



WHEN RECORDED RETURN TO:
Mark D. Eisemann
Lewis Rice LLC
1010 Walnut, Suite 500
Kansas City, MO 64106

Title of Document: Third Amendment to Cross Easement Agreement

Date of Document: November 13, 2015

Developer: Lincoln Q Company, L.L.C., a Missouri limited liability company

Owner: 6401 Q STREET, LLC, a Nebraska limited liability company

Owner(s) Mailing Address: 2637 S. 158th Plaza, Suite 110
Omaha, Nebraska 68130

Reference Book and Page(s): Instrument No. 93-21953
Instrument No. 2013050165
Instrument No. 2015003922

***FOR INDEXING PURPOSES ONLY**

(If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document.)

Third Amendment to Cross Easement Agreement

This Third Amendment to Cross Easement Agreement (the “**Agreement**”) is made as of November 13, 2015, by and between **Lincoln Q Company, L.L.C.**, a Missouri limited liability company (“**Developer**”), with an address at 598 N. Winnebago Drive, Lake Winnebago, Missouri 64034, Attention: Michael Bo Conrad, and **6401 Q STREET, LLC**, a Nebraska limited liability company (“**Owner**”), with an address at 2637 S. 158th Plaza, Suite 110, Omaha, Nebraska 68130.

Recitals

A. Lincoln “Q” Company, a Nebraska general partnership (predecessor to Developer) and N & K Investment Co., a Nebraska general partnership (predecessor to Owner) executed that certain Cross Easement Agreement dated May 28, 1993, and recorded as Instrument No. 93-21953 in the Real Property Records of Lancaster County, Nebraska, as modified by First Amendment to Cross Easement Agreement dated September 19, 2013, and recorded as Instrument No. 2013050165 in the Real Property Records of Lancaster County, Nebraska, and Second Amendment to Cross Easement Agreement dated November 21, 2014, and recorded as Instrument No. 2015003922 in the Real Property Records of Lancaster County, Nebraska (collectively the “**Easement Agreement**”).

B. Developer and Owner desire to amend the Easement Agreement in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of mutual covenants, Developer and Owner agree as follows:

1. **Definitions.** Any capitalized term used herein but undefined shall have the meaning as defined in the Easement Agreement. The legal description of the Developer’s Tract is Lots 2 and 3 and Outlot “A”, “Q” Place, a subdivision in the City of Lincoln, Lancaster County, Nebraska. The legal description of the Owner’s Tract is Lot 1, “Q” Place, a subdivision in the City of Lincoln, Lancaster County, Nebraska.

“**Building**” shall mean the building existing on the Owner’s Tract as of the date of this Agreement.

“**Common Areas**” shall mean the parking areas, driveways, sidewalks, landscaping and other common areas from time to time located on the Developer’s Tract.

“**Proposed USPS Lease**” shall mean the proposed lease between Owner, as landlord, and USPS, as tenant, for the USPS Premises in the Building.

“**Site Plan**” shall mean the site plan consisting of pages A-1 and A-2 attached to this Agreement as Exhibit A and incorporated herein by this reference.

“**USPS**” shall mean the United States Postal Service, an independent establishment of the Executive Branch of the Government of the United States, which has an address of 475 L’Enfant Plaza, Washington, D.C. 20260.

“**USPS Delivery Service Area**” shall the area identified and dotted as the “USPS Delivery Service Area” on the Site Plan, which area includes portions of the sidewalk in front of the USPS Premises and portions of the Common Areas on the Developer’s Tract.

“**USPS Permitted Use**” shall mean the operation, in compliance with all applicable laws, of a United States Post Office customer service branch within the USPS Premises containing not more than 1,000 customer P.O. boxes.

“**USPS Premises**” shall mean the premises identified and cross-hatched as the “USPS Premises” on the Site Plan, which premises contain approximately 3,000 square feet of floor area and are located in the easternmost portion of the Building.

2. **Conflict.** In the event of any conflict between the terms of this Agreement and the terms of the Easement Agreement, the terms of this Agreement shall control. As between Owner and USPS, in the event of any conflict between this Agreement and the Proposed USPS Lease, the terms of the Proposed USPS Lease shall control.

