



MISC 2008118934



DEC 17 2008 14:26 P 7

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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/17/2008 14:26:50.64

2008118934

CUSTOMER AGREEMENT
(Inside Meter Installation and Access Easement)

This Customer Agreement (this "Agreement") is made and entered this 24 day of November, 2008, by and between OMAHA PUBLIC POWER DISTRICT ("OPPD"), a public corporation and political subdivision of the State of Nebraska and EAST CAMPUS REALTY, LLC, a Nebraska limited liability company ("Customer").

WHEREAS, Customer is in the process of constructing seven (7) buildings on the property owned by the Customer (the "Customer Premises") legally described as follows: Lots 1, 2 and 4, Midtown Crossing a Turner Park, a subdivision, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska, as shown on Exhibit A;

WHEREAS, OPPD's Meter Specifications Manual ("Meter Manual") requires meter installations on the outside of buildings and facilities;

WHEREAS, Customer has requested that it be permitted to have electrical meter(s) located in the interior of the Customer Premises; and

WHEREAS, OPPD has agreed to allow the location of certain electrical meter sockets or socket panels inside the Customer Premises, as provided in and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the aforesaid and for other good and valuable consideration, the parties hereto agree as follows:

- Interior Installation of Meter(s).** Customer, at its own cost and expense, shall install an electrical meter socket or socket panels in the interior of the Customer Premises consistent with the plans and specifications identified in Exhibit A. Any material changes to, or variations from, such plans and specifications shall be presented by Customer and approved by OPPD. Such installation shall be in a workmanlike manner and in compliance with the Meter Manual (other than exterior installation) and all other applicable rules and regulations. At all times following installation, Customer shall repair and maintain the Meter Rooms shown on Exhibit A ("Meter Rooms" or individually, a "Meter Room") consistent with Exhibit A, the Meter Manual, the District's Service Regulations and all other applicable rules and regulations. During the term of this Agreement, Customer shall adhere to all OPPD meter specifications other than the requirement for the meters to be placed outside. At all times, Customer shall

OMA-273632-2

RETURN TO:
OMAHA PUBLIC POWER DISTRICT
% Land Rights 5E/EP2
444 South 16th Street Mall
Omaha, NE 68102-2247

maintain the Meter Rooms clear of all impediments and obstructions in order to permit OPPD uninhibited and safe access to the meter panels. In the event that OPPD elects to, or is required to, install at the Customer Premises special equipment to transmit meter reading electronically to the exterior of the building to allow for automated reading by OPPD's automated meter reading equipment, the Customer shall pay for such special equipment to transmit meter reading data, and maintenance or replacement of such equipment.

2. **OPPD Access.** Customer hereby grants OPPD full and free access to the portion of the Customer Premises where the electrical meter(s) and meter panels are located, together with a right of ingress and egress thereto, at such times as may be necessary and/or desirable for OPPD. The parties acknowledge and agree that it is essential that OPPD be permitted to enter the Customer Premises in order to access the Meter Rooms on a 24 hours per day, 7 days per week, 365 days per year basis. In the event that Customer or its tenants or agents change locks to the Customers Premises, Customer shall immediately notify OPPD and deliver to OPPD's Meter Services Building at 4440 Jones Plaza a new key within ten (10) days. Customer shall not take any action or allow any action to be taken that restricts OPPD's access to the Meter Rooms, and shall promptly, upon notice from OPPD, take all actions necessary to remove any impediments to OPPD's access to the Meter Rooms.

3. **Lock Box.** OPPD shall be permitted to install a lock box at the exterior of the Customer Premises which lock box shall contain a key(s) (provided by Customer) to allow OPPD to access the Meter Rooms. Use by OPPD of the key(s) located in the lock box must allow OPPD access to the Meter Rooms without necessity of OPPD contacting Customer, its tenants or security providers. Customer shall not have a key to the lock box and the Customer shall not permit any other person, through agreement or contract, the use of or access to such lock box.

