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Register of Deeds, Douglas County, NE  
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[FOR RECORDING PURPOSES]

**DECLARATION OF EASEMENTS**

This Declaration of Easements ("Declaration") is made this 8<sup>th</sup> day of MARCH, 2005, by TERRA PACIFIC OMAHA, LLC, a Nebraska limited liability company ("Declarant").

**Recitals**

A. Declarant is the owner of the real estate described on Exhibit "A" attached hereto (each platted lot, a "Development Tract", and collectively the "Project").

B. Declarant desires to establish certain easements which shall benefit and/or burden the Development Tracts and shall run with the land.

**Declaration**

NOW THEREFORE, Declarant hereby declares as follows:

1. Granted Easements. Subject to the terms and conditions set forth herein, Declarant hereby grants to itself as the owner of the Project, and to each individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding an ownership interest in fee in any portion of the Project or a Development Tract (individually an "Owner", and collectively the "Owners"), the following easements:

- (a) Roadways. Non-exclusive easements over that portion of the Project consisting of paved streets and roadways (including but not limited to Emmet Plaza, Bedford Plaza, North 147<sup>th</sup> Court, North 148<sup>th</sup> Court and, if constructed, North 149<sup>th</sup> Court) (the "Roadways") for the purpose of vehicular and pedestrian access to and from each Development Tract and the public streets now or hereafter abutting or located on any portion of the Project; limited, however, to those portions or each Development Tract which are improved by the Owner thereof from time to time for vehicular use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

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- (b) *Pedestrian.* In addition to the Roadways, non-exclusive easements for the purpose of pedestrian traffic between each Development Tract and (i) each other Development Tract, (ii) the public streets now or hereafter abutting or located on any portion of the Project, (iii) the walkways now or hereafter abutting or located on any portion of the Project, and (iv) the parking areas now or hereafter abutting or located on any portion of the Project; limited, however, to those portions of each Development Tract which are improved by the Owner thereof from time to time for pedestrian walks and made available by such Owner for general use, as such portion may be reduced, increased or relocated from time to time by each such Owner.
- (c) *Vehicular.* In addition to the Roadways, non-exclusive easements for the purpose of vehicular traffic between each Development Tract and the public streets now and hereafter abutting or located on any portion of the Project; limited, however, to those portions of the Development Tracts which are improved by the Owner thereof from time to time for vehicular access, as such portion may be reduced, increased or relocated from time to time by each such Owner.
- (d) *Parking.* In addition to the Roadways, non-exclusive easements for the purpose of vehicular parking in those areas designated for vehicular parking, limited however to those parking areas which are immediately adjacent to the boundary lines of each Development Tract, and further limited, however, to those portions of each Development Tract which are improved by the Owner thereof as, and designated by the Owner thereof as, vehicular parking spaces, as such portions may be reduced, increased or relocated from time to time by each such Owner.
- (e) *Utility.* Non-exclusive easements for the installation, operation, maintenance, repair, replacement and removal of water lines and systems, telephone lines and systems, gas lines and systems, sanitary sewer lines and systems, electrical lines and systems, storm sewer, drainage lines and systems, and other utility lines or systems hereafter developed to serve one or more of the Development Tracts; provided, all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (collectively "Utility Facilities") will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of any Development Tract or the improvements located thereon where such Utility Facilities are located and the Owner of any Development Tract burdened by any of such utility easements will have the right, at any time and from time to time, to relocate any Utility Facilities then located on such Development Tract on the condition that (i) such right of relocation will be exercisable only after thirty (30) days prior written notice of the intention to relocate has been given to all Owners using the Utility Facilities to be relocated, (ii) such relocation will not unreasonably interrupt any utility service to any improvements then located on any benefitted Development Tract, (iii)

such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated, and (iv) all costs of such relocation will be borne by the Owner relocating the Utility Facilities.

- (f) *Common Facilities.* Non-exclusive easements for access to and use of any clubhouse(s) and swimming pool(s) now or hereafter located on any portion of the Project (collectively "Common Facilities"); limited, however, to those portions of each Development Tract which are improved with Common Facilities, as such portions may be replaced or relocated within such Development Tract from time to time by each such Owner.
- (g) *Self Help.* Non-exclusive rights of entry and easements over, across and under each Development Tract for all purposes reasonably necessary to enable any other Owner of a Development Tract to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform.