3. **Proposed USPS Lease, USPS Permitted Use and Restrictions on Deliveries.**

(A) Owner and USPS are negotiating the Proposed USPS Lease. Developer has approval rights with respect to the use of the USPS Premises. Developer and Owner agree that during the term of the Proposed USPS Lease, the USPS Premises shall be used only for the USPS Permitted Use and for no other use or purpose. If the Proposed USPS Lease is not fully executed and delivered on or before September 30, 2015, and written notice thereof is not given to Developer within 30 days after such foregoing date, then this Agreement shall automatically terminate and be of no further force and effect, except that Owner’s obligations under Paragraph 4 shall survive such termination.

(B) The USPS Premises shall not be used as a mail distribution center and no USPS trucks or vehicles shall be parked in the Common Areas, other than within the USPS Delivery Service Area to the limited extent required for the pick-up of mail from the USPS Premises and delivery of supplies to the USPS Premises.

(C) No USPS truck or vehicle servicing the USPS Premises shall have an overall length in excess of 30 feet, and no truck or vehicle servicing the USPS Premises when parked in the USPS Delivery Service Area shall extend within the drive lane directly in front of

the Building (it being agreed that such drive lane shall at all times be available for uninterrupted vehicular access).

(D) Except during the month of December for the USPS "Peak Season," USPS trucks and vehicles servicing the USPS Premises shall only be permitted to service the USPS Premises during the following times at the USPS Delivery Service Area:

- a. 5:00 AM to 6:00 AM
- b. 7:30 AM to 8:30 AM
- c. 1:00 PM to 2:00 PM
- d. 3:00 PM to 4:00 PM
- e. 5:00 PM to 6:00 PM

(E) Other than the USPS Permitted Use and the Lumber Liquidator Permitted Use, Owner shall not use or permit the use of all or any portion of the Building on the Owner's Tract for any other use or purpose without first obtaining Developer's prior written consent in accordance with the terms of Section 9(D) of the Easement Agreement.

(F) If, after initially opening the USPS Premises for business with the public for the USPS Permitted Use, the USPS Premises is not used for the USPS Permitted Use for a period of 90 consecutive calendar days (for reasons other than fire or other casualty damage to the USPS Premises that Owner is diligently and in good faith rebuilding or repairing, but such rebuilding or repair work will take longer than 90 days), then, from and after the expiration of such 90 day period, Owner and USPS shall no longer have the right to use the USPS Premises for the USPS Permitted Use.

4. **Attorneys' Fees and Common Area Contribution.** Owner will pay to Developer, contemporaneously with Owner's execution and delivery of this Agreement to Developer, (a) 50% of all attorneys' fees and filing fees incurred or reasonably estimated to be incurred by Developer in the preparation, negotiation, execution and recording of this Agreement, and (b) all common area expenses then due and payable by Owner to Developer under the Easement Agreement (such expenses which are due and payable, and unpaid, as of July 31, 2015 aggregating \$4,636.82).

5. **USPS Delivery Service Area Construction.** Portions of the USPS Delivery Service Area are located on the Developer's Tract. Developer acknowledges receipt of the plans and specifications for the "USPS Work" (defined below) on July 10, 2015, which plans and specifications for the USPS Work are included within those certain plans and specifications identified as "United States Post Office New Customer Service Facility Gateway Retail Alternate Quarters 6401 Q Street, Lincoln, NE 68505", prepared by Sheldon Architecture as Project E95937, dated June 11, 2015 and last revised July 10, 2015, and consisting of 20 pages labeled T1.1, C2.1, C2.2, C2.3, D1.1, A1.1, A1.2, A2.1, A5.1, A6.1, A6.2, A6.3, A7.1, A7.2, A7.3, M1.1, M2.1, E1.1, E1.2, and E2.1 (the portions of such plans and specification related to the USPS Work being herein referred to as the "**USPS Work Plans**"). Owner (which term for

purposes of this Paragraph 5 shall be deemed to include USPS) shall have the right to construct the delivery dock improvements contemplated within the USPS Delivery Service Area as shown on the Site Plan, reconfigure Common Areas adjacent thereto and reconfigure the exterior elevations of the USPS Premises (the “USPS Work”) in accordance with the USPS Work Plans. Owner shall expeditiously perform the USPS Work (a) in accordance with the USPS Work Plans, (b) in a good and workmanlike manner, (c) in compliance with the requirements of all applicable municipal and governmental authorities and laws, (d) in a manner which does not interfere with the businesses operated by the other occupants of the Developer’s Tract and the Owner’s Tract, (e) in a manner which does not reduce the number of parking spaces available for use by the other occupants of the Developer’s Tract and the Owner’s Tract, and their customers, and (f) lien free.

