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*Lloyd J. Dowding*  
REGISTER OF DEEDS

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**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS  
Steven J. Stastny, Deputy  
1210 GOLDEN GATE DRIVE, STE 1109  
PAPILLION, NE 68046-2895  
402-593-5773

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**DECLARATION OF CROSS-EASEMENTS,  
COVENANTS AND RESTRICTIONS**

**THIS DECLARATION OF CROSS-EASEMENTS, COVENANTS AND RESTRICTIONS** (this "Declaration") is made as of the 31st day of July, 2008, by and between CLARKSON REGIONAL HEALTH SERVICES, INC., a Nebraska non-profit corporation, ("CRHS"), BELLEVUE HEALTHCARE PROPERTIES, LLC, a Delaware limited liability company ("Bellevue Properties"), and BELLEVUE PHYSICIANS, LLC, a Delaware limited liability company ("Bellevue Physicians").

RECITALS

CRHS is the owner of a certain real estate located in Sarpy County, Nebraska, described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Medical Campus");

CRHS has developed a business plan wherein the Medical Campus shall be developed to include medical office space, and a hospital that provides medical services;

CRHS entered into a ground lease ("Hospital Ground Lease") and a development agreement ("Hospital Development Agreement") with Bellevue Properties, wherein Bellevue Properties will develop and own a hospital on a portion of the Medical Campus hereafter referred to as "Lot 2", and described on Exhibit "B" attached hereto and by this reference incorporated herein ("Hospital") and has entered into a twenty-five (25) year lease with Bellevue Medical Center, LLC for the entire Hospital (the "Bellevue Lease");

CRHS entered into a ground lease ("MOB Ground Lease") and a development agreement (MOB Development Agreement") with Bellevue Physicians, wherein Bellevue Physicians will develop and own a medical office space ("MOB") on the land immediately adjacent to the Hospital and described on Exhibit "C" and hereafter referred to as "Lot 3";

It is necessary for all buildings, structures and improvements to meet City of Bellevue regulations controlling parking, access, drainage, signage and the overall development and use of the land for the Medical Campus; and

The parties agree that it is in the best interest of each party to provide for design, development, construction, usage and maintenance of all parking, access, drainage, sidewalks, utilities and other Medical Campus common area improvements that will or may be utilized by all parties, (the "On-Site Improvements") below, in, over, upon, across and through the common areas of the Medical Campus described on Exhibit "D" and hereafter referred to as "Lot 1" and below, in, over, upon, across and through the common areas of the Medical Campus described on Exhibit "E" and hereafter referred to as "Lot 4".

NOW, THEREFORE, in consideration of One Dollar (\$1.00), the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

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**ARTICLE I**  
**Definitions**

In addition to terms defined elsewhere in this Declaration, as used herein the following terms shall have the meanings ascribed to such terms as set forth below:

1.01. Building or Buildings. "**Building**" or "**Buildings**" shall mean individually the MOB or the Hospital, and collectively both the foregoing.

1.02. Environmental Laws. "**Environmental Laws**" shall mean all present and future federal, state, or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including the following federal laws: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any amendments enacted or regulations adopted, published and/or promulgated pursuant thereto.

1.03. Floor Area. "**Floor Area**" shall mean the actual number of gross square feet of floor space of all floors of a Building measured to the center lines of the Building's exterior walls, and including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms; but excluding loading docks and platforms, transformer vaults, utility or mechanical penthouses or utility enclosures, and patio or outside entry areas which are not heated or air conditioned.

1.04. Hazardous Material. "**Hazardous Material**" shall mean materials and substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," including asbestos, polychlorinated biphenyls, petroleum (or Petroleum products), hydrocarbonic substances and constituents of any of the foregoing, or other similar designations under any Environmental Laws, and further, any substance or material which because of toxicity, corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains, presents a demonstrated threat to biologic processes when discharged into the environment. Hazardous Material shall also include blood, tissue, bodily fluids, and other materials generally termed and recognized as bio-hazardous materials by federal and state health and safety agencies.

1.05. Occupant. "**Occupant**" shall mean and include each of the parties hereto, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Medical Campus under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.06. Owner or Owners. "**Owner**" or "**Owners**" shall mean individually the owners of the buildings located on Lot 2 and Lot 3, including their successors, heirs and assigns, and collectively two or more of the foregoing.

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1.07. Permittees. "Permittees" shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.08. Prime Rate. "Prime Rate" shall mean the prime rate of interest from time to time published in the Money Rates Section of The Wall Street Journal. If The Wall Street Journal or any successor to it ceases to publish the prime rate, CRHS will designate a comparable interest rate to serve as the Prime Rate.

1.09 Repair Percentage. "Repair Percentage" shall mean the percentage determined by the Floor Area of a Building benefited by the costs of the repair or maintenance work, by the total Floor Area of all the Buildings so benefited, subject to the provisions of Section 4.06 of this Declaration.

**ARTICLE II**  
**Easements and Parking**

2.01. Grant of Easements. CRHS hereby grants to Owners, as appropriate, the following easements for use by the Owners, their Occupants and their respective Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the parties:

2.01.1. Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic upon, over and across Lot 1 and Lot 4 limited, however, to those portions of each Lot which are improved from time to time for pedestrian walkways, passage or use.

2.01.2. Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon and across Lot 1; limited, however, to those portions of the Lot 1 which are improved from time to time for vehicular ingress, egress and passage.

2.01.3. Utility Easements.

(a) Nonexclusive easements over, upon and across Lot 1 and Lot 4 for the installation, use, testing, connection to, 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 sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Lots; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "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 the Medical Campus, On-Site Improvements or Buildings.

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(b) Each party will operate and maintain all Utility Facilities located within the boundaries of such party's Lot in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities). Any expense for operation or maintenance of the Utility Facilities located on Lot 1 or Lot 4 will be initially paid for by CRHS and such costs shall be allocated to the Lot or Lots which are serviced by such Utility Facilities in accordance with the Repair Percentage of each as more fully discussed in Article IV below.

(c) CRHS will have the right, at any time, and from time to time, to relocate any Utility Facilities then located on Lot 1 or Lot 4 on the conditions that: (i) except in the case of an emergency, such right of relocation will be exercisable only after thirty (30) days' prior written notice has been given to all Owners using the Utility Facilities to be relocated and all such Owners have consented to such relocation, such approval not to be unreasonably withheld; (ii) other than in an emergency situation, such right of relocation of any Utility Facilities shall not be located within twenty-five (25) feet of the entryway to any Building; (iii) such relocation will not unreasonably interrupt any utility service to any Building; and (iv) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated. Provided the costs of such relocation are reasonably required for the benefit of one or more Buildings, the cost of such relocation shall be initially paid for by CRHS and allocated to the Buildings in accordance with the Repair Percentage of each as more fully discussed in Article IV below.

2.01.4. Construction Easements. Nonexclusive temporary easements on Lot 1 and Lot 4 as needed for the purpose of constructing, renovating, repairing or remodeling the Buildings and the parking areas and roadways or other improvements of Lot 1 and Lot 4 to be constructed by such Owner pursuant to separate agreement, including grading, balancing and compaction of soils and other site work materials, reconstruction, storage of supplies and materials, installation, replacement, modification, care and maintenance, provided such use of Lot 1 and Lot 4 is reasonably necessary, and all work will be diligently prosecuted in accordance with sound construction practices and will not unreasonably interfere with the use of Lot 1, Lot 4 or the On-Site Improvements by any other Owner or Occupant. Any Owner taking advantage of the construction easement granted herein shall pay all costs associated therewith, including without limitation restoration of the utilized portion of Lot 1 and Lot 4 to the condition in which it existed immediately prior to such exercise, and shall indemnify and hold CRHS and the remaining Owners harmless from all loss, cost and expense in connection with the use of such easement.

2.01.5. Encroachment Easements. An easement shall exist for the benefit of all Owners so that in the event any Building, by reason of the construction or reconstruction of such Building or from the settlement or shifting of such Building, encroaches upon any adjoining Lot or Lots, such Building encroachments shall not be deemed a trespass upon the adjoining Lot or Lots, but shall instead be permitted easement use under the terms of

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this Section 2.01.5. This Section 2.01.5 shall not excuse the Owner of an encroaching Building from exercising all due diligence in the construction or reconstruction of such Building within its Lot, nor shall this Section 2.01.5 be deemed to permit a substantial encroachment upon any adjoining Lot or Lots.”

2.01.6. Self-Help Easements. Nonexclusive rights of entry and easements over, across and under the Lots for all purposes reasonably necessary to enable any Owner to perform any of the provisions of this Declaration or to maintain such Owner’s Building.

2.01.7. Surface Water Drainage. Non-exclusive easements over, across and under the Lots for the flow of a reasonable volume of surface water to the nearest storm sewer or surface water inlet, drainage catch basins, dry cell detention basins, or waterway; provided, however, that (a) the easement for surface water drainage shall be consistent with an overall surface water drainage plan for the Medical Campus; and (b) following the initial construction of the MOB, the Hospital and the On-Site Improvements, no Owner shall alter the flow of surface water onto the Lot in a manner that would materially increase the volume, or materially decrease the purity or quality, of surface water flowing onto any of the Lots.

2.01.8. Parking Easements. Non-exclusive easements over, across and on Lot 1 for use as a parking lot serving the Buildings. The foregoing easement is limited as follows: The ratio of parking spaces to be used by the MOB shall be five spaces per one thousand gross square feet in the MOB, and the ratio for the Hospital shall be four (4) spaces per one thousand gross square feet in the Hospital (“Allocated Ratio”). The foregoing ratios do not include any spaces located within the Hospital or the MOB.

In no event shall any Owner exceed its allocated ratio unless such Owner has constructed the additional parking spaces and lot structure necessary to accommodate the additional use. Notwithstanding the above Allocated Ratio, in the event an Owner is permitted to change the use of its Building in accordance with the terms of that Owner’s Ground Lease or Development Agreement, or the City of Bellevue Ordinance or require a greater number of parking spaces per one thousand gross Building square feet, then the Allocated Ratio of such Owner shall be revised as required so long as the available spaces for any Building are not reduced below the number required by the first paragraph of this Section 2.01.8, and provided further that the design of such additional parking shall be subject to prior review and approval by CRHS, which approval shall not be unreasonably withheld or delayed. CRHS agrees to cooperate with the Owner to obtain any permits or authorizations required for the construction of the additional parking and to permit the Owner to construct the additional parking or parking structure on Lot 1. CRHS shall have the right to require the Owner to provide a bond or other security to guaranty completion of the construction and restoration of any landscaping or other portion of Lot 1 damaged by such construction. All costs for the design, construction, and approval of the additional parking shall be the sole responsibility of the Owner. In addition, the Owner shall reimburse or pay on behalf of CRHS, any and all costs incurred by CRHS. Such costs may include, but are not limited to, legal fees and administrative costs incurred for the review, revision, approval or execution of any permits,

authorizations, applications, agreements or other documentation pertaining to the additional parking. Upon completion of the additional parking, CRHS shall assume responsibility for the maintenance and repair of the parking, pursuant to Article IV of this Declaration.

2.02. Unimpeded Access. No barricade or other divider will be constructed between the Buildings and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic throughout the Medical Campus in the areas designated for such purposes; provided, however, that 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.

### ARTICLE III Nature of Easements and Rights Granted

3.01. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the Lots and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Lots.

3.02. Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

(a) Are made for the direct, mutual and reciprocal benefit of CRHS, the Owners, Occupants and Permittees of the respective Lots;

(b) Create mutual equitable servitudes upon each Lot in favor of the other Lots;

(c) Constitute covenants running with the land; and

(d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Medical Campus at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3.03. Transfer of Title. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns of all or any part of its interest in its Building or Lot, or in its ground lease, or in any portion thereof, shall be deemed to:

(a) Require the prospective grantee to agree not to use, occupy or allow any other party to use or occupy its Lot or Building in any manner which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein; and

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(b) Require any prospective ground lease assignee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to the Lot, Building or interest to be conveyed.

In each case a written instrument shall be executed, acknowledged and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska, which instrument shall acknowledge that such party shall meet the applicable requirements set forth above.

**ARTICLE IV**  
**Maintenance of On-Site Improvements**

4.01. Maintenance of On-Site Improvements. CRHS shall at all times during the term of this Agreement, maintain the On-Site Improvements in sound structural and mechanical condition, and in compliance with all applicable laws, including:

(a) Maintenance, repair and replacement of the surface and subsurface of all parking areas and driveways on Lot 1, in order to maintain the surfaces in a smooth and evenly covered condition with the type of materials originally constructed thereon or such substitutes as will in all respects be at least equal to such materials in quality, appearance and durability;

(b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof and maintaining, repairing and replacing (when necessary) automatic sprinkler systems and water lines;

(c) Removal from Lot 1 and Lot 4 of loose papers, debris, refuse and other rubbish, and washing or thoroughly sweeping paved areas as may be reasonably required;

(d) Removal of any accumulation of ice or snow from the parking areas, driveways, sidewalks and pedestrian areas on Lot 1 and Lot 4;

(e) Maintenance, repair and replacement of such appropriate parking area entrance, exit and directional signs, markers, and parking area, sidewalk and driveway lighting as will be reasonably required from time to time;

(f) Such painting and repainting as may be required to maintain parking areas, drives, emergency corridors and other vehicular areas in high quality condition;

(g) Removal of any debris or blockage from storm water sewer inlets;

(h) Repair, maintenance and replacement of storm and surface water sewer lines, detention basins, dry cell detention basins, and other storm and surface water control appurtenances and system components;



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(i) Repair, maintenance and replacement of Utility Facilities, except in those cases where the repair, maintenance or replacements of such Utility Facility is provided by the public authority or controlling utility company.

