



MISC Inst. # 2018018062, Pg: 1 of 65 Rec Date: 03/09/2018 13:49:14.993

Fee Received: \$394.00 Electronically Recorded By: YT

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**DECLARATION OF CONDITIONS, COVENANTS,
RESTRICTIONS, OPERATIONS AND EASEMENT AGREEMENT
FOR
THE CAPITOL DISTRICT DEVELOPMENT**

Omaha, Nebraska

TABLE OF CONTENTS

ARTICLE I
DEFINITIONS

ARTICLE II
GRANT OF EASEMENTS

- Section 2.01 Easements
- Section 2.02 Maintenance and Support Easement
- Section 2.03 Intentionally Deleted
- Section 2.04 Temporary Closings and Limitations on Use
- Section 2.05 Use and Duration of Easements
- Section 2.06 Rights and Easements for Utilities
- Section 2.07 Relocation of Utilities
- Section 2.08 Indemnification by Owners
- Section 2.09 Encroachments
- Section 2.10 Limited Warranty
- Section 2.11 Intentionally Deleted
- Section 2.12 Rights of Entry and Use
- Section 2.13 Easements to Accompany Conveyance of a Parcel or
Condominium Unit
- Section 2.14 Delegation of Use
- Section 2.15 Cooperation Regarding Construction Staging
- Section 2.16 Limitations of Rights in Easement Areas

ARTICLE III
USE RESTRICTIONS AND OTHER OBLIGATIONS

- Section 3.01 General Use Restrictions
- Section 3.02 No Walls, Fences or Barriers
- Section 3.03 Fencing Off Construction
- Section 3.04 Signs
- Section 3.05 No Covenant of Operation
- Section 3.06 Cooperation of Owners
- Section 3.07 Specific Restrictions
- Section 3.08 Hazardous Materials

ARTICLE IV
ALTERATIONS, MAINTENANCE AND REPAIR

- Section 4.01 Utilities
- Section 4.02 Common Area
- Section 4.03 Common Expenses
- Section 4.04 Maintenance of Each Parcel and Building Improvements
- Section 4.05 Trash and Garbage
- Section 4.06 Construction, Alteration or Repair
- Section 4.07 Mechanic's Liens

ARTICLE V
PROPERTY TAXES

- Section 5.01 Payment of Property Taxes

Section 5.02 Contest of Property Taxes

ARTICLE VI

CASUALTIES; INSURANCE

Section 6.01 Insurance

Section 6.02 Release

ARTICLE VII

CONDEMNATION

Section 7.01 Distribution

Section 7.02 Condemnation

Section 7.03 Interests Affected

ARTICLE VIII

RIGHTS UPON DEFAULT

Section 8.01 Right to Cure

Section 8.02 Costs of Cure

Section 8.03 Lien

Section 8.04 Removal of Lien

Section 8.05 Waiver and Remedies Cumulative

Section 8.06 Estoppel Certificate

Section 8.07 No Termination

Section 8.08 Priority of Lien

Section 8.09 Mortgagees Protected

ARTICLE IX

DISPUTE RESOLUTION

Section 9.01 Dispute Resolution Process

ARTICLE X

MORTGAGEES

Section 10.01 Priority

Section 10.02 Title By Foreclosure

Section 10.03 Right to Encumber

Section 10.04 Default; Prior Claims and Obligations

Section 10.05 Notice to Mortgagees

Section 10.06 Right to Cure

Section 10.07 Amendment

Section 10.08 Condemnation or Insurance Proceeds

Section 10.09 Modification of Article; Conflicts

Section 10.10 Delegation to Mortgagee

Section 10.11 No Obligation to Cure

ARTICLE XI

COVENANTS AND RECORDATION

Section 11.01 Covenants Run with the Land

Section 11.02 Recordation

ARTICLE XII

DIVISION OF PARCEL; ADDITION OF PARCELS

- Section 12.01 Division of Parcel
- Section 12.02 Addition of Parcel(s)

ARTICLE XIII

MISCELLANEOUS

- Section 13.01 No Partnership or Third Party Beneficiary
- Section 13.02 Termination and Amendment
- Section 13.03 Approvals
- Section 13.04 Not a Public Dedication
- Section 13.05 Excusable Delays
- Section 13.06 Severability
- Section 13.07 Exhibits
- Section 13.08 Notices
- Section 13.09 Liability Upon Transfer
- Section 13.10 Entire OEA
- Section 13.11 Captions
- Section 13.12 References
- Section 13.13 Disclaimer of Derivative Rights
- Section 13.14 Minimization of Damages
- Section 13.15 No Merger
- Section 13.16 Governing Law; Place of Performance
- Section 13.17 Time
- Section 13.18 Priority of Other Documents
- Section 13.19 Additional Documents
- Section 13.20 Labor Harmony
- Section 13.21 Interpretation

ARTICLE XIV

ASSOCIATION AND MARKETING FUND

- Section 14.01 Association
- Section 14.02 Membership in the Association
- Section 14.03 Marketing Fund and Charge
- Section 14.04 Entertainment District

**DECLARATION OF CONDITIONS, COVENANTS,
RESTRICTIONS, OPERATIONS, AND EASEMENT AGREEMENT
FOR THE CAPITOL DISTRICT DEVELOPMENT**

INTRODUCTION

This Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development (this "OEA") is executed effective as of March 9, 2018 ("Effective Date").

A. Capitol District Hotel, LLC, a Nebraska limited liability company (together with its successors and assigns in and to the Hotel Lot, as hereinafter defined, the "Hotel Lot Owner"), The Residences at the Capitol District, LLC, a Nebraska limited liability company (together with its successors and assigns in and to Lot 2, as hereinafter defined, the "Lot 2 Owner"), Capitol District Parking, LLC, a Nebraska limited liability company (together with its successors and assigns in and to the Parking Garage Lot, as hereinafter defined, the "Parking Garage Owner"), The Capitol District, LLC, a Nebraska limited liability company (together with its successors and assigns in and to Lot 5, as hereinafter defined, "Lot 5 Owner"), and Capitol District Retail, LLC, a Nebraska limited liability company (together with its successors and assigns in and to Lot 1, Replat 1, as hereinafter defined, the "Lot 1, Replat 1 Owner") (collectively, the "Declarants" or the "Parties"), are the fee title owners of real property interests adjacent to each other in Omaha, Nebraska, as shown on the Site Map attached hereto as Exhibit "A" and made a part hereof for all purposes.

B. Parking Garage Owner is the owner of fee title to that certain real property more particularly described as Lot 1, The Capitol District, located in the original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska (collectively, the "Parking Garage Lot"), on and within which Parking Garage Owner intends to construct certain improvements including a parking garage complex consisting of approximately 505 parking stalls (the "Parking Garage") and two (2) skyways, one (1) skyway that will connect the Parking Garage and the Retail/Multi-Family Building, and one (1) skyway system that will connect the Parking Garage to the Retail Building, as hereinafter defined, and the Retail Building to the Hotel, as hereinafter defined (collectively, the "Skyways"; the Skyways and the Parking Garage complex shall be referred to herein collectively as and the "Parking Garage Project"). The Parking Garage Lot and the Parking Garage Project situated on Parking Garage Lot are collectively referred to as the "Parking Garage Real Property."

C. Lot 2 Owner is the owner of fee title to that certain real property more particularly described as Lot 2, The Capitol District, located in the original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska (collectively, "Lot 2"), on and within which Lot 2 Owner intends to construct certain improvements, including one-story retail space and multiple floors of multi-family residential units (the "Retail/Multi-Family Building"), intended to be operated as retail shopping and multi-family living space (the "Retail/Multi-Family Project"). Lot 2 and the Retail/Multi-Family Project are collectively referred to as the "Retail/Multi-Family Real Property."

D. The Lot 1, Replat 1 Owner is the owner of fee title to that certain real property more particularly described as Lot 1, The Capitol District Replat 1, located in the original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska (collectively, "Lot 1, Replat 1") on and within which the Lot 1, Replat 1 Owner intends to construct certain improvements, including but not limited to, a public plaza/entertainment venue, and retail shopping facilities (the "Retail Building" and

collectively, the "Retail Project"). Lot 1, Replat 1 and the Retail Project are collectively referred to as the "Retail Real Property."

E. Hotel Lot Owner is the owner of fee title to that certain real property legally described as Lot 2, The Capitol District Replat 1, located in the original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska (collectively, the "Hotel Lot") on and within which the Hotel Lot Owner intends to construct certain improvements intended to be operated as a Marriot hotel (the "Hotel"). The "Hotel" will also include certain related spa, restaurant, bar and retail facilities located within the Hotel and such facilities, together with the Hotel, shall be collectively referred to herein as the "Hotel Real Property."

F. Lot 5 Owner is the owner of fee title to that certain real property more particularly described as Lot 5, The Capitol District, located in the original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska (collectively, "Lot 5") on and within which Lot 5 intends to construct certain improvements, including potential retail and office space (collectively, the "Lot 5 Buildings"), intended to be operated as retail shopping and office space (the "Office Project"). Lot 5 and the Office Project are collectively referred to as the "Office Real Property."

G. The Parties are developing the Capitol District Development (defined in Article I), on the Project Real Property (as defined in Recital H below) with a common development plan that includes (i) the Hotel, (ii) the Parking Garage Project, (iii) the Office Project, (iv) the Retail/Multi-Family Project, (v) the Retail Project, and (vi) the Plaza (defined in Article I), all as shown on the project plan (the "Project Plan") attached hereto as Exhibit "B" and made a part hereof for all purposes.

H. The Parties desire to place certain conditions, covenants and restrictions on, and grant certain easements and enter into certain agreements with respect to, the Hotel Real Property, the Parking Garage Real Property, the Retail Real Property, the Office Real Property, and the Retail/Multi-Family Real Property (sometimes herein referred to collectively as the "Project Real Property").

I. This OEA provides for (1) reciprocal, non-exclusive easements and exclusive easements between and among the various Parcels (as defined herein), (2) covenants for management, administration, operation, and maintenance of the Common Area (as hereinafter defined), and (3) certain covenants, conditions, and restrictions relative to the use of the Parcels and the Common Area.

J. The costs for operation, maintenance, repair, and replacement of the facilities situated in the easements granted herein shall be allocated and assessed between and among the Owners as set forth in this OEA.

In consideration of the foregoing, the Declarants hereby declare the Project Real Property, and every portion thereof, shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved, and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project Real Property for the purpose of enhancing and protecting the value and desirability of the Project Real Property and every part thereof, and which shall run with the Project Real Property and be binding on Declarants and their successors and assigns, and on parties having or acquiring any right, title, or interest in or to the described Real Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Each reference in this OEA to any of the following terms shall mean:

AAA. The term "AAA" is defined in Section 9.01.

Affiliates. The term "Affiliates" means any entity controlling, controlled by, or under common control with such applicable entity or individual. For this purpose, "control" shall mean possession of the authority to direct or cause the direction of the management and policies of the specified entity, through ownership of equity interests therein, by contract or otherwise.

Annual Budget. The phrase "Annual Budget" is defined in Section 4.03(a).

Appropriation. The term "Appropriation" is defined in Section 7.02.

Arbitration. The term "Arbitration" is defined in Section 9.01.

Arbitrator. The term "Arbitrator" is defined in Section 9.01.

Association. The term "Association" shall mean and refer to the Nebraska nonprofit corporation (and its successors and assigns) organized by Declarants to exercise the rights, powers and duties set forth in this OEA. The name of the Association is "The Capitol District Landowners Association, Inc."

Benefited Owner. The phrase "Benefited Owner" is defined in the Section 2.06(h).

Building Construction and Maintenance Easements. The phrase "Building Construction and Maintenance Easements" is defined in Section 2.01(a).

Buildings. The term "Buildings" shall mean any or all of the buildings built or to be built on the Project Real Property, including but not limited to, the Hotel, Parking Garage, Lot 5 Buildings, Retail Building, and the Retail/Multi-Family Building, as contemplated by the Project Plan.

Burdened Owner. The phrase "Burdened Owner" is defined in Section 2.05(b).

Business Days. The term "Business Days" shall mean any day other than Saturday, Sunday and federal holidays.

Business Hours. The term "Business Hours" shall mean 6:00 a.m. through 6:00 pm., Monday through Friday, excluding federal holidays, and may be modified from time to time by the Association to reflect customary business hours at such time.

Capitol District Development. The phrase "Capitol District Development" means the Hotel, the Parking Garage Project, the Office Project, the Retail/Multi-Family Project, and the Retail Project, as shown on the Project Plan, and any development which is in general conformance with the character and quality of the Project Plan.

Claim of Lien. The phrase "Claim of Lien" is defined in Section 8.03.

Claims. The term "Claims" means the assertion of a legal right, including, without limitation, demands or legal actions (whether filed or threatened), alleging responsibility for a Loss.

Code. The term "Code" shall mean the City of Omaha, Nebraska Municipal Code, as it may be amended from time to time.

Common Area. The phrase "Common Area" shall mean areas of the Project Real Property for the use of Owners, the City of Omaha, Nebraska, a municipal corporation (the "City"), Occupants and Users in common, as described more fully in this OEA, which are under the ownership or control of the Association (by this OEA or other separate easement/agreement which may be entered into from time to time), including without limitation the Plaza, the Skyways, private streets, sidewalks and other pedestrian ways situated on the Project Real Property. The Declarants' intention is that the initial Common Area shall be all areas of the Project Real Property which is located outside of the footprint/building envelope of the Buildings, as generally depicted on the Project Plan attached hereto as Exhibit "B".

Common Expenses. The phrase "Common Expenses" shall mean the expenses shared by the Owners as set forth in the Budget prepared by the Association from time to time pursuant to the terms of this OEA.

Common Expense Initiation Date. The phrase "Common Expense Initiation Date" shall mean the date determined by the Association, but such date shall not be later than the date on which the last certificate of occupancy that permits any portion of two or more of the components of the Capitol District Development to be occupied and used as each Owner secures such certificates of occupancy. The Association shall notify the Owners of same.

Condominium Association. The phrase "Condominium Association" means and refers to any condominium association which may hereafter exist as part of the Project.

Condominium Owner(s). The term "Condominium Owner(s)" shall mean and refer to the owner or owners of a condominium units within a condominium project/association which is a part of the Project.

Condominium Unit. The phrase "Condominium Unit" shall mean and refer to a condominium unit or condominium units within a condominium project/association which is a part of the Project and covered by a condominium declaration.

Declarants. The phrase "Declarants" is defined in the Introduction.

Defaulting Owner. The phrase "Defaulting Owner" is defined in Section 8.01.

Dispute. The term "Dispute" is defined in Section 9.01.

Evaluator. The term "Evaluator" is defined in Section 9.01.

Evaluator Appointment Deadline. The phrase "Evaluator Appointment Deadline" is defined in Section 9.01

Evaluator Notice. The phrase "Evaluator Notice" is defined in Section 9.01.

Excusable Delays. The phrase "Excusable Delays" is defined in Section 13.05.

First Class. The phrase "First Class" shall mean a comparative standard of excellence judged in accordance with customary real estate industry practices for institutional investment grade projects similar to the Capitol District Development in newly built condition but based on the standards of quality and maintenance for such similar institutional grade projects as of the date in question.

Hazardous Materials. The phrase "Hazardous Materials" means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act., as amended (42 U.S.C. § 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, and all asbestos (friable or non friable), petroleum derivatives, polychlorinated biphenyls, flammable substances and materials defined as hazardous materials under any federal, state or local laws, ordinances, codes, rules, orders or regulations governing the use, storage, treatment, transportation, manufacture, handling or disposal thereof, excluding, however, any petroleum and other chemicals used in the ordinary course of operations in compliance with all applicable laws.

Hotel. The term "Hotel" is defined in the Introduction.

Hotel Lot. The term "Hotel Lot" is defined in the Introduction.

Hotel Lot Owner. The term "Hotel Lot Owner" is defined in the Introduction.

Hotel Operator. The term "Hotel Operator" shall mean the operator of the Hotel chosen by Hotel Lot Owner from time-to-time.

Hotel Real Property. The phrase "Hotel Real Property" is defined in the Introduction.

Improvement. The term "Improvement" shall mean all buildings, structures, landscaping, audio/video equipment, signage or any other improvement.

Indemnifying Owner. The phrase "Indemnifying Owner" is defined in Section 2.08.

Indemnified Persons. The phrase "Indemnified Persons" is defined in Section 2.08.

Institutional Lender. The phrase "Institutional Lender" means any state or federally regulated bank, savings and loan, credit union or any life insurance company or other lending institution regularly engaged in the business of financing the development, construction or acquisition of real estate.

Legal Costs. The phrase "Legal Costs" means all court costs, attorneys' fees, experts' fees or other expenses incurred in investigating, preparing, prosecuting or settling any legal or alternative dispute resolution action or proceeding.

Lien Claimant. The phrase "Lien Claimant" is defined in Section 8.03.

Loss. The term "Loss" means any actual or alleged liability, cost or expense (including legal costs), loss, damage (including actual, consequential, and punitive), hurt, judgment, or penalty of whatever nature or description, incurred by a Person or property, including, without limitation, (i) harm to or impairment, loss, or diminution in the value of tangible or intangible property or its use, including, without limitation, loss of business or revenues, or (ii) physical harm to or death of an individual person.