6. **Repair.** Owner (which term for purposes of this Paragraph 6 shall be deemed to include USPS), at Owner’s expense, shall (a) keep the USPS Delivery Service Area in good order, condition and repair and make all necessary replacements thereto, during the term of the Easement Agreement, and (b) repair any damage to the Building, the Common Areas or other buildings and improvements on the Developer’s Tract and the Owner’s Tract due to Owner’s or USPS’s activities pursuant to the terms of this Agreement, including, without limitation, the performance of the USPS Work, USPS’s use of the USPS Premises and USPS’s use of the USPS Delivery Service Area (including damage caused by USPS’s trucks and vehicles). All repairs and replacements effected by Owner shall be in all respects of a standard at least substantially equal in quality of material and workmanship to the original work and material used and shall meet all requirements of all applicable municipal and governmental authorities and laws.

7. **Parking of Trucks and Vehicles Servicing the USPS Premises and Employee Parking.** No truck or vehicle servicing the USPS Premises shall block the drive aisle in front of the Building. There shall be no long term parking of trucks or vehicles servicing the USPS Premises in the parking or other Common Areas on Owner’s Tract or Developer’s Tract for periods in excess of four (4) hours, and then, only at such locations as are approved in writing by Developer. Employees of USPS shall park their personal vehicles only in parking spaces designated in writing by Developer from time to time (it being agreed by the parties hereto that in no event shall more than 10 personal vehicles of employees of USPS at any given time park on the Developer’s Tract in the parking spaces designated in writing by Developer from time to time as non-exclusive employee parking spaces available for non-exclusive parking by employees of USPS. USPS shall not have more than 10 employees working in the USPS Premises at any given time. If any employee of USPS fails to park within the applicable designated parking areas or if there are more than 10 employee vehicles of USPS parked at any given time on the Developer’s Tract, then Owner will reimburse Developer \$100 for each day or portion of a day a vehicle is so parked in violation, which remedy shall be in addition to any other remedies available to Developer, including the right to tow such vehicle at Owner’s expense and sole liability.

8. **Liability Insurance.** Owner and Developer acknowledge that the USPS does not routinely purchase commercial insurance or maintain a separate account for potential claims, as

is required to technically be considered "self-insured." Rather, USPS is authorized to pay proper claims against it out of its general revenue fund and available credit, and is subject to suit for damages. Liability claims against USPS are governed by the Federal Tort Claims Act, 39 U.S.C. §409(c), with the specific provisions being set forth at 28 U.S.C. §§1346(b), 2401(b), and 2671-2680. With respect to the issue of Workers' Compensation coverage, pursuant to 39 U.S.C. §1005(c), the Federal Employees' Compensation Act ("FECA"), 5 U.S.C. §§8101 et seq., is the exclusive remedy for all postal employees who sustain personal injuries on the job. While Owner and Developer are hereby waiving their standard insurance requirements for USPS, if at any time USPS assigns or subleases any portion of the USPS Premises in accordance with the terms of the Proposed USPS Lease and the Easement Agreement, as herein amended, to a non-governmental entity (the "**Non-Governmental Entity**"), then the Non-Governmental Entity shall keep in force during the term of its lease, with an insurance company authorized to do business in the State of Nebraska and which has a Best's Insurance Guide Rating of A:VII or better, a policy of commercial general liability insurance, including property damage, (or its equivalent) with respect to its premises, the business operated by the Non-Governmental Entity in its premises, and the Non-Governmental Entity's use of the Common Area, in which the limits of coverage shall not be less than \$3,000,000.00 in the aggregate (combined single limit bodily injury and property damage), which limits can be met by a stacking of so called "primary" and "umbrella" coverage for an aggregate coverage of not less than \$3,000,000.00. Such policy shall also include contractual liability coverage with the Easement Agreement, as herein amended, as a covered contract. In addition to the Non-Governmental Entity, the policy shall also name Owner and Developer and any other person, firm or corporation designated by Developer and in privity with it, as an additional insured with respect to third party claims for injury to persons or damage to property, except to the extent such damage or injury is caused by the negligence or willful misconduct of any of the additional insureds. The Non-Governmental Entity shall, within 30 days after written request, provide Developer with a certificate or other evidence of such insurance, and Non-Governmental Entity will give Developer at least 25 days' written notice prior to any cancellation of, lapse or material change in the insurance.

