



**Building Restriction Agreement  
To Ensure Structures Are Reasonably Safe From Flooding**

E086622

THIS BUILDING RESTRICTION AGREEMENT to Ensure Structures are Reasonably Safe From Flooding is entered into as of the 8<sup>TH</sup> day of OCTOBER, 2013, by and between Brester Construction, Inc ; Last Pass Properties, LLC, and Ironwood Properties, LLC (hereinafter collectively referred to as "Owner"); and the City of Lincoln, Nebraska, a municipal corporation (hereinafter referred to as "City") This Building Restriction Agreement, for Lots 1,2 and 3, Only, SUPERCEDES an existing "Agreement to Ensure Future Structures are Reasonably Safe from Flooding in the Horizon Business Center and Associated Additions", as approved under Executive Order #072894. The aforementioned previous agreement remains in effect for the remaining lots not provided for in this Agreement

**RECITALS**

**I.**

Owner are the owners of Lots 1, 2 and 3, Horizon Business Center 13th Addition to the City of Lincoln, Nebraska, hereinafter referred to as the "Property "

**II.**

The Property was previously located in an area shown on the Flood Insurance Rate Map (FIRM) for the City of Lincoln issued by the Federal Emergency Management Agency (FEMA) as a special flood hazard area (SFHA) and was in a designated floodplain subject to the requirements of the City's Flood Regulations for the Existing Urban Area (Chapter 27 52 of the Lincoln Municipal Code) The Property was removed from the floodplain with a Letter of Map Revisions based on Fill (LOMR-F) after the aforementioned previous agreement was approved.

**III.**

Lincoln Municipal Code § 27 52 030 provides in part that:

(b) Residential Construction All new construction and substantial improvements of residential structures within the floodplain or floodprone area shall have the lowest floor, including basement, elevated at least one foot above the base flood level Garages and storage buildings used exclusively for the storage of motor vehicles and storage of other items readily

removable in the event of a flood warning may have their lowest floor below flood elevation, provided the building structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the 100-year flood and, further, provided that no utilities are installed in the building except elevated or floodproofed electrical fixtures. If the building is converted to another use, it must be brought into full compliance with the requirements of this title governing such uses.

(c) **Nonresidential Construction** All new construction and substantial improvements of commercial, industrial, and other nonresidential structures within the designated floodplain or floodprone area shall either have the lowest floor, including basement, elevated at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level plus one foot the structure is watertight in accordance with the performance standards set forth in the City's building code. A registered professional engineer or architect shall develop or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction meet the watertight performance standards. The certification shall be provided to the City as set forth in § 27-52-040 of the Lincoln Municipal Code.

(d) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
- (2) The bottom of all openings shall be no higher than one foot above grade; and
- (3) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

#### IV.

FEMA regulations found in 44 CFR 65.5 and 65.6 authorize the issuance of a Letter of Map Revision (LOMR) or a Letter of Map Revision based on fill (LOMR-F) to remove land from the area of a SFHA (i.e. designated floodplain) provided in part that the participating

community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding "

**V.**

FEMA defines "reasonably safe from flooding" to mean "base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area (Floodplain) and that any subsurface waters related to the base flood will not damage existing or proposed buildings 44 CFR 65 2(c)

**VI.**

After FEMA has revised the FIRM to show that the (filled) land is outside the floodplain (SFHA) the participating community is no longer required to apply the minimum National Flood Insurance Program (NFIP) floodplain management standards to any structures built on the land and FEMA's mandatory flood insurance purchase requirements no longer apply, although flood insurance may still be required contractually by banks and other lenders if the structure is used as collateral to secure a loan

**VII.**

Land removed from the designated floodplain pursuant to a LOMR or LOMR-F is not subject to the City's floodplain ordinance and in particular the requirements of Lincoln Municipal Code § 27 52 030(b) and (c).

**VIII.**

FEMA believes that residual flood hazards may exist in areas elevated above the base flood elevation, including subsurface flood conditions and flooding from events which exceed the base flood Therefore, FEMA will not process an application for nor approve a LOMR or a LOMR-F removing land from the floodplain unless the participating community, here the City, certifies that the area is reasonably safe from flooding according to criteria set forth in FEMA's Technical Bulletin 10-01 "Ensuring that structures built on fill and that are near special flood hazard areas are reasonably safe from flooding in accordance with the National Flood Insurance Program."