Lot or Lots. "Lot" or "Lots" shall mean Lot 2; Lot 5; Lot 1, Replat 1; the Parking Garage Lot; and the Hotel Lot, inclusive, and any subsequent administrative subdivision, replat, revision or amendment thereof. If any Lot is hereafter lawfully subdivided by administrative lot split, lot line adjustment, lot combination or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this OEA, with copies attached thereto of the Replat recorded in the office of the Douglas County Register of Deeds.

Lot 2. The term "Lot 2" is defined in the Introduction.

Lot 5. The term "Lot 5" is defined in the Introduction.

Lot 1, Replat 1. The term "Lot 1, Replat 1" is defined in the Introduction.

Lot 2 Owner. The term "Lot 2 Owner" is defined in the Introduction.

Lot 1, Replat 1 Owner. The term "Lot 1, Replat 1 Owner" is defined in the Introduction.

Lot 5 Owner. The term "Lot 5 Owner" is defined in the Introduction.

Mediation. The term "Mediation" is defined in Section 9.01.

Member. The term "Member" shall mean and refer to every person or entity who is a Member of the Association pursuant to this OEA.

Minor Encroachment. The term "Minor Encroachment" shall mean any encroachment of one Party's Building, utility line, roof projection, awning, footing, foundation, or other improvement, structure or element over the boundary line of such Party's Parcel onto, into, or over another Party's Parcel boundary line, provided that, in each instance, such encroachment does not adversely affect the value, maintenance, future development, expansion potential or the use or operation of the Parcel being encroached upon or the Improvements situated on the Parcel being encroached upon.

Mortgage. The term "Mortgage" shall mean any mortgage or deed of trust encumbering any Parcel.

Mortgagee. The term "Mortgagee" shall mean the record holder or beneficiary/assignee of any recorded Mortgage executed by a Party and covering such Party's Parcel or any interest therein, provided that such instrument of security secures a bona fide loan (made in good faith and for value) from an Institutional Lender not related directly or indirectly through one or more intermediaries (whether corporate or otherwise) to a Party. Each Owner shall provide notice to the Association in accordance with Section 13.08 below, of each Mortgagee related to its respective Parcel and the address to which notices to such Mortgagee should be sent.

Mortgage Lien. The phrase "Mortgage Lien" is defined in Section 8.08.

Net Acre. For the purposes of establishing the number of votes for each Lot, the term "Net Acre" shall mean and refer to an acre of land which does not include any area dedicated as a right-of-way for public use, but shall include the area covered by any easements of record against any Lot, including those set forth in this OEA.

Occupant. The term "Occupant" shall mean any Person or Persons from time to time entitled to the use and occupancy of any portion of the Project Real Property under this OEA or pursuant to any lease, sublease, license or directors, employees, agents and independent contractors of such Persons and, in the case of the any apartment units or Condominium Units, family members of any Person holding a fee simple or leasehold interest in agreement, or other instrument or arrangement under which such Person or Persons acquires a right to such use and occupancy. Occupant shall include the officers, any portion of a Condominium Unit or apartment unit.

OEA. The term "OEA" is defined in the Introduction.

Other Area. The phrase "Other Area" is defined in Section 2.01(a).

Owner-Related Persons. The phrase "Owner-Related Persons" shall mean with respect to an Owner, (i) such Owner's Affiliates, partners, shareholders, members, officers, employees, agents and independent contractors, (ii) such Owner's Mortgagees, (iii) the Occupants and Users of such Owner's Parcel, and (iv) the respective Affiliates, partners, shareholders, members, officers, employees, agents and contractors of the Persons enumerated in items (i) through (iii).

Owner. The term "Owner" shall mean each of Parking Garage Owner, Lot 2 Owner, Hotel Lot Owner, Lot 5 Owner, and the Lot 1, Replat 1 Owner, provided, however, that such term shall not include any Condominium Owners, if applicable, but, if applicable, shall include any Condominium Association when such Condominium Association takes control of the application condominium property/project pursuant to the applicable governing condominium declaration. The term "Owners" shall mean each and every Owner, as applicable, collectively.

Parcel. The term "Parcel" means any of Lots, inclusive.

Parking Garage. The term "Parking Garage" is defined in the Introduction.

Parking Garage Lot. The term "Parking Garage Lot" is defined in the Introduction.

Parking Garage Owner. The term "Parking Garage Owner" is defined in the Introduction.

Parking Garage Real Property. The term "Parking Garage Real Property" is defined in the Introduction.

Parking Garage Project. The term "Parking Garage Project" is defined in the Introduction.

Parties. The term "Parties" shall mean Declarants and their successors and assigns.

Person or Persons. The term "Person" or "Persons" shall mean individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

Plaza. The term "Plaza" means those portions of the Project Real Property depicted on Exhibit "B" attached hereto and labeled "plaza space". The Plaza will link the separate developments within the Capitol District Development together.

Project Plan. The phrase "Project Plan" is defined in the Introduction.

Project Real Property. The phrase "Project Real Property" is defined in the Introduction.

Project Rules. The phrase "Project Rules" is defined in Section 14.01.

Proportionate Share. The phrase "Proportionate Share" means the percentage of Common Expenses owed by an Owner, as set forth in Exhibit "C" attached hereto.

Request for Arbitration. The phrase "Request for Arbitration" is defined in Section 9.01.

Request for Mediation. The phrase "Request for Mediation" is defined in Section 9.01.

Resolution. The term "Resolution" is defined in Section 9.01.

Responsible Owner. The phrase "Responsible Owner" is defined in Section 4.01(c).

Support Easement. The phrase "Support Easement" is defined in Section 2.02.

Users. The term "Users" shall mean all Persons granted permission to utilize the Common Area, including without limitation, the Declarants and Occupants and the Owners and all of their respective Owner-Related Persons.

Utility Easements. The phrase "Utility Easements" is defined in Section 2.06.

Utility Facilities. The phrase "Utility Facilities" is defined in Section 2.06.

Certain other terms shall have the meaning set forth for each term in this OEA.

ARTICLE II GRANT OF EASEMENTS

Section 2.01. Easements. Declarants hereby grant, convey, and reserve the following non-exclusive (except as otherwise expressly set forth herein) easements and rights for themselves, their respective successors and assigns, and to the Association, and their respective employees, contractors and other authorized designees (each an "Easement Area" and collectively the "Easement Areas"):

(a) Construction of the Capitol District Development. A non-exclusive easement and right of access, ingress and egress appurtenant to the Project Real Property, for the benefit of each of the Owners, and their agents, independent contractors, invitees, and employees, is hereby granted and established and shall be provided over and across the Project Real Property to permit each Owner to

construct, maintain, repair and renovate its respective portion of the Capitol District Development; provided, however, that as to any construction work affecting or involving the use of another Party's Parcel (the "Other Area"), such construction work will only result in incidental encroachment that may occur as a result of the use of construction equipment, ladders, overhead cranes, scaffolding, barricades and similar facilities resulting in temporary obstruction of portions of the Other Area, all of which are permitted hereunder so as such work is performed, to the extent applicable, substantially in accordance with the Project Plan and in accordance with the provisions of Section 4.06 and such use is kept within reasonable requirements of construction work expeditiously pursued. All of the easements granted by this paragraph (a) shall be herein collectively referred to as the "Building Construction and Maintenance Easements."

(b) Utility Construction Easements. A temporary, non-exclusive construction easement appurtenant to each Parcel of the Project Real Property over, on, under and through the Project Real Property for the benefit of all of the Owners and the City is hereby granted and established and shall be provided for the construction of Utility Facilities during the initial construction of the Capitol District Development.

(c) Minor Encroachments. An easement appurtenant to each Parcel of the Project Real Property is hereby granted and established and shall be provided on the Project Real Property of each Declarant for Minor Encroachments upon the Project Real Property of such Declarant.

(d) Emergency Escape Routes. A non-exclusive easement appurtenant to the entire Project Real Property for the benefit of all Owners and their Users is hereby granted and established and shall be provided for escape routes in the event of any life-threatening emergency in the Capitol District Development.

(e) Easement for Valet Stand. An exclusive easement appurtenant to the Hotel Lot for the benefit of Hotel Lot Owner and its Users is hereby granted and established and shall be provided to permit the construction, operation, maintenance, and use of one (1) or more "Valet Stands" on the Hotel Lot. The Association may grant additional valet stands in the future in its sole and absolute discretion.

(f) Easement for all Common Area. A non-exclusive easement appurtenant to the portions of the Project Real Property consisting of the Common Area, specifically including, but not limited to, the Plaza, and as depicted on the Project Plan attached hereto as Exhibit "B", for the benefit of all Owners, Occupants, and their Users is hereby granted and established. Such easement shall include the right of ingress/egress and the right to install, repair, reconstruct, restore, and/or replace any Improvements located within the Common Area, as permitted pursuant to the terms hereof, and the general right to utilize and enjoy the Common Area. Declarants reserve the right of the Association to restrict portions of the Common Area by granting an exclusive license to an Owner, and Owner-Related Person, or a member of the general public, for private events/parties within portions of the Common Area as determined by the Association from time to time.

Section 2.02. Maintenance and Support Easement. The Project Real Property shall be subject to a reciprocal easement of maintenance and subjacent and lateral support appurtenant for the benefit of the Owners which is hereby granted and established and is provided to maintain the structural integrity of the Buildings as the same may hereafter be repaired, replaced or restored. Without limiting the foregoing, each Owner's Parcel is hereby benefited by an easement for the support columns and other structural components located on another Parcel which support the Improvements constructed within such Owner's Parcel, together with an easement over, under and across that portion of such

other Parcel for ingress, egress and access to and from such support columns and other structural components providing support to the Owner's Parcel to the extent necessary or appropriate in connection with the exercise of any self-help rights under this OEA by any Owner with respect to the maintenance, repair or replacement of any such support columns or other structural components (collectively, the "Support Easement"). The Owner of each Parcel shall have the obligation to maintain the Improvements within such Parcel that provide structural integrity and subjacent or lateral support for any portion of the Buildings on another Parcel. Any Owner may only exercise its right of self-help pursuant to Section 8.01 of this OEA in connection with the Support Easement in the event of the failure of the Owner of the other Parcel to comply with its obligations hereunder.

Section 2.03. Intentionally Deleted.

Section 2.04. Temporary Closings and Limitations on Use. Any Owner shall have the right to temporarily close or restrict the use of a portion of the Common Area located on or immediately adjacent to such Owner's Parcel:

(a) if necessary because of fire or other casualty, civil commotion, governmental regulations or orders, security considerations or other similar causes rendering the use of the facilities or parts thereof dangerous, unfit or inappropriate for normal use;

(b) during any period of restoration, alteration or other construction activity that renders the facilities or any part thereof dangerous, unfit or inappropriate for normal use;

(c) during any emergency or other period in which the health and safety of Users is in jeopardy,
or

(d) to conduct maintenance.

Reasonable notice shall be given to all Owners of any temporary closing except in the case of an emergency, in which event notice must be given as soon as is practical, and each Owner agrees to coordinate any such closing with the other Owners so that (i) no unreasonable interference in the operation of the Common Area shall occur, (ii) reasonable efforts are used to minimize the duration of the closing or restriction on use initiated by it, and (iii) alternative means of access to the Common Area are provided in all instances except where providing the same would present an unreasonable danger or impossibility. If any unauthorized use at any time is made of any Common Area, any Owner shall have the right, at its election, to restrain or terminate such unauthorized use by appropriate methods and/or proceedings.

Section 2.05. Use and Duration of Easements.

(a) **Use and Duration.** Each easement or other right granted herein shall be perpetual in term, unless otherwise set forth herein, shall be non-exclusive (unless otherwise noted), and shall be an appurtenance to and for the benefit of the respective benefited Parcel, or portions thereof, and for the purpose of developing and operating the Parcels pursuant to a common plan of beneficial use.

(b) **Use of Easement Areas by Owner.** Each Owner of a Parcel burdened by an easement established by this OEA, or in a separate agreement of record, shall be referred to in this Section 2.05 as the "Burdened Owner". Except as otherwise set forth in this OEA, each Burdened Owner, on behalf of itself and any Users of such Burdened Owner, reserves the right to use all

Easement Areas described in this Article II which burden its respective Parcel, in conjunction with the grantee of such easement, provided that such use by the applicable Burdened Owner does not unreasonably interfere with the use of the easement by the grantee thereof for the purpose intended.

Section 2.06. Rights and Easements for Utilities. The rights and duties of Owners, any Condominium Owners and any Condominium Association with respect to sanitary or storm sewer, drainage, water, electric, gas, radio, television receiving, telephone, data and telecommunications equipment, internet or phone cables and lines, elevators, elevator shafts, fire sprinklers, fire and safety devices, exhaust flues, and heating and air conditioning facilities situated in one Owner's Parcel but serving another Owner's Parcel (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows.

(a) Whenever Utility Facilities are installed or located within the Project Real Property, including but not limited to all telephone rooms, electrical rooms, chutes, risers or chases, which Utility Facilities or any portion thereof lie in a portion of the Capitol District Development owned by someone other than the Owner served by said Utility Facilities, then the Owner served by said Utility Facilities (or any Condominium Association) shall have a nonexclusive easement and right of reasonable access to the other Owner's Parcel for themselves, or for utility companies, to install, operate, repair, replace and generally maintain said Utility Facilities as and when the same may be necessary. All of the easements granted by this paragraph (a) shall be herein collectively referred to as the "Utility Easements".

(b) In the event of a dispute between Owners with respect to the repair or rebuilding of said Utility Facilities, or with respect to the sharing of the cost thereof, then, upon written request of an Owner, any Condominium Owner or any Condominium Association addressed to the others the matter shall be submitted to Resolution as set forth in Section 9.01.

(c) All Utility Facilities shall be constructed so as not to materially interfere with or burden the overall development and operation of each Parcel by the Owners.

(d) The Owners shall cooperate in good faith in connection with the repair, restoration and replacement of any such Utility Facilities.

(e) All such Utility Facilities shall be separately metered (or sub-metered) or separately assessed for the respective Parcels served by the same, unless otherwise agreed by the Owners.

(f) The Owner installing any Utility Facilities or relocating any Utility Facilities in accordance with the provisions of this Section 2.06 or Section 2.07 below shall, upon completion of such work, repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition equal to or better than the condition existing prior to the beginning of such work.

(g) The provisions of the last paragraph of Section 4.01 below shall apply with respect to the entry onto another Owner's Parcel to perform installation, maintenance or repairs in connection with any Utility Facility, as further described therein.

(h) THE OWNER OF THE PARCEL SERVED BY A UTILITY FACILITY LOCATED ON ANOTHER PARCEL (THE "BENEFITED OWNER") HEREBY AGREES TO INDEMNIFY AND HOLD THE OWNER OF SUCH OTHER PARCEL AND ITS OCCUPANTS AND USERS

HARMLESS FROM AND AGAINST ALL DAMAGES, LOSSES OR CLAIMS ATTRIBUTABLE TO THE PERFORMANCE OF ANY UTILITY FACILITIES INSTALLED OR CONSTRUCTED BY THE BENEFITED OWNER, EXCEPT IN THE EVENT SUCH DAMAGES, LOSSES OR CLAIMS ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PERSON CLAIMING SUCH DAMAGES, LOSSES OR CLAIMS.

Section 2.07. Relocation of Utilities. At any time during the term of this OEA, the Owner of any Parcel burdened by a Utility Easement shall have the right, subject to compliance with the provisions of Sections 4.06 and 2.06, to relocate any utilities serving any other Parcel, provided that such relocation is done at the sole cost and expense of the Owner requesting such relocation, and, provided further, that such relocation does not materially interfere with or increase the cost of providing utility services to the Parcel benefited by such utilities.

Section 2.08. Indemnification by Owners. SUBJECT TO THE PROVISIONS OF SECTION 6.02, EACH OWNER (THE "INDEMNIFYING OWNER") SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER OWNERS AND THEIR RESPECTIVE OWNER-RELATED PERSONS (COLLECTIVELY, THE "INDEMNIFIED PERSONS") HARMLESS FROM ALL CLAIMS AND LOSSES CAUSED BY, ARISING FROM, OR IN CONNECTION WITH (I) THE USE BY THE INDEMNIFYING OWNER OR ITS USERS OF THE EASEMENTS GRANTED HEREUNDER, (II) THE EXERCISE BY THE INDEMNIFYING OWNER OR ITS USERS OF THE RIGHTS GRANTED TO THE INDEMNIFYING OWNER OR ITS USERS IN THIS OEA, OR (III) THE USE BY THE INDEMNIFYING OWNER OR ITS USERS OF ANY PORTION OF THE PARCELS OF OTHER OWNERS. WITHOUT LIMITING THE INDEMNIFICATION PROVIDED IN THIS SECTION 2.08, THE OWNERS ACKNOWLEDGE AND AGREE THAT THE INDEMNIFICATION DESCRIBED IN THIS SECTION 2.08 INCLUDES, WITHOUT LIMITATION, CLAIMS OR LOSSES CAUSED BY OR ARISING FROM THE PERFORMANCE OF THE UTILITIES INSTALLED OR CONSTRUCTED BY A BENEFITED OWNER PURSUANT TO AN EASEMENT GRANTED HEREUNDER, BUT EXPRESSLY EXCLUDES CLAIMS OR LOSSES ARISING, IN WHOLE OR IN PART, FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PERSONS.