4. **Failure to Maintain Access.** In the event (i) OPPD is unable to gain immediate and full access to a Meter Room as and when desired or necessary, or (ii) Customer fails or refuses to provide a working key to a Meter Room for the lock box as provided in Section 3 above, or (iii) Customer breaches any covenant herein contained and fails to cure such breach to the satisfaction of OPPD within thirty (30) days notice thereof, OPPD, in its sole discretion, may:

- (a) assess Customer a charge in the amount of \$250 per occurrence, the charge will be attached to the House Meter (H/M), such charge to increase annually on the anniversary date of this contract based on the change in the Bureau of Labor Statistics (BLS) for CPI-U – all items, with a minimum increase of 3%;
- (b) terminate electrical service to the Customer Premises upon written notice to Customer; and/or
- (c) elect to terminate this Agreement upon written notice to Customer and require Customer to immediately install an exterior electric meter socket or socket panels at the Customer Premises as required by the Meter Manual.

5. **Liability and Indemnity.** In the event that OPPD is unable to access, or is delayed in accessing, a Meter Room to cut electrical power to the Customer Premises due, in whole or in part, to inability to timely access a Meter Room, Customer hereby waives any liability for damage to the Customer Premises if OPPD is unable to cut electrical power to Customer Premises. To the maximum extent permitted by law, Customer shall indemnify, defend and hold harmless OPPD against and from all liabilities that arise from or are related to an act or omission of the Customer, its agents and tenants and any third party with respect to the Meter Rooms, unless such liabilities are caused by OPPD or its subcontractors. Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any punitive, consequential, incidental or special damages, or alleged lost profits, incurred or

alleged to have been incurred as a result of interior electrical meters installed under this Agreement and access thereto.

6. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns and subsequent owners of the Customer Premises. If title to any of the seven buildings shown on Exhibit A is transferred, the rights and duties of Customer hereunder pertaining to that building shall become binding upon and inure to the benefit of the transferee, and the transferor shall have no further liability hereunder with respect to the transferred building or the Meter Room located in such building. Likewise, if a condominium owners association is established with respect to one or more of the buildings shown on Exhibit A (as is presently anticipated by Customer), Customer may transfer, convey or assign to such association its rights and delegate its duties hereunder with respect to the Meter Room or Meter Rooms which become the obligation of such association to maintain, in which case such association shall assume the obligations and liability of Customer under this Agreement with respect to the Meter Room or Meter Rooms involved and Customer and individual condominium unit owners who may own condominium units in such condominium shall have no further liability hereunder. Customer shall give OPPD written notice of any such transfer, conveyance or assignment not later than seven (7) days after such transfer or assignment takes place. Customer may not assign or otherwise transfer this Agreement or the rights and privileges herein granted to any other third party without the prior written consent of OPPD, which consent shall not be unreasonably withheld. Customer agrees that this Agreement shall run with the land, and acknowledges and agrees that OPPD may record this Agreement, or a memorandum of this Agreement, with the Register of Deeds of Douglas County, Nebraska.

7. **Notices.** All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by written confirmation of receipt, sent by commercial air or ground courier (such as Federal Express), or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their addresses or facsimile numbers set forth below.

8. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the statutory and decisional law of the State of Nebraska, without regard to conflicts of laws principles.

9. **Termination.** Customer may elect to terminate this Agreement as to any Meter Room shown on Exhibit A if OPPD is no longer supplying electrical distribution service to the building in which such Meter Room is located; provided, however, this Agreement shall continue if a successor or assign of OPPD continues to require the Meter Room in order to provide electric service to the Customer Premises.

10. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof. All prior agreements, representations, statements, and negotiations are hereby superseded. This Agreement may be amended only by a writing executed by both parties. If there is a conflict between the terms of this Agreement and the terms of the applicable rate schedule, the District's Service Regulations, or the Meter Manual, then the terms of this Agreement shall govern. This Agreement shall be executed by the duly authorized representative of the owner of record of the Customer Premises.

[continued on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first written above.