9. **Indemnity.** USPS hereby agrees to save harmless and indemnify Owner and Developer from all claims, loss, damage, actions, causes of actions, expense, and/or liability (including reasonable attorneys' fees and costs) (collectively, "**Liability**") incurred by Owner or Developer resulting from the use of the USPS Premises, the USPS Delivery Service Area and/or the Common Areas by USPS, or its employees, or the failure of USPS to comply with the terms of this Agreement, whenever such Liability arises from the act or omission of USPS, or its employees while acting within the scope of their employment, under circumstances where USPS, if a private person, would be liable in accordance with applicable law of the place where the act or omission occurred or under the terms of the Easement Agreement, as herein amended. Notwithstanding the immediately preceding sentence, USPS is under no obligation to save harmless and indemnify Owner or Developer from any Liability incurred by Owner or Developer with respect to the USPS Premises, the USPS Delivery Service Area and/or the Common Areas to the extent the Liability is as a result of the negligent or wrongful act or omission of Owner or Developer or their respective employees or agents. If Owner or Developer needs to defend itself in any matter covered by this Section, USPS hereby agrees to reimburse

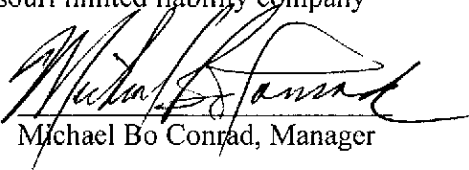
Owner or Developer, as the case may be, the reasonable attorneys' fees and costs associated with Owner's or Developer's defense. USPS will reimburse Owner or Developer for reasonable attorney's fees and costs actually incurred in defending matters covered by this indemnification clause. Owner or Developer must present a detailed accounting of such fees and costs, along with proof of payment, in order to be entitled to reimbursement, and USPS will reimburse Owner or Developer, as the case may be, within 30 days after such demand.

10. **Miscellaneous.** The Easement Agreement, as herein amended, shall continue in full force and effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and shall run with the land.

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

DEVELOPER:

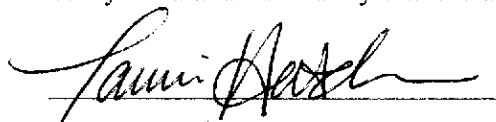
Lincoln Q Company, L.L.C.,
a Missouri limited liability company

By: 
Michael Bo Conrad, Manager

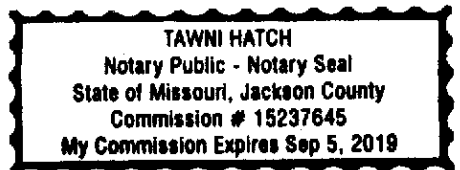
STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

On this 13th day of November, 2015, before me, a Notary Public in and for such County and State, personally appeared Michael Bo Conrad, to me personally known, who, being by me duly sworn, did say that he is the Manager of **Lincoln Q Company, L.L.C.**, a Missouri limited liability company, and that such instrument was signed in behalf of such entity by authority of its members and such person acknowledged such instrument to be the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.


Notary Public

My Commission Expires:
09/05/2019



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Gottlieb Lincoln Q 3rd Amendment to Cross Easement Agreement }

OWNER:

6401 Q STREET, LLC,
a Nebraska limited liability company

By: *Henry W. Anderson*
Name: Henry W. Anderson
Title: Member

STATE OF NEBRASKA)
) SS:
 Douglas Co
COUNTY OF ~~LANCASTER~~)

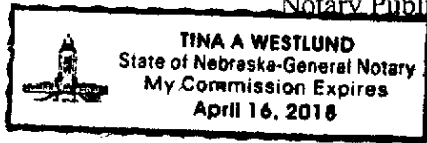
On this 17 day of September, 2015, before me, a Notary Public in and for such County and State, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the Manager of **6401 Q STREET, LLC**, a Nebraska limited liability company, and that such instrument was signed in behalf of such entity by authority of its members and such person acknowledged such instrument to be the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

Tina Westlund

Notary Public

My Commission Expires:
April 16, 2018



JOINDER

USPS joins in the execution of this Agreement for purposes of being bound by the terms of this Agreement and agreeing to perform those obligations of this Agreement which are to be performed or complied with by USPS.