Section 2.09. Encroachments. Although certain of the easements created in this Article II are described by reference to specific metes and bounds legal descriptions or depicted on Exhibits to this OEA, the Owners recognize that due to error in such metes and bounds legal descriptions or depictions, or settling, shifting, rising or lateral movement of the foundation or other portions of the Buildings or other improvements to the Project Real Property, the location of the areas intended to be covered by such easements may vary from the area covered by the specific legal descriptions set forth or depicted herein. Accordingly, in the event of any such error in the metes and bounds legal description or depictions, or settling, shifting, rising or lateral movement of the foundation or other portions of the Project Real Property, the affected easements shall be deemed to be bounded by the physical boundaries of the areas intended to be encompassed by such easement, rather than the precise legal descriptions or depictions set forth herein.

Section 2.10. Limited Warranty. Declarants each individually do hereby bind themselves and their successors and assigns to warrant and forever defend all and singular each easement encumbering their respective Parcels and herein granted or reserved for the benefit of the other Parties hereto, their successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under such Declarant, but not otherwise, subject, however, to building and Parcel lines, the Code, all existing liens, encumbrances, restrictions, easements and other matters

of record affecting title to the Project Real Property (except as otherwise expressly provided herein), and all existing encroachments and protrusions, if any. Each such easement is granted or conveyed "AS IS" and, except for the special warranty of title contained herein, without any representation or warranty, express or implied, including, without limitation, any warranty as to merchantability or fitness for a particular purpose.

Section 2.11. Intentionally Deleted.

Section 2.12. Rights of Entry and Use. Each Parcel (including any Condominium Units) shall be subject to the following rights of entry and use:

(a) The easements described in this Article II; and

(b) The right of any Parcel Owner and the City or their respective delegees to enter the Common Area or any Easement Area to perform maintenance on any facility for which such Parcel Owner or City or their respective delegees are responsible.

Section 2.13. Easements to Accompany Conveyance of a Parcel or Condominium Unit. Easements that benefit or burden any Parcel or Condominium Unit shall be appurtenant to and run with that Parcel or Condominium Unit and shall automatically accompany the transfer, conveyance or demise of such Parcel or Condominium Unit, even though the description in the instrument of transfer may refer only to the interests in the Parcel or Condominium Unit as transferred, conveyed or demised.

Section 2.14. Delegation of Use. Subject to the Project Rules, any Owner or Condominium Owner may delegate its right of use and enjoyment of the easements granted herein, and the duties with respect thereto, to tenants or installment contract purchasers and, respectively, to any Occupant of the Owner's Parcel or Condominium Unit, provided no such delegation shall relieve any such Owner or Condominium Owner of responsibility therefore, except for matters accruing or arising after the date of a sale or transfer of: (a) the entire interest in an Owner's Parcel, with respect to such Parcel and (b) a Condominium Owner's entire interest in its Condominium Unit, with respect to such Condominium Unit.

Section 2.15. Cooperation Regarding Construction Staging. The Capitol District Development is being developed as an integrated center but with multiple Owners. Each Party acknowledges that the Parking Garage Project, the Retail Project, the Hotel, the Office Project, and the Retail/Multi-Family Project are being built on relatively small tracts of land and that the same may be constructed simultaneously, making construction staging and coordination critical to the timely and efficient construction of the entire development. The Owners hereby acknowledge that there may be some disruption in the construction or use of their respective Parcels in connection with the completion of the construction of the Capitol District Development. Accordingly, the Declarants each acknowledge that in order to complete its respective portion of the Capitol District Development it may (and in some instances, will) require the utilization of portions of the Project Real Property owned by other Owners, and each Owner agrees to reasonably (a) cooperate with the others to coordinate construction by the contractors and subcontractors for the Capitol District Development so as to minimize any disruption of the others' construction activities and enjoyment of their Parcels, and (b) grant temporary use of portions of their Project Real Property to others and their contractors during such construction provided such use does not unreasonably interfere with the construction or enjoyment of the Owner granting such temporary use so as to minimize interference and maximize efficiency for the Declarants and their respective contractors. During construction of the Capitol

District Development, the Declarants, and their respective contractors, shall meet on a regular basis to discuss, and agree upon, construction scheduling and process so as to identify areas where cooperation, access, utilization or other assistance may be necessary or appropriate to facilitate the overall development of the Capitol District Development and each Owner agrees to be bound by such timing and construction schedules, as determined by Declarants, as the same may affect their Parcel, and any construction taking place on such Parcels. Construction shall be synchronized so as to attempt to keep all construction of the Capitol District Development on schedule and so as to not unreasonably disrupt any Owner's use or construction on their respective Parcel. Any controversy between the Owners and/or their contractors with respect to construction staging and coordination shall be subject to Resolution hereunder.

Section 2.16. Limitations of Rights In Easement Areas. The rights of any Condominium Owner or any Condominium Association in and to easements described in this Article II shall be subject to the following:

(a) The rights of Condominium Owners in and to the easements shall be for a term and duration coextensive with a Condominium Owner's title or interest in and to a Condominium Unit, subject to the termination provisions of this OEA;

(b) The rights of Declarants and their assignees and successors as to any Parcel for work necessary to complete development and construction of the Capitol District Development as further set forth in this Article II;

(c) The rights of Declarants and their assignees and successors as to any Parcel and a Condominium Association to repair, replace or restore the Improvement situated within a Parcel, as provided in this Article II;

(d) The rights of the Owners, a Condominium Associations, Declarants and Condominium Owners to install, repair or replace Utility Facilities as provided in this Article II; and

(e) The rights of the Association to limit the rights of access to, over and across the Easement Areas described in this Article II as the Association determines to be required for the reasonable operation and management of the Project.

ARTICLE III USE RESTRICTIONS AND OTHER OBLIGATIONS

Section 3.01. General Use Restrictions. No use of any easement granted under this OEA shall be exercised in a manner other than as stated in this OEA. Each Owner shall comply with all applicable laws, rules, regulations and ordinances of all applicable governmental authorities with respect to its Parcel, including, but not limited to, the Project Rules. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Capitol District Development that is obnoxious or inconsistent with a First Class mixed use hotel, retail, office, commercial and residential center, including the following which are expressly prohibited unless otherwise approved in writing by the Association:

(a) Any use that creates noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

(b) Any use that creates obnoxious odor; including without limitation any inordinate odor of food preparation or disposal, trash or garbage disposal, it being acknowledged that the Hotel, retail and restaurant operations that are a part of the Capitol District Development will create the usual odors attendant to such operations;

(c) Any use that creates noxious, toxic, caustic, or corrosive fuel or gas;

(d) Any use that creates dust, dirt, or fly ash in excessive quantities (except as may reasonably occur even with taking commercially reasonable precautions during periods of construction);

(e) Any use that creates any unusual fire, explosion, or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks. Notwithstanding the foregoing, fires contained in commercially sold gas heaters shall not be prohibited;

(f) Any warehouse (not including storage which is incidental to a permitted use), manufacturing, refining, smelting, or mining operations;

(g) Any permanent flea market, "second hand" store, Army, Navy, or "surplus" store, unless operating in conjunction with an event approved by the Association taking place in the Plaza;

(h) Any animal raising, boarding or grooming; provided, however, that this restriction shall not prohibit domestic pets;

(i) Any dumping, disposal, incineration, reduction of garbage or refuse other than as expressly provided to this OEA;

(j) Any fire or bankruptcy sale or auction house operation (excluding charity auctions),

(k) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to the following i) the Hotel laundry, (ii) any laundry facilities serving the residents of the Capitol District Development, (iii) a typical dry cleaning retail "store-front" operation including pressing of cleaning and on-site pickup and delivery by the ultimate consumer, including nominal supporting facilities, or (iv) personal, domestic laundry use in the residential portion of the Capitol District Development;

(l) Any automobile sales, leasing or display, including body repair facilities;

(m) Any shooting gallery, carnival, or skating rink (other than a seasonal ice skating rink which may be located on the Plaza);

(n) Any veterinary hospital, clinic or pet store;

(o) Any mortuary or funeral parlor;

(p) Any adult bookstore, or other facility selling pornographic items or material;

(q) Any trailer or truck rental;

(r) Any unlawful use;

(s) Automobile or appliance repair or service center;

(t) Bingo, lotto, off-track betting hall, poker, blackjack hall, slot machines, video poker/blackjack machines or similar devices, or other gambling establishment except state lottery tickets lawfully sold;

(u) Car wash;

(v) Check cashing facility or pawn shop;

(w) Adult theater or strip-tease establishment or other display of male or female dancers;

(x) Any abortion clinic or blood bank facility; and

(y) Nothing shall be hung from the outside of the windows or placed on the outside window sill of any window. Satellite dishes shall be prohibited from being hung on the exterior of any building.

Section 3.02. No Walls, Fences or Barriers. Other than as otherwise permitted by the Association, no walls, fences or barriers of any sort or kind shall be constructed or erected in the Common Area, Plaza, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein. Curb stops and other reasonable traffic controls, including without limitation traffic lights and stop signs, directional signs and barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as traffic circulation pattern is not materially affected.

Section 3.03. Fencing Off Construction. From and after the time when any portion of the Capitol District Development has been completed and opened to the public, each Owner, at its own cost and expense, unless otherwise agreed by the Association, shall fence off or cause to be fenced off any development, construction, major repair, alteration or remodeling work performed by the Owner or Occupant on any Parcel or any Common Area under this OEA. Fencing shall be as approved by the governmental authority issuing the building permit for the work and shall be of a construction sufficient to protect existing facilities in the Capitol District Development, and its respective appurtenances from dust, debris and other inconveniences occasioned by such work.

Section 3.04. Signs. Each Owner shall have the right to construct, install or erect signs on the exterior of any Building located on an Owner's Parcel, provided that (a) all such signs are constructed in accordance with (i) the provisions of this OEA and (ii) applicable law, and (b) no signs shall be erected that obstruct the view of any previously constructed sign.

(a) The Owners agree that all signs erected by an Owner or its Occupants or Users within the Common Area or on the exterior of any Building located within the Capitol District Development shall comply in all respects with all applicable laws (including without limitation, the Code), be consistent with signs customarily erected in First Class mixed use (commercial, retail, office and residential) centers situated in Douglas County, Nebraska, except as expressly provided in this OEA, be erected only on that Owner's Parcel, and shall be approved in writing by the Association.

(b) All signs shall be subject to the approval of the Association, which approval may be withheld, denied, conditioned or revoked at the sole discretion of the Association.

(c) Each Owner may erect such signs on the interior of such Owner's Parcel as such Owner may desire, and as otherwise allowed by applicable law.

(d) Each Owner shall maintain the signage located on such Owner's Parcel in good condition and repair at its own expense.

Section 3.05. No Covenant of Operation. Nothing contained in this OEA shall be deemed to impose, either explicitly, implicitly or constructively, upon any Owner or Occupant an obligation for any business on any Parcel to remain open and operating for any period or in accordance with any operating schedule.

Section 3.06. Cooperation of Owners. Each Owner shall, at any time from and after the date hereof upon receipt of written request therefore from any other Owner, promptly execute, acknowledge and deliver such plats, building permit applications, and similar documents, instruments and consents as may be reasonably requested by such requesting Owner in connection with the development and improvement of the Parcel owned by such requesting Owner, provided such request is consistent with the overall development concept of the Capitol District Development and with the operation of a First Class mixed use hotel, office, retail, and multi-family residential center in Douglas County, Nebraska and provided that such action will not expose the cooperating Owner to any liability or costs. All direct out-of-pocket costs and expenses in connection with such cooperation shall be borne solely by the Owner requesting such action (except for requests for the other Owner to comply with Code requirements or other laws for which such Owner is responsible) and the cooperating Owner shall be indemnified against any expense or liability with respect thereto. No Owner shall oppose, or take any action detrimental to, any zoning change or variance, building permit application, plat approval or other matter requested by any other Owner from the City or any other governmental authority or utility with respect to such other Owner's Parcel, provided that the action proposed to be taken or the matter requested is not in violation of the terms and provisions of this OEA and further provided such requests are consistent with the concept of the Capitol District Development as a First Class mixed use hotel, retail, office, and multi-family residential development. The obligations of each Owner under the provisions of this Section 3.06 are subject to the condition that the Owner requesting any action hereunder shall not, at the time of such request, be in default hereunder in any material respect.

Section 3.07. Specific Restrictions. The Owners agree that the following restrictions shall be observed and carried out within the Capitol District Development, which restrictions shall be applied equally and without discrimination toward the Users in the Capitol District Development:

(a) Except to the extent otherwise expressly contemplated by this OEA (including the easements granted herein), nothing shall be constructed, attached to, or placed within the Common Area without the prior written consent of the Association.

(b) Occupants and Users shall not solicit or conduct business in the Parking Garage except as may be related to the parking of vehicles, nor shall Occupants or Users distribute any handbills or other advertising matter in or on any vehicles parked in the Parking Garage, or any on grade or above grade parking areas.

Section 3.08. Hazardous Materials. Each Owner agrees not to use or allow the use of Hazardous Materials in its Parcel. If any investigation or monitoring of site conditions or any cleanup, containment, restoration, removal or other remedial work (collectively, "Remedial Work") is required

(a) under any applicable Environmental laws, (b) by any judicial, arbitral or administrative order, (c) to maintain the Parcel in a standard of environmental condition which prevents the release of any Hazardous Materials to adjacent property, (d) as a result of the existence of Hazardous Materials on the Parcel, or (e) resulting from any activities on the Parcel which directly or indirectly result in (i) the Parcel becoming contaminated with Hazardous Materials, or (ii) violation of Environmental laws, the Owner of such Parcel shall perform or cause to be performed such Remedial Work; provided that, such Owner may withhold commencement of such Remedial Work, pending resolution of any good faith contest regarding the application, interpretation or validity of any law, regulation, order or agreement, subject to the requirements set forth below. All Remedial Work shall be conducted (i) in a diligent and timely fashion by a licensed environmental engineer, (ii) pursuant to a detailed written plan for the Remedial Work approved by any governmental agency with a legal or contractual right to such approval, (iii) with such Insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities and (iv) only following receipt of all required permits, licenses or approvals (unless required by law or in the case of an emergency). EACH OWNER THAT USES OR ALLOWS THE USE OF HAZARDOUS MATERIALS ON ITS PARCEL AGREES TO INDEMNIFY AND HOLD THE OTHER OWNERS HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, LIENS, LIABILITIES, STRICT LIABILITIES, PENALTIES, FINES, LAWSUITS AND OTHER PROCEEDINGS (INCLUDING ALL CONSEQUENTIAL DAMAGES TO THIRD PARTIES) AND ALL COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY REQUIRED CLEANUP OF SUCH HAZARDOUS MATERIALS AND ALL REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED BY THE OTHER OWNERS IN CONNECTION THEREWITH) ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF, OR IN ANY WAY CONNECTED WITH SUCH HAZARDOUS MATERIALS, AND THE CLEANUP OF SUCH HAZARDOUS MATERIALS.

Section 3.09. Association's Authority to Grant Exclusive Uses within the Capitol District Development. Declarants reserve the right of the Association to, from time to time, agree to exclusive covenant(s)/agreement(s) which would grant an Owner and/or its tenant(s) with the exclusive right to operate a certain type of business/use within the Capitol District Development. Upon the duly authorized approval/execution by the Association, such exclusive use covenant(s)/agreement(s) shall be binding upon all Owners and the Association shall provide written notice of such covenant(s)/agreement(s) to all Owners within a commercially reasonable time following the execution thereof; provided, however, that any restrictive/exclusive use covenant shall not be retroactive, but shall only be effective against any future use/operation (and not any uses/operations then currently in place within the Capitol District Development) and any such restrictive/exclusive use covenant shall only be applicable while such owner or tenant, as applicable, is actively operating such use/operation within the Capitol District Development. In the event the lease which is the subject of the restrictive/exclusive use is terminated or, alternatively, in the event that an owner ceases such operation/use for a period of six (6) months or longer (excluding remodeling/reconstruction periods), then such restrictive/exclusive use covenant shall automatically terminate.

ARTICLE IV ALTERATIONS, MAINTENANCE AND REPAIR

Section 4.01. Utilities. Each Owner (the "Maintaining Owner") shall be obligated to maintain, service and repair:

(a) any Utility Facilities situated on the Maintaining Owner's Parcel which service other Owners' Parcels unless (i) such Utility Facilities are contained within an easement dedicated to and

accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation, or (ii) such Utility Facilities are required below in this Section 4.01 to be maintained, serviced and repaired by another Owner; and

(b) any Utility Facilities situated on the Parcel of another Owner, the benefits of which, however, are used solely by the Maintaining Owner, unless such Utility Facilities are contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency which assumes such maintenance, service and repair obligation; and

(c) without regard for which Owner would otherwise be required to perform such maintenance, service or repair, any damage to Utility Facilities caused by the act of an Owner (the "Responsible Owner") or any Occupant of the Parcel owned by a Responsible Owner, or its or their servants, employees or independent contractors.