4.02. Failure to Properly Maintain. In the event that CRHS shall fail to properly maintain the On-Site Improvements, any Owner may send written notice of such failure to CRHS and the other Owners. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in CRHS's maintenance of the On-Site Improvements. Notwithstanding anything to the contrary in Section 5.02, CRHS shall have ten (10) days after receipt of the said notice (the "Cure Period") in which to correct the Deficiencies or in which to commence correction of the Deficiencies if the Deficiencies cannot be corrected within the Cure Period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that CRHS shall unreasonably fail or refuse to timely correct or begin to correct the Deficiencies, as the case may be, the Owner may, at its option, correct the Deficiencies. In the event that the Owner exercises its option to correct the Deficiencies, CRHS shall, immediately upon receipt from the Owner of an itemized invoice for the costs incurred by the Owner in correcting the Deficiencies, pay all costs to the Owner. Any properly invoiced amount not paid within thirty (30) days shall accrue interest at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. Notwithstanding the foregoing, in the event such cure is necessary for either the safety of persons or property, or is otherwise necessary to address an emergency situation in the applicable Owner's reasonable determination or to comply with the requirements of a first mortgage holder, the cure period set forth above shall not apply and such Owner may undertake such cure immediately provided that such Owner shall provide notice to CRHS and the other Owners as soon thereafter as reasonably practicable.

4.03. Maintenance of Easement Areas. With respect to each of the easements granted in Article II, except as otherwise specifically provided in this Declaration, each Owner shall be responsible for the cost of operation, maintenance and cleaning of the areas subject to such easements on such Owner's Lot.

4.04. Surface Water Drainage. CRHS, its successors or assigns, shall perform all required monitoring, maintenance and repairs with respect to any detention pond, drainage basin, storm and surface water sewer system, and dry cell detention basin located on Lot 1 and Lot 4, and all costs associated therewith shall be initially borne by CRHS, which costs shall be reimbursed to CRHS in accordance with Section 4.06.

4.05. Taxes and Insurance. All the real property taxes, assessments and insurance for Lot 1 and Lot 4 and on the On-Site Improvements required to be maintained by CRHS pursuant to Section 4.09 shall be initially paid for by CRHS and reimbursed to CRHS in accordance with Section 4.06. If CRHS shall fail to pay such real property taxes or assessments prior to delinquency or if CRHS shall fail to maintain such insurance, any Owner may send written notice of such failure to CRHS and the other Owners. Such notice shall contain a statement specifying the amount of any such delinquent real property taxes or assessments or the insurance CRHS has failed to maintain. Notwithstanding anything to the contrary in Section 5.02, CRHS shall have ten (10) days after receipt of said notice (the "Cure Period") in which to pay such

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delinquent real property taxes or assessments or obtain such insurance and notify the Owners thereof. If CRHS shall fail to pay any such delinquent real property taxes or assessments or obtain such insurance within the Cure Period, the Owner may, at its option, pay such delinquent real property taxes or assessments or obtain such insurance, and CRHS shall, immediately upon receipt from the Owner of an invoice for such real property taxes or assessments or insurance premiums and any other associated costs reasonably incurred and paid by the Owner, reimburse the owner for the amount paid by the Owner, together with interest thereon at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. The Owner shall have the right to offset any such amount owed by CRHS to the Owner against any ground rent or other sums owed by the Owner to CRHS. The Owner paying such delinquent real property taxes or assessments or obtaining such insurance shall continue to be responsible for paying its share thereof in accordance with Section 4.06 hereof.

4.06. Owners' Share of Maintenance Costs. No later than March 1<sup>st</sup> of each year during the term of this Declaration, CRHS shall provide to each Owner an annual accounting of the costs incurred by CRHS for the maintenance, repair and replacement of On-Site Improvements for the immediately prior year, including insurance and real property taxes and assessments (the "OSI Certified Costs"). Each Owner shall, within thirty (30) days of the date of the OSI Certified Costs accounting, pay to CRHS such Owner's Repair Percentage of the total OSI Certified Costs. In the event an Owner fails to pay CRHS within thirty (30) days, the balance owed to CRHS shall accrue interest at the lesser of two percent (2%) per annum over the Prime Rate, or the highest interest rate then allowable under Nebraska's applicable usury laws. The payment of such interest shall not excuse or cure any default by an Owner under this Declaration.

Notwithstanding anything to the contrary contained herein, any OSI Certified Cost that is specifically allocable to a Building or Buildings shall be allocated solely to the Owner or Owners of such Building or Buildings. By way of example only, and not as a limitation, any evening, weekend or holiday maintenance, snow removal, and emergency repairs that is necessary, in the sole discretion of CRHS, to allow the uninterrupted operation and access to any Building or Buildings twenty-four (24) hours a day, shall be allocated solely to such Building or Buildings (on a proportionate basis), and not to the remaining Building or Buildings.

Each Owner shall have the right to inspect, audit and copy CRHS's records pertaining to the OSI Certified Costs, provided such Owner shall provide written notice to CRHS of Owner's intent to inspect and audit the records no later than One Hundred and Twenty (120) days after notice of the OSI Certified Costs is sent to Owner. Failure of any Owner to so notify CRHS shall be deemed that Owner's approval of the OSI Certified Costs, and such Owner shall have no further right to inspect or audit the records for that year. Any overpayment discovered as the result of an audit shall be promptly refunded to the Owners. Any underpayment discovered as the result of an audit by one of the Owners within the 120 day period referenced above shall be promptly paid by the Owners to CRHS.

CRHS may, in its discretion, establish an estimated annual budget for the OSI Certified Costs ("Projected OSI Costs") which Projected OSI Costs shall be allocated among the Owners in accordance with each Owner's Repair Percentage. CRHS shall notify each Owner of such

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Owner's share of the Projected OSI Costs for the following year of the Lease (the "Projected Year") no later than December 1, of the immediately preceding calendar year. Each Owner shall pay an amount equal to 1/12<sup>th</sup> of such Owner's share of the Projected OSI Costs on or before the 1<sup>st</sup> day of each month, beginning on January 1 of the Projected Year. If, at the end of any Projected Year, the total amount actually paid by an Owner for such Projected Year exceeds the total amount of the OSI Certified Costs required to be paid by such Owner for that year, then Owner shall receive a credit equivalent to the excess which shall be applied against the next payments of Projected OSI Costs. CRHS shall refund to each Owner any Projected OSI Costs actually paid by such Owner in excess of such Owner's share of the OSI Certified Costs for the final Lease year of such Owner's ground lease within thirty (30) days of the expiration of the ground lease. If, at the end of any Projected Year the total amount of Projected OSI Costs actually paid by an Owner for such Projected Year is less than the total amount of OSI Certified Costs due from such Owner for the Projected Year, the Owner shall pay to CRHS the balance of the OSI Certified Costs due within thirty (30) days after receipt of notice of the OSI Certified Costs for such year. CRHS shall have the right to adjust the Projected OSI Costs annually.

4.07. Repair Contractors. All maintenance work and other obligations to be performed by CRHS pursuant to this Declaration may be performed by individuals or entities affiliated with CRHS, provided such services are comparable in cost for substantially the same quality of work and materials as would be provided by an independent third party provider.

4.08. Management Fee. No management fees shall be included in the OSI Certified Costs. Notwithstanding the foregoing, CRHS, or its appointed management provider, may charge an administrative fee for its services administering maintenance and repair contracts which administration fee shall equal five percent (5%) of the total amount for contracted maintenance and repair services. The administrative fee may include five percent (5%) of any costs paid to CRHS related personnel or entities providing maintenance and repair services as provided in Section 4.07 whether such services were provided pursuant to a contract or otherwise.

4.09. Insurance. CRHS shall at all times maintain a public liability insurance policy with contractual liability and personal injury coverage with a responsible insurance carrier covering liability for injuries to or death of any person or damage to or loss of any property on or about Lot 1 and Lot 4 in an amount at least equal to the minimum amount then commercially reasonable for public areas of similar medical facilities or campuses. The Owners and any lenders or other parties specified by any of the Owners will each be a named insured on such policy. All policies will contain an agreement of the insurer that it will not cancel the policy or reduce coverage except after 30 days' prior written notice to the named insureds. CRHS will deliver a copy of the replacement policy or certificate of coverage therefor at least 30 days prior to the expiration date of any such policy.

## **ARTICLE V** **Enforcement - Injunctive Relief**

5.01. Remedies. In the event of any violation by any party hereto of any of the terms, restrictions, covenants and conditions provided herein, any of the parties, or their respective

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successors or assigns, as the case may be, shall have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days' written notice of the violation will be given to all other parties and to the party guilty of such violation or threatened violation.

5.02. Notice. Except as specifically provided elsewhere in this Declaration, a party will not be in default under this Declaration unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

5.03. Breach Does Not Affect Declaration. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration, but this limitation shall not affect, in any manner, any other rights or remedies which the parties may have by reason of any breach of this Declaration.

**ARTICLE VI**  
**Restrictions on Development and Use**

6.01. Signs. No Owner or Occupant shall erect or install, or permit to be erected or installed, anywhere on the Medical Campus any sign except in accordance with the following:

(a) No free-standing sign shall be erected or installed anywhere on the Medical Campus except as may be approved in writing by CRHS.

(b) All exterior signage on any Building must be approved in advance by CRHS.

(c) Any Owner desiring to install signage shall first submit to CRHS a written request for signage approval, which request must include a complete copy of the final sign plans showing dimensions, color, lighting (if any), and proposed installation method. CRHS shall either approve or deny the request no later than twenty (20) days after receipt of the request. If CRHS fails to deny the request within twenty (20) days of receipt, then the request shall be deemed approved. The Owner shall be solely responsible for all costs of designing, fabricating and installing the approved sign, including all costs related to obtaining approval from the City of Bellevue.

6.02. Use Restriction. No portion of the Medical Campus shall be used or operated:

(a) In violation of applicable laws;

(b) In a dangerous or hazardous manner;

(c) As a nuisance, or as an obnoxious use by reason of unsightliness or excess emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation;

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provided, however, that nothing contained in this subsection shall limit or prohibit the erection of business communications satellite dishes on the roof of any building; or

(d) In a manner that would increase the number of parking spaces required pursuant to applicable laws or regulations beyond the number of parking spaces required as of the date that the Hospital and the MOB are substantially completed unless provision for additional parking is made pursuant to Section 2.01.8.

6.03. Building Restrictions. Each Building, structure or other improvement constructed on the Medical Campus shall be of first quality construction and architecturally designed so that the exterior elevation (including signs) and color will be architecturally and aesthetically compatible and harmonious with all other Buildings. No Building, structure or other improvement may be constructed nor the exterior of any existing Building changed in any material way without the prior written approval of CRHS, which approval shall not be unreasonably withheld, delayed or denied, as to the exterior design, color and elevations of the Building, structure or other improvement to be constructed or modified. Before any construction or modification which requires approval hereunder is commenced, written notice requesting such approval shall be sent to CRHS including sufficient information to enable CRHS to make a reasonable determination. CRHS must approve or disapprove the proposed construction or modification within thirty (30) days after receipt of the proposal. If CRHS fails to provide its written objections as required within the thirty (30) day period, the proposal shall be deemed to be approved. Buildings, structures and improvements shall at all times comply with all applicable laws, rules, regulations, codes, requirements, restrictions and covenants pertaining to the Medical Campus.

6.04. Restrictions on Divisions; Conveyances. Except as may be permitted in an Owner's Ground Lease, no portion of the Medical Campus shall be divided or conveyed except with the express prior written approval of CRHS. Any party obtaining an interest in any portion of the Medical Campus shall execute a written acceptance of this Declaration, which acceptance shall provide that such party shall be and remain subject to all easements, covenants, restrictions and other provisions set forth in this Declaration. The above requirement shall not apply to any mortgage or deed of trust entered into by an Owner in connection with its interest in its Building or Lot or any space lease entered into by an Owner for space in its Building provided that such mortgage, deed of trust or space lease is entered into in compliance with the terms and conditions of the Ground Lease between CRHS and such Owner, nor shall the above requirement apply to any conveyance by foreclosure sale under or pursuant to a mortgage or deed of trust entered into by an Owner in compliance with the terms of its Ground Lease with CRHS, or to a deed in lieu of foreclosure of such a mortgage or deed of trust.