**IX.**

Currently the City of Lincoln Municipal Code does not have any regulations that control development of flood prone areas outside of the designated floodplain that would ensure that any construction in such areas is reasonably safe from flooding. Therefore, the City cannot

make the required certification to FEMA required for the processing or issuance of a LOMR or LOMR-F

**X.**

Owner applied for a LOMR-F that was issued 09-01-2005 (case # 05-07-0787A-and Revalidation # 09-07-1969V, effective 04-17-2013) in order to remove the Property from the SFHA (i.e. designated floodplain) for future development in order to avoid the mandatory flood insurance purchase requirement for lending which is attached to federally guaranteed loans for construction of said buildings on the Property as it presently exists. Therefore, the Owner desires to update the agreement previously entered into with the City restricting development of the Property to ensure that any construction on the Property is reasonably safe from flooding in order to induce the City to sign the certification required by FEMA certifying that if the Property is removed from the SFHA (i.e. designated floodplain) the land and any existing or future buildings constructed thereon will be reasonably safe from flooding.

**XI.**

The Owner desires to follow FEMA Technical bulletin 10-1 to show that future buildings with lowest finished floors below base flood elevations for the Property are reasonably safe from flooding per the mutual covenants contained herein. Documentation will be made available at the City Building and Safety Department at time of Building Permit application to certify any portion of the building below the elevation of 1180.45 NAVD 88, which is designated the lowest floor elevation for the Property as specified in the Platted grading and drainage plan prepared by Olsson Associates Consulting Engineers, is waterproofed per FEMA Technical bulletin 10-1

NOW, THEREFORE, in consideration of the above-recited recitals and the mutual covenants contained herein, Owner and City agree as follows:

1. Owner and City agree that the base flood elevation of the Property remains at approximately 1177.7 NAVD 88
2. Owner agrees that all new construction and substantial improvements of residential structures located on the Property shall have the lowest floor, including basement, elevated at least one foot above the base flood level or the platted lowest floor (1180.45 NAVD88), whichever is higher. City agrees that garages and storage buildings used exclusively for the storage of motor vehicles, and storage of other items readily removable in the event of a flood warning may have their lowest floor below flood elevation, provided the building structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the 100-year flood

and, further, provided that no utilities are installed in the building except elevated or floodproofed electrical fixtures. Owner agrees that if the building is converted to another use, it must be brought into full compliance with the requirements of this Agreement governing such uses

3 Owner agrees that all new construction and substantial improvements of commercial, industrial, and other nonresidential structures located upon the Property shall either have the lowest floor, including basement, elevated at least one foot above the base flood level or the platted lowest floor (1180 45 NAVD88), whichever is higher, or, together with attendant utility and sanitary facilities, be flood-proofed so that below the base flood level plus one foot the structure is watertight in accordance with the performance standards set forth in the City's building code. Owner further agrees that a registered professional engineer or architect shall develop or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction meet the watertight performance standards. The certification shall be provided to the City as set forth in Lincoln Municipal Code § 27 52 040.

4. Owner agrees that for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,

b. The bottom of all openings shall be no higher than one foot above grade, and

c. Openings may be equipped with screens, louvers, or other coverings or devices, provided, that they permit the automatic entry and exit of floodwaters.

5. Owner agrees to identify all building sites and their elevation in relationship to the base flood elevation on all grading plans, preliminary plats, final plats, planned unit developments, use permits, and/or special permits for the Property or any part thereof. Owner further agrees to identify all building sites and their elevation in relationship to the base flood elevation in any application of a LOMR or LOMR-F.