Omaha Public Power District

East Campus Realty, LLC

By: Mutual of Omaha Insurance Company, its sole member

Date: 11-25-08

Date: 11-24-08

Signature: *Steven Heston*

Signature: *John C. McClelland*

By: Steven Heston

By: John C. McClelland

Title: Manager Metering and Collections

Title: Senior Vice President - Administration

Address: 1101 N. 180th Omaha Nebr, 68022

Address: Mutual of Omaha Insurance Company Mutual of Omaha Plaza 3301 Dodge Street Omaha, NE 68175-0002

Phone No.: 402-552-4938

Phone No.: 402-351-2567

Facsimile No.: _____

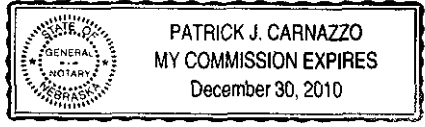
Facsimile No.: 402-351-5741

OPPD Customer Account No. _____

STATE OF NEBRASKA)) ss: COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, on this 25th day of Nov, 2008, by Steven Heston, a duly authorized representative of Omaha Public Power District, on behalf of the corporation.

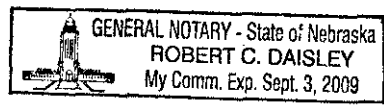
Patrick J. Carnazzo
Notary Public



STATE OF NEBRASKA)) ss: COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, on this 24th day of November, 2008, by John C. McClelland, Senior Vice President -- Administration of Mutual of Omaha Insurance Company, sole member of East Campus Realty, LLC, on behalf of the company.