## ARTICLE VII Mutual Indemnification

7.01. Indemnification. Each party, with respect to its Lot and Building on the Medical Campus, shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other party to this Declaration harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees)

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arising out of or in any way related to the failure by such party to maintain its Lot or Building in a safe and proper condition. Each party shall give each other party prompt and timely notice of any claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

**ARTICLE VIII**  
**Condemnation**

8.01. Condemnation Awards. If all or any part of Lot 1, Lot 4 or the On-Site Improvements is sold to or taken by any duly constituted authority for a public or quasi-public use under its power of condemnation or threat thereof (whether obtained by agreement or by judgment or court order) shall be payable only to CRHS and no claim thereto shall be made by any Owner; provided, however, that any Owner may file collateral claims with the condemning authority, over and above the value of the CRHS' interest in the land and On-Site Improvements so taken, to the extent of any damage suffered by the Building or Lot of such Owner resulting from the severance of the property so condemned or taken. If any On-Site Improvements are condemned or taken, then CRHS shall repair and reconstruct such On-Site Improvements to the extent necessary to comply with the requirements of the City of Bellevue, and such other governmental authorities as may have jurisdiction over Lot 1 or Lot 4. CRHS shall apply the proceeds of any condemnation award received by CRHS toward the costs of repair or reconstruction of the On-Site Improvements. Any amounts of an award payable to CRHS not needed for the repair and replacement required by this Section 8.01 shall be retained and be the sole property of CRHS.

**ARTICLE IX**  
**Environmental Matters**

9.01. Duties of Users. Except as provided in Section 9.03, no Owner, Occupant or Permittee shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material upon, in, over or across the Medical Campus or otherwise permit the presence of any Hazardous Material to be on the Medical Campus. Any use, handling or storage permitted under Section 9.03 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof.

Each party with respect to its Lot and Building shall immediately notify the other Owners and CRHS by providing a copy of the following with respect to such Lot or Building: (1) any notice of violation or potential or alleged violation of any laws, ordinances or regulations which the party shall have received from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to its Lot or Building; (iii) all claims made or threatened by any third party relating to any Hazardous Materials; and (iv) any release of Hazardous Materials on or about the Medical Campus which such party knows of or reasonably believes may have occurred.

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9.02. Specific Substances. Neither CRHS, nor any Owner, nor any Occupant(s), nor any Permittee shall introduce, or permit any other person or entity to introduce, any friable asbestos, radioactive material, urea formaldehyde foam insulation or devices containing polychlorinated biphenyls (PCBs) into any portion of the Medical Campus; except, that, radioactive materials used solely for medical purposes, including but not limited to radiology, medical imaging, or radiation treatments, shall be permitted provided such radioactive material is stored, handled and used in accordance with applicable laws, rules and regulations.

9.03. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 9.01 to the contrary, CRHS, or any Owner, or any other Occupant or Permittee may use products containing Hazardous Materials and equipment fueled by or containing Hazardous Materials in, on or about Medical Campus to the extent such products and/or equipment are incident to the normal operations of CRHS or the respective Owner or Occupant. Examples of such products and equipment include, but are not limited to; gasoline and petroleum products used to fuel and/or lubricate vehicles, fertilizers and other lawn care products, and pest control materials. Owners or Occupants may use products such as photocopy equipment, ordinary office supplies, photographic chemicals and supplies, building materials, maintenance supplies, cleaning agents and solvents in quantities commonly stored, found or maintained for use in medical offices or out-patient hospital facilities. In addition, the use, storage, handling and disposal of medical supplies, blood, tissue, bodily fluids and other bio-hazardous materials by an Occupant is specifically permitted, provided such Occupant strictly complies with all applicable laws, rules and regulations pertaining to such use, storage, handling or disposal ("Bio-Hazard Law").

9.04 Cleanup of Hazardous Materials. In the event Hazardous Materials are released, handled or disposed of in violation of any Environmental Law or Bio-Hazard Law, and such violation occurred as a direct or indirect result of an Owner's or an Occupant's use, handling, storage, or transportation of such Hazardous Material, as between CRHS and the Owners, such Owner or Occupant engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and all claims, costs, expenses (including reasonable attorney and consultant fees) and damages, including consequential damages, suffered by CRHS, the other Owners and Occupants.

## ARTICLE X Duration and Termination

10.01. Duration. The easements, covenants, restrictions and other provisions of this Declaration shall be of perpetual duration and shall run with the land.

10.02. Amendment. This Declaration may not be modified, terminated, or rescinded except by written instrument executed by CRHS and a majority of the Owners as of the date of such instrument. All amendments shall be effective when recorded in the Office of the Register of Deeds of Sarpy County. Any amendments or modifications of this Declaration shall be superior to any and all liens, to the same extent as this Declaration, and to the same extent as if such amendment or modification had been executed and recorded concurrently herewith.

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**ARTICLE XI**  
**Not a Public Dedication**

11.01. Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Medical Campus to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

**ARTICLE XII**  
**Reasonableness of Consent**

12.01. Unless otherwise provided herein, whenever the agreement or approval of CRHS or an Owner is required hereunder, such party shall not unreasonably withhold or delay such agreement or approval.

12.02 Notwithstanding anything to the contrary in this Declaration, no consent, agreement or approval shall ever be required of any Occupant or other Permittee other than CRHS and the Owners.

**ARTICLE XIII**  
**Miscellaneous**

13.01. Recording. A fully executed counterpart of this Declaration shall be recorded in the Office of the Register of Deeds of Sarpy County.

13.02. Benefit. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

13.03. Waiver. No waiver of any breach of any of the easements, covenants, restrictions or agreements herein contained shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other easement, covenant, restriction or agreement.

13.04. Severability. If any term or provision of this Declaration shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

13.05. Applicable Law. This Declaration shall be construed and enforced in accordance with the laws of the State of Nebraska.

13.06. Counterparts. This Declaration may be executed in several counterparts, all of which together shall be deemed an original single document.



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13.07. Notice. All notices and demands to be given by one party to another party under this Declaration shall be given in writing, mailed or delivered, to CRHS or an Owner, at the addresses set forth below or at such other address as that party may hereafter designate:

If to CRHS:                    Clarkson Regional Health Services, Inc.  
William S. Dinsmoor, CMA  
Chief Financial Officer  
The Nebraska Medical Center  
987400 Nebraska Medical Center  
Omaha, Nebraska 68198-7400

With a copy to:            Howard Fredrick Hahn, Esq.  
Blackwell Sanders Peper Martin, LLP  
1620 Dodge Street  
Suite 2100  
Omaha, Nebraska 68102

If to Bellevue Properties:    Mr. Richard Wicka  
Bellevue HealthCare Properties, LLC  
c/o Frauenshuh HealthCare Real Estate Solutions  
Suite 100  
7101 West 78<sup>th</sup> Street  
Minneapolis, MN 55439

With a copy to:            Health Care REIT, Inc.  
One SeaGate, Suite 1500  
P.O. Box 1475  
Toledo, Ohio 43603-1475  
Attn: General Counsel

And a copy to:            Jeffrey C. Urban, Esq.  
Robert O. Straughn, Esq.  
McGrann Shea Anderson  
Carnival Straughn & Lamb, Chartered  
800 Nicollet Mall  
Suite 2600  
Minneapolis, MN 55402

If to Bellevue Physicians:    Mr. Richard Wicka  
Bellevue Physicians, LLC  
c/o Frauenshuh HealthCare Real Estate Solutions  
Suite 100  
7101 West 78<sup>th</sup> Street  
Minneapolis, MN 55439

With a copy to:

Jeffrey C. Urban, Esq.  
Robert O. Straughn, Esq.  
McGrann Shea Anderson  
Carnival Straughn & Lamb, Chartered  
800 Nicollet Mall  
Suite 2600  
Minneapolis, MN 55402

(b) Notices shall be delivered by United States certified or registered mail, postage prepaid, return receipt requested, or by hand delivery, or by a nationally recognized overnight courier service which provides evidence of delivery. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two business days after posting in the United States mail, or one business day after delivery to a nationally recognized courier for overnight delivery.

(c) Copies of any notices to be sent pursuant to this Section 13.07 by CRHS shall be sent to the mortgagee or assignee of the Owner receiving such notice in the manner and with the effect above provided at the address appearing on the mortgage or assignment thereof, if any (copies of which shall be furnished to CRHS), and if said address does not so appear then to such address as CRHS may ascertain by reasonable inquiry, provided, however, that the address for notices to any such mortgagee or assignee may be changed as provided in Section 13.08(e) below.

(d) Notice sent by certified mail which is refused shall be effective upon attempted delivery.

(e) All parties shall give the other parties reasonably prompt notice of any change in address, and until such notice, any party may rely on the most recent address furnished.

13.08. Entire Agreement. This Declaration and the Exhibits hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations, understandings or agreements are superseded. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Declaration and shall not negate or invalidate any provision of this Declaration.

13.09 Notwithstanding anything to the contrary herein, the Owners shall not be responsible for any costs attributable to the period of time prior to the date that the Building on such Owner's Lot is substantially complete, and CRHS shall be liable for such Owner's portion of such costs as if CRHS were the Owner of such Building.

R

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the day and year first above written.

**CLARKSON REGIONAL HEALTH SERVICES, INC.**  
A Nebraska non-profit corporation

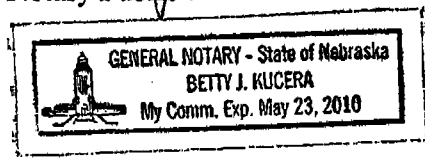
By: W.S. Dinsmoor  
Its: CEO  
Attest: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

On the 30<sup>th</sup> day of July, 2008, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came William S. Dinsmoor, as Chief Financial Officer of CLARKSON REGIONAL HEALTH SERVICES, INC., to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the corporation.

WITNESS my hand and notarial seal on the day and year last written above.

Betty J. Kucera  
Notary Public





T

**BELLEVUE PHYSICIANS, LLC,**  
a Delaware limited liability company

By: DRF BELLEVUE LLC,  
a Minnesota limited liability company,  
its Managing Member

By: [Signature]

Its: Manager

Date of Execution: 7-31-08

STATE OF Minnesota )  
  ) ss  
COUNTY OF Hennepin )

On the 31<sup>st</sup> day of July, 2008, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came Richard V. Wicks, Manager of DRF Bellevue LLC, the Managing Member of Bellevue Physicians, LLC, to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the company.

WITNESS my hand and notarial seal on the day and year last written above.

[Signature: Patricia M. Drewelow]  
Notary Public



4

**EXHIBIT A**

**DESCRIPTION OF MEDICAL CAMPUS**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 1, 2, 3 and 4, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

V

**EXHIBIT B**

**DESCRIPTION OF LOT 2**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 2, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

W

EXHIBIT C

DESCRIPTION OF LOT 3

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 3, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.



X

**EXHIBIT D**

**DESCRIPTION OF LOT 1**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 1, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

2008-22421 Y

**EXHIBIT E**

**DESCRIPTION OF LOT 4**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 4, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

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NOTIFY a D.E. ZM  
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INSTRUMENT  
2009-07731

2009 MAR 23 AM 273

*Slowly*  
REGISTER

## FIRST AMENDMENT TO DECLARATION OF CROSS-EASEMENTS, COVENANTS AND RESTRICTIONS

*RJR*  
ⓔ  
Upon recording please return to:  
First American Title Insurance Co.  
1900 Midwest Plaza  
801 Nicollet Mall  
Minneapolis, MN 55402  
NCS-386887-MPLS (KAM)

A

**FIRST AMENDMENT TO DECLARATION OF CROSS-EASEMENTS,  
COVENANTS AND RESTRICTIONS**

**THIS FIRST AMENDMENT TO DECLARATION OF CROSS-EASEMENTS,  
COVENANTS AND RESTRICTIONS** (the "Amendment") is made and entered into as of the 1st day of March, 2009 by and among CLARKSON REGIONAL HEALTH SERVICES, INC., a Nebraska non-profit corporation, ("CRHS"), BELLEVUE HEALTHCARE PROPERTIES, LLC, a Delaware limited liability company ("**Bellevue Properties**"), and BELLEVUE PHYSICIANS, LLC, a Delaware limited liability company ("**Bellevue Physicians**").

**RECITALS:**

CRHS is the owner of a certain real estate located in Sarpy County, Nebraska, described on Exhibit "A" attached hereto (the "Medical Campus");

Bellevue Properties is the "Owner" of a leasehold estate in that portion of the Medical Campus hereafter referred to as "Lot 2" described on Exhibit "B" attached hereto pursuant to the terms of the Hospital Ground Lease upon which Bellevue Properties will develop and own the Hospital pursuant to the terms of the Hospital Development Agreement;

Bellevue Physicians is the "Owner" of a leasehold estate in that portion of the Medical Campus hereafter referred to as "Lot 3" described on Exhibit "C" attached hereto pursuant to the terms of the MOB Ground Lease upon which Bellevue Physicians will develop and own the MOB pursuant to the terms of the MOB Development Agreement;

The Medical Campus, Lot 2 and Lot 3 are subject to the Declaration of Cross Easements, Covenants and Restrictions dated July 31, 2008 and recorded August 5, 2008 as Instrument No. 2008-22421, records, Sarpy County, Nebraska (the "Declaration").