2. Use of Easements. The use of all easements created by this Declaration will, in each instance, be non-exclusive and for the use and benefit of the Owners, their respective successors, assigns and such agents, customers, invitees, licensees, employees, servants, contractors, mortgagees and tenants as may be designated by each Owner from time to time (collectively the "Permittees"); provided, each Owner specifically reserves the right, at any time and from time to time, to promulgate such reasonable rules and regulations applicable to the Owner's Development Tract as may be necessary to promote the health, safety, welfare and security of such Development Tract, the improvements located thereon, and the Permittees of such Owner. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy and enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as provided herein. If unauthorized use is being made of any easement area by any of the Owners or their respective Permittees, such unauthorized use may be restrained or terminated by appropriate proceeding after written notice to the defaulting Owner and failure to abate such unauthorized use within a reasonable time.

3. Unimpeded Access. Owners agree that no barricade or other divider will be constructed between the Development Tracts and that Owners will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic throughout the Project in the areas designated for such purpose by the Owner of each Development Tract; provided, each Owner shall have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

4. Maintenance of Easement Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities, the Owner of each Development Tract will operate and maintain all of the areas of the Development Tract which are subject to the pedestrian and vehicular easements created by subparagraphs 1(a), (b) and (c) of this Declaration in sound structural and operating condition at the sole expense of the Owner of such Development Tract. The Owner of each Development Tract will operate and maintain all Utility Facilities and Common Facilities located within the boundaries of such Development Tract in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public author-

ities or utilities) and any expenses occasioned thereby including, without limitation, maintenance, repairs, replacements, and operating and utility costs, will be borne by the Owners of the Development Tract in the ratio in which the gross rentable area of the improvements located on each Development Tract bears to the total gross rentable area of the improvements located on all Development Tracts; provided: (a) each Owner will pay all costs associated with the operation and maintenance of Utility Facilities and the consumption of utility services which relate solely to the improvements located on a single Development Tract and no other Owner will have any liability with respect thereto; and (b) any Owner of a respective Development Tract (together with the consent of the holder of any mortgage or deed of trust constituting a lien on such Development Tract) may, by recording in the public records a relinquishment of the Common Facilities easement created by subparagraph 1(e), and providing a copy thereof to all other Owners, be released from its share of those costs of operating and maintaining any one or more of the Common Facilities located on other Development Tracts which accrue from and after the date of such recording.

5. Insurance. Each Owner agrees to maintain policies of fire and extended coverage insurance and of public liability insurance issued by reputable companies in amounts and on policy terms customary for the improvements of such Owner. Each Owner releases each other Owner from any liability for any loss or damage of the type provided by fire and extended coverage insurance, and grants to each other Owner, on behalf of any insurer providing such insurance, a waiver of any right of subrogation which any insurer of any Owner might acquire against any other Owner by virtue of payment of any loss covered by such insurance.

6. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to the Development Tract to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Development Tract. Each covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Development Tract now or hereafter constituting a part of the Project; (b) creates mutual equitable servitudes on each Development Tract in favor of each other Development Tract; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in any Development Tract; and (e) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Each Owner agrees that on conveyance of all or any part of the Project or a Development Tract, the grantee, by accepting such conveyance, will thereby become bound by this Declaration.

7. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Development Tract to the general public or for any public purpose whatsoever, it being the intention of the Owners that this Declaration will be strictly limited to the private use of the Owners and their respective Permittees. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees, and is not intended to constitute any person which is not an Owner a third party beneficiary hereunder, or to give any such person any rights hereunder.

8. Amendment and Termination. This Declaration shall continue in full force and effect until terminated, modified or amended with the express written consent of all of the Owners of the real property included within the Project and no amendment, modification or termination of this Declaration will affect the rights of the holder of any mortgage or deed of trust constituting a lien

on any portion of the Project or a Development Tract unless such mortgagee consents to the same; provided, nothing contained herein shall prevent or prohibit the relinquishment by an Owner (with the consent of its mortgagee) of its rights with respect to one or more of the Common Facilities easements as provided in paragraph 4. No tenant, licensee or other person having only a possessory interest in the improvements constructed on a Development Tract will be required to join in the execution of or consent to any action of the Owners taken pursuant to this Declaration.

9. Condemnation. In the event the whole, or any part, of a Development Tract is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, an Owner benefitted by an easement created by this Declaration will not share in any award, compensation or other payment made by reason of the taking of a portion of any Development Tract which is subject to such easement, and such award, compensation or other payment will belong entirely to the Owner of that portion of the Development Tract which is taken, and such Owner will have no further liability to any other Owner for the loss or such easements, or portion thereof, located on the Development Tract so taken.