Notwithstanding any other provision in this OEA to the contrary, any maintenance and/or repair performed on a Parcel owned by another Owner pursuant to this Section 4.01 or pursuant to any Utility Easement granted or reserved in this OEA shall be performed by contractors reasonably approved by the Owner of the Parcel on which the work is to be conducted and only after fourteen (14) days' notice given to the Owner whose Parcel is burdened by the Utility Easement, of the intention of the beneficiary of the Utility Easement to do such work (except that no such notice need be given in the case of any emergency, whereupon the work may be initiated immediately, provided notice thereof is given to the other Owner promptly thereafter). Any such work shall be done after Business Hours whenever possible (unless performing such work during Business Hours would not cause unreasonable disruption or inconvenience to the Users or Occupants of the Parcel of the affected Owner) and otherwise in such manner as to cause as little disturbance in the use of the affected Parcel as may be practicable under the circumstances. Any Owner performing or causing to be performed such maintenance work agrees to pay promptly all costs and expenses associated therewith, to diligently complete such work as quickly as practicable and to promptly clean the area and restore the affected portion of the Common Area and such other Owner's Building to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

Section 4.02. Common Area.

(a) Each Owner acknowledges and agrees that the Association shall be responsible for the maintenance of all Common Area, which shall be maintained in good condition and state of repair and in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction there over and the provisions of this OEA and the Owners shall share in the cost of maintaining the Common Area pursuant to the terms of this OEA.

(b) The standard of maintenance for the Common Area to be followed by the Association shall be First Class. The maintenance and repair obligations shall include, but not be limited to, the following:

(i) Removal of all papers, debris, filth and refuse and sweeping to the extent necessary to keep the Common Area in a First Class, clean and orderly condition.

(ii) Placing, keeping in repair and replacing any appropriate directional signs, markers and lines, curb stops, barriers and other parking controls.

(iii) Operating, keeping in repair and replacing when necessary such lighting facilities as may be reasonably required.

(iv) Maintaining, repairing and replacing as necessary all trash receptacles, benches, planters, fountains, stage, audio video technology, furniture and other items of personal property and fixtures owned by the Association and located within the Common Area. Any items of personal property owned by an Owner which are located within the Common Area as approved by the Association, shall be maintained by such Owner at such Owner's sole cost and expense.

(v) Cleaning, maintaining and repairing all walkway and sidewalks, including those situated on the perimeter or adjacent to the boundaries of each Parcel.

(vi) Maintaining all landscaped areas, repairing automatic sprinkler systems or water lines in the Common Area, and replacing shrubs, trees, plants and other landscaping as necessary.

(c) Each Owner shall pay its Proportionate Share of the costs of installing, maintaining, repairing, restoring, and replacing improvements to the Common Area, as more particularly described in Section 4.03 below. If and to the extent that one (1) or more Owners agree in a separate writing to the joint maintenance or operation of any area within the Capitol District Development, then the Owners owning such area(s) shall pay such costs and expenses in accordance with such agreement.

Section 4.03 Common Expenses.

(a) On or before the Common Expense Initiation Date, the Association shall prepare an estimated budget for Common Expenses for the balance of the current calendar year containing such detail as is reasonably requested by the Owners, which will be the "Annual Budget" for such calendar year. The Association shall have the sole power to enter into contracts to perform elements of work which are Common Expenses. This power shall specifically include, but shall not be limited to, the right, but not the obligation, to pay for some or all of the costs associated with the initial construction/installation of Improvements on the Plaza (including the reimbursement of the Lot 1, Replat 1 Owner for costs incurred in connection with the same), and the obligation to maintain, manage, and operate the Plaza and to maintain, repair and/or replace any Improvements located thereon, including the ability to maintain a reasonable reserve for future expenses.

(b) On or before October 15th of each year following the Common Expense Initiation Date, the Association shall submit to each Owner the Annual Budget for Common Expenses for the following calendar year. The Annual Budget shall be in form and content reasonably acceptable to the Owners by majority vote pursuant to the Association's Bylaws.

(c) If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years during the term of this OEA, then the Annual Budget shall separately identify the cost attributable to the applicable calendar year (including the portion of the Common Area affected) and shall note the anticipated cost and timing (indicating the portion of the Common Area affected) of such phased work during succeeding calendar years.

(d) Unless otherwise agreed to in writing, only the Association shall be permitted to contract for the performance of any work in any Common Area the cost of which will be Common Expenses. Notwithstanding the foregoing, any Owner shall have the right to expend reasonable amounts to make

emergency repairs to any Common Area that are reasonably necessary to prevent injury or damage to Persons or property, it being understood that such Owner shall nevertheless advise the Association of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof.

(e) Commencing upon the Common Expense Initiation Date, and, thereafter during each calendar month throughout the term of this OEA, the Association shall invoice the Owners for their Proportionate Share of Common Expenses theretofore incurred and the Proportionate Share of the Owner receiving such invoice shall be due and payable, without offset, thirty (30) days after demand for such amount, together with reasonable supporting documentation thereof. Notwithstanding any provision hereof to the contrary, from and after the Common Expense Initiation Date only those Owners who have received the first certificate of occupancy for their component part of the Capitol District Development shall share in the payment of the Common Expenses in the ratio of its Proportionate Share, and the Owners shall have no obligation to share in Common Expenses until such time as they have received the first certificate of occupancy for their component part.

(f) Within ninety (90) days after the receipt of any invoice as described in Section 4.03(e) above, an Owner shall have the right to audit the books and records of the Association pertaining to such Common Expenses. Any Owner desiring to conduct such an audit shall notify the Association and the other Owners of its intent to audit at least seven (7) Business Days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Expenses or any allocation thereof to a particular Parcel, the Owner conducting such audit shall provide the other Owners with a copy of the audit, and an appropriate adjustment shall be made forthwith. If the Owners fail to agree upon any matter related to such costs or expenses, the dispute shall be resolved by the Association, and if the Association is unable to resolve such dispute within sixty (60) days, the dispute shall be resolved as provided in Section 9.01. The cost of any audit shall be assumed by the Owner conducting such audit unless such Owner shall be entitled to a refund in excess of five percent (5%) of the amount calculated by the other Owner as such Owner's share for any calendar year, in which case the Owner responsible for the overcharge shall pay the cost of such audit.

Section 4.04. Maintenance of Each Parcel and Building Improvements. Each Owner covenants and agrees to operate and maintain its respective Parcel (other than the Common Area located on its respective Parcel which shall be maintained by the Association pursuant to Section 4.02 hereof) in a First Class good and clean order, operation, condition and repair, and in such a manner as to establish, maintain and present at all times the appearance of a clean, well-managed and attractive operation of the Capitol District Development. In the event the Association fails to fulfill its obligations to maintain any portion of the Common Area located on an Owner's Parcel pursuant to the terms of this OEA, each Owner covenants and agrees to cause the Common Area contained on their Parcel thereon to be maintained in First Class order, operation, condition and repair, and in such a manner as to establish, maintain and present at all times the appearance of a clean, well-managed and attractive operation of the Capitol District Development, and the costs of any such maintenance/repair shall be provided to the Association to be allocated to the rest of the Owners pursuant to Section 4.03, above. In the event that any Owner fails to maintain its Parcel in the condition required by this Section 4.04, each other Owner shall have the right to exercise self-help with respect to such maintenance in accordance with the provisions of Section 8.01 below.

Section 4.05. Trash and Garbage. Each Owner agrees to store all trash, recycling and garbage generated on such Owner's Parcel in adequate containers maintained in a neat and clean condition, to shield such containers in such a way that they will not be readily visible from the Buildings, Common

Area, or the adjacent streets, and to arrange for regular removal of trash and garbage from such Owner's Parcel at its sole cost and expense. As part of the Project Rules, the Association may establish additional or different procedures with respect to trash/recycling removal as may be prudent from time to time.

Section 4.06. Construction, Alteration or Repair.

(a) All construction, alteration or repair work undertaken by any Owner upon any Parcel pursuant to any provision of this OEA (including the temporary access over or use of another Owner's Parcel in connection therewith) shall be accomplished in an expeditious, diligent and good and workmanlike manner, and to the extent such work is performed on a Parcel owned by another Owner, shall be free of any lien affecting such other Parcel for labor or materials supplied during such work. The Owner undertaking such work shall take appropriate measures to minimize any disruption or inconvenience caused by such work to the Occupants or Users of the affected Parcel and to the other Owners and Users in their use of the Common Area and other areas at the Capitol District Development, and such Owner shall make adequate provisions for the safety and convenience of all Users of the Capitol District Development. Dust, noise and other effects of such work shall be controlled by the Owner undertaking the work using appropriate methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel (and the improvements located thereon) upon which such work performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER OWNERS, THEIR RESPECTIVE OWNER-RELATED PERSONS HARMLESS FROM ALL LOSSES OR CLAIMS ATTRIBUTABLE TO THE PERFORMANCE OF SUCH WORK, INCLUDING BUT NOT LIMITED TO LOSSES OR CLAIMS ATTRIBUTABLE TO THE NEGLIGENCE OF THE OWNER UNDERTAKING SUCH WORK OR ITS CONTRACTORS. All such work by an Owner on the Parcel of another Owner, in the Common Area or affecting the structural support of a Building owned by another Owner shall be undertaken only after giving the other Owner fourteen (14) days prior written notice of the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed.

(b) Any work performed by an Owner to connect to, repair, relocate, maintain or install any Utility Facilities shall be performed so as to minimize interference with the provision of such services to any other Owner, Occupant or other Owner's Parcel. Any work or installation which requires interference with any other portion of a Parcel shall be undertaken with particular care so as to minimize the impact upon traffic circulation and access of all Users to the various Buildings in the Capitol District Development.

(c) All work undertaken by any Owner pursuant to this OEA shall comply with the terms of this OEA, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) and all applicable laws, ordinances, rules and regulations of such authorities, including without limitation, zoning laws and building codes, including without limitation the Code. Each Owner shall also secure all licenses, permits and approvals from governmental agencies, public bodies and other entities (such as public utilities) necessary for any work undertaken by it.

(d) Notwithstanding any other notice provision contained in this Section 4.06, in the event of emergency conditions, any Owner may undertake the necessary work to remedy the emergency

condition with respect to work that is otherwise allowed pursuant to this OEA, provided that the Owner undertaking such work does so in good faith, has given notice thereof to the other Owners upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Section 4.06.

Section 4.07. Mechanic's Liens. In the event any mechanic's lien is recorded against the Parcel of an Owner as a result of work or services performed on or materials furnished to the Parcel of another Owner, the Owner permitting or causing such lien to be so recorded agrees to cause such lien to be released and discharged of record, by bonding or otherwise, within fifteen (15) Business Days after notice of same or request by the Owner of the Parcel burdened by such lien (or such earlier time as is required to prevent foreclosure thereof). In the event that such Owner fails to cure or remove such lien by bonding or otherwise within the above-described time period, the other Owner, may elect to discharge or bond over such lien. If the other Owner so elects to bond or discharge any lien or violation, upon the failure of the Owner causing or allowing such lien to do so, the other Owner may bond over or discharge any such lien, and in such event, the Owner causing or allowing such lien shall pay the other Owner, upon demand, the cost of such bonding or discharge, including without limitation reasonable legal fees and expenses relating thereto. Nothing herein shall prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses, so long as such contest is pursued with reasonable diligence and such lien is discharged of record against each Parcel encumbered by the same by bonding in accordance with law within the time period described above. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), the Owner causing or allowing such lien shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges THE OWNER PERMITTING OR CAUSING SUCH LIEN AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER OWNERS. AND THEIR RESPECTIVE PARCELS OR PORTIONS THEREOF AGAINST ALL CLAIMS AND LOSSES CAUSED BY, ARISING FROM, OR IN CONNECTION WITH SUCH LIEN.

ARTICLE V PROPERTY TAXES

Section 5.01. Payment of Property Taxes. Each Owner covenants and agrees to pay or cause to be paid directly when due all real property taxes and other general and special taxes and assessments which may be levied or assessed against its Parcel.

Section 5.02. Contest of Property Taxes. Subject to the terms of this section 5.02, each Owner may contest (or allow to be contested) in good faith any real property tax or other special tax or assessment levied upon its Parcel. Notwithstanding the foregoing, as it relates to each Owner's Parcel, each Owner shall at all times comply with the terms and obligations of the Redevelopment Agreement dated as of April 24, 2014 by and between The Capitol District, LLC, a Nebraska liability company and the City, and approved by the City as Ordinance No. 39976 on April 22, 2014, as amended from time to time, specifically including, but not limited to, the obligation to pay directly when due all real property taxes and other general and special taxes and assessments which may be levied or assessed against its Parcel. The obligations contained herein shall survive until the termination of the Redevelopment Agreement.

ARTICLE VI CASUALTIES; INSURANCE

Section 6.01. Insurance. Each Owner (as to its Parcel only) shall maintain or cause to be maintained in full force and effect such liability, fire or other casualty insurance as such Owner desires or as may be required by any mortgagee of a Mortgage encumbering its Lot. The Association shall not be obligated to insure any Lot or any portion thereof or any Improvements thereon.

Section 6.02. Release. Each Owner for itself, and all persons claiming by, through or under it, and, to the extent permitted by applicable law, on behalf of its Insurer and without affecting the coverage provided by insurance required to be maintained by such Owner hereunder, except for the requirements of agreements between two (2) or more Owners, hereby releases and waives any right to recover against the other Owners and their respective Owner-Related Persons, from any Claims or Losses caused by, arising from or in connection with an occurrence at, in or to the Capitol District Development or to the contents or any part of the Capitol District Development or the revenue derived there from, provided (a) such Claim or Loss is covered by the insurance required to be carried by the releasing Owner under this OEA or to be carried by one or more Owners under this OEA as a Common Expense (or would have been covered by such insurance in the event that such Owner or Owners fail to carry the required Insurance coverage), but only to the extent such Claim or Loss is covered by such Insurance (or would have been covered by such insurance in the event that such Owner or Owners fail to carry the required insurance coverage), or (b) the releasing Owner has agreed to indemnify the other Owners under this OEA for such Claim or Loss. The waiver contained in this Section 6.02 is independent of, and will not be limited by, other release or waiver provisions in this OEA, will survive the term of this OEA until all related Claims are fully and finally barred by applicable law, and will be enforced to the fullest extent permitted by applicable law for the benefit of the intended beneficiary thereof, even if the applicable Claim or Loss is caused by the active or passive, joint, concurrent or comparative negligence of such intended beneficiary, and regardless of whether liability without fault or strict liability is imposed upon or alleged against the Intended beneficiary. As to each Owner described in clause (a) of the first sentence of this Section 6.02, the provisions of this Section 6.02 are intended to restrict each Owner and its Users (as permitted by law) to recovery against insurance carriers until such time as coverage is exhausted and each Owner shall, to the extent such insurance endorsement is available, obtain or cause to be obtained, for the benefit of the other Owners and their respective Owner-Related Persons, a waiver of any right of subrogation with respect to the matters described above which the insurer of such Owner may acquire against the other Owners by virtue of the payment with respect to any such Claim or Loss. The release and waiver described in clause (a) of the first sentence of this Section 6.02 is not intended and does not restrict each Owner and its Users (as permitted by law) from the right to recover from any other Owner or Owner-Related Persons in those situations where such Owner carries the required insurance under this OEA, but coverage limits are exhausted, coverage is denied and/or the maximum amount that a carrier actually pays for such Claim or Loss does not fully cover the amount of the Claim or Loss.

ARTICLE VII CONDEMNATION

Section 7.01. Distribution. Any award of compensation or damages, whether obtained by agreement or by judgment, verdict or order in a legal proceeding resulting from a taking of any Parcel, or any portion thereof, by exercise of right of condemnation or eminent domain, or resulting from a requisitioning of any Parcel, or a portion thereof, by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance shall be distributed in accordance with the terms of the agreement, or judgment, verdict or order made in the proceedings. In the event of any sale of any Parcel or any portion thereof under threat of condemnation, such Parcel or portion thereof shall for all purposes be deemed to have been "taken" as that term is used in this Article

VII, and the net amount of the price received therefor after deduction of the expenses of the sale borne by the Owner of the Parcel taken shall be deemed to constitute an "award" as that term is used herein.

Section 7.02. Condemnation. If condemnation or eminent domain or other taking (hereinafter collectively referred to as an "Appropriation") shall result in a taking of all or any part of any Common Area or Easement Area created by this OEA, the Owners shall cooperate in any such condemnation proceeding in order to maximize the award with respect to the property interests of each Owner which are taken and no Owner shall settle any such condemnation proceeding (or sell any Parcel or portion thereof under threat thereof) as it relates to any Common Area or Easement Area created by this OEA without the prior written consent of the Association, which consent shall not be unreasonably withheld. No Appropriation resulting in a taking of the Parcel of any Owner shall terminate this OEA without the written consent of all the Owners. Any Owner receiving notice of any proposed Appropriation of all or any portion of any Parcel shall give immediate written notice thereof to all other Owners.