Pursuant to Section 10.02 of the Declaration, the Declaration may be amended only by a written instrument executed by CRHS and a majority of the Owners as of the date of such instrument.

CRHS, Bellevue Properties and Bellevue Physicians desire to amend the Declaration to provide for certain additional easements as set forth herein.

For purposes of this Amendment, capitalized terms used and not defined herein shall have the meanings ascribed to them in the Declaration.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, it is agreed as follows:

1. Article II of the Declaration is hereby amended to include the following Section 2.03 in its entirety:

B

Section 2.03. Grant of Easements by Owners. Each Owner hereby grants to the other, as appropriate, the following easements for use by the Owners, their Occupants and their respective Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the parties:

2.03.1. Easement to Attach. A perpetual easement to have the MOB abut on, attach to, and open onto the Hospital and a perpetual easement to have the Hospital abut on, attach to, and open onto the MOB, pursuant to the plans and specifications reviewed and approved by each Owner.

2.03.2 Easement to Use Common Areas. A perpetual and non-exclusive easement on, over, across and through the public lobbies, hallways, corridors, stairwells, and elevators from time to time existing in the Hospital for the purpose of pedestrian ingress and egress by Occupants and Permittees between the Hospital and the MOB and a perpetual and non-exclusive easement on, over, across and through the public lobbies, hallways, corridors, stairwells, and elevators from time to time existing in the MOB for the purpose of pedestrian ingress and egress by the Occupants and Permittees between the MOB and the Hospital. Each Owner shall have the right, for security purposes, to close off access from, respectively, the Hospital and the MOB through the public lobbies and corridors located therein at such times as the Owners shall mutually agree in writing. Each Owner shall be responsible for the maintenance, repair and replacement of the public lobbies, hallways, corridors, stairwells and elevators on its Lot and shall cause such areas at all times to comply with all applicable laws, rules, regulations, codes, requirements, restrictions and covenants pertaining to the Medical Campus or improvements located thereon. In addition, each Owner shall have the right to promulgate, upon advance written notice, reasonable rules and regulations regarding access to and from their respective Buildings, including without limitation, security procedures.

2.03.3 Easement to Use Service Areas. A non-exclusive appurtenant easement (i) to use the "Loading Dock Area" and the "Compactor Area" as shown on the plans and specifications for the Hospital, for their intended purpose, subject to such reasonable rules and regulations as the Owner of the Hospital may enact from time to time, and (ii) to and from the MOB to the Loading Dock Area or the Compactor Area over, upon, through and across those portions of the Hospital as the Owner of the Hospital may designate from time to time, for the purpose of providing access to the loading dock(s) and trash compactor. In connection with such easements, the Owner of the Hospital shall maintain a trash compactor ("Compactor") that may be utilized by the Owner of the MOB and shall contract with a trash collection company ("Contractor") for the removal of the trash from the Compactor, which trash removal shall occur no less frequently than twice a week (the "Trash Collection Service"). The Owner of the Hospital shall have the right to charge the Owner of the MOB an annual service charge for the provision of the Trash Collection Service (the "Annual Service Charge") which charge shall be determined based on each party's proportionate use of such Trash Collection

C

Service. The Annual Service Charge shall be payable by the Owner of the MOB in equal monthly installments on the first day of each calendar month. The Owner of the Hospital may increase the Annual Service Charge from time to time to reflect increases in the costs, expenses and charges incurred by the Owner of the Hospital in connection with the Trash Collection Services, including, without limitation, trash collection fees and trash compactor/dumpster rental fees charged by the Contractor. The Owner of the Hospital shall give written notice to the Owner of the MOB of any such increase in the Annual Service Charge, which notice shall include a reasonably detailed explanation as to said increase.

2.03.4 Mutual Indemnity. The Owner of the MOB and the Owner of the Hospital shall each indemnify and save the other party and their respective agents, contractors and employees, harmless from and against all penalties, claims, costs, demands, damages, losses, expenses (including reasonable attorneys' fees), suits or liabilities of whatsoever nature brought by third parties and that arise from the such party's or its agent's, contractor's or employee's use and occupancy of the easements granted in this Section 2.03.

2. Responsible and Benefited Parties: This Amendment is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

3. Ratification and Confirmation of Original Declaration. Except as set out in this Amendment, the Declaration is hereby ratified and confirmed and shall continue in full force and effect.

4. Counterparts. This Amendment may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.



E

**BELLEVUE HEALTHCARE PROPERTIES,  
LLC, a Delaware limited liability company**

By: HEALTH CARE REIT, INC.,  
a Delaware corporation  
its Managing Member

By: Erin C. Ibele  
Erin C. Ibele

Its: Senior Vice President -  
Administration and Corporate Secretary

Date of Execution: \_\_\_\_\_

STATE OF Ohio )  
COUNTY OF Lucas ) ss

On the 6 day of March, 2009, before me, the undersigned a Notary Public,  
duly commissioned and qualified for said County, personally came Erin C. Ibele  
Senior Vice President of Health Care REIT, Inc., the Managing Member of Bellevue  
Administration and Corporate Secretary HealthCare Properties, LLC, to me known to be the identical person whose name is subscribed to  
the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and  
deed, and the voluntary act and deed of the company.

WITNESS my hand and notarial seal on the day and year last written above.

Rita Rogge  
Notary Public



RITA J. ROGGE  
Notary Public, State of Ohio  
My Commission Expires 08-26-2010





G

EXHIBIT A

DESCRIPTION OF MEDICAL CAMPUS

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 1, 2, 3 and 4, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

H

**EXHIBIT B**

**DESCRIPTION OF LOT 2**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 2, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

2009-07731 I

EXHIBIT C

DESCRIPTION OF LOT 3

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 3, Clarkson Medical Campus Subdivision, a Subdivision located in SE 1/4 of Section 33; and also the SW 1/4 of Section 34, all located in Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

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SUBMITTED FIRST AMERICAN NCS MINNEAP

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

2010-26588

2010 Oct 01 09:34:36 AM

*Sheryl J. Rowland*

REGISTER OF DEEDS



**AMENDED AND RESTATED  
DECLARATION OF CROSS-EASEMENTS,  
COVENANTS AND RESTRICTIONS**

Upon recording please return to:  
First American Title Insurance Co.  
1900 Midwest Plaza  
801 Nicollet Mall  
Minneapolis, MN 55402  
NCS-452108-MPLS (LMC/kam)

**AMENDED AND RESTATED  
DECLARATION OF CROSS-EASEMENTS,  
COVENANTS AND RESTRICTIONS**

**THIS AMENDED AND RESTATED DECLARATION OF CROSS-EASEMENTS, COVENANTS AND RESTRICTIONS** (this **"Declaration"**) is made as of the 30th day of September, 2010, by and between CLARKSON REGIONAL HEALTH SERVICES, INC., a Nebraska non-profit corporation, (**"CRHS"**), THE NEBRASKA MEDICAL CENTER, a Nebraska non-profit corporation, (**"TNMC"**), BELLEVUE HEALTHCARE PROPERTIES, LLC, a Delaware limited liability company (**"Bellevue Properties"**), and BELLEVUE PHYSICIANS, LLC, a Delaware limited liability company (**"Bellevue Physicians"**).

RECITALS

CRHS, Bellevue Properties and Bellevue Physicians previously executed that certain Declaration of Cross-Easements, Covenants and Restrictions dated July 31, 2008 and recorded August 5, 2008 as Instrument No. 2008-22421 in Sarpy County, Nebraska, as amended by that certain Declaration of Cross-Easements, Covenants and Restrictions dated March 1, 2009 and recorded March 23, 2009 as Instrument No. 2009-07731 in Sarpy County, Nebraska (the **"Original Declaration"**);

Section 10.02 of the Original Declaration provides that the Original Declaration may not be modified except by written instrument executed by CRHS and a majority of the Owners (as defined in the Original Declaration) as of the date of execution of such a modification;

The parties to the Original Declaration unanimously desire to include an additional party to this Declaration and to modify the Original Declaration by amending and restating its terms and provisions in their entirety as set forth in this Declaration, and by executing this Declaration hereby evidence their individual and collective intention and consent to such inclusion and modification;

Subsequent to the execution of the Original Declaration, Bellevue Properties made the determination to build out the fourth floor of its hospital building located on Lot 2 (hereinafter defined), and said build out required additional parking stalls be added to the then existing medical campus;

In order to meet the above mentioned need for additional parking, the parties to the Original Declaration determined it most advantageous to incorporate an additional lot owned by TNMC within the existing medical campus;

TNMC is the owner of certain land adjacent to the existing medical campus, described more particularly on Exhibit "A" attached hereto and by this reference incorporated herein (**"Lot 5"**) and desires to incorporate Lot 5 into the existing medical campus, as well as become a party to, and bound by, the applicable terms and provisions of this Declaration;

CRHS and TNMC are the owners of a certain real estate located in Sarpy County, Nebraska described on Exhibit "B" attached hereto and by this reference incorporated herein (the "Medical Campus");

CRHS and TNMC have developed a business plan wherein the Medical Campus shall be developed to include medical office space, and a hospital that provides medical services;

CRHS entered into a ground lease ("Hospital Ground Lease") and a development agreement ("Hospital Development Agreement") with Bellevue Properties, wherein Bellevue Properties will develop and own a hospital on a portion of the Medical Campus hereafter referred to as "Lot 2", and described on Exhibit "C" attached hereto and by this reference incorporated herein ("Hospital") and has entered into a twenty-five (25) year lease with Bellevue Medical Center, LLC for the entire Hospital (the "Bellevue Lease");

TNMC entered into a ground lease (a "Parking Lot Ground Lease") with Bellevue Properties, wherein Bellevue Properties will initially develop and own a parking lot to serve the Medical Campus on a certain portion of Lot 5, with the Parking Lot Ground Lease to run coterminous with the Hospital Ground Lease;

CRHS entered into a ground lease ("MOB Ground Lease") and a development agreement ("MOB Development Agreement") with Bellevue Physicians, wherein Bellevue Physicians will develop and own a medical office space ("MOB") on the land immediately adjacent to the Hospital and described on Exhibit "D" and hereafter referred to as "Lot 3";

It is necessary for all buildings, structures and improvements to meet City of Bellevue regulations controlling parking, access, drainage, signage and the overall development and use of the land for the Medical Campus; and

The parties agree that it is in the best interest of each party to provide for design, development, construction, usage and maintenance of all parking, access, drainage, sidewalks, utilities and other Medical Campus common area improvements that will or may be utilized by all parties, (the "On-Site Improvements") below, in, over, upon, across and through the common areas of the Medical Campus described on Exhibit "E" and hereafter referred to as "Lot 1" and below, in, over, upon, across and through the common areas of the Medical Campus described on Exhibit "F" and hereafter referred to as "Lot 4".

NOW, THEREFORE, in consideration of One Dollar (\$1.00), the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

#### **ARTICLE I** **Definitions**

In addition to terms defined elsewhere in this Declaration, as used herein the following terms shall have the meanings ascribed to such terms as set forth below:

1.01. Building or Buildings. “**Building**” or “**Buildings**” shall mean individually the MOB, the Hospital or a Lot 5 Building only if and when such a building is in existence, and collectively two or more of the foregoing.

1.02. Building Owner or Building Owners. “**Building Owner**” or “**Building Owners**” shall mean individually the owners of the Buildings located on Lot 2, Lot 3 or Lot 5 only if and when a Lot 5 Building is then in existence, including their successors, heirs and assigns, and collectively two or more of the foregoing.

1.03. Environmental Laws. “**Environmental Laws**” shall mean all present and future federal, state, or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including the following federal laws: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any amendments enacted or regulations adopted, published and/or promulgated pursuant thereto.

1.04. Floor Area. “**Floor Area**” shall mean the actual number of gross square feet of floor space of all floors of a Building measured to the center lines of the Building’s exterior walls, and including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms; but excluding loading docks and platforms, transformer vaults, utility or mechanical penthouses or utility enclosures, and patio or outside entry areas which are not heated or air conditioned.

1.05. Hazardous Material. “**Hazardous Material**” shall mean materials and substances defined as “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” including asbestos, polychlorinated biphenyls, petroleum (or Petroleum products), hydrocarbonic substances and constituents of any of the foregoing, or other similar designations under any Environmental Laws, and further, any substance or material which because of toxicity, corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains, presents a demonstrated threat to biologic processes when discharged into the environment. Hazardous Material shall also include blood, tissue, bodily fluids, and other materials generally termed and recognized as bio-hazardous materials by federal and state health and safety agencies.