10. Default; Remedies. Owners agree that the provisions of this Declaration will be enforced as follows:

- (a) *Injunctive Relief.* In the event of any violation or threatened violation by any Owner of any of the provisions of this Declaration, each Owner will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the violation will be given to the Owner claimed to have committed such violation.
- (b) *Self Help.* In the event any Owner fails to perform any of the provisions of this Declaration, any other Owner will have the right, without being obligated to do so, to enter upon the Development Tract and improvements of such defaulting Owner and perform the obligations of the defaulting Owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the defaulting Owner not less than ten (10) days prior to the commencement of such action. During such ten (10) day period, the defaulting Owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion, the right of such other Owner to perform the obligation of the defaulting Owner will terminate. If an Owner elects to perform the action to have been performed by a defaulting Owner, on completion of such action, or from time to time if the action is of a continuing nature, an itemized statement of the cost thereof will be submitted to the defaulting Owner and the amount thereof will be immediately due and payable by the defaulting Owner, which amount will bear interest at the rate of sixteen percent (16%) per annum until paid.

- (c) *Force Majeure.* If performance of any action by any Owner is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such Owner, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.
  - (d) *No Termination.* No breach of this Declaration will entitle any Owner to cancel, rescind or otherwise terminate this Declaration. The foregoing limitation will not affect, in any manner, any other right or remedy which any Owner might have by reason of any breach of this Declaration.
11. Miscellaneous.
- (a) *Notices.* All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person or by certified or registered mail, postage prepaid, to the Owners at the addresses set forth in the real property tax records respecting each Development Tract.
  - (b) *Waiver of Default.* No waiver of any default by any Owner will be implied from the failure of any other Owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision of any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.
  - (c) *Severability.* If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.
  - (d) *Governing Law.* This Declaration will be construed in accordance with the laws of the State of Nebraska.

- (e) *Binding Effect.* The provisions of this Declaration will be binding on the Owners and their respective successors, assigns and mortgagees.

IN WITNESS WHEREOF, this Declaration has been executed effective as of the date first above written.

TERRA PACIFIC OMAHA, LLC, a  
Nebraska limited liability company

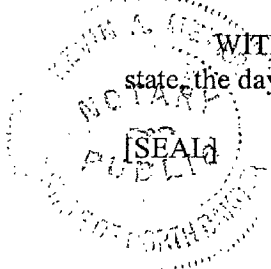
By *Loren Gunderson*  
Loren Gunderson, Manager/Member

By *Gene Gallagher*  
Gene Gallagher, Manager/Member

STATE OF ND )  
 ) ss.  
COUNTY OF Cass )

On this 25<sup>th</sup> day of February, 2005, before me, a notary public in and for said county and state, personally came LOREN GUNDERSON, Manager/Member of TERRA PACIFIC OMAHA, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company

WITNESS my hand and notarial seal at Fargo, in said county and state, the day and year last above written.



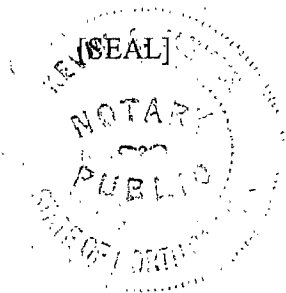
**NOTARIAL SEAL  
REGISTER OF DEEDS**

*Kevin Amey*  
Notary Public 7-21-06

STATE OF ND )  
 ) ss.  
COUNTY OF Cass )

On this 25<sup>th</sup> day of February, 2005, before me, a notary public in and for said county and state, personally came GENE GALLAGHER, Manager/Member of TERRA PACIFIC OMAHA, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company

WITNESS my hand and notarial seal at Fargo, in said county and state, the day and year last above written.



Kevin Amey  
7-21-06

**NOTARIAL SEAL  
REGISTER OF DEEDS**



**SUBORDINATION**

The undersigned hereby subordinates its mortgage or deed of trust lien on the Project to the foregoing Declaration of Easements.

TierOne Bank

By 

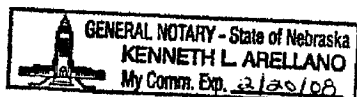
Title: SENIOR VICE PRESIDENT

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER    )

On this 8<sup>th</sup> day of MARCH, 2005, before me, a notary public in and for said county and state, personally came DELMAR WILLIAMS, SENIOR VICE PRESIDENT of TierOne Bank, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at Lincoln, Nebraska, in said county and state, the day and year last above written.

[SEAL]

  
Notary Public

**EXHIBIT "A"**

Lot 1 and Lot 2, in Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.