Robert C. Daisley
Notary Public



FS-W495261.2

OMA-273632-2

EXHIBIT A

LEGEND
[Symbol] ELECTRICAL ROOM

ECI
Investment Advisors, Inc.
Midtown Crossing
at Turner Park
Omaha, NE

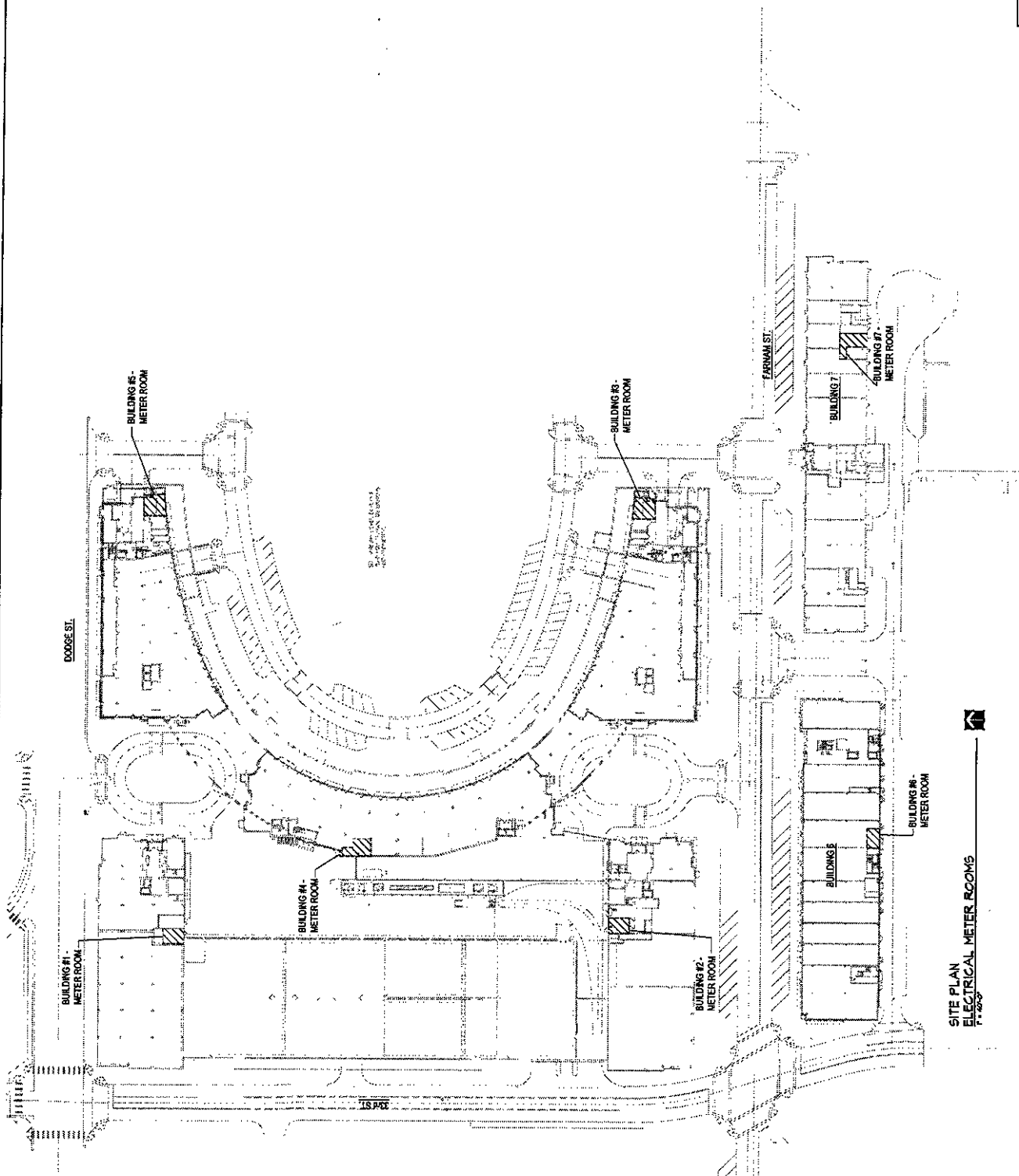
OMAHA PUBLIC POWER
DISTRICT

SITE PLAN --
ELECTRICAL METER ROOMS



PROJECT: 07/07
DATE: 03 SEPTEMBER 2008

Sheet
E0.001
SHEET



NOTES:
1. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND THE ILLINOIS ELECTRICAL CODE (IEC).
2. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE OMAHA PUBLIC POWER DISTRICT (OPPD) STANDARDS AND SPECIFICATIONS.
3. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE OMAHA PUBLIC POWER DISTRICT (OPPD) METER ROOM SCHEDULE.
4. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE OMAHA PUBLIC POWER DISTRICT (OPPD) METER ROOM SCHEDULE.
5. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE OMAHA PUBLIC POWER DISTRICT (OPPD) METER ROOM SCHEDULE.
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EXHIBIT A

LEGEND



ECI
Investment Advisors, Inc.
Midtown Crossing
at Turner Park
Omaha, NE

OMAHA PUBLIC POWER
DISTRICT

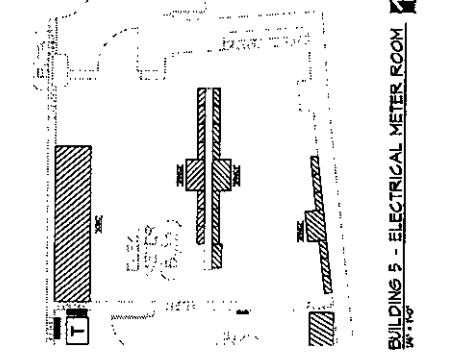
ENLARGED ELECTRICAL
METER ROOMS



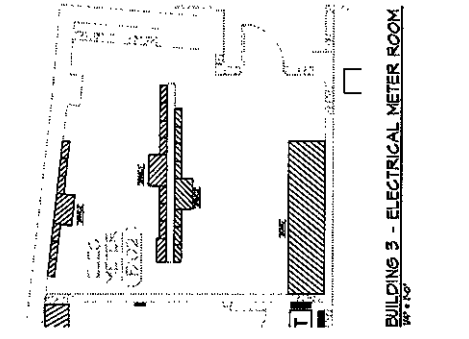
PROJECT: 07207
DATE: 03 SEPTEMBER 2008

SHEET: E1.001

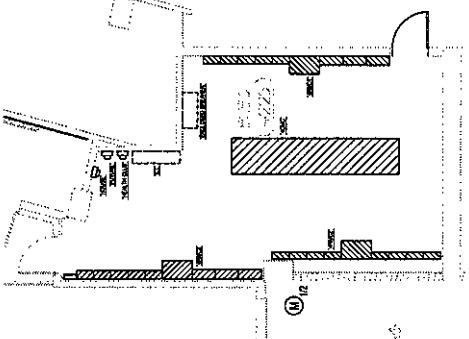
NOT TO SCALE
THIS DRAWING IS THE PROPERTY OF W. H. HENSELEY ENGINEERING, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF W. H. HENSELEY ENGINEERING, INC.