1.06. Lot 5 Building. “**Lot 5 Building**” shall mean any future building placed or constructed, and any and all improvements related thereto, on Lot 5 during the term of this Declaration. The term “Lot 5 Building” shall be given effect for purposes of this Declaration only if and when construction of such a building on Lot 5 is substantially completed.

1.07. Lot 5 Parking Area. “**Lot 5 Parking Area**” shall mean the drives, parking surfaces, curbs, light poles, water service, storm and waste water sewers, landscaping, retaining walls, roads, traffic signalization, sidewalks, gas, electrical, telephone, and other utilities and any and all other improvements or fixtures made or placed on Lot 5 for the purposes of constructing and maintaining a dedicated parking area or any other use permitted under the Parking Lot Ground Lease.



1.08. Occupant. "Occupant" shall mean and include each of the parties hereto, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Medical Campus under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.09. Owners. "Owners" shall mean, collectively, the Building Owners and the Parking Area Owner.

1.10. Parking Area Owner. "Parking Area Owner" shall mean the owner of the Lot 5 Parking Area including their successors, heirs and assigns.

1.11. Permittees. "Permittees" shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.12. Prime Rate. "Prime Rate" shall mean the prime rate of interest from time to time published in the Money Rates Section of *The Wall Street Journal*. If *The Wall Street Journal* or any successor to it ceases to publish the prime rate, CRHS will designate a comparable interest rate to serve as the Prime Rate.

1.13. Repair Percentage. "Repair Percentage" shall mean the percentage determined by the Floor Area of a Building benefited by the costs of the repair or maintenance work, by the total Floor Area of all the Buildings so benefited, subject to the provisions of Section 4.06 of this Declaration.

## ARTICLE II Easements and Parking

2.01. Grant of Easements. CRHS and TNMC, with respect to their respective properties, hereby grant to the Owners, as appropriate, the following easements for use by the Owners, their Occupants and their respective Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the parties:

2.01.1. Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic upon, over and across Lot 1, Lot 4 and Lot 5 limited, however, to those portions of each Lot which are improved from time to time for pedestrian walkways, passage or use.

2.01.2. Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon and across Lot 1 and Lot 5; limited, however, to those portions of the Lot 1 and Lot 5 which are improved from time to time for vehicular ingress, egress and passage.

2.01.3. Utility Easements.

(a) Nonexclusive easements over, upon and across Lot 1, Lot 4 and Lot 5 for the installation, use, testing, connection to, 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 sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Lots; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "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 the Medical Campus, On-Site Improvements, Buildings or the Lot 5 Parking Area.

(b) CRHS and TNMC will operate and maintain all Utility Facilities located within the boundaries of such party's Lot in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities). Any expense for operation or maintenance of the Utility Facilities located on Lot 1 or Lot 4 will be initially paid for by CRHS and such costs shall be allocated to the Lot or Lots which are serviced by such Utility Facilities in accordance with the Repair Percentage of each as more fully discussed in Article IV below.

(c) CRHS, will have the right, at any time, and from time to time, to relocate any Utility Facilities then located on Lot 1 or Lot 4 on the conditions that: (i) except in the case of an emergency, such right of relocation will be exercisable only after thirty (30) days' prior written notice has been given to all Owners using the Utility Facilities to be relocated and all such Owners have consented to such relocation, such approval not to be unreasonably withheld; (ii) other than in an emergency situation, such right of relocation of any Utility Facilities shall not be located within twenty-five (25) feet of the entryway to any Building; (iii) such relocation will not unreasonably interrupt any utility service to any Building or the Lot 5 Parking Area; and (iv) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated. Provided the costs of such relocation are reasonably required for the benefit of one or more Buildings or the Lot 5 Parking Area, the cost of such relocation shall be initially paid for by CRHS and allocated to the Buildings or the Lot 5 Parking Area in accordance with the Repair Percentage of each as more fully discussed in Article IV below.

(d) TNMC will have the right, at any time, and from time to time, to relocate any Utility Facilities then located on Lot 5 on the conditions that: (i) except in the case of an emergency, such right of relocation will be exercisable only after thirty (30) days' prior written notice has been given to all Owners using the Utility Facilities to be relocated and all such Owners have consented to such relocation, such approval not to be unreasonably withheld; (ii) other than in an emergency situation, such right of relocation of any Utility Facilities shall not be located within twenty-five (25) feet of the entryway to any Building; (iii) such relocation will not unreasonably interrupt any utility service to any Building; and (iv) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated. Provided the costs of such

relocation are reasonably required for the benefit of one or more Buildings or the Lot 5 Parking Area, the cost of such relocation shall be initially paid for by TNMC and allocated to the Buildings or the Lot 5 Parking Area in accordance with the Repair Percentage of each as more fully discussed in Articles IV and V below.

2.01.4. Construction Easements. Nonexclusive temporary easements on Lot 1, Lot 4, and Lot 5 as needed for the purpose of constructing, renovating, repairing or remodeling the Buildings, the Lot 5 Parking Area and the parking areas and roadways or other improvements of Lot 1, Lot 4 and Lot 5, each to be constructed by such Owners pursuant to separate agreement, including grading, balancing and compaction of soils and other site work materials, reconstruction, storage of supplies and materials, installation, replacement, modification, care and maintenance, provided such use of Lot 1, Lot 4 and Lot 5 is reasonably necessary, and all work will be diligently prosecuted in accordance with sound construction practices and will not unreasonably interfere with the use of Lot 1, Lot 4, Lot 5 or the On-Site Improvements by any of the other Owners or Occupants. Any Owners taking advantage of the construction easement granted herein shall pay all costs associated therewith, including without limitation restoration of the utilized portion of Lot 1, Lot 4 or Lot 5 to the condition in which it existed immediately prior to such exercise, and shall indemnify and hold CRHS or TNMC, as applicable, and the remaining Owners harmless from all loss, cost and expense in connection with the use of such easement.

2.01.5. Encroachment Easements. An easement shall exist for the benefit of all Owners so that in the event any Building or the Lot 5 Parking Area, by reason of the construction or reconstruction of such Building or the Lot 5 Parking Area from the settlement or shifting of such Building or the Lot 5 Parking Area encroaches upon any adjoining Lot or Lots, such Building or the Lot 5 Parking Area encroachments shall not be deemed a trespass upon the adjoining Lot or Lots, but shall instead be permitted easement use under the terms of this Section 2.01.5. This Section 2.01.5 shall not excuse any of the Owners whose Building or Lot 5 Parking Area encroaches from exercising all due diligence in the construction or reconstruction of such Building or Lot 5 Parking Area within its Lot, nor shall this Section 2.01.5 be deemed to permit a substantial encroachment upon any adjoining Lot or Lots.

2.01.6. Self-Help Easements. Nonexclusive rights of entry and easements over, across and under the Lots for all purposes reasonably necessary to enable any of the Owners to perform any of the provisions of this Declaration or to maintain such Owners' Building or Lot 5 Parking Area.

2.01.7. Surface Water Drainage. Non-exclusive easements over, across and under the Lots for the flow of a reasonable volume of surface water to the nearest storm sewer or surface water inlet, drainage catch basins, dry cell detention basins, or waterway; provided, however, that (i) the easement for surface water drainage shall be consistent with an overall surface water drainage plan for the Medical Campus; and (ii) following the initial construction of the MOB, the Hospital, the Lot 5 Parking Area, any Lot 5 Building and the On-Site Improvements, none of the Owners shall alter the

flow of surface water onto the Lot in a manner that would materially increase the volume, or materially decrease the purity or quality, of surface water flowing onto any of the Lots.

2.01.8. Parking Easements. Non-exclusive easements over, across and on Lot 1 and Lot 5 for use as a parking lot serving the Buildings, including, but not limited to, the Owners of the MOB and the Hospital. The foregoing easement is limited as follows: (i) the portion of this easement granted to Lot 5 in this Section 2.01.8 shall terminate if and when the construction of a Lot 5 Building commences; and (ii) the ratio of parking spaces to be used by the MOB shall be five (5) spaces per one thousand rentable square feet in the MOB, and the ratio for the Hospital shall be four and one-half (4.5) spaces per hospital bed in the Hospital ("**Allocated Ratio**"). The foregoing ratios do not include any spaces located within the Hospital or the MOB.

In no event shall the Building Owner of the Hospital or the MOB exceed its Allocated Ratio unless such Building Owner has constructed the additional parking spaces and lot structure necessary to accommodate the additional use. Notwithstanding the above Allocated Ratio, in the event the Building Owner of the Hospital or the MOB is permitted to change the use of its Building in accordance with the terms of that Building Owner's Ground Lease or Development Agreement, or the City of Bellevue Ordinance or require a greater number of parking spaces per one thousand gross Building square feet, then the Allocated Ratio of such Building Owner shall be revised as required so long as the available spaces for any Building are not reduced below the number required by the first paragraph of this Section 2.01.8, and provided further that the design of such additional parking shall be subject to prior review and approval by CRHS, which approval shall not be unreasonably withheld or delayed. If CRHS intends to reconfigure, reduce or create additional parking, it shall first give notice to the Owners. CRHS agrees to cooperate with the Building Owner of the Hospital or the MOB to obtain any permits or authorizations required for the construction of the additional parking and to permit the Building Owner of the Hospital and the MOB to construct the additional parking or parking structure on Lot 1. CRHS shall have the right to require the Building Owner of the Hospital or the MOB to provide a bond or other security to guaranty completion of the construction and restoration of any landscaping or other portion of Lot 1 damaged by such construction. All costs for the design, construction, and approval of the additional parking shall be the sole responsibility of that Building Owner. In addition, such Building Owner shall reimburse or pay on behalf of CRHS any and all costs incurred by CRHS. Such costs may include, but are not limited to, legal fees and administrative costs incurred for the review, revision, approval or execution of any permits, authorizations, applications, agreements or other documentation pertaining to the additional parking. Upon completion of the additional parking, CRHS shall assume responsibility for the maintenance and repair of the parking, pursuant to Article IV of this Declaration.

2.02. Unimpeded Access. No barricade or other divider will be constructed between the Buildings and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic throughout the Medical Campus in the areas designated for such purposes; provided, however, that the Owners shall have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2.03. Grant of Easements by Owners. Each Owner hereby grants to the other, as appropriate, the following easements for use by the Owners, their Occupants and their respective Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the parties:

2.03.1. Easement to Attach. A perpetual easement to have the MOB abut on, attach to, and open onto the Hospital and a perpetual easement to have the Hospital abut on, attach to, and open onto the MOB, pursuant to the plans and specifications reviewed and approved by each Owner.

2.03.2 Easement to Use Common Areas. A perpetual and non-exclusive easement on, over, across and through the public lobbies, hallways, corridors, stairwells, and elevators from time to time existing in the Hospital for the purpose of pedestrian ingress and egress by Occupants and Permittees between the Hospital and the MOB and a perpetual and non-exclusive easement on, over, across and through the public lobbies, hallways, corridors, stairwells, and elevators from time to time existing in the MOB for the purpose of pedestrian ingress and egress by the Occupants and Permittees between the MOB and the Hospital. Each Owner shall have the right, for security purposes, to close off access from, respectively, the Hospital and the MOB through the public lobbies and corridors located therein at such times as the Owners shall mutually agree in writing. Each Owner shall be responsible for the maintenance, repair and replacement of the public lobbies, hallways, corridors, stairwells and elevators on its Lot and shall cause such areas at all times to comply with all applicable laws, rules, regulations, codes, requirements, restrictions and covenants pertaining to the Medical Campus or improvements located thereon. In addition, each Owner shall have the right to promulgate, upon advance written notice, reasonable rules and regulations regarding access to and from their respective Buildings, including without limitation, security procedures.

2.03.3 Easement to Use Service Areas. A non-exclusive appurtenant easement (i) to use the "Loading Dock Area" and the "Compactor Area" as shown on the plans and specifications for the Hospital, for their intended purpose, subject to such reasonable rules and regulations as the Owner of the Hospital may enact from time to time, and (ii) to and from the MOB to the Loading Dock Area or the Compactor Area over, upon, through and across those portions of the Hospital as the Owner of the Hospital may designate from time to time, for the purpose of providing access to the loading dock(s) and trash compactor. In connection with such easements, the Owner of the Hospital shall maintain a trash compactor ("Compactor") that may be utilized by the Owner of the MOB and shall contract with a trash collection company ("Contractor") for the removal of the trash from the Compactor, which trash removal shall occur no less frequently than twice a week (the "Trash Collection Service"). The Owner of the Hospital shall have the right to charge the Owner of the MOB an annual service charge for the provision of the Trash Collection Service (the "Annual Service Charge") which charge shall be determined based on each party's proportionate use of such Trash Collection Service. The Annual Service Charge shall be payable by the Owner of the MOB in equal monthly installments on the first day of each calendar month. The Owner of the Hospital may increase the Annual Service Charge from time to time to reflect

increases in the costs, expenses and charges incurred by the Owner of the Hospital in connection with the Trash Collection Services, including, without limitation, trash collection fees and trash compactor/dumpster rental fees charged by the Contractor. The Owner of the Hospital shall give written notice to the Owner of the MOB of any such increase in the Annual Service Charge, which notice shall include a reasonably detailed explanation as to said increase.