6. Owner agrees to note, and/or agrees that the City may note, on all grading plans, building permits, preliminary plats, final plats, planned unit developments, use permits,

and/or special permits for the Property or any part thereof that all new construction and substantial improvements of residential structures and all new construction and substantial improvements of commercial, industrial and other non-residential structures shall be constructed to the same standard as is required for such structures by Lincoln Municipal Code § 27 52.030(b) and § 27 52 030(c) respectively

7 Upon execution of this Agreement and its filing of record with the Register of Deeds for Lancaster County, Nebraska, the City agrees to provide FEMA with the City's assurance that if the Property is removed from the SFHA (i.e. designated floodplain) pursuant to a LOMR or a LOMR-F that all new construction and substantial improvement of existing buildings or structures on the Property will be reasonably safe from flooding

8 Owner agrees that no building permit shall be issued for the construction of any new building or structure on the Property or substantial improvement of an existing building or structure on the Property until the Owner has submitted all the required information necessary to obtain a development permit in accordance with the requirements of Lincoln Municipal Code §§ 27 52 040 and 27 52.050. Owner further agrees that no certificate of occupancy will be issued by the City until Owner has provided certification from a registered professional engineer that the new building or structure or substantial improvement of an existing building or structure has been constructed in accordance with this Agreement

9 Owner agrees to notify all purchasers of the Property or any part thereof that no certificate of occupancy will be issued until the City receives satisfactory certificate from a registered professional engineer that the new building or structure or substantial improvement of an existing building or structure has been constructed in accordance with this Agreement

10. The parties agree that the agreements contained herein shall run with the land and shall be binding and obligatory upon the heirs, successors, and assigns of the Owner

11 Owner agrees that this Agreement shall be filed by the City with the Register of Deeds of Lancaster County, filing fees to be paid in advance by Owner

12. The parties agree that except as defined elsewhere in this Agreement the following terms be defined in the same manner as they are defined in Lincoln Municipal Code § 27 52 020 "base flood," "basement," "development," "existing manufactured home park or subdivision," "expansion to an existing manufactured home park or subdivision," "Flood Insurance Rate Map (FIRM)," "flood plain," "floodproofing," "floodway," "historic structure," "lowest floor," "manufactured home," "manufactured home park or subdivision," "NAVD," "new construction," "new manufactured home park or subdivision," "qualified engineer," "recreational

vehicle," "riverine," "start of construction," "structure," "substantial damage," "substantial improvement"

Dated this 14 day of oct., 2013.

OWNER (Lot 1):

IRONWOOD PROPERTIES, LLC

By [Signature]

Title OWNER

OWNER (Lot 2):

LAST PASS PROPERTIES, LLC

By [Signature]

Title owner

OWNER (Lot 3):

BRESTER CONSTRUCTION, INC.

By [Signature]

Title PRESIDENT

Attest:

CITY OF LINCOLN, NEBRASKA

Deputy

[Signature]  
City Clerk

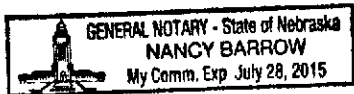


[Signature]  
Chris Beutler, Mayor

STATE OF NEBRASKA

COUNTY OF LANCASTER

oct, 2013, by Joc Steinbach on behalf of Ironwood Properties, LLC



[Signature]  
Notary Public

STATE OF NEBRASKA

COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this 17 day of October, 2013, by Dustin Baker on behalf of Last Pass Properties, LLC.



Nancy Johnson  
Notary Public

STATE OF NEBRASKA

COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this 8 day of Oct, 2013, by Chris Brester on behalf of Brester Construction, Inc

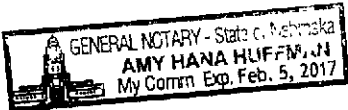


Nancy Barrow  
Notary Public

STATE OF NEBRASKA

COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 2013, by Mayor Chris Beutler on behalf of City of Lincoln, Nebraska



Amy Hana Huffman  
Notary Public



# CERTIFICATE

STATE OF NEBRASKA           )  
  )  
COUNTY OF LANCASTER       ) ss:  
  )  
CITY OF LINCOLN                )

I, Sandy L Dubas, Deputy City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of EO 86622 - Executing the Building Restriction Agreement to Ensure Structures are Reasonably Safe from Flooding from the following property owners: Brester Construction, Inc.; Last Pass Properties, LLC; and Ironwood Properties, LLC, as it appears of record in my said office and is now in my charge remaining as Deputy City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, on the 25<sup>th</sup> day of November, 2013

*Sandy L. Dubas*  
Deputy City Clerk



*Return Filed Document to City Clerk*