USPS:

UNITED STATES POSTAL SERVICE,
an independent establishment of the Executive
Branch of the Government of the United States

By: *[Signature]*
Name: Diana Alvarado
Title: Contracting Officer

STATE OF California)
) ss:
COUNTY OF San Francisco)

On this 4th day of September, 2015, before me, a Notary Public in and for such County and State, personally appeared Diana Alvarado, to me personally known, who, being by me duly sworn, did say that she is the Contracting Officer of **UNITED STATES POSTAL SERVICE**, an independent establishment of the Executive Branch of the Government of the United States, and that such instrument was signed in behalf of such entity by due authority and such person acknowledged such instrument to be the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

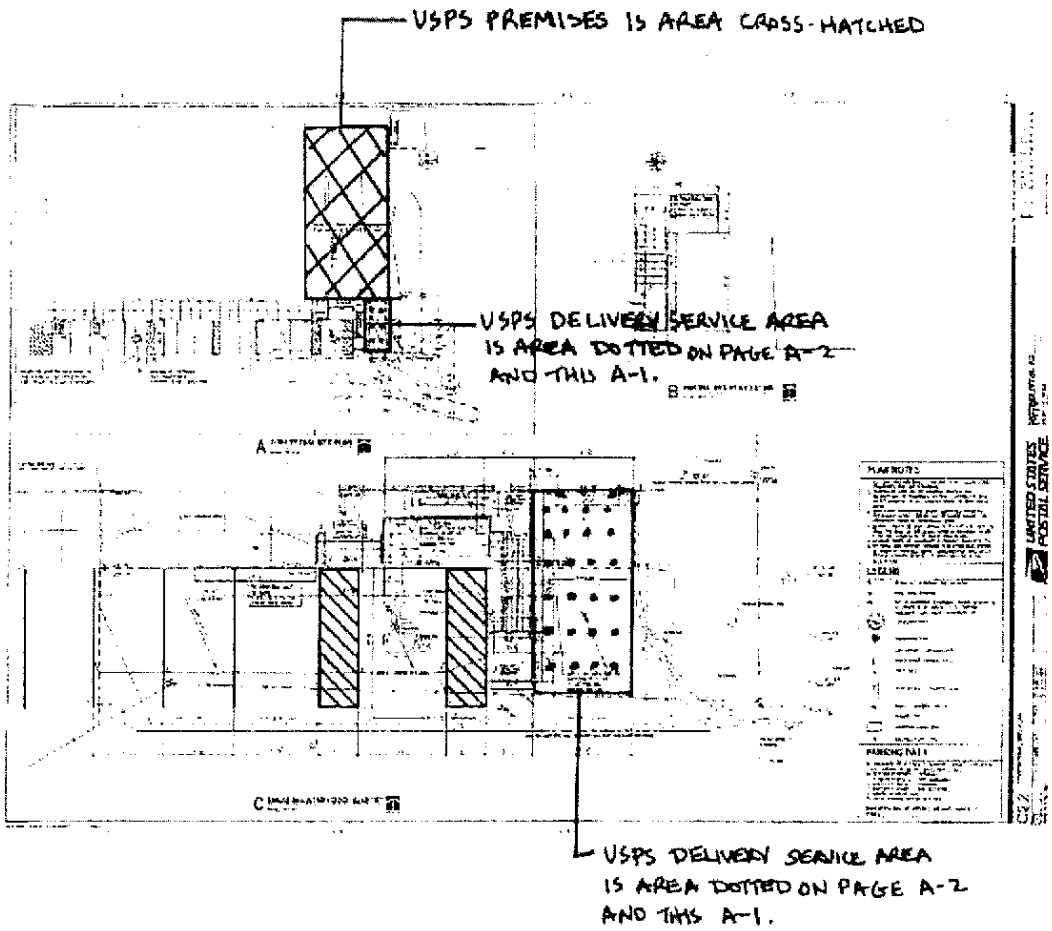
[Signature]
Notary Public

My Commission Expires:
Jul 18, 2018

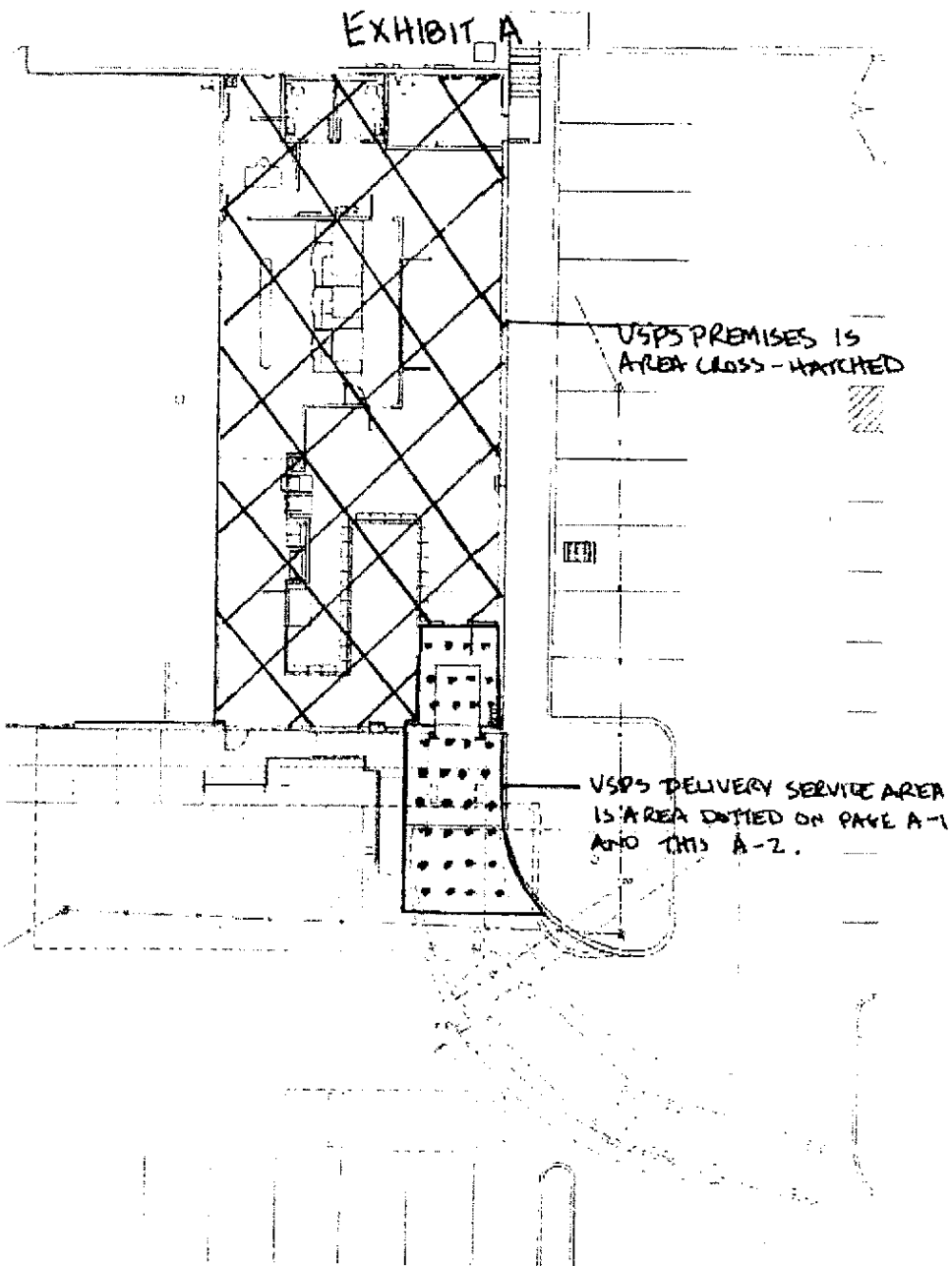


EXHIBIT A

EXHIBIT A



A-1



A-2