2.03.4 Mutual Indemnity. The Owner of the MOB and the Owner of the Hospital shall each indemnify and save the other party and their respective agents, contractors and employees, harmless from and against all penalties, claims, costs, demands, damages, losses, expenses (including reasonable attorneys' fees), suits or liabilities of whatsoever nature brought by third parties and that arise from the such party's or its agent's, contractor's or employee's use and occupancy of the easements granted in this Section 2.03.

2.04.5 Insurance and Restoration. Each Owner, at its expense, shall keep in full force and effect the insurance policies required by each Owner's Ground Lease and shall comply with all other covenants, obligations and requirements contained in each Owner's Ground Lease regarding the restoration or replacement of the MOB and/or the Hospital in the event of any casualty or condemnation as more particularly set forth therein.

### **ARTICLE III** **Nature of Easements and Rights Granted**

3.01. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the Lots and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Lots.

3.02. Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) Are made for the direct, mutual and reciprocal benefit of CRHS, TNMC, the Owners, Occupants and Permittees of the respective Lots;
- (b) Create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (c) Constitute covenants running with the land; and
- (d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Medical Campus at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3.03. Transfer of Title. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns of all or any part of its interest in its Lot, Building or Lot 5 Parking Area, or in its ground lease, or in any portion thereof, shall be deemed to:

(a) Require the prospective grantee to agree not to use, occupy or allow any other party to use or occupy its Lot, Building or Lot 5 Parking Area in any manner which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein; and

(b) Require any prospective ground lease assignee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to the Lot, Building or Lot 5 Parking Area, or interest to be conveyed.

In each case a written instrument shall be executed, acknowledged and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska, which instrument shall acknowledge that such party shall meet the applicable requirements set forth above.

#### **ARTICLE IV**

##### **Maintenance of On-Site Improvements**

4.01. Maintenance of On-Site Improvements. CRHS shall at all times during the term of this Declaration, maintain the On-Site Improvements in sound structural and mechanical condition, and in compliance with all applicable laws, including:

(a) Maintenance, repair and replacement of the surface and subsurface of all parking areas and driveways on Lot 1, in order to maintain the surfaces in a smooth and evenly covered condition with the type of materials originally constructed thereon or such substitutes as will in all respects be at least equal to such materials in quality, appearance and durability;

(b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof and maintaining, repairing and replacing (when necessary) automatic sprinkler systems and water lines;

(c) Removal from Lot 1 and Lot 4 of loose papers, debris, refuse and other rubbish, and washing or thoroughly sweeping paved areas as may be reasonably required;

(d) Removal of any accumulation of ice or snow from the parking areas, driveways, sidewalks and pedestrian areas on Lot 1 and Lot 4;

(e) Maintenance, repair and replacement of such appropriate parking area entrance, exit and directional signs, markers, and parking area, sidewalk and driveway lighting as will be reasonably required from time to time;

(f) Such painting and repainting as may be required to maintain parking areas, drives, emergency corridors and other vehicular areas in high quality condition;

- (g) Removal of any debris or blockage from storm water sewer inlets;
- (h) Repair, maintenance and replacement of storm and surface water sewer lines, detention basins, dry cell detention basins, and other storm and surface water control appurtenances and system components; and
- (i) Repair, maintenance and replacement of Utility Facilities, except in those cases where the repair, maintenance or replacements of such Utility Facility is provided by the public authority or controlling utility company.

4.02. Failure to Properly Maintain. In the event that CRHS shall fail to properly maintain the On-Site Improvements, any of the Owners may send written notice of such failure to CRHS and the other Owners. Such notice shall contain an itemized statement of the specific deficiencies (the "Deficiencies") in CRHS's maintenance of the On-Site Improvements. Notwithstanding anything to the contrary in Section 6.02, CRHS shall have ten (10) days after receipt of the said notice (the "Cure Period") in which to correct the Deficiencies or in which to commence correction of the Deficiencies if the Deficiencies cannot be corrected within the Cure Period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that CRHS shall unreasonably fail or refuse to timely correct or begin to correct the Deficiencies, as the case may be, the Owner who provided notice under this Section 4.02 may, at its option, correct the Deficiencies. In the event that such Owner exercises its option to correct the Deficiencies, CRHS shall, immediately upon receipt of an itemized invoice for the costs incurred by the in correcting the Deficiencies from such Owner, pay all costs to that Owner. Any properly invoiced amount not paid within thirty (30) days shall accrue interest at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. Notwithstanding the foregoing, in the event such cure is necessary for either the safety of persons or property, or is otherwise necessary to address an emergency situation in the applicable Owners' reasonable determination or to comply with the requirements of a first mortgage holder, the cure period set forth above shall not apply and such Owner may undertake such cure immediately provided that such Owner shall provide notice to CRHS and the other Owners as soon thereafter as reasonably practicable.

4.03. Maintenance of Easement Areas. With respect to each of the easements granted in Article II, except as otherwise specifically provided in this Declaration, each of the Owners shall be responsible for the cost of operation, maintenance and cleaning of the areas subject to such easements on such Owners' Lot.

4.04. Surface Water Drainage on Lot 1 and Lot 4. CRHS, its successors or assigns, shall perform all required monitoring, maintenance and repairs with respect to any detention pond, drainage basin, storm and surface water sewer system, and dry cell detention basin located on Lot 1 and Lot 4, and all costs associated therewith shall be initially borne by CRHS, which costs shall be reimbursed to CRHS in accordance with Section 4.06.

4.05. Taxes and Insurance. All the real property taxes, assessments and insurance for Lot 1 and Lot 4 and on the On-Site Improvements required to be maintained by CRHS pursuant to Section 4.09 shall be initially paid for by CRHS and reimbursed to CRHS in accordance with Section 4.06. If CRHS shall fail to pay such real property taxes or assessments prior to



delinquency or if CRHS shall fail to maintain such insurance, any Building Owner may send written notice of such failure to CRHS and the other Building Owners. Such notice shall contain a statement specifying the amount of any such delinquent real property taxes or assessments or the insurance CRHS has failed to maintain. Notwithstanding anything to the contrary in Section 6.02, CRHS shall have ten (10) days after receipt of said notice (the "T&I Cure Period") in which to pay such delinquent real property taxes or assessments or obtain such insurance and notify the Building Owners thereof. If CRHS shall fail to pay any such delinquent real property taxes or assessments or obtain such insurance within the T&I Cure Period, the Building Owner may, at its option, pay such delinquent real property taxes or assessments or obtain such insurance, and CRHS shall, immediately upon receipt from the Building Owner of an invoice for such real property taxes or assessments or insurance premiums and any other associated costs reasonably incurred and paid by the Building Owner, reimburse the Building Owner for the amount paid by that Building Owner, together with interest thereon at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. The Building Owner shall have the right to offset any such amount owed by CRHS to the Building Owner against any ground rent or other sums owed by the Building Owner to CRHS. The Building Owner paying such delinquent real property taxes or assessments or obtaining such insurance shall continue to be responsible for paying its share thereof in accordance with Section 4.06 hereof.

4.06. Building Owners' Share of Maintenance Costs. No later than March 1st of each year during the term of this Declaration, CRHS shall provide to each Building Owner an annual accounting of the costs incurred by CRHS for the maintenance, repair and replacement of On-Site Improvements for the immediately prior year, including insurance and real property taxes and assessments (the "OSI Certified Costs"). Each Building Owner shall, within thirty (30) days of the date of the OSI Certified Costs accounting, pay to CRHS such Building Owner's Repair Percentage of the total OSI Certified Costs. In the event a Building Owner fails to pay CRHS within thirty (30) days, the balance owed to CRHS shall accrue interest at the lesser of two percent (2%) per annum over the Prime Rate, or the highest interest rate then allowable under applicable law. The payment of such interest shall not excuse or cure any default by a Building Owner under this Declaration.

Notwithstanding anything to the contrary contained herein, any OSI Certified Cost that is specifically allocable to a Building or Buildings shall be allocated solely to the Building Owner of such Building or Buildings. By way of example only, and not as a limitation, any evening, weekend or holiday maintenance, snow removal, and emergency repairs that is necessary, in the sole discretion of CRHS, to allow the uninterrupted operation and access to any Building or Buildings twenty-four (24) hours a day, shall be allocated solely to such Building or Buildings (on a proportionate basis), and not to the remaining Building or Buildings.

Each Building Owner shall have the right to inspect, audit and copy CRHS's records pertaining to the OSI Certified Costs, provided such Building Owner shall provide written notice to CRHS of the Building Owner's intent to inspect and audit the records no later than One Hundred and Twenty (120) days after notice of the OSI Certified Costs is sent to the Building Owner. Failure of any Building Owner to so notify CRHS shall be deemed that Building Owner's approval of the OSI Certified Costs, and such Building Owner shall have no further right to inspect or audit the records for that year. Any overpayment discovered as the result of an

audit shall be promptly refunded to the Building Owners. Any underpayment discovered as the result of an audit by one of the Building Owners within the 120 day period referenced above shall be promptly paid by the Building Owners to CRHS.

CRHS may, in its discretion, establish an estimated annual budget for the OSI Certified Costs ("Projected OSI Costs") which Projected OSI Costs shall be allocated among the Building Owners in accordance with each Building Owner's Repair Percentage. CRHS shall notify each Building Owner of such Building Owner's share of the Projected OSI Costs for the following year of the Lease (the "Projected Year") no later than December 1, of the immediately preceding calendar year. Each Building Owner shall pay an amount equal to 1/12th of such Building Owner's share of the Projected OSI Costs on or before the 1st day of each month, beginning on January 1 of the Projected Year. If, at the end of any Projected Year, the total amount actually paid by a Building Owner for such Projected Year exceeds the total amount of the OSI Certified Costs required to be paid by such Building Owner for that year, then that Building Owner shall receive a credit equivalent to the excess which shall be applied against the next payments of Projected OSI Costs. CRHS shall refund to each Building Owner any Projected OSI Costs actually paid by such Building Owner in excess of such Building Owner's share of the OSI Certified Costs for the final Lease year of such Building Owner's ground lease within thirty (30) days of the expiration of the ground lease. If, at the end of any Projected Year the total amount of Projected OSI Costs actually paid by a Building Owner for such Projected Year is less than the total amount of OSI Certified Costs due from such Building Owner for the Projected Year, the Building Owner shall pay to CRHS the balance of the OSI Certified Costs due within thirty (30) days after receipt of notice of the OSI Certified Costs for such year. CRHS shall have the right to adjust the Projected OSI Costs annually.

4.07. Repair Contractors. All maintenance work and other obligations to be performed by CRHS pursuant to this Declaration may be performed by individuals or entities affiliated with CRHS, provided such services are comparable in cost for substantially the same quality of work and materials as would be provided by an independent third party provider.

4.08. Management Fee. No management fees shall be included in the OSI Certified Costs. Notwithstanding the foregoing, CRHS, or its appointed management provider, may charge an administrative fee for its services administering maintenance and repair contracts which administration fee shall equal five percent (5%) of the total amount for contracted maintenance and repair services. The administrative fee may include five percent (5%) of any costs paid to CRHS related personnel or entities providing maintenance and repair services as provided in Section 4.07 whether such services were provided pursuant to a contract or otherwise.

4.09. Insurance. CRHS shall at all times maintain a public liability insurance policy with contractual liability and personal injury coverage with a responsible insurance carrier covering liability for injuries to or death of any person or damage to or loss of any property on or about Lot 1 and Lot 4 in an amount at least equal to the minimum amount then commercially reasonable for public areas of similar medical facilities or campuses. The Owners and any lenders or other parties specified by any of the Owners will each be a named insured on such policy. All policies will contain an agreement of the insurer that it will not cancel the policy or reduce coverage except after thirty (30) days prior written notice to the named insureds. CRHS

will deliver a copy of the replacement policy or certificate of coverage therefor at least thirty (30) days prior to the expiration date of any such policy.

**ARTICLE V**  
**Maintenance of Lot 5 Parking Area**

5.01. Limitation. This Article V shall only be in effect while the Lot 5 Parking Area is in existence during the term of the Declaration. Upon the commencement of construction of a Lot 5 Building, or on the day Lot 5 is put to a use other than the Lot 5 Parking Area, this entire Article V shall be void and any and all terms, rights, restrictions, covenants and conditions provided herein shall cease to be effective.