Section 7.03. Interests Affected. Nothing contained in this Article VII shall entitle any Owner, or its successors in interest, to share in any award made to any other Owner whose Parcel is taken, other than as provided in Sections 7.01 and 7.02 hereof and to the extent an award is made for the interests of each Owner created by this OEA in the Parcel taken.

ARTICLE VIII RIGHTS UPON DEFAULT

Section 8.01. Right to Cure. If any Owner defaults in the payment of amounts due from such Owner or in the performance of any of the obligations of such Owner contained in this OEA (the Owner owning the Parcel with respect to which the default has occurred being deemed the "Defaulting Owner"), the non-defaulting Owners shall have the right, but not the obligation, upon the expiration of thirty (30) days' after delivery of notice to the Defaulting Owner and to any Mortgagee of the Defaulting Owner in the case of any monetary default, and sixty (60) days' after delivery of written notice to the Defaulting Owner and to any Mortgagee of the Defaulting Owner in the case of any other default, to cure such default for the account of and at the expense of the Defaulting Owner, except with respect to non-monetary defaults (a) where the Defaulting Owner or Mortgagee has prior to the expiration of the above-described 60-day notice period cured the default, and, (b) where the matter is not susceptible to cure within 60 days and the Defaulting Owner or Mortgagee has diligently commenced to cure the default within such 60-day period and is diligently continuing such efforts to cure notwithstanding the provisions of the preceding sentence, in the event of (i) a default affecting a Common Area where the use of such Common Area by another Owner or its Users is materially and adversely affected, and such default is not cured by the Owner responsible for same within five (5) days after written notice from the affected Owner, or (ii) emergency conditions constituting default, any non-defaulting Owner(s), acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action that the Owner giving such notice proposes to take in order to cure the claimed default to effectuate any such cure, the non-defaulting Owners shall have the right to enter upon the Parcel of the Defaulting Owner to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner in accordance with Section 4.06 of this OEA, provided that the non-defaulting Owner shall not be obligated to provide the 14-day notice described in Section 4.06(a) if it has given the 60-day notice provided for above in this Section. Each Owner shall be responsible hereunder for the default of its Users.

Section 8.02. Costs of Cure. All costs and expenses (including but not limited to costs and expenses of any proceedings at law or in equity and reasonable attorneys' fees) reasonably incurred by any Owner to cure a default of a Defaulting Owner under the provisions of Section 8.01 hereof and all amounts as to which an Owner is in default in paying to another Owner pursuant to this OEA after the expiration of the notice period described in Section 8.01 above, together with interest thereon from the date incurred until the date reimbursed at the lower of (a) five percent (5%) above the "prime rate" as published in The Wall Street Journal from time to time (or, if the Wall Street Journal shall cease to publish, in such other periodical as may be agreed upon by the Declarants, such agreement not to be unreasonably withheld or delayed), or (b) the maximum rate allowed by law, shall be assessed against and paid by the Defaulting Owner.

Section 8.03. Lien. Costs and expenses assessed pursuant to Section 8.02 and/or 4.03, or any other amounts due pursuant to this OEA that are not paid within ten (10) days after the receipt by the Defaulting Owner of notice that such amounts are past due, together with reasonable documentation supporting such expenditures, shall constitute a lien against the Defaulting Owner's Parcel and the Association or the Owner to which such amounts are owing, as applicable, shall have the right to deduct the owed amount, without liability or forfeiture, from any sums then due or thereafter becoming due from such Owner under this OEA. Such lien shall attach and take effect only upon recordation of a claim of lien ("Claim of Lien") in the Official Records of Douglas County, Nebraska by the Association and/or the Owner making the claim ("Lien Claimant"). The Claim of Lien shall include the following:

- (a) Name. The name of the Lien Claimant;
- (b) Basis of Claim. A statement concerning the basis for the claim of lien and identifying the Lien Claimant;
- (c) Identification of Owner. An identification of the Owner or reputed Owner of the Parcel against which the lien is claimed;
- (d) Parcel Description. A description of the Parcel against which the lien is claimed;
- (e) Work Performed or Other Obligation. A description of the amount due, work performed or other obligation under this OEA which has given rise to the Claim of Lien and a statement itemizing the amount thereof; and
- (f) Statement of Claim. A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date, volume and page of recordation of this OEA.

The notice shall be duly sworn, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to the notice requirements of this OEA. Notice of the Claim of Lien shall be served upon the Defaulting Owner by personal service or by mailing pursuant to Section 13.08 hereof. The Claim of Lien shall be effective only as to the amount claimed thereby, but it may be supplemented from time to time by filing a supplemental Claim of Lien in the form required above and by serving notice thereof on the Defaulting Owner in the manner required above.

The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced or foreclosed in any manner allowed by law, including without limitation,

suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Nebraska.

Section 8.04. Removal of Lien. If the Defaulting Owner against whom a Claim of Lien is recorded posts either (a) a bond executed by a corporate surety licensed in Nebraska and reasonably satisfactory to the Lien Claimant, or (b) an irrevocable letter of credit executed by a national banking association which is reasonably acceptable to the lien Claimant having offices in Omaha, Nebraska, which bond or letter of credit (i) names the Lien Claimant as the principal or payee and is in form and substance satisfactory to the lien Claimant, (ii) is in the amount of 1-1/2 times the Claim of Lien, and (iii) unconditionally provides that it may be drawn upon by the Lien Claimant upon the earlier of (y) a final judgment entered by a court of competent jurisdiction in favor of such Lien Claimant or (z) thirty (30) days prior to the expiration thereof without renewal, then the Lien Claimant shall record a notice extinguishing the lien or take such action as may be reasonably required by a title insurance company requested to furnish a policy of title Insurance on such Parcel deleting the lien as an exception thereto. The Defaulting Owner shall post the bond or letter of credit by delivery to the Lien Claimant. All costs and expenses to obtain the bond or letter of credit, and all costs and expenses incurred by the Lien Claimant to extinguish the Claim of Lien as described in this Section 8.04 shall be borne by the Defaulting Owner. If Defaulting Owner against whom a Claim of Lien is recorded satisfies the defaulted obligation, the Lien Claimant shall promptly following such satisfaction record a notice extinguishing the Lien.

Section 8.05. Waiver and Remedies Cumulative. No waiver by the Association or any Owner of any default under this OEA shall be effective or binding on the Association or such Owner unless made in writing by the Association and/or such Owner and no such waiver shall be implied from any omission by the Association or an Owner to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default, or period of time, or both, specified in such express waiver. One or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision contained in this OEA. All of the remedies permitted or available to the Association and the Owners under this OEA or at law or in equity shall be cumulative and not alternative (except as otherwise provided in Article IX below), and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 8.06. Estoppel Certificate. Any Party may, at any time and from time to time, in connection with the sale, lease or transfer of such Party's Parcel or any portion thereof, or in connection with the financing or refinancing of such Parcel of any portion thereof or the sale or transfer of any interest in any Party, deliver written notice to the Association requesting the Association certify in writing (a) that to the best knowledge of the Association, the requesting Party is not in default in the performance of its obligations under this OEA, or, if in default, to describe therein the nature and amount of any and all defaults, and (b) to such other reasonable matters as the requesting Party may request. The Association shall execute and return such certificate within twenty (20) days following the receipt thereof. Failure by the Association to execute and return such certificate within the specified period shall be deemed to be a response indicating no default by the requesting Party. The Parties acknowledge that such certificate may be relied upon by prospective and actual purchasers, tenants, transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors. Any Mortgagee of a Party, no more than twice per calendar year, may request an estoppel certificate from the Association requesting that the Association confirm, to the best of its knowledge, that the Party whose Parcel or portion thereof (and the Party owning such Parcel, if different) is encumbered by the lien of such

Mortgagee is not in default under this OEA or, if any such default shall exist, stating in detail the nature of any such default and the actions necessary to cure the same. The Association shall respond to such request for an estoppel certificate from a Mortgagee in the same manner as described above. Any estoppel certificate delivered pursuant to this Section 8.06 (or deemed response in the event of failure to deliver as provided above) shall act to estop the Association from asserting a claim or defense against a Mortgagee or a bona fide purchaser for value to the extent that such claim or defense is based upon facts known to the Association as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or Mortgagee has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate (or deemed response in the event of failure to deliver as provided above) shall in no event subject the Association to any liability for the inadvertent failure of the Association to disclose correct or relevant information, nor shall the same be construed to waive any rights of the Association to perform an audit or obtain an adjustment with respect to any Proportionate Share or other amount owed by any Party for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Parties or Associations was required but not sought or obtained. Notwithstanding the foregoing, the rights to request and receive estoppel certificates shall not apply in the event of the sale, lease, transfer, financing or refinancing of individual Condominium Units.

Section 8.07. No Termination. A breach of this OEA shall not entitle any Party to cancel, rescind or otherwise terminate its obligations hereunder, and upon the occurrence of any such breach by a Party, the sole right of the other Parties shall be to pursue the rights and remedies herein set forth and any other rights and remedies that may otherwise be available to them under law or equity.

Section 8.08. Priority of Lien. Any lien which may arise pursuant to Section 8.03 above shall be subordinate and inferior to the (a) lien of taxes which are by law prior thereto, (b) the rights of tenants under leases, (c) any Mortgage or other instrument of security held by a Mortgagee (a "Mortgage Lien") affecting the Parcel owned by the Defaulting Owner, and (d) to the claims and interests of any bona fide purchaser for value, but only if it acquires its interest prior to the recordation in the Official Records of Douglas County, Nebraska of a Claim of Lien, in the form hereinabove prescribed. Any lien that may arise pursuant to Section 8.03 above shall also be subordinate to the rights of the Hotel Operator to operate the Hotel pursuant to written agreements between Hotel Lot Owner and the Hotel Operator and no enforcement of any such lien shall disturb the operation of the Hotel by the Hotel Operator or the Hotel Operator's rights under any such written agreements.

Section 8.09. Mortgagees Protected. To be effective, any notice of default or Claim of Lien given to a Defaulting Owner under this Article VIII must also be given at the same time to the Defaulting Owner's Mortgagee(s), which shall have the right, but not the obligation, to cure defaults on behalf of the Defaulting Owner, and, to the extent provided in an agreement between such non-defaulting Party and its Mortgagee(s), all the rights and powers afforded to and exercisable by a non-defaulting Party pursuant to this Article VIII (including the right to give notices of default, cure defaults and right of entry, and to execute, deliver and record a Claim of Lien) may be exercised by any Mortgagee of a non-defaulting Party to the same extent and with the same effect as if such Mortgagee were the non-defaulting Party.

ARTICLE IX DISPUTE RESOLUTION

Section 9.01. Dispute Resolution Process. The Parties, having recognized the importance of quickly resolving any disputes hereunder, intend to resolve all such disputes without resorting to legal

proceedings according to the procedures ("Resolution") set forth in this Section 9.01. Accordingly, in the event of any controversy, dispute or claim of any nature arising out of, in connection with, or in relation to the existence, validity, interpretation, performance, enforcement or claimed breach of this OEA, including any claim based on contract, tort or statute (collectively, a "Dispute"), the Parties involved in the Dispute shall first meet within five (5) business days to attempt to resolve the Dispute. If such meeting does not resolve the Dispute or does not occur for any reason, then prior to the initiation of any action or proceeding and upon written notice given by a Party to the other Parties involved in the Dispute (the "Evaluator Notice"), such Parties shall make a good faith effort to appoint a disinterested third party ("Evaluator") with expertise in the matters constituting the basis of such Dispute within fifteen (15) days after the date of the Evaluator Notice for the purpose of resolving the dispute by an early neutral evaluation process. In the event that the Parties involved in the Dispute cannot agree on the disinterested third party to serve as the Evaluator within such fifteen (15) day period then, prior to the end of such period, each such Party shall appoint a disinterested third party, and the persons so chosen shall within ten (10) days thereafter (the last day of such 10 day period being the ("Evaluator Appointment Deadline")) appoint a disinterested third party who shall serve as the Evaluator. The Parties involved in the Dispute shall then meet with the Evaluator within fifteen (15) business days after such Parties select the Evaluator. In the event that an Evaluator is not appointed prior to the Evaluator Appointment Deadline, or the Parties involved in the Dispute fail to resolve the Dispute through the Evaluator within twenty (20) days after the selection of the Evaluator, such Parties may then submit the Dispute to a mediator ("Mediator").

Any Party may initiate the mediation process (the "Mediation") by sending written notice ("Request for Mediation") to the other Parties involved in the Dispute requesting initiation of Mediation. Such Parties shall attempt in good faith to mutually select a Mediator. If within twenty (20) days after the date of the Request for Mediation the Parties involved in the Dispute are unable to agree upon a Mediator, any such Party may submit a request for the appointment of a Mediator by the American Arbitration Association ("AAA"), and the AAA shall select a Mediator within ten (10) days after such request. The Mediation shall take place in the State of Nebraska, County of Douglas, within twenty (20) days after the date the Mediator is selected, or not later than such date as the Parties involved in the Dispute may mutually agree in writing. The Mediator shall conduct the Mediation in accordance with the Construction Industry Arbitration Rules of the AAA.

In all Disputes, the Evaluator or Mediator will render an assessment of the Dispute which the Parties involved in the Dispute shall use to structure a framework for settlement, or, at a minimum, to streamline the issues that will ultimately be settled, or arbitrated as set forth below. To facilitate Resolution, each Party involved in the Dispute shall prepare a "position paper" setting forth the material basis for their respective position. Each Party involved in the Dispute shall also prepare a short presentation before the Evaluator or Mediator. Upon completion of the presentation, the Evaluator or Mediator will identify areas of agreement, forecast liabilities, and establish, if applicable, a range for liability. Nothing disclosed by any Party involved in the Dispute or evaluation made by the Evaluator or Mediator may be admitted in any subsequent Arbitration by a non-disclosing Party unless it is obtained through authorized discovery related to the Arbitration.

All parties to Mediation shall promptly provide all other parties to the Mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

The Parties involved in the Dispute shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

If the statute of limitations would run during the required Mediation period, any Party Involved in the Dispute may institute binding Arbitration as set forth below so as to avoid the running of such statute upon the condition that such Party immediately seek a stay of such Arbitration pending the conclusion of the Mediation period.

The Parties are bound, each to the other, by this requirement to mediate prior to commencement of any Arbitration. In the case where more than one mediation is begun under any such document or agreement and any Party involved in the Dispute contends that the mediations are substantially related, the mediator selected in the first mediation that was commenced may hear the mediations.

IF A DISPUTE IS NOT RESOLVED BY MEDIATION, AS SET FORTH ABOVE, WITHIN SIXTY (60) DAYS OF THE APPOINTMENT OF A MEDIATOR, SUCH DISPUTE MAY THEN BE REFERRED BY WRITTEN REQUEST OF ANY PARTY INVOLVED IN THE DISPUTE ("REQUEST FOR ARBITRATION" TO MANDATORY BINDING ARBITRATION ("ARBITRATION")) THE CURRENT APPLICABLE ARBITRATION RULES AND GUIDELINES OF AAA. ANY ARBITRATION HEREUNDER SHALL TAKE PLACE IN DOUGLAS COUNTY, NEBRASKA, AND WILL BE HEARD AND DECIDED BY A NEUTRAL ARBITRATOR (THE "ARBITRATOR") SELECTED EITHER BY MUTUAL AGREEMENT OF THE PARTIES INVOLVED IN THE DISPUTE HERETO OR, IF SUCH PARTIES ARE UNABLE TO REACH SUCH AGREEMENT WITHIN THIRTY (30) DAYS AFTER THE DATE OF THE REQUEST FOR ARBITRATION, THEN SELECTED UNDER THE ARBITRATION RULES OF THE AAA. THE PARTIES INVOLVED IN THE DISPUTE SHALL INITIALLY BE JOINTLY RESPONSIBLE FOR THE ADMINISTRATIVE COSTS OF THE AAA AND THE ARBITRATOR'S FEES, SAID COSTS AND FEES TO BE RECOVERABLE BY THE PREVAILING PARTY.

