed on the Premises.

4. Recording. This Declaration shall be recorded in the office of the County Recorder of Douglas County, State of Nebraska.

5. Declaration to Run With the Land in Perpetuity; Amendments. The covenants, conditions, and restrictions contained in this Declaration shall run with the land in perpetuity, and shall bind all persons, corporations, or any other entities, obtaining or succeeding to an interest in the Premises, or any part thereof, after the date hereof. This Declaration may be amended only by written amendment executed and acknowledged by the city and Declarant, and duly recorded.

6. Application. All real estate, lots, parcels or portions thereof located within or on the Premises, and any conveyance, transfer lease or sublease covering or describing any part thereof, shall be subject to the covenants, conditions, and restrictions contained in this Declaration. By acceptance of such conveyance, transfer, lease or sublease each transferee and each of his/her/its heirs, successors, transferees, and assigns agree with Declarant and each other to be bound by the covenants, conditions, and restrictions contained in this Declaration. Owners, tenants and subtenants shall have liability under this Declaration only for violations of this Declaration occurring during their period of ownership or occupancy, as applicable.

7. Enforcement. The EPA, NDEQ, Declarant, the City, any person, corporation, or other entity then holding title in and to the Premises or any part thereof (a "Grantee"), and their respective heirs, assigns and successors, each shall have the right to enforce the covenants, conditions, and restrictions contained in this Declaration and to proceed at law or in equity to

compel compliance with or prevent the violation or breach of the terms hereof. This right includes, but is not limited to, the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of this Declaration. Failure to exercise such rights of enforcement shall in no event result in liability to any person or entity. The prevailing party in any action to enforce any provision of this Declaration shall be entitled to recover all costs of such action, including reasonable attorney fees. Declarant shall retain all of its rights under this Declaration regardless of whether Declarant retains ownership of any real property adjacent to the Premises.

8. Easement. The Declarant (and its successors and assigns), the City, the EPA and the NDEQ and any of their duly authorized agents and contractors shall have a permanent nonexclusive easement to enter or come on the Premises to monitor compliance with the terms of this Declaration. In addition, Declarant, its successors and assigns, and duly authorized agents and contractors employed on behalf of the Declarant (or its successors and assigns), shall have a permanent, nonexclusive easement to enter or come on the Premises to: (a) perform thereon any environmental investigation or remediation required by any federal, state, or local government agency, department, or other authority (collectively, the "Agency") including, without limitation, EPA or NDEQ; (b) perform any maintenance or monitoring required by any Agency; and (c) sample, repair, or reconstruct any environmental monitoring, investigation, or remediation systems.

9. Nonwaiver. To the maximum extent permitted by law, this Declaration and the covenants, conditions, and restrictions set forth herein shall not be subject to waiver or abandonment due to nonenforcement or violation of this Declaration on all or any portion of the Premises.

10. Miscellaneous. The determination that any provision of this Declaration is invalid shall not affect any other provision of this Declaration and the other provisions of this Declaration shall remain in full force and effect. No waiver of the breach of any provision of this Declaration shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person, corporation, or any other entity to exercise any right created by this Declaration nor for imposing any provision, condition, restriction, or covenant which may be unenforceable. The captions herein are for convenience and reference only and in no way define, limit, or describe the scope or intent of, or in any way affect this Declaration.

IN WITNESS WHEREOF, Union Pacific Railroad Company has caused this Declaration of Restrictive Covenants to be executed this 29 day of June, 2001.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: 

Its: ASST. VICE PRESIDENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 29 of June, 2001, by R. D. Ulrich, who is the ASST. VICE PRESIDENT of Union Pacific Railroad Company, a Delaware corporation, and acknowledged said Declaration of Restrictive Covenants on behalf of Union Pacific Railroad Company.