5.02. Maintenance of Lot 5. Bellevue Properties shall at all times maintain Lot 5 in sound structural and mechanical condition, and in compliance with all applicable laws, including:

- (a) Maintenance, repair and replacement of the surface and subsurface of all parking areas and driveways on Lot 5, in order to maintain the surfaces in a smooth and evenly covered condition with the type of materials originally constructed thereon or such substitutes as will in all respects be at least equal to such materials in quality, appearance and durability;
- (b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof and maintaining, repairing and replacing (when necessary) automatic sprinkler systems and water lines;
- (c) Removal from Lot 5 of loose papers, debris, refuse and other rubbish, and washing or thoroughly sweeping paved areas as may be reasonably required;
- (d) Removal of any accumulation of ice or snow from the parking areas, driveways, sidewalks and pedestrian areas on Lot 5;
- (e) Maintenance, repair and replacement of such appropriate parking area entrance, exit and directional signs, markers, and parking area, sidewalk and driveway lighting as will be reasonably required from time to time;
- (f) Such painting and repainting as may be required to maintain parking areas, drives, emergency corridors and other vehicular areas in high quality condition;
- (g) Removal of any debris or blockage from storm water sewer inlets;
- (h) Repair, maintenance and replacement of storm and surface water sewer lines, detention basins, dry cell detention basins, and other storm and surface water control appurtenances and system components; and
- (i) Repair, maintenance and replacement of Utility Facilities, except in those cases where the repair, maintenance or replacements of such Utility Facility is provided by the public authority or controlling utility company.

5.03. Failure to Properly Maintain. In the event that Bellevue Properties shall fail to properly maintain Lot 5, any of the Owners may send written notice of such failure to Bellevue Properties and the other Owners. Such notice shall contain an itemized statement of the Deficiencies in Bellevue Properties' maintenance of Lot 5. Notwithstanding anything to the contrary in Section 6.02, Bellevue Properties shall have the Cure Period in which to correct the Deficiencies or in which to commence correction of the Deficiencies if the Deficiencies cannot be corrected within the Cure Period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that Bellevue Properties shall unreasonably fail or refuse to timely correct or begin to correct the Deficiencies, as the case may be, the Owner who provided notice under this Section 5.03 may, at its option, correct the Deficiencies. In the event that such Owner exercises its option to correct the Deficiencies, Bellevue Properties shall, immediately upon receipt of an itemized invoice for the costs incurred by the in correcting the Deficiencies from such Owner, pay all costs to that Owner. Any properly invoiced amount not paid within thirty (30) days shall accrue interest at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. Notwithstanding the foregoing, in the event such cure is necessary for either the safety of persons or property, or is otherwise necessary to address an emergency situation in the applicable Owners' reasonable determination or to comply with the requirements of a first mortgage holder, the cure period set forth above shall not apply and such Owner may undertake such cure immediately provided that such Owner shall provide notice to Bellevue Properties and the other Owners as soon thereafter as reasonably practicable.

5.04. Surface Water Drainage on Lot 5. Bellevue Properties, its successors or assigns, shall perform all required monitoring, maintenance and repairs with respect to any detention pond, drainage basin, storm and surface water sewer system, and dry cell detention basin located on Lot 5.

5.05. Taxes and Insurance. All the real property taxes, assessments and insurance for Lot 5 required to be maintained by Bellevue Properties pursuant to Section 5.09 shall be paid for by Bellevue Properties in accordance with Parking Lot Ground Lease. If Bellevue Properties shall fail to pay such real property taxes or assessments prior to delinquency or if Bellevue Properties shall fail to maintain such insurance, any Owner may send written notice of such failure to Bellevue Properties and the other Owners. Such notice shall contain a statement specifying the amount of any such delinquent real property taxes or assessments or the insurance Bellevue Properties has failed to maintain. Notwithstanding anything to the contrary in Section 6.02, Bellevue Properties shall have the T&I Cure Period in which to pay such delinquent real property taxes or assessments or obtain such insurance and notify the Owners thereof. If Bellevue Properties shall fail to pay any such delinquent real property taxes or assessments or obtain such insurance within the T&I Cure Period, the Owner may, at its option, pay such delinquent real property taxes or assessments or obtain such insurance, and Bellevue Properties shall, immediately upon receipt from the Owner of an invoice for such real property taxes or assessments or insurance premiums and any other associated costs reasonably incurred and paid by the Owner, reimburse the Owner for the amount paid by that Owner, together with interest thereon at a rate equal to the lesser of two percent (2%) over the Prime Rate or the maximum rate allowed by applicable law. The Owner paying such delinquent real property taxes or assessments or obtaining such insurance shall continue to be responsible for paying its share thereof in accordance with Section 5.06 hereof.

5.06. Hospital Tenant's Share of Maintenance Costs. No later than March 1st of each year during the term of this Declaration, Bellevue Properties shall provide to the Bellevue Medical Center, LLC as tenant under the Bellevue Lease ("Hospital Tenant") an annual accounting of the costs incurred by Bellevue Properties for the maintenance, repair and replacement of Lot 5 for the immediately prior year, including insurance and real property taxes and assessments (the "**Lot 5 OSI Certified Costs**"). Hospital Tenant shall, within thirty (30) days of the date of the Lot 5 OSI Certified Costs accounting, pay to Bellevue Properties all Lot 5 OSI Certified Costs. In the event the Hospital Tenant fails to pay Bellevue Properties within thirty (30) days, the balance owed to Bellevue Properties shall accrue interest at the lesser of two percent (2%) per annum over the Prime Rate, or the highest interest rate then allowable under applicable law.

The Hospital Tenant shall have the right to inspect, audit and copy TNMC's records pertaining to the Lot 5 OSI Certified Costs, provided the Hospital Tenant shall provide written notice to Bellevue Properties of the Hospital Tenant's intent to inspect and audit the records no later than One Hundred and Twenty (120) days after notice of the Lot 5 OSI Certified Costs is sent to the Hospital Tenant. Failure of the Hospital Tenant to so notify Bellevue Properties shall be deemed Hospital Tenant's approval of the Lot 5 OSI Certified Costs, and the Hospital Tenant shall have no further right to inspect or audit the records for that year. Any overpayment discovered as the result of an audit shall be promptly refunded to the Hospital Tenant. Any underpayment discovered as the result of an audit within the 120 day period referenced above shall be promptly paid by the Hospital Tenant to Bellevue Properties.

Bellevue Properties may, in its discretion, establish an estimated annual budget for the Lot 5 OSI Certified Costs ("**Projected Lot 5 OSI Costs**") which Projected Lot 5 OSI Costs paid in whole by the Hospital Tenant. Bellevue Properties shall notify the Hospital Tenant of the Projected Lot 5 OSI Costs for the following year of the Lease (the "**Lot 5 Projected Year**") no later than December 1, of the immediately preceding calendar year. The Hospital Tenant shall pay an amount equal to 1/12th of the Projected Lot 5 OSI Costs on or before the 1st day of each month, beginning on January 1 of the Lot 5 Projected Year. If, at the end of any Lot 5 Projected Year, the total amount actually paid by the Hospital Tenant for such Lot 5 Projected Year exceeds the total amount of the Lot 5 OSI Certified Costs required to be paid by the Hospital Tenant for that year, then the Hospital Tenant shall receive a credit equivalent to the excess which shall be applied against the next payments of Projected Lot 5 OSI Costs. Bellevue Properties shall refund to the Hospital Tenant any Projected Lot 5 OSI Costs actually paid by the Hospital Tenant in excess of such Lot 5 OSI Certified Costs. If, at the end of any Lot 5 Projected Year the total amount of Projected Lot 5 OSI Costs actually paid by the Hospital Tenant for such Lot 5 Projected Year is less than the total amount of Lot 5 OSI Certified Costs due from the Hospital Tenant for the Lot 5 Projected Year, the Hospital Tenant shall pay to Bellevue Properties the balance of the Lot 5 OSI Certified Costs due within thirty (30) days after receipt of notice of the Lot 5 OSI Certified Costs for such year. Bellevue Properties shall have the right to adjust the Lot 5 Projected OSI Costs annually.

5.07. Repair Contractors. All maintenance work and other obligations to be performed by Bellevue Properties pursuant to this Declaration may be performed by individuals or entities affiliated with Bellevue Properties, provided such services are comparable in cost for

substantially the same quality of work and materials as would be provided by an independent third party provider.

5.08. Management Fee. No management fees shall be included in the Lot 5 OSI Certified Costs. Notwithstanding the foregoing, Bellevue Properties, or its appointed management provider, may charge an administrative fee for its services administering maintenance and repair contracts which administration fee shall equal five percent (5%) of the total amount for contracted maintenance and repair services. The administrative fee may include five percent (5%) of any costs paid to Bellevue Properties related personnel or entities providing maintenance and repair services as provided in Section 5.07 whether such services were provided pursuant to a contract or otherwise.

5.09. Insurance. Bellevue Properties shall at all times maintain a public liability insurance policy with contractual liability and personal injury coverage with a responsible insurance carrier covering liability for injuries to or death of any person or damage to or loss of any property on or about Lot 5 in an amount at least equal to the minimum amount then commercially reasonable for public areas of similar medical facilities or campuses. The Owners and any lenders or other parties specified by any of the Owners will each be a named insured on such policy. All policies will contain an agreement of the insurer that it will not cancel the policy or reduce coverage except after thirty (30) days' prior written notice to the named insureds. Bellevue Properties will deliver a copy of the replacement policy or certificate of coverage therefor at least thirty (30) days prior to the expiration date of any such policy.

## **ARTICLE VI** **Enforcement - Injunctive Relief**

6.01. Remedies. In the event of any violation by any party hereto of any of the terms, restrictions, covenants and conditions provided herein, any of the parties, or their respective successors or assigns, as the case may be, shall have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days' written notice of the violation will be given to all other parties and to the party guilty of such violation or threatened violation.

6.02. Notice. Except as specifically provided elsewhere in this Declaration, a party will not be in default under this Declaration unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

6.03. Breach Does Not Affect Declaration. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration, but this limitation shall not affect, in any manner, any other rights or remedies which the parties may have by reason of any breach of this Declaration.

**ARTICLE VII**  
**Restrictions on Development and Use**

7.01. Signs. None of the Owners or Occupants shall erect or install, or permit to be erected or installed, anywhere on the Medical Campus any sign except in accordance with the following:

(a) No free-standing sign shall be erected or installed anywhere on the Medical Campus except as may be approved in writing by CRHS;

(b) All exterior signage on any Building must be approved in advance by CRHS; and

(c) Any of the Owners desiring to install signage shall first submit to CRHS a written request for signage approval, which request must include a complete copy of the final sign plans showing dimensions, color, lighting (if any), and proposed installation method. CRHS shall either approve or deny the request no later than twenty (20) days after receipt of the request. If CRHS fails to deny the request within twenty (20) days of receipt, then the request shall be deemed approved. The requesting Building Owner or Parking Area Owner shall be solely responsible for all costs of designing, fabricating and installing the approved sign, including all costs related to obtaining approval from the City of Bellevue.

7.02. Use Restriction. No portion of the Medical Campus shall be used or operated:

(a) In violation of applicable laws;

(b) In a dangerous or hazardous manner;

(c) As a nuisance, or as an obnoxious use by reason of unsightliness or excess emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation; provided, however, that nothing contained in this subsection shall limit or prohibit the erection of business communications satellite dishes on the roof of any building; or

(d) In a manner that would increase the number of parking spaces required pursuant to applicable laws or regulations beyond the number of parking spaces required as of the date that the Hospital and the MOB are substantially completed unless provision for additional parking is made pursuant to Section 2.01.8.

7.03. Building Restrictions. Each Building, structure or other improvement constructed on the Medical Campus shall be of first quality construction and architecturally designed so that the exterior elevation (including signs) and color will be architecturally and aesthetically compatible and harmonious with all other Buildings. No Building, Lot 5 Parking Area, structure or other improvement may be constructed nor the exterior of any existing Building changed in any material way without the prior written approval of CRHS or TNMC, as applicable, which approval shall not be unreasonably withheld, delayed or denied, as to the exterior design, color and elevations of the Building, Lot 5 Parking Area, structure or other improvement to be constructed or modified. Before any construction or modification which requires approval

hereunder is commenced, written notice requesting such approval shall be sent to CRHS or TNMC, as applicable, including sufficient information to enable CRHS or TNMC, as applicable, to make a reasonable determination. CRHS or TNMC, as applicable, must approve or disapprove the proposed construction or modification within thirty (30) days after receipt of the proposal. If CRHS or TNMC, as applicable, fails to provide its written objections as required within the thirty (30) day period, the proposal shall be deemed to be approved. Buildings, the Lot 5 Parking Area, structures and improvements shall at all times comply with all applicable laws, rules, regulations, codes, requirements, restrictions and covenants pertaining to the Medical Campus.

7.04. Restrictions on Divisions; Conveyances. Except as may be permitted in an Owners' Ground Lease, no portion of the Medical Campus shall be divided or conveyed except with the express prior written approval of CRHS and TNMC. Any party obtaining an interest in any portion of the Medical Campus shall execute a written acceptance of this Declaration, which acceptance shall provide that such party shall be and remain subject to all easements, covenants, restrictions and other provisions set forth in this Declaration. The above requirement shall not apply to any mortgage or deed of trust entered into by any of the Owners in connection with its interest in its Building, Lot 5 Parking Area or Lot or any space lease entered into by any of the Owners for space in its Building or Lot 5 Parking Area provided that such mortgage, deed of trust or space lease is entered into in compliance with the terms and conditions of the Ground Lease between CRHS or TNMC, as applicable, and such Owner, nor shall the above requirement apply to any conveyance by foreclosure sale under or pursuant to a mortgage or deed of trust entered into by any of the Owners in compliance with the terms of its Ground Lease with CRHS or TNMC, as applicable, or to a deed in lieu of foreclosure of such a mortgage or deed of trust.