THE ARBITRATOR SHALL HAVE THE RIGHT TO IMPOSE ANY AND ALL REMEDIES AVAILABLE PURSUANT TO THIS OEA. IN THE EVENT THAT THE PARTY AGAINST WHOM AN ARBITRATION AWARD HAS BEEN ENTERED HAS FAILED TO COMPLY WITH SUCH AWARD WITHIN THIRTY (30) DAYS OF RECEIVING FROM THE PREVAILING PARTY IN SUCH ARBITRATION WRITTEN NOTICE OF SUCH FAILURE, THE PREVAILING PARTY MAY SEEK TO HAVE THE ARBITRATOR'S AWARD ENTERED AS A JUDGMENT OF THE DOUGLAS COUNTY DISTRICT COURT AND/OR THE UNITED STATES DISTRICT COURT LOCATED IN OMAHA, NEBRASKA (OR ANY OTHER COURT OF COMPETENT JURISDICTION) THE ARBITRATOR SHALL APPLY NEBRASKA SUBSTANTIVE LAW TO ANY ISSUES ARISING UNDER STATE LAW. SHALL APPLY FEDERAL LAW TO ANY ISSUES ARISING UNDER FEDERAL LAW, AND SHALL APPLY THE NEBRASKA EVIDENCE CODE DURING ANY ARBITRATION. THE ARBITRATOR MUST PROVIDE A WRITTEN OPINION SETTING FORTH FINDINGS OF FACT, LEGAL ANALYSIS AND AWARD, AND MUST FOLLOW APPLICABLE NEBRASKA LAW IN REACHING THE ARBITRATOR'S DECISION. THE DECISION OF THE ARBITRATOR SHALL BE BINDING, SUBJECT TO CHALLENGE TO THE EXTENT PERMISSIBLE PURSUANT TO NEBRASKA LAW. ALL DOCUMENTS FILED BY THE INITIATING AND RESPONDING PARTIES IN CONNECTION WITH ANY LEGAL PROCEEDINGS PERTAINING THERETO SHALL BE FILED UNDER SEAL TO MAINTAIN THE CONFIDENTIALITY OF CONFIDENTIAL INFORMATION (AS HEREINAFTER DEFINED) AND RELATED MATTERS, INCLUDING THE ARBITRATION AWARD, AND THE PARTY INITIATING SUCH PROCEEDINGS SHALL USE ITS BEST EFFORTS TO OBTAIN FROM THE DOUGLAS COUNTY DISTRICT COURT (OR ANY OTHER COURT OF COMPETENT JURISDICTION) ON AN EX PARTE APPLICATION OR NOTICED MOTION WITHOUT OPPOSITION AN ORDER

SEALING THE FILE IN SUCH PROCEEDING TO MAINTAIN CONFIDENTIALITY OF CONFIDENTIAL INFORMATION, INCLUDING THE AWARD. THE PROVISIONS OF NEBRASKA LAW SHALL APPLY WITH RESPECT TO ANY ARBITRATION AND DISCOVERY SHALL BE COMPLETED WITHIN 90 DAYS OF DEMAND FOR ARBITRATION. SUBJECT TO THE FOREGOING, DEPOSITIONS MAY BE TAKEN AND DISCOVERY MAY BE OBTAINED IN ANY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF NEBRASKA LAW.

ALL DOCUMENTS AND INFORMATION USED IN CONNECTION WITH ANY MEDIATION AND/OR ARBITRATION PROCEEDING (AS WELL AS THE EXISTENCE OF ANY SUCH PROCEEDING) THAT WERE NOT THERETOFORE PUBLIC SHALL CONSTITUTE CONFIDENTIAL INFORMATION AND SHALL BE KEPT STRICTLY PRIVATE AND CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, TO ANY MEMBER OF THE MEDIA) EXCEPT AS LEGALLY REQUIRED IN CONNECTION WITH THE MEDIATION AND/OR ARBITRATION PROCEEDING OR OTHERWISE.

IN THE EVENT OF ANY ACTUAL OR THREATENED BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, AS SET FORTH UNDER THIS SECTION 9.01, WHICH IS LIKELY TO OR MAY CAUSE IRREPARABLE HARM, THE AGGRIEVED PARTY MAY OBTAIN, ON AN EXPEDITED BASIS, PURSUANT TO THE ARBITRATION RULES OF AAA, AN EX PARTE ISSUANCE OF A RESTRAINING ORDER AND PRELIMINARY INJUNCTION PROHIBITING THE THREATENED HARM, INCLUDING WITHOUT LIMITATION, THE THREATENED DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, NOTWITHSTANDING THE ARBITRATOR'S POWER AND RIGHT TO GRANT EQUITABLE RELIEF, IN THE EVENT OF A THREATENED DISCLOSURE OF CONFIDENTIAL INFORMATION, ANY PARTY ALSO HAS THE ALTERNATIVE RIGHT TO SEEK AND OBTAIN FROM THE DOUGLAS COUNTY DISTRICT COURT AND/OR THE UNITED STATES DISTRICT COURT LOCATED IN OMAHA, NEBRASKA (OR ANY OTHER COURT OF COMPETENT JURISDICTION) AN EX PARTE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION TO PREVENT DISCLOSURE OF CONFIDENTIAL INFORMATION, AND TO CONCURRENTLY SEEK AND OBTAIN AN ORDER SEALING THE FILE IN ORDER TO MAINTAIN CONFIDENTIALITY REGARDING THAT PROCEEDING.

THE PARTIES INVOLVED IN THE DISPUTE SHALL USE REASONABLE EFFORTS TO CONDUCT AND COMPLETE THE ARBITRATION NOT LATER THAN 180 DAYS FROM THE DATE OF DEMAND FOR ARBITRATION AND THE DECISION OF THE ARBITRATOR SHALL BE RENDERED WITHIN 30 DAYS OF COMPLETION OF THE ARBITRATION.

BY EXECUTING THIS OEA, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY NEBRASKA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS OEA YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "DISPUTE RESOLUTION" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE

COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE NEBRASKA CODE OF CIVIL PROCEDURE.

YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "DISPUTE RESOLUTION" PROVISION TO NEUTRAL ARBITRATION, AND AGREE TO BE BOUND BY ITS TERMS.

Notwithstanding the foregoing provisions of this Section 9.01, any disputes between any Condominium Owners shall be resolved under the provisions of the applicable condominium declaration.

ARTICLE X MORTGAGEES

Section 10.01. Priority. Except as otherwise provided in Section 8.08 above, this OEA, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this OEA or exercise of any remedy provided in Article VIII of this OEA shall defeat, render invalid, diminish or impair the lien of any Mortgage for the benefit of a Mortgagee.

Section 10.02. Title by Foreclosure. Except as otherwise set forth herein, all of the provisions contained in this OEA, including but not limited to the covenants and restrictions, easements and conditions herein contained, shall be binding upon and effective against any Party (including any Mortgagee or beneficiary under a Mortgage) who acquires title to any Parcel, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 10.03. Right to Encumber. Any Party shall have the right to encumber its interest in its respective Parcel by any Mortgage, provided such Mortgage is subject to and subordinate to this OEA.

Section 10.04. Default; Prior Claims and Obligations. No breach or default under this OEA, nor any entry upon a Parcel by reason of such breach or default, shall defeat or render invalid the lien of any Mortgage made in good faith and for value on any Parcel. The provisions, easements, conditions, restrictions, and covenants hereof shall be binding and effective against any Person whose title to the Project Real Property, or any portion thereof, is acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise. No Mortgagee shall have any personal liability beyond its interest in the Parcel acquired by it through enforcement of this Mortgage for the performance or payment of any covenant, liability, warranty or obligation hereunder and each Party agrees that it shall look solely to the interests of such Mortgagee in such Parcel for payment or discharge of any such covenant, liability, warranty or obligation.

Section 10.05. Notice to Mortgagees. The Mortgagee under any Mortgage affecting a Parcel shall be entitled to receive notice of any default by the Owner of such affected Parcel, provided that such applicable Owner shall have delivered a copy of a notice to the Association specifying the Mortgagee's name and address and requesting such notices be sent to such Mortgagee. Failure of the Association to deliver a copy of such notice of default to the Mortgagee shall affect in no way the

validity of the notice of default as it respects the defaulting Party, but shall make the same invalid as it respects the interest of the Mortgagee and its lien upon the affected Parcel, but only if the Owner of such affected Parcel provides the Association with the above-required notice and information with respect to the Mortgagee. Any such notice to a Mortgagee shall be given in the same manner as provided in Section 13.08 hereof. The giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Person so declaring a default.

Section 10.06. Right to Cure. In the event that any notice shall be given of the default of a Party and of such defaulting Party's failure to cure or to commence to cure such default as provided in this OEA, then and in that event any Mortgagee under any Mortgage affecting the Parcel of the defaulting Party shall be entitled to receive an additional notice given in the manner provided in Section 10.05, that the defaulting Party has failed to cure such default, and such Mortgagee shall have sixty (60) days after the receipt of said additional notice to cure any such default, or, if such default cannot be cured within sixty (60) days, to diligently commence curing within such time and diligently cure within a reasonable time thereafter. Mortgagees may jointly or singly pay any sum or take any other action reasonably necessary to cure any default of their mortgagors hereunder with the same effect as cure by the mortgagor itself.

Section 10.07. Amendment. This OEA shall not, without the prior written consent of all Mortgagees holding Mortgages on any of the Parcels, be amended so as to (a) change the fundamental purpose for which the Project was created or the permitted use thereof; (b) terminate this OEA prior to the Ninety-Ninth (99th) anniversary of the Effective Date; (c) change any provision of this Article X or any other provision of this OEA which, by its terms is specifically for the benefit of Mortgagees or specifically confers rights on Mortgagees. No amendment to this OEA made without the consent of any Mortgagee shall be binding upon it or its successors in interest should it become a Party, and such Mortgagee's Mortgage shall not be subordinate to any such amendment without written consent of such Mortgagee.

Section 10.08. Condemnation or Insurance Proceeds. Nothing in this OEA shall impair the rights of any Mortgagee, pursuant to its Mortgage, to receive insurance or condemnation proceeds which are otherwise payable to the Party granting such Mortgage.

Section 10.09. Modification; Conflicts. Each Party hereby agrees to cooperate in including in this OEA by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this OEA and allowing such Mortgagee reasonable means to protect or preserve the lien and security interest of the Mortgage hereunder as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. The Parties each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment: provided, however, that any such amendment shall not in any way materially or adversely affect any rights of any Party under this OEA. If there is any conflict between this Article X and any other provision contained in this OEA, this Article X shall control.

Section 10.10. Delegation to Mortgagee. Any Party may delegate irrevocably to its Mortgagee the non-exclusive authority to exercise any or all of such Party's rights hereunder, but no such delegation shall be binding upon any other Party unless and until either the delegating Party or its

Mortgagee shall give to such other Party a true copy of the written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case service upon any other Party of an executed counterpart or conformed copy of said Mortgage in accordance with this Article X, together with written notice specifying the provisions therein which delegates such authority to said Mortgagee, shall be sufficient to give such other Party notice of such delegation.

Section 10.11. No Obligation to Cure. Nothing herein contained shall require any Mortgagee to cure any default of any Party.

ARTICLE XI COVENANTS AND RECORDATION

Section 11.01. Covenants Run with the Land. All of the provisions, agreements, rights, powers, covenants, conditions, easements, and obligations contained in this OEA shall be binding upon and inure to the benefit of the Declarants, and their successors and assigns, and all Persons which become Owners of any Parcel, or any portion thereof, whether by operation of law or in any manner whatsoever; provided, however, that any Condominium Owners shall not be entitled individually to the benefit of any of the provisions, agreements, rights, powers, covenants, conditions, easements, and obligations contained in this OEA and any easement herein benefiting the Condominium Owners shall be enforced only by the applicable Condominium Association. It is expressly acknowledged that each covenant to do or refrain from doing some act on a Parcel hereunder (i) is a burden upon such Parcel and is for the benefit of each other Parcel, (ii) runs with such Parcel, and (iii) shall benefit or be binding upon each successive Owner during its ownership of such Parcel or any portion thereof. Each Owner shall automatically be deemed, by acceptance of title to a Parcel, to have assumed all of the obligations of the Owner of such Parcel hereunder and agrees to execute any documents reasonably requested by any Owner to confirm the same, and the prior Owner of the Parcel shall have no liability for obligations accruing under this OEA. This OEA shall be binding upon all Owner-Related Persons.

Section 11.02. Recordation. This OEA shall become effective and binding upon the Declarants and their respective successors in interest in accordance with the provisions of this Article XI upon recordation of this OEA in the Official Records of Douglas County, Nebraska.

ARTICLE XII DIVISION OF PARCELS; ADDITION OF PARCEL(S)

Section 12.01. Division of Parcel. The Owner of any Parcel shall have the option and ability to divide and subdivide its Parcel or create a condominium within the boundaries of such Owner's Parcel without the approval by any other Owner. The subdivision of any such Parcel or the creation of such condominium shall not modify any obligations, limitations, rights, benefits or burdens established in this OEA.

Section 12.02. Addition of Parcel(s). Any Owner shall have the right at any time or from time to time but only upon the receipt of an express written acceptance executed by the Association, to subject additional real property owned by such Owner in Douglas County, Nebraska, and comprised of one or more lots, to this OEA by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written Supplementary OEA describing such property and extending to each of such lot all of the conditions and other terms set out in this OEA with only such complementary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the

different character of such property. Such additional real estate shall be of a nature but not inconsistent with the character of the Capitol District Development. The Supplementary OEA shall also amend this OEA as necessary to account for the change in the membership of the Association and the Proportionate Share of each Owner, as applicable.

ARTICLE XIII MISCELLANEOUS

Section 13.01. No Partnership or Third Party Beneficiary. No provision of this OEA shall be construed to create a partnership or joint venture among the Parties or any User nor will it make any of them in any way responsible for the debts, losses or liabilities of any of the other Parties or Users, except as expressly provided in this OEA. This OEA is made solely and specifically for the benefit of the Declarants and their respective successors and assigns as Owners and, to the extent expressly provided herein, Mortgagees, and no other Person shall have any rights, interest or claim hereunder or be entitled to any benefit under or on account of this OEA as a third party beneficiary or otherwise; provided however, the Parties and their successors and assigns shall have the right to grant to any of their Users the right to use any of the easements granted herein for the purposes and uses described herein.

Section 13.02. Termination and Amendment. This OEA shall run with the Project Real Property and be in perpetuity unless terminated in accordance with the terms hereof. Except as otherwise specified in this OEA, including Section 10.07 hereof, this OEA may be terminated, cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the Owners, which shall be effective only upon recordation in the Official Records of Douglas County, Nebraska; provided, however, that no such termination or amendment shall impose any materially greater obligation on or materially impair any right, benefit or obligation of an Owner or its Parcel hereunder without the written consent of such Owner.

Section 13.03. Approvals. The words "approve", "consent" and "agree" or deviations of such words or words of similar import mean, unless otherwise expressly provided herein, the approval, consent or agreement in writing of the person holding the right to approve, consent or agree with respect to the matter in question, and the words "require", "judgment" and "satisfy" or derivations of said words or words of similar import mean the requirement, judgment or satisfaction of the person who or which may make a requirement or exercise judgment or who or which must be satisfied. Unless otherwise herein provided, whenever approval or consent is required of any Owner, it shall not be unreasonably withheld, conditioned, or delayed. Approval or consent shall be deemed given thirty (30) days after the receipt of written request for approval or consent (or such other time period as may be specified in this OEA for approval or consent) if an Owner shall neither approve nor disapprove within such time period. If an Owner shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. The consent or approval by an Owner to or of any act or request by any other Owner shall not be deemed to waive or render unnecessary consent or approval to or of any similar or subsequent acts or requests.

Section 13.04. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Capitol District Development, or of any Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Owners that this OEA shall be strictly limited to and for

the purposes herein expressed for the development, maintenance and operation of a development on private property solely for the benefit of the Owners.

Section 13.05. Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, acts of terror, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage by reason of fire or other casualty or cause beyond the reasonable control of a Party (financial inability and imprudent management excepted), then the time for performance as herein specified shall be appropriately extended by the length of the delay actually so caused ("Excusable Delays"), provided that the Party claiming an Excusable Delay provides written notice to the Association of such Excusable Delay within ten (10) days of the occurrence of the Excusable Delay. Notwithstanding the foregoing, no interruption, deferment or postponement in payment of any monetary obligation hereunder shall be permitted by reason of an Excusable Delay.

Section 13.06. Severability. Invalidation of any of the provisions contained in this OEA or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect, unless enforcement of this OEA as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purpose of this OEA.

Section 13.07. Exhibits. The Exhibits to this OEA that constitute drawings of portions of the Capitol District Development are based on development drawings and/or construction plans and drawings provided by the architects and engineers for the Capitol District Development. The Owners acknowledge and agree that such drawings may not be fully-finalized as of the date of this OEA. Accordingly, each Owner shall cooperate (at no cost or expense to the cooperating Owner) with the other Owner's request to revise the Exhibits hereto as the drawings and plans are finalized and appropriately amend this OEA provided that such revisions are consistent with this OEA. The following exhibits to which reference is made herein are deemed incorporated into this OEA in their entirety unless not actually attached, in which event the Exhibit shall be deemed omitted by the Owners:

Exhibit "A" - Site Map

Exhibit "B" - Project Plan

Exhibit "C" - Proportionate Shares in Common Expenses/Net Acres

Section 13.08. Notices.

(a) Procedure. Any notice, demand or request required or permitted pursuant to this OEA shall be in writing and given by delivering the same to the applicable Person in person, by expedited, private carrier service (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Owner's or the Association's, as the case may be, mailing address. The mailing addresses of the Owners and the Association, until changed as hereinafter provided, are as follows:

Parking Garage Owner:

Capitol District Parking, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

Lot 2 Owner:

The Residences at The Capitol District, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

Lot 1, Replat 1 Owner:

Capitol District Retail, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

Hotel Lot Owner:

Capitol District Hotel, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

Lot 5 Owner:

The Capitol District, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

The Association:

The Capitol District Landowners Association, Inc.
1111 North 13th Street, Suite 101
Omaha, NE 68102

Any Owner or the Association may change its notice address at any time to another address within the United States of America by notifying the other persons set forth in this Section 13.08 and recording its address for notices under this OEA in the Official Records of Douglas County, Nebraska, as a supplement to this OEA at least ten (10) days prior to the date such change is effective. All notices under this OEA shall be deemed given received, made or communicated on the date personal delivery is effected or, if mailed or sent by expedited, private carrier service, on the delivery date or attempted delivery date shown on the return receipt or similar receipt or evidence of delivery or attempted delivery.