Notary Public

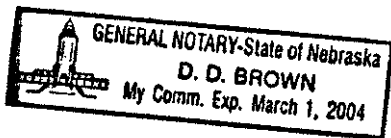


EXHIBIT A

REDEVELOPMENT SITE

Part of Blocks M, N, O, 300, 312, 313, 314, 315, 316, 322, 323, 324 AND 325, ORIGINAL CITY OF OMAHA, a subdivision, as surveyed, lithographed and recorded in Douglas County, Nebraska; TOGETHER WITH part of Elm, Chestnut, Napoleon, Nicholas, Izard, 8th, 9th, 10th, 11th, 12th AND 13th Streets as dedicated in the ORIGINAL CITY OF OMAHA, the entire tract described as follows:

Commencing at the point of intersection of the north right of way line of Seward Street with the east line of the ORIGINAL CITY OF OMAHA;

Thence South 02°26'24" East (assumed bearings) for 364.93 feet along the east line of the ORIGINAL CITY OF OMAHA to the TRUE POINT OF BEGINNING;

Thence continuing South 02°26'24" East for 802.49 feet along said east line;

Thence South 64°52'31" West for 22.97 feet;

Thence along a curve to the left (having a radius of 5331.50 feet and a long chord bearing South 55°54'12" West for 38.52 feet) for an arc length of 38.52 feet;

Thence North 02°19'04" West for 233.36 feet;

Thence South 37°46'31" West for 164.65 feet;

Thence South 15°03'30" East for 126.17 feet;

Thence along a curve to the right (having a radius of 1145.93 feet and a long chord bearing South 14°17'29" East for 30.68 feet) for an arc length of 30.68 feet;

Thence along a curve to the left (having a radius of 5331.50 feet and a long chord bearing South 53°14'35" West for 286.24 feet) for an arc length of 286.27 feet;

Thence South 47°32'38" West for 406.88 feet;

Thence South 47°14'26" West for 239.53 feet;

Thence South 49°16'40" West for 149.04 feet;

Thence along a curve to the right (having a radius of 2220.20 feet and a long chord bearing South 56°19'12" West for 205.27 feet) for an arc length of 205.35 feet;

Thence along a curve to the left (having a radius of 191.00 feet and a long chord bearing South 62°57'36" West for 359.96 feet) for an arc length of 469.66 feet;

Thence along a curve to the right (having a radius of 1810.93 feet and a long chord bearing South 79°18'15" West for 525.95 feet) for an arc length of 527.81 feet;

Thence South 87°32'06" West for 454.07 feet along the north right of way line of vacated Cumming Street to the east right of way line of 14th Street;

Thence North 02°21'26" West for 47.10 feet along said east right of way line of 14th Street;

Thence North 87°37'56" East for 299.45 feet;

Thence along a curve to the left (having a radius of 1685.00 feet and a long chord bearing North 75°43'39" East for 695.18 feet) for an arc length of 700.21 feet;

Thence along a curve to the right (having a radius of 156.70 feet and a long chord bearing North 58°13'25" East for 231.71 feet) for an arc length of 260.78 feet;

Thence along a curve to the left (having a radius of 1700.00 feet and a long chord bearing North 41°54'18" East for 778.16 feet) for an arc length of 785.12 feet;

Thence North 28°40'28" East for 488.84 feet;

Thence along a curve to the right (having a radius of 3125.00 feet and a long chord bearing North 35°42'18" East for 765.01 feet) for an arc length of 766.94 feet to the Point of Beginning.

Contains 586213 square feet or 13.458 acres. (Tract 1C)

Being part or all of Lots 1, 2, 5, 6, 7 and 8, Block "M"; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block "N" Lots 1, 2, 3, 4, 5 and 6, Block "O"; Lots 1, 2, 6, 7 and 8, Block 300; Lots 7 and 8, Block 312; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 313; Lots 2, 3, 4 and 5, Block 314; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 315; Lot 8, Block 316; Lots 5, 6, 7 and 8, Block 322; Lots 5, 6, 7 and 8, Block 323; Lots 1, 2, 4, 5 and 6, Block 324; Lots 1, 2, 3, 4 and 8, Block 325; Lots 2, 3 and 4, Block 326, Original City of Omaha, Douglas County, Nebraska

EXHIBIT A

TOGETHER WITH

Part of Blocks P, Q, 328, 360, 1 AND 32, ORIGINAL CITY OF OMAHA, a subdivision, as surveyed, lithographed and recorded in Douglas County, Nebraska; TOGETHER WITH part of Cass, California, Webster, Burt, Cuming, Izard, AND Nicholas Streets as dedicated in the ORIGINAL CITY OF OMAHA, the entire tract described as follows:

Commencing at the point of intersection of the north right of way line of Seward Street with the east line of the ORIGINAL CITY OF OMAHA;

Thence South 02°26'24" East (assumed bearings) for 1541.23 feet along the east line of the ORIGINAL CITY OF OMAHA to the TRUE POINT OF BEGINNING;

Thence continuing South 02°26'24" East for 1307.35 feet along said east line to an angle point therein;

Thence South 20°58'06" East for 197.21 feet along said east line to the west line of a parcel deeded to the City of Omaha, Nebraska as recorded in Deed Book 896 at page 377 in the Register of Deeds Office in Douglas County Nebraska;

Thence south for the next seven courses along the west line of said deed:

- 1) Thence South 47°17'32" West for 65.56 feet;
- 2) Thence along a curve to the left (having a radius of 331.56 feet and a long chord bearing South 28°02'33" West for 218.62 feet) for an arc length of 222.79 feet;
- 3) Thence South 08°47'34" West for 179.10 feet;
- 4) Thence along a curve to the right (having a radius of 448.33 feet and a long chord bearing South 13°32'04" West for 74.12 feet) for an arc length of 74.21 feet;
- 5) Thence South 18°20'44" West for 112.90 feet;
- 6) Thence South 18°10'53" West for 100.39 feet;
- 7) Thence South 08°57'45" West for 175.01 feet to the south right of way line of vacated Cass Street;

Thence South 89°12'55" West for 14.19 feet along said south right of way line;

Thence along a curve to the right (having a radius of 793.52 feet and a long chord bearing North 07°21'46" East for 2.19 feet) for an arc length of 2.19 feet;

Thence North 07°26'30" East for 1064.20 feet;

Thence along a curve to the left (having a radius of 2575.00 feet and a long chord bearing North 02°33'43" East for 438.08 feet) for an arc length of 438.61 feet;

Thence North 02°19'04" West for 817.31 feet;

Thence North 52°31'54" East for 66.92 feet to the Point of Beginning. **

Contains 158,398 square feet or 3.636 acres. (Tract 1A)

ALSO TOGETHER WITH

That part of Lot 4, Block 334, ORIGINAL CITY OF OMAHA, a subdivision, as surveyed, lithographed and recorded in Douglas County, Nebraska, described as follows:

Beginning at the northwest corner of said Lot 4;

4; Thence North 87°32'06" East (assumed bearings) for 27.07 feet along the north line of said Lot

Thence South 37°02'06" East for 35.13 feet;

Thence South 87°37'56" West for 46.89 feet to the west line of said Lot 4;

Thence North 02°40'50" West for 28.85 feet to the Point of Beginning.

Contains 1068 square feet or 0.025 acres. (Tract 1D)

(Item 1.7 of the Agreement)