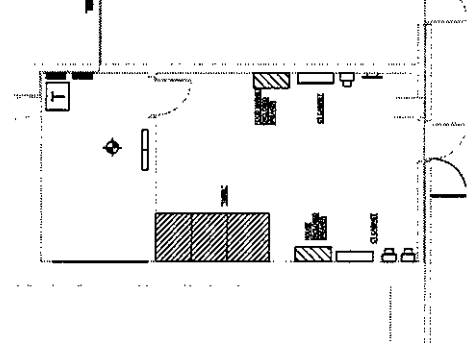
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W.P. 100



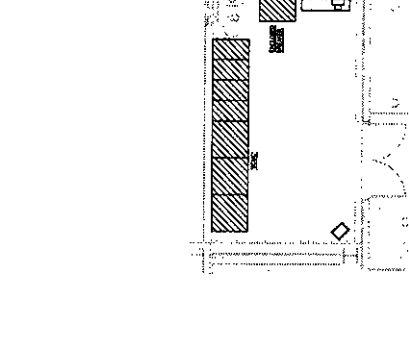
BUILDING 2 - ELECTRICAL METER ROOM
W.P. 100



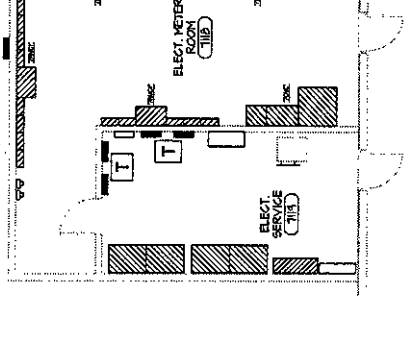
BUILDING 3 - ELECTRICAL METER ROOM
W.P. 100



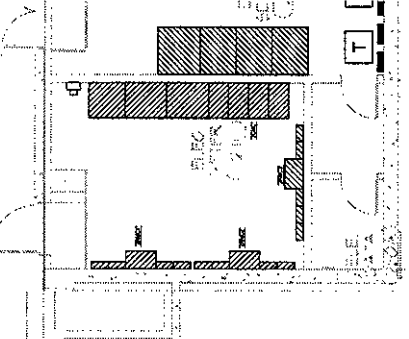
BUILDING 4 - ELECTRICAL METER ROOM
W.P. 100



BUILDING 5 - ELECTRICAL METER ROOM
W.P. 100



BUILDING 6 - ELECTRICAL METER ROOM
W.P. 100



BUILDING 7 - ELECTRICAL METER ROOM
W.P. 100



BUILDING 8 - ELECTRICAL METER ROOM
W.P. 100

EXHIBIT A
PAGE 3

Referenced in Article 1:

- “[] plans and specifications” include the following package prepared by Morrissey Engineering (MEI) and included by HBA, the Architect of Record, in the project’s design package.
 - Building 1 Core and Shell Drawings and Project Manual
 - Building 2 Core and Shell Drawings and Project Manual
 - Buildings 3-4-5 Core and Shell Drawings and Project Manual
 - Building 6 Core and Shell Drawings and Project Manual
 - Building 7 Core and Shell Drawings and Project Manual
- “[] plans and specifications” also include the two (2) drawings prepared by MEI and attached marked Pages 1 and 2 of Exhibit A:
 - E0.001 – Site Plan – Electrical Meter Rooms
 - E1.001 – Enlarged Electrical Meter Rooms

Reference in Article 1: “[] special equipment to transmit meter reading electronically” (“Special Equipment”) is understood to include the following:

- A Repeater, with an estimated \$1000 cost for material and installation.
 - If needed, Repeaters would be installed at the rate of one (1) per Meter Room.
 - The costs outlined above include taxes and the full & complete scope, including materials and installation; any ancillary items or installation incidentals will be provided by OPPD as part of methods of work to complete the required scope within the pricing outlined above.
- Following installation, the special equipment will be considered part of the metering system, and periodic maintenance will be performed by OPPD as needed. Replacements will be completed by OPPD as needed and reimbursed by the Customer.