(b) Form and Effect of Notice. Every notice (other than the giving or withholding of consent or approval under this OEA) given to a Party shall comply with the following requirements. Each such notice shall state: (i) the Section of this OEA pursuant to which the notice is given; (ii) the period of time within which the recipient of the notice must respond, if any, or if no response is required, a statement to that effect; and (iii) if applicable, in a conspicuous manner, that the failure to object or otherwise respond to the notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice. In no event shall notice be deemed given nor shall a Party's approval of or consent to the subject matter of a notice be deemed given by such Party's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section 13.08. No waiver of this subsection (b) shall be inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

Section 13.09. Liability Upon Transfer. Each Party shall be personally liable for performance of all covenants, obligations and undertakings set forth in this OEA with respect to the Parcel or portion thereof so owned which accrue during the period of such ownership. The conveying Party shall be released from all obligations accruing and arising under this OEA from and after the date of the conveyance. Except in the case of the conveyance of individual Condominium Units, the conveying Party shall deliver notice to the other Parties of such conveyance, which notice shall include a legal description of the Parcel conveyed which shall be clearly stated, and the name and address of the transferee. If any statute or law applicable to any Parcel shall require delivery of any notice or other information as a condition to conveyance of such Parcel or any interest therein, then the Party conveying such Parcel or interest shall comply in all respects with such statute or law and SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER PARTIES HARMLESS FROM AND AGAINST ALL LOSSES AND CLAIMS CAUSED BY, ARISING FROM, OR IN CONNECTION WITH THE FAILURE OR REFUSAL OF THE CONVEYING PARTY TO SO COMPLY WITH SUCH STATUTE OR LAW. The Parties agree to execute such documents as may be reasonably requested by a conveying party or Mortgagee evidencing the releases in this Section.

Section 13.10. Entire OEA. Except for any Condominium agreements which contain covenants relating to each specific Condominium regime, as applicable, and other documents referenced in this OEA, this OEA and the Exhibits hereto contain all the representations and the entire agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements with respect to the subject matter hereof are superseded in total by this OEA and the Exhibits hereto. The provisions of this OEA shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

Section 13.11. Captions. The captions preceding the text of each Article, Section and subsection and the Table of Contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this OEA.

Section 13.12. References. Except as otherwise expressly provided herein to the contrary, all references herein to a given Article, Section or subsection refer to the Article, Section or subsection of this OEA. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

Section 13.13. Disclaimer of Derivative Rights. No consent to the modification, from time to time, or to the termination of the provisions of this OEA shall ever be required from any User, other than an Owner, nor shall any such User have the right to enforce any of the provisions contained in this OEA, or to join in any amendment, termination, modification, surrender or cancellation hereof.

Section 13.14. Minimization of Damages. In all situations arising out of this OEA, all Owners shall attempt to avoid and minimize the damage resulting from the conduct of any other Owner.

Section 13.15. No Merger. Unless otherwise clearly indicated to the contrary in a written, recorded document executed by the Person acquiring such title, in no event will there be a merger of the dominant and servient tenements in the Parcels by virtue of the present or future ownership of any portion of said tenements being vested in the same person or entity, but instead the easements and servitudes created pursuant to the terms of this OEA will not be extinguished by such vesting in common ownership and the dominant and servient tenements will be kept separate.

Section 13.16. Governing Law, Place of Performance. This OEA and all rights and obligations created hereby shall be governed by the laws of the State of Nebraska. This OEA is performable only in Douglas County, Nebraska. The parties hereby agree that any action to enforce the terms of this OEA, or for any other remedy arising out of said OEA, shall be brought solely in a Douglas County state court or federal court in the State of Nebraska, and in no other court, and each party specifically acknowledges and submits to the personal jurisdiction of said court, and waives as to any such court any defense of inconvenient forum or improper venue.

Section 13.17. Time. Time is of the essence of this OEA and each and every provision hereof.

Section 13.18. Priority of Other Documents. In the event of a conflict between the terms of this OEA and the terms of any of the declarations or covenants governing any Condominium, the terms of this OEA shall control except where Nebraska Law must control.

Section 13.19. Additional Documents. The Owners agree to execute and deliver such additional documents as may reasonably be requested by any lenders for any portion of the Capitol District Development (including but not limited to amendments to this OEA) provided such additional documents do not materially or adversely affect the rights, remedies or obligations of any Owner.

Section 13.20. Labor Harmony. No work performed by any Owner shall create any labor disharmony, work stoppage or labor dispute to the other Owners or projects, nor materially and adversely interfere with the use or occupancy of any portion of the Capitol District Development.

Section 13.21. Interpretation. Unless otherwise specified in this OEA:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender Include the other gender;
- (c) words and terms which include a number of constituent parts, things or elements, shall be construed as referring separately to each constituent part, thing, or element thereof, as well as to all of such constituent parts, things or elements as a whole,
- (d) references to statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in writing and signed by the parties to be bound thereby;
- (f) the words "include" or "including" or words of similar import, shall be deemed to be followed by the words "without limitation";
- (g) the words "hereto" or "hereby" or "herein" or "hereof or "hereunder", or words of similar import, refer to this OEA in its entirety;
- (h) in computing any time period hereunder, the day of the act, event or default after which the designated time period begins to run is not to be included, and the last day of the period so computed

is to be included, unless any such last day is not a Business Day in which event, such lime period shall run until the next day which is a Business Day; and

(i) all parties hereto have each jointly, with the advice and assistance of their respective legal counsel, participated in the negotiation and drafting of all of the terms and provisions of this OEA, and, accordingly, it is agreed that no term or provision of this OEA shall be construed in favor of or against any party by virtue of the authorship or purported authorship thereof by any party.

ARTICLE XIV ASSOCIATION; MARKETING FUND; AND ENTERTAINMENT DISTRICT

Section 14.01. The Association.

(a) The Association shall be a nonprofit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles of Incorporation of the Association (the "Articles"). Upon the incorporation of the Association by Declarants, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this OEA.

(b) The affairs of the Association shall be conducted by the Board of Directors of the Association (the "Board") and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made by a majority of the members of the Board. The Board may also appoint various committees at its discretion and may contract with a Person to serve as a manager, who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager and any employees of the Association.

(c) The responsibility for establishing policies and procedures (all such policies and procedures being herein collectively referred to as the "Project Rules") with respect to the day-to-day maintenance, operation and use of the Common Area including, without limitation, such matters as governance/operational requirements of the "entertainment district" to be established with the Capitol District Development, as described below in Section 14.05, maintenance of the Common Area, use of any easements for access, for ingress and egress, utilities, trash and garbage disposal and trash recycling, installation of any utilities or services on any easement granted herein, scheduling and procedures for deliveries, the establishment of policies regarding security for the Common Area, policies regarding the scheduling of special events in the Common Area, temporary closings of the Common Area, exclusive-use agreements (in accordance with Section 2.01(f) and/or 3.09), the daily hours of operation of the Common Area, insurance for the Common Area (and the Proportionate Share of the cost of same to be paid by the Owners) and other matters expressly reserved to the Association in this OEA or hereafter delegated to the Association by the Declarants, shall be undertaken by the Association, subject to the terms of this OEA. All decisions made by the Association with respect to such matters shall be binding on all Owners and all Owner-Related Persons. The Association may modify the Project Rules from time to time in order to effectuate the matters described in this Section 14.01(c), provided the same are not inconsistent with the terms and provisions of this OEA, are enforced in a uniform and nondiscriminatory manner, and do not materially and adversely affect any rights or obligations of the Owners or Owner-Related Persons.

(d) Following the recording of this OEA, and excluding any Improvements for which construction has begun prior to such recording of this OEA, no Improvement shall be constructed, installed, or erected on any portion of the Project Real Property without the prior written approval of the Board of the site plan, landscape plan, building architecture plans, and signage plan (collectively, the "Plans"). An Owner desiring to erect an Improvement shall deliver two sets of the Plans to the Board for their review and approval. The Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the Plans, the Owner shall notify the Declarants of the Owner's mailing address. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Board, in its sole and absolute discretion, to promote development of the Capitol District Development and to protect the values, design, character and quality of the Capitol District Development. If the Board determines, in its sole and absolute discretion, that the proposed Improvement will not protect and enhance the integrity and character of all the Capitol District Development, the Board may refuse approval of the proposed Improvement. Written notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the Plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the Plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Board. The Board may charge an Owner all reasonable fees for the processing of any requests, plans, and specifications, including consultation with a professional, including, but not limited to, any architectural, engineering, or legal fees incurred by the Board in connection with such request for approval.

(e) The Board shall meet at least quarterly (unless any quarterly meeting shall be waived by all directors of the Board of the Association) and more frequently on the call of any director upon ten (10) business days' notice to the other directors, which meetings shall be in Omaha, Nebraska, unless otherwise agreed by the directors. An agenda for each meeting shall be prepared in advance by the directors in consultation with each other. All Board directors shall be required for a quorum and the approval of a majority of the directors shall be required for any Association decision including but not limited to adopting any Project Rules. The Board may act without a meeting if the action taken is approved in writing by all directors of the Board. The Association shall cause written minutes to be prepared of all meetings.

(f) No director of the Board, or of any committee of the Board, nor any officer or employee of the Association or any manager, or the Declarants, or any agent employee or officer of Declarants, shall be personally liable to any Owner, or to any lessee, contract purchaser, or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may possessed by such person, acted in good faith without willful or intentional misconduct.

(g) Neither the Articles nor the Bylaws shall be amended or interpreted in a manner that is inconsistent with this OEA.

(h) In the event that approval of all directors of the Board is not obtained for any reason, any Owner may initiate the Resolution process as provided in Section 9.01.

(i) The Association shall maintain a list of the Mortgagees (and their addresses) which have provided the Association with notice thereof in accordance herewith. The Association shall provide such information to any Owner upon request.

Section 14.02. Membership in the Association.

(a) Each Owner, shall have one membership rounded off to the nearest Net Acre for each Net Acre owned by such Owner within its Lot; provided, however, that any Owner owning a Lot containing less than one acre shall have one membership. For example, an Owner of 6.3 Net Acres shall have six memberships, and the Owner of 1.8 Net Acres shall have two memberships and the Owner of 3.5 Net Acres shall have four memberships. The number of Net Acres in a Lot (and the number of memberships attributable to each Lot) are set forth on Exhibit C attached hereto. In the event of (i) a subdivision or resubdivision of any Lot or portion thereof, or (ii) the exclusion of property or the annexation of any additional property hereunder, the revised number of Net Acres and the number of memberships attributable thereto will change from that set forth in Exhibit C.

(b) An Owner shall, upon becoming the record Owner of a Lot, automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. The membership shall not be transferred, pledged or alienated in any way, except as appurtenant to a transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void.

(c) All voting pursuant to the terms of this OEA shall be made in accordance with the provisions of this Section 14.02. Each vote must be cast as a single unit. If an Owner consists of more than one Person, then the votes of such Owners shall be void unless all persons constituting an Owner of such Lot shall deliver to the Association a written instrument appointing one Person as the agent for all Persons constituting the Owner of such Lot, which agent shall thereupon receive notices of assessment and other notices, demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this OEA. An Owner may change its designated agent by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. An Owner may assign all, but not less than all, of its voting rights attributable to a particular Lot to a lessee or Mortgagee, which shall be effective only upon actual receipt of such notice by the Association and shall terminate with the termination of the lease or mortgage. If more than one Person casts or attempts to cast a vote for a particular Lot, all such votes shall be deemed void.

(d) The initial Board shall consist of not less than five (5) Directors. The Members shall then elect all Directors as provided in the Bylaws.

(e) The Members (including the Hotel Lot Owner) shall elect the Directors as provided in the Bylaws, and the Bylaws may provide for staggered terms and lengths of terms for Directors chosen by the Members which are different than those initially set forth in this OEA and may provide for a greater number of Directors to be chosen by the Members than is set forth herein; provided, however, that in no event shall there be fewer than five (5) Directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof.

(f) If the Articles or Bylaws are in any way inconsistent with this OEA, then this OEA shall prevail and control. Each Owner and lessee of a Lot shall comply with, and shall cause their respective invitees to comply with the provisions of this OEA, the Articles and Bylaws, and rules of the Association, as amended from time to time, and failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this OEA or by law, each of which remedies shall be cumulative and in addition to any other available remedy.

Section 14.03. Enhanced Employment Area; Marketing Fund, and Marketing Charge.

The Declarants hereby agree to cooperate in all commercially reasonable respects to cause the creation of and operate the Capitol District Development as an “enhanced employment area” as defined in Section 18-2103(22), Reissue Revised States of Nebraska. The creation of the “enhanced employment area” would authorize the levy and collection of a general business occupation tax upon the businesses, Owners and/or Users of the Capitol District Development for the time period set forth in the City’s official resolution/ordinance. Pursuant to Section 18-2142.02 and 18-2142.04, Reissue Revised Statutes of Nebraska, as amended, the collected tax proceeds shall be utilized for (i) the payment of development costs, (ii) the general promotion of the Capitol District Development, and (iii) the maintenance of the Common Area, specifically including, but not limited to, the Plaza. All Owners and/or Users agree to collect the general business occupation tax and remit the same to the City of Omaha, as required by the City’s official resolution/ordinance. All general business occupation tax proceeds remitted to the City, and thereafter redistributed back to The Capitol District Retail, LLC, shall be deposited by The Capitol District Retail, LLC into a special fund to be owned and maintained by the Association (the “EEA Fund”). In addition, the Declarants acknowledge and agree that so long as the Association is using the EEA Fund for the benefit of the Capitol District Development, the Owners and/or Users agree to collect the general business occupation tax and remit the same to the City of Omaha. The Declarants agree that the Association may allow neighboring businesses outside of the Capitol District Development to participate in the marketing efforts of the Capitol District Development, provided that such other businesses agree to collect the general business occupation tax and remit the same to the City of Omaha pursuant to the City’s official resolution/ordinance, on a case-by-case basis. The Declarants, or the Owners (as the case may be) shall each ensure that their leases, licenses, or other agreements related to the use or occupancy of a Parcel are subject to this Section 14.03. An Owner’s failure to collect and deposit the occupation tax as provided for herein shall be a default under the OEA.

In addition, the Declarants acknowledge and agree that the Association may establish a “Marketing Fund” to promote the Capitol District Development and the Owners shall contribute to the Marketing Fund in such amounts and installments established by the Association from time to time (the “Marketing Charge”). The Declarants agree that the Association may allow neighboring businesses outside of the Capitol District Development to participate in the marketing efforts of the Capitol District Development, provided that such other businesses contribute to the Marketing Fund pursuant to the Marketing Charge established by the Association on a case-by-case basis.

Section 14.04. Entertainment District. The Declarants hereby acknowledge that portions of the Capitol District Development will be subject to an “entertainment district”, as described in Section 53-123.17, Reissue Revised States of Nebraska. Each Owner agrees that it shall comply with, and cause its tenants, licensees, guests, invitees or occupants to comply at all times with, the requirements of any required license(s) or permit(s) relating to the “entertainment district”, including, but not limited to, any liquor law requirements specific to the “entertainment district”. It is acknowledged and agreed that the Association shall establish reasonable rules and regulations relating to the governance,

maintenance and operations of the “entertainment district” and each Owner agrees that it shall comply with, and cause its tenants/occupants to comply at all times with such rules and regulations as established by the Association from time to time. An Owner’s violation of the license(s) or permit(s) relating to the “entertainment district” shall be a default under the OEA.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

[SIGNATURES FOLLOW]

LOT 2 OWNER:

THE RESIDENCES AT THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company

By: The Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

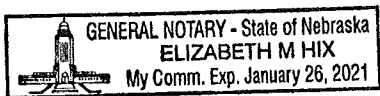
By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By: [Signature]
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15 day of February, 2018, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Residences at the Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.

[Signature]
Notary Public

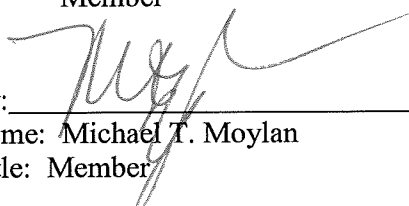


PARKING GARAGE OWNER:

CAPITOL DISTRICT PARKING, LLC, a
Nebraska limited liability company

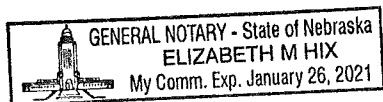
By: The Capitol District, LLC, a
Nebraska limited liability company,
its Sole Member

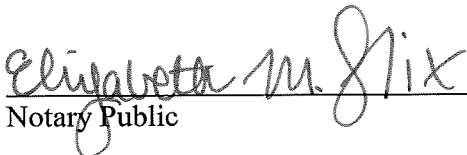
By: MTM Capitol District, LLC,
a Nebraska limited liability
company, its Administrative
Member

By: 
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15 day of February, 2018, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, the sole member of Capitol District Parking, LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public

LOT 5 OWNER:

THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company

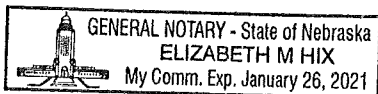
By: MTM Capitol District, LLC,
a Nebraska limited liability company,
its Administrative Member

By: *[Signature]*
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15 day of February 2018, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.