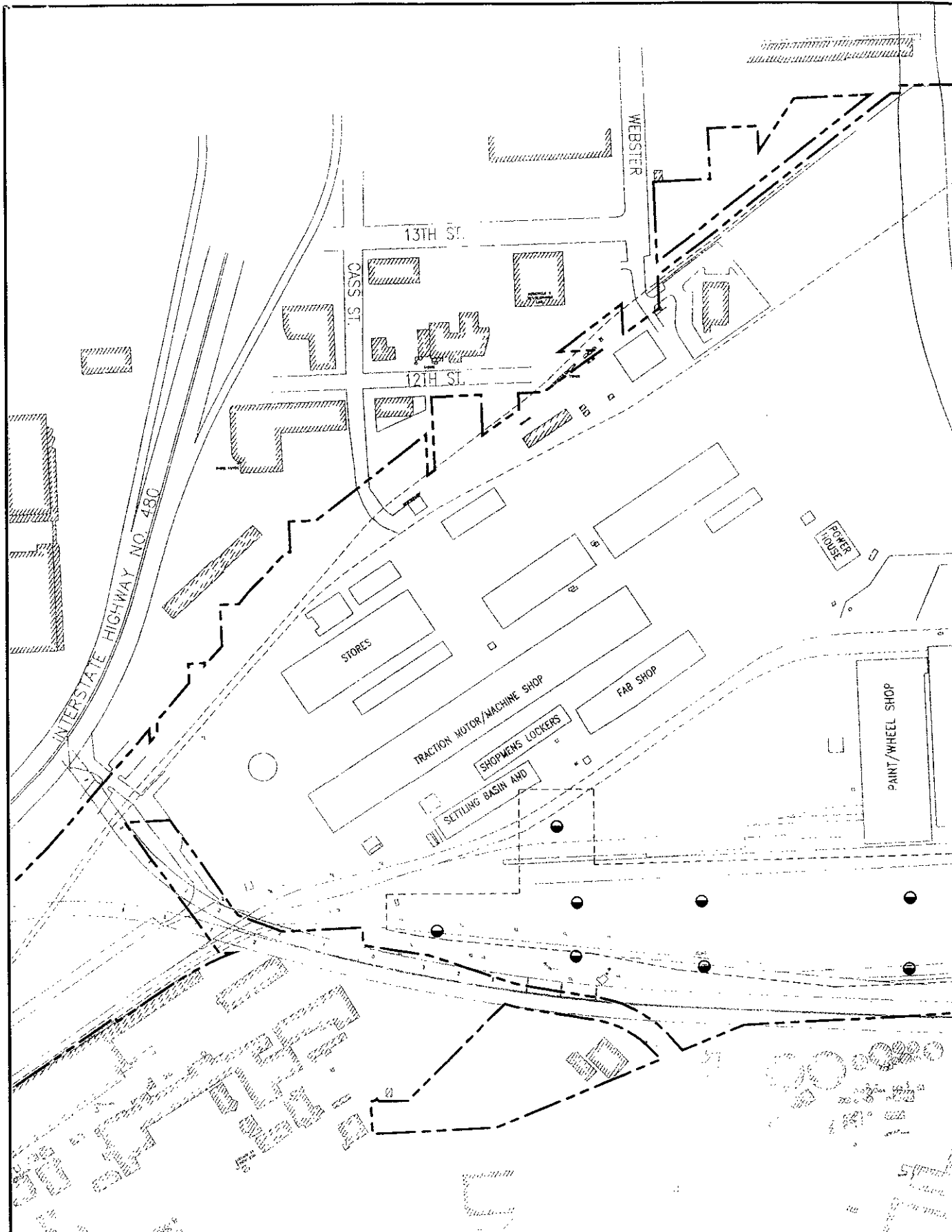
**Being part or all of Lots 1, 3, 4, 5, 8 and 9, Block 1; Lots 5, 6, 7 and 8, Block 32; Lots 5, 6, 7 and 8, Block 328; Lots 1, 2, 6 and 7, Block 360; Lots 1, 2, 7 and 8, Block "P"; and Lots 1, 2, 7, and 8, Block "Q"; Original City of Omaha, Douglas County, Nebraska

EXHIBIT B

EXCAVATION MANAGEMENT PLAN




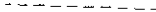


The Excavation Management Plan (Plan) shall be a document prepared by Union Pacific Railroad and provided to the City of Omaha. The Plan will describe actionable contamination that is anticipated to remain on site and the precautions that must be exercised in regards to the contamination. The precautions shall address excavation in the area of actionable contamination. The Plan will contain information on the management of excavation activities in the area of actionable contamination.