Elizabeth M. Hix
Notary Public

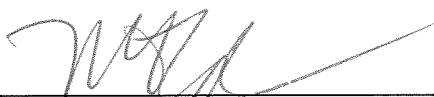


LOT 1, REPLAT 1 OWNER:

CAPITOL DISTRICT RETAIL, LLC, a
Nebraska limited liability company

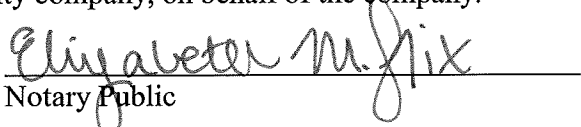
By: TCD 2, LLC, a
Nebraska limited liability company,
its sole member

By: MTM Capitol District, LLC,
a Nebraska limited liability
company, its Administrative
Member

By: 
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15 day of February, 2018,
by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company,
the administrative member of TCD 2, LLC, a Nebraska limited liability company, the sole member of
Capitol District Retail, LLC, a Nebraska limited liability company, on behalf of the company.


Notary Public

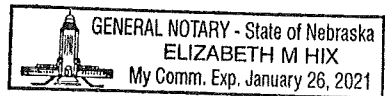
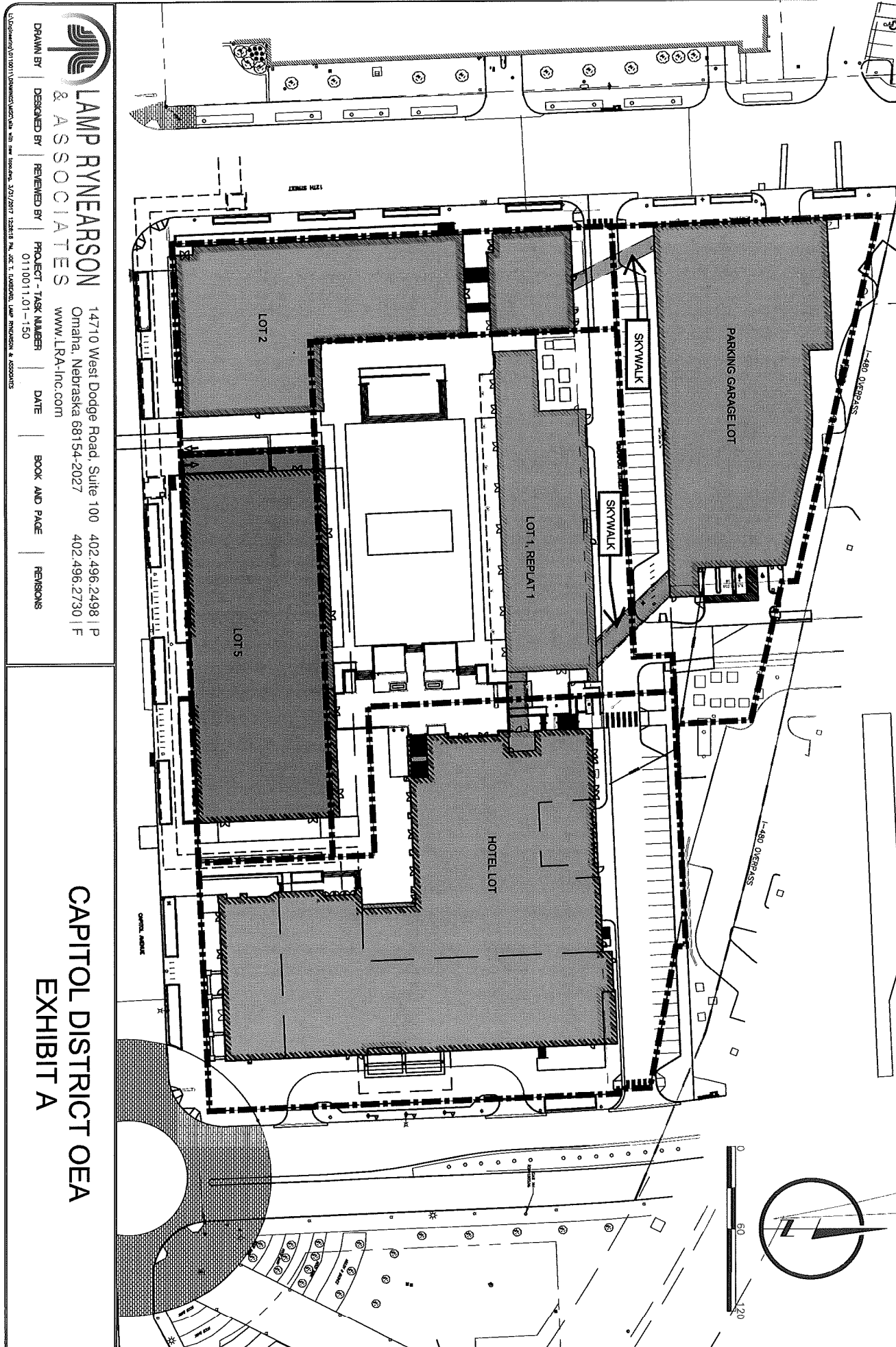


Exhibit "A"

Site Map

(To be attached)



**LAMP RYNEARSON
& ASSOCIATES**

14710 West Dodge Road, Suite 100 402.496.2498 | P
 Omaha, Nebraska 68154-2027 402.496.2730 | F
 www.LRA-Inc.com


DRAWN BY | DESIGNED BY | REVIEWED BY | PROJECT - TASK NUMBER | DATE | BOOK AND PAGE | REVISIONS
 011001.01-150

L:\Drawing\011001\Drawings\011001.dwg with new properties, 3/27/2017 12:04:51 PM, AOT T. LAMBERG, LAMP RYNEARSON & ASSOCIATES

**CAPITOL DISTRICT OEA
EXHIBIT A**

Exhibit "B"

Project Plan
(To be attached)



LAMP RYNEARSON & ASSOCIATES
 14710 West Dodge Road, Suite 100 Omaha, Nebraska 68154-2027
 www.LRA-inc.com 402.496.2498 | P 402.496.2730 | F

DRAWN BY DESIGNED BY REVIEWED BY PROJECT - TASK NUMBER DATE BOOK AND PAGE REVISIONS
 0110011.01-150

Undersigned hereby certifies that the undersigned, on 3/27/2017, is the author of the above described project and is duly licensed as a Professional Engineer in the State of Nebraska. LAMP RYNEARSON & ASSOCIATES

**CAPITOL DISTRICT OEA
 EXHIBIT B-PROJECT PLAN**

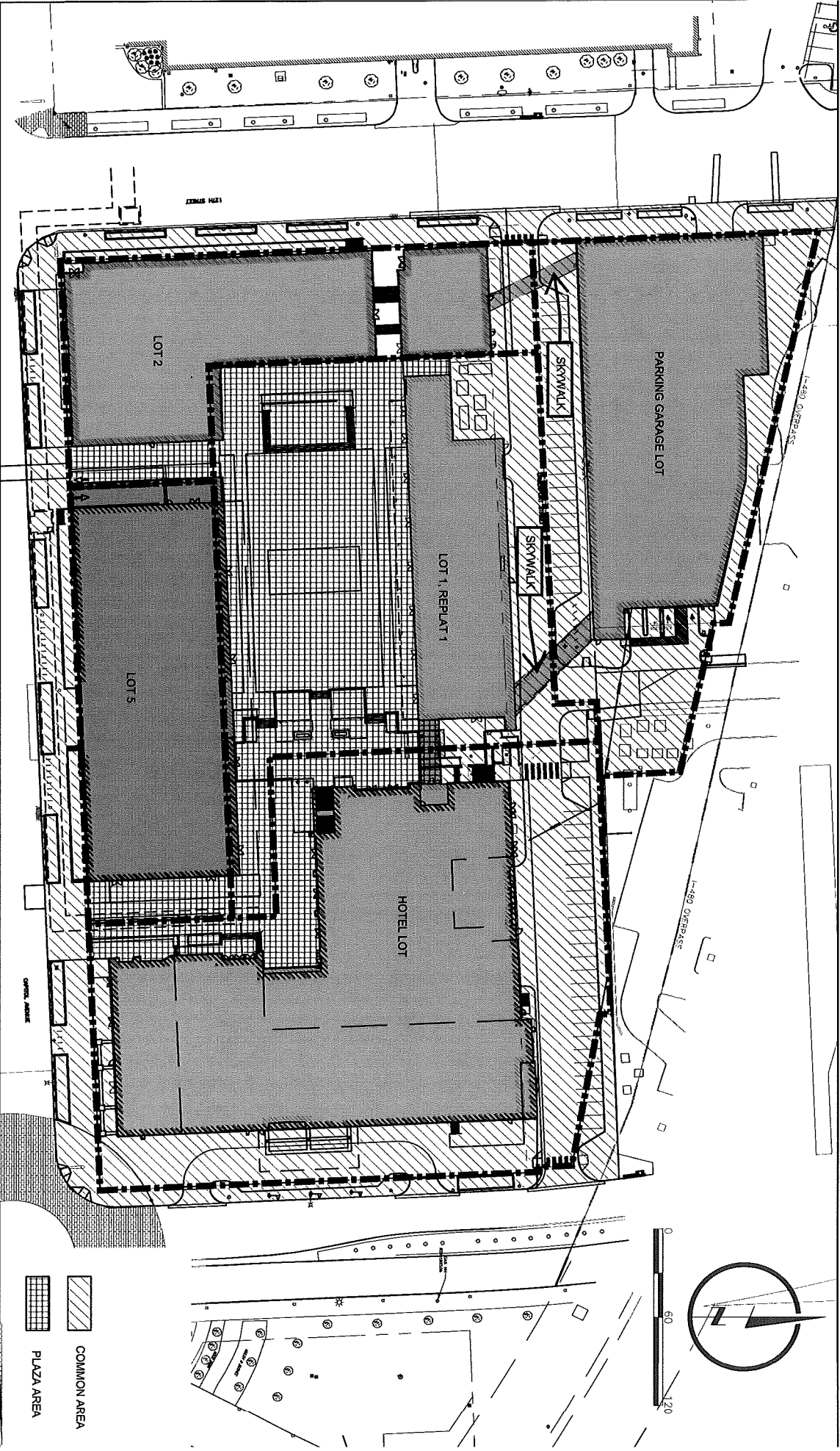


Exhibit "C"

Proportionate Shares in Common Expenses/Net Acres

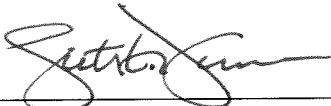
<u>Parcel</u>	<u>Net Acres</u>	<u>Votes/Memberships</u>	<u>Proportionate Share</u>
Parking Garage Lot	1.111	1	10.00%
Lot 2	0.822	1	22.50%
Lot 1, Replat 1	1.095	1	22.50%
Hotel Lot	1.872	2	22.50%
<u>Lot 5</u>	<u>0.903</u>	<u>1</u>	<u>22.50%</u>
	5.803	6	100%

CONSENT BY LENDER

FIRST NATIONAL BANK OF OMAHA, a national banking association, is the Beneficiary of the Construction Deed of Trust, Security Agreement and Assignment of Rents dated as of May 29, 2015 (together with all riders, amendments, restatements, extensions, renewals or modifications thereof, the **"Deed of Trust"**) and filed for record on June 2, 2015 as Instrument No. 2015042747 in the Official Records of the County Clerk's Office of Douglas County, Nebraska, which Deed of Trust affects certain real estate legally described as Lot 2, The Capitol District Replat 1, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deed of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.

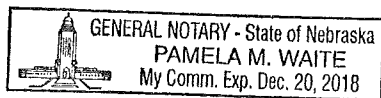
Dated this 11th day of January 2018.

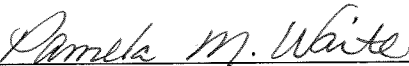
FIRST NATIONAL BANK OF OMAHA, a national banking association

By: 
Name: Scott W. Damrow
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11 day of January, 2018, by Scott W. Damrow, the Vice President of First National Bank of Omaha, a national banking association, on behalf of such national banking association.





Notary Public

CONSENT BY LENDER

FIRST NATIONAL BANK OF OMAHA, a national banking association, is the Beneficiary of the Construction Deed of Trust, Security Agreement and Assignment of Rents dated as of September 19, 2016 by Borrower to the deed trustee named therein for the benefit of Lender, filed for record on September 20, 2016 as Instrument No. 2016077869 in the Official Records of the County Clerk's Office of Douglas County, Nebraska (together with all riders, amendments, restatements, extensions, renewals or modifications thereof, the "**Deed of Trust**"), which Deed of Trust affects certain real estate legally described as Lot 1, The Capitol District, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deed of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.

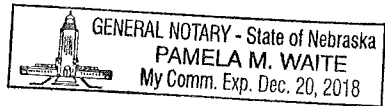
Dated this 17th day of January 2018.


FIRST NATIONAL BANK OF OMAHA, a national banking association

By: 
Name: Scott W. Damrow
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11 day of January, 2018, by Scott W. Damrow, the Vice President of First National Bank of Omaha, a national banking association, on behalf of such national banking association.




Notary Public

CONSENT BY LENDER

CMB NEBRASKA INFRASTRUCTURE INVESTMENT GROUP 47, LP, a Delaware limited partnership, is the Beneficiary of the Deed of Trust dated August 28, 2015 and recorded September 8, 2015, as Instrument No. 2015075417 of the Records of Douglas County, Nebraska, as modified by that certain Modification of Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated July 26, 2017 and recorded August 1, 2017 as Instrument No. 2017060219 and as may be further amended or modified from time to time, and, in accordance with the Collateral Assignment executed on July 26, 2017 by Michael T. Moylan on behalf of The Capitol District, LLC, a Nebraska limited liability company, and recorded August 3, 2017, as Instrument No. 2017060539 of the Records of Douglas County, Nebraska, the Deed of Trust dated July 26, 2017 and recorded August 1, 2017, as Instrument No. 2017060218 of the Records of Douglas County, Nebraska (collectively referred to as the “Deeds of Trust”) which Deeds of Trust affects certain real estate that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deeds of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONSENT BY LENDER

FIVE POINTS BANK, a Nebraska bank, is the Beneficiary of that certain CONSTRUCTION DEED OF TRUST (the "Deed of Trust") dated May 29, 2015 and recorded on June 2, 2015, as Instrument No. 2015042783 of the Records of Douglas County, Nebraska, which Deed of Trust affects certain real estate legally described as Lot 5, The Capitol District, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deed of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.

Dated this 9th day of January 2018.

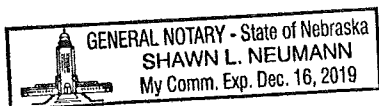
FIVE POINTS BANK

By: 
Name: Timothy K. Smith
Its: Senior Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged, subscribed and sworn to before me by Tim Smith, the SVP of Five Points Bank, a Nebraska bank, on behalf of said bank, this 9th day of Jan, 2018.

[Seal]





Notary Public

CONSENT BY LENDER

FIVE POINTS BANK, a Nebraska bank, is the Beneficiary of that certain CONSTRUCTION DEED OF TRUST (the "Deed of Trust") dated September 19, 2017 and recorded on September 21, 2017, as Instrument No. 2017075530 of the Records of Douglas County, Nebraska, which Deed of Trust affects certain real estate legally described as Lot 1, The Capitol District Replat 1, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deed of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.

Dated this 9th day of January 2018.

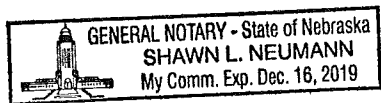
FIVE POINTS BANK

By: 
Name: Timothy K. Smith
Its: Senior Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged, subscribed and sworn to before me by Tim Smith, the SVP of Five Points Bank, a Nebraska bank, on behalf of said bank, this 9 day of Jan, 2018.

[Seal]




Notary Public

CONSENT BY LENDER

GREAT WESTERN BANK, a South Dakota corporation is the Beneficiary of the CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Deed of Trust") dated May 29, 2015 and recorded on June 2, 2015, as Instrument No. 2015042789 of the Records of Douglas County, Nebraska, which Deed of Trust affects certain real estate legally described as Lot 2, The Capitol District, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, that is subject to the Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development. The Beneficiary hereby consents to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development and agrees that the Deed of Trust will be subordinate and subject to this Declaration of Conditions, Covenants, Restrictions, Operations, and Easement Agreement for The Capitol District Development.

Dated this 19th day of January 2018.

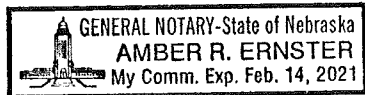
GREAT WESTERN BANK, a South Dakota corporation

By: [Signature]
Name: Craig J. Williams
Its: SVP

STATE OF Nebraska)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged, subscribed and sworn to before me by Craig J. Williams, the SVP of Great Western Bank, a South Dakota corporation, on behalf of said corporation, this 19th day of January, 2018.

[Seal]



[Signature]
Notary Public