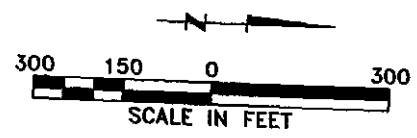
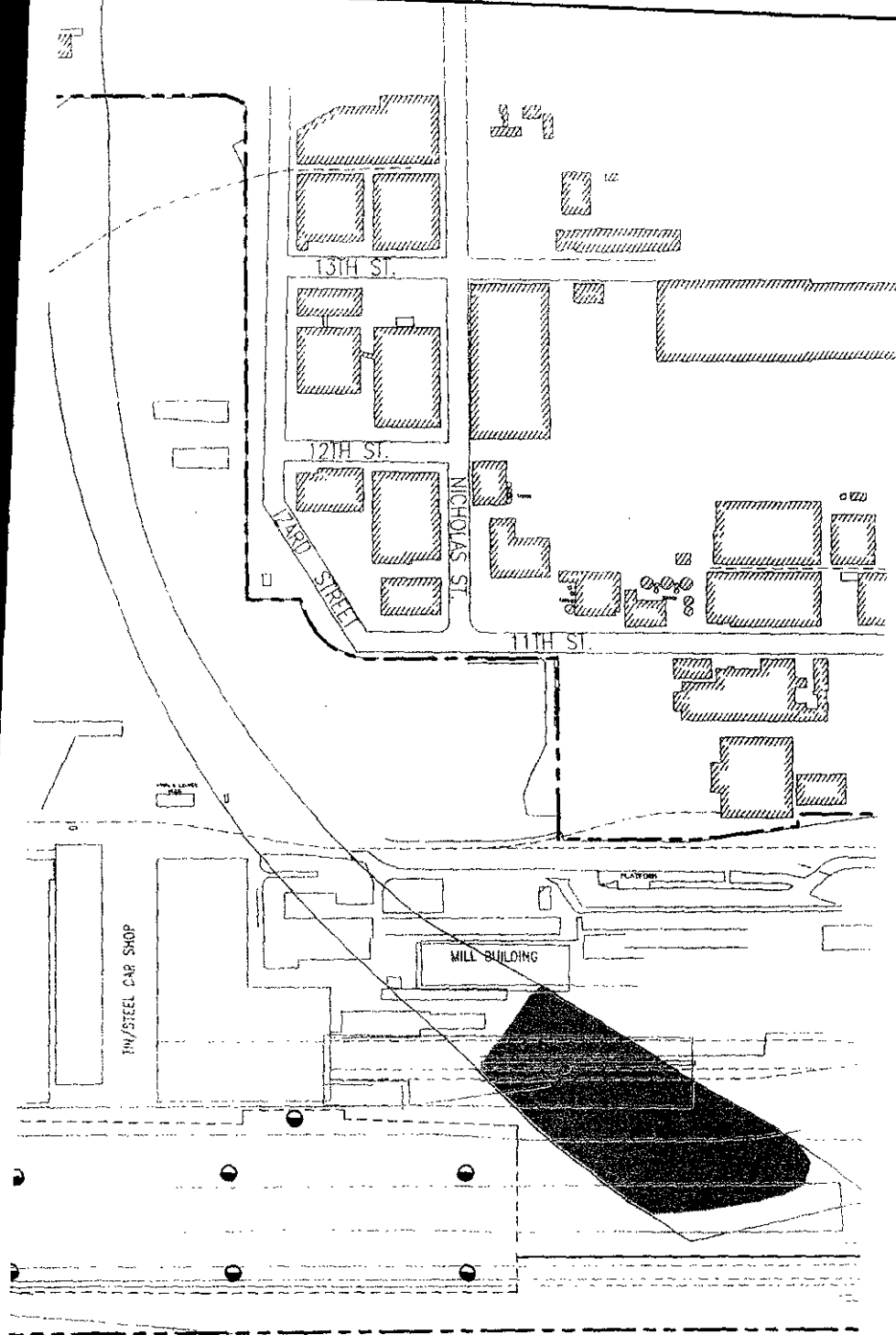
At this time, the area where actionable contamination will remain on site following completion of the corrective measures is the area of lead and asbestos-contaminated soil placement. This placement area is the embankment for the new Cuming Street bridge. See the attached Figure 4-2A dated June 22, 2001, and prepared by URS Greiner Woodward Clyde, for the lead and asbestos-contaminated soil placement.




June 22, 2001 1:51:54 a.m.
Drawing: I:\91mc204\sp02\102400\4-2.DWG (DAP)
Xrefs: sdcex2.DWG DRILLHOLES.DWG uprrpropline.DWG

LEGEND


-  OU1 RFI BORINGS WITH LEAD DETECTED
-  STRUCTURES
-  PROPERTY LINE
-  LIMITS OF EXCAVATION
-  EDGE OF EMBANKMENT
-  LEAD CONTAMINATED SOIL PLACEMENT



**LEAD
CONTAMINATED SOIL PLACEMENT**



OMAHA SHOPS
UNION PACIFIC RAILROAD COMPANY



URS

DRN BY	DAP	DATE	06/22/01
CHK'D BY		DATE	
PROJECT NO.			FIG. NO.
45-091MC204.02			4-2A