#### ARTICLE VIII Mutual Indemnification

8.01. Indemnification. Each party, with respect to its Lot or Lots, Building or Lot 5 Parking Area on the Medical Campus, shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other party to this Declaration harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to the failure by such party to maintain its Lot or Lots, Building or Lot 5 Parking Area in a safe and proper condition. Each party shall give each other party prompt and timely notice of any claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

#### ARTICLE IX Condemnation of CRHS Property

9.01. Condemnation Awards. If all or any part of Lot 1, Lot 4 or the On-Site Improvements is sold to or taken by any duly constituted authority for a public or quasi-public use under its power of condemnation or threat thereof (whether obtained by agreement or by judgment or court order) shall be payable only to CRHS and no claim thereto shall be made by any of the Owners; provided, however, that any of the Owners may file collateral claims with the condemning authority, over and above the value of the CRHS interest in the land and On-Site



Improvements so taken, to the extent of any damage suffered by the Building, Lot 5 Parking Area, or Lot of such Owners resulting from the severance of the property so condemned or taken. If any On-Site Improvements are condemned or taken, then CRHS shall repair and reconstruct such On-Site Improvements to the extent necessary to comply with the requirements of the City of Bellevue, and such other governmental authorities as may have jurisdiction over Lot 1 or Lot 4. CRHS shall apply the proceeds of any condemnation award received by CRHS toward the costs of repair or reconstruction of the On-Site Improvements. Any amounts of an award payable to CRHS not needed for the repair and replacement required by this Section 9.01 shall be retained and be the sole property of CRHS.

#### **ARTICLE X** **Condemnation of TNMC Property**

10.01. Condemnation Awards. If all or any part of Lot 5 or the Lot 5 Parking Area is sold to or taken by any duly constituted authority for a public or quasi-public use under its power of condemnation or threat thereof (whether obtained by agreement or by judgment or court order) shall be payable in accordance with the terms of the Parking Lot Ground Lease and no claim thereto shall be made by any of the Owners; provided, however, that any of the Owners may file collateral claims with the condemning authority, over and above the value of the TNMC interest in the land and Lot 5 Parking Area so taken, to the extent of any damage suffered by the Building, Lot 5 Parking Area, or Lot of such Owners resulting from the severance of the property so condemned or taken.

#### **ARTICLE XI** **Environmental Matters**

11.01. Duties of Users. Except as provided in Section 11.03, none of the Owners, nor any Occupant or Permittee shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material upon, in, over or across the Medical Campus or otherwise permit the presence of any Hazardous Material to be on the Medical Campus. Any use, handling or storage permitted under Section 11.03 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof.

Each party with respect to its Lot, Building or Lot 5 Parking Area shall immediately notify the other Owners, CRHS and TNMC by providing a copy of the following with respect to such Lot, Building or Lot 5 Parking Area: (i) any notice of violation or potential or alleged violation of any laws, ordinances or regulations which the party shall have received from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to its Lot or Building; (iii) all claims made or threatened by any third party relating to any Hazardous Materials; and (iv) any release of Hazardous Materials on or about the Medical Campus which such party knows of or reasonably believes may have occurred.

11.02. Specific Substances. Neither CRHS, TNMC, nor any of the Owners, nor any Occupant(s), nor any Permittee shall introduce, or permit any other person or entity to introduce, any friable asbestos, radioactive material, urea formaldehyde foam insulation or devices

containing polychlorinated biphenyls (PCBs) into any portion of the Medical Campus; except, that, radioactive materials used solely for medical purposes, including but not limited to radiology, medical imaging, or radiation treatments, shall be permitted provided such radioactive material is stored, handled and used in accordance with applicable laws, rules and regulations.

11.03. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 11.01 to the contrary, CRHS, TNMC, or any of the Owners, or any other Occupant or Permittee may use products containing Hazardous Materials and equipment fueled by or containing Hazardous Materials in, on or about Medical Campus to the extent such products and/or equipment are incident to the normal operations of CRHS or the respective Owners or Occupant. Examples of such products and equipment include, but are not limited to; gasoline and petroleum products used to fuel and/or lubricate vehicles, fertilizers and other lawn care products, and pest control materials. Owners or Occupants may use products such as photocopy equipment, ordinary office supplies, photographic chemicals and supplies, building materials, maintenance supplies, cleaning agents and solvents in quantities commonly stored, found or maintained for use in medical offices or out-patient hospital facilities. In addition, the use, storage, handling and disposal of medical supplies, blood, tissue, bodily fluids and other bio-hazardous materials by an Occupant is specifically permitted, provided such Occupant strictly complies with all applicable laws, rules and regulations pertaining to such use, storage, handling or disposal ("**Bio-Hazard Law**").

11.04. Cleanup of Hazardous Materials. In the event Hazardous Materials are released, handled or disposed of in violation of any Environmental Law or Bio-Hazard Law, and such violation occurred as a direct or indirect result of an Owners' or an Occupant's use, handling, storage, or transportation of such Hazardous Material, as between CRHS or TNMC, as applicable, and the Owners, such Owners or Occupant engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and all claims, costs, expenses (including reasonable attorney and consultant fees) and damages, including consequential damages, suffered by CRHS or TNMC, as applicable, the other Owners and Occupants.

## ARTICLE XII Duration and Termination

12.01. Duration. The easements, covenants, restrictions and other provisions of this Declaration shall be of perpetual duration, except as where a term or limitation is provided by the express terms of this Declaration, and shall run with the land.

12.02. Amendment. This Declaration may not be modified, terminated, or rescinded except by written instrument executed by CRHS, TNMC and a majority of the Owners as of the date of such instrument. All amendments shall be effective when recorded in the Office of the Register of Deeds of Sarpy County. Any amendments or modifications of this Declaration shall be superior to any and all liens, to the same extent as this Declaration, and to the same extent as if such amendment or modification had been executed and recorded concurrently herewith.

**ARTICLE XIII**  
**Not a Public Dedication**

13.01. Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Medical Campus to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

**ARTICLE XIV**  
**Reasonableness of Consent**

14.01. Unless otherwise provided herein, whenever the agreement or approval of CRHS, TNMC or any of the Owners is required hereunder, such party shall not unreasonably withhold or delay such agreement or approval.

14.02. Notwithstanding anything to the contrary in this Declaration, no consent, agreement or approval shall ever be required of any Occupant or other Permittee other than CRHS, TNMC and the Owners.

**ARTICLE XV**  
**Miscellaneous**

15.01. Recording. A fully executed counterpart of this Declaration shall be recorded in the Office of the Register of Deeds of Sarpy County.

15.02. Benefit. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

15.03. Waiver. No waiver of any breach of any of the easements, covenants, restrictions or agreements herein contained shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other easement, covenant, restriction or agreement.

15.04. Severability. If any term or provision of this Declaration shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

15.05. Applicable Law. This Declaration shall be construed and enforced in accordance with the laws of the State of Nebraska.

15.06. Counterparts. This Declaration may be executed in several counterparts, all of which together shall be deemed an original single document.

15.07. Notice. All notices and demands to be given by one party to another party under this Declaration shall be given in writing, mailed or delivered, to CRHS, TNMC or any of the

Owners, at the addresses set forth below or at such other address as that party may hereafter designate:

If to CRHS:                      Clarkson Regional Health Services, Inc.  
William S. Dinsmoor, CMA  
Chief Financial Officer  
The Nebraska Medical Center  
987400 Nebraska Medical Center  
Omaha, Nebraska 68198-7400

With a copy to:                Howard Fredrick Hahn, Esq.  
Husch Blackwell Sanders LLP  
1620 Dodge Street  
Suite 2100  
Omaha, Nebraska 68102

If to TNMC:                      The Nebraska Medical Center  
William S. Dinsmoor, CMA  
Chief Financial Officer  
987400 Nebraska Medical Center  
Omaha, Nebraska 68198-7400

With a copy to:                Howard Fredrick Hahn, Esq.  
Husch Blackwell Sanders LLP  
1620 Dodge Street  
Suite 2100  
Omaha, Nebraska 68102

If to Bellevue Properties:    Mr. Richard Wicka  
Bellevue HealthCare Properties, LLC  
c/o Frauenshuh HealthCare Real Estate Solutions  
Suite 100  
7101 West 78th Street  
Minneapolis, MN 55439

With a copy to:                Health Care REIT, Inc.  
One SeaGate, Suite 1500.  
P.O. Box 1475  
Toledo, Ohio 43603-1475  
Attn: General Counsel

And a copy to:                Jeffrey C. Urban, Esq.  
Robert O. Straughn, Esq.  
McGrann Shea Anderson  
Carnival Straughn & Lamb, Chartered  
800 Nicollet Mall  
Suite 2600

Minneapolis, MN 55402

If to Bellevue Physicians: Mr. Richard Wicka  
Bellevue Physicians, LLC  
c/o Frauenshuh HealthCare Real Estate Solutions  
Suite 100  
7101 West 78th Street  
Minneapolis, MN 55439

And a copy to: Jeffrey C. Urban, Esq.  
Robert O. Straughn, Esq.  
McGrann Shea Anderson  
Carnival Straughn & Lamb, Chartered  
800 Nicollet Mall  
Suite 2600  
Minneapolis, MN 55402

(a) Notices shall be delivered by United States certified or registered mail, postage prepaid, return receipt requested, or by hand delivery, or by a nationally recognized overnight courier service which provides evidence of delivery. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two business days after posting in the United States mail, or one business day after delivery to a nationally recognized courier for overnight delivery.

(b) Copies of any notices to be sent pursuant to this Section 15.07 by CRHS shall be sent to the mortgagee or assignee of the Owners receiving such notice in the manner and with the effect above provided at the address appearing on the mortgage or assignment thereof, if any (copies of which shall be furnished to CRHS), and if said address does not so appear then to such address as CRHS may ascertain by reasonable inquiry, provided, however, that the address for notices to any such mortgagee or assignee may be changed as provided in Section 15.07(d) below.

(c) Notice sent by certified mail which is refused shall be effective upon attempted delivery.

(d) All parties shall give the other parties reasonably prompt notice of any change in address, and until such notice, any party may rely on the most recent address furnished.

15.08. Entire Agreement. This Declaration and the Exhibits hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations, understandings or agreements are superseded. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Declaration and shall not negate or invalidate any provision of this Declaration.

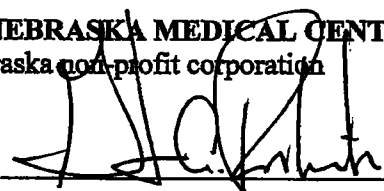
15.09. Notwithstanding anything to the contrary herein, the Building Owners or Parking Area Owner shall not be responsible for any costs attributable to the period of time prior to the date that the Building or Lot 5 Parking Area on such Building Owner's or Parking Area Owner's Lot is substantially complete, and CRHS or TNMC, as applicable, shall be liable for such Building Owner's or Parking Area Owner's portion of such costs as if CRHS or TNMC, as applicable, were the Building Owner or Parking Area Owner of such Building or Lot 5 Parking Area.

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**THE NEBRASKA MEDICAL CENTER,**  
A Nebraska non-profit corporation

By: \_\_\_\_\_



Name: Glenn A. Fosdick, FACHE

Its: CEO

STATE OF NEBRASKA )

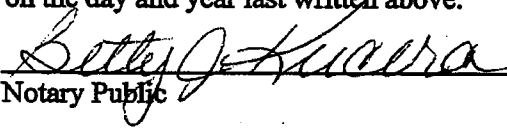
) ss.

COUNTY OF DOUGLAS )

On the 15<sup>th</sup> day of September, 2010, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came Glenn A. Fosdick, as Chief Executive Officer of THE NEBRASKA MEDICAL CENTER, to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the corporation.

WITNESS my hand and notarial seal on the day and year last written above.

\_\_\_\_\_  
Notary Public





**BELLEVUE HEALTHCARE PROPERTIES, LLC,**  
A Delaware limited liability company

By: **HEALTH CARE REIT, INC.,**  
a Delaware corporation  
its Managing Member

By: Erin C. Ibele

Name: Erin C. Ibele

Its: Senior Vice President-Administration  
and Corporate Secretary

STATE OF OHIO )  
                                       )  
COUNTY OF LUCAS )

ss.

On the 26th day of September, 2010, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came Erin C. Ibele, as Senior Vice President-Administration and Corporate Secretary of Health Care REIT, Inc., the Managing Member of Bellevue HealthCare Properties, LLC, to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the corporation.

WITNESS my hand and notarial seal on the day and year last written above.


Donna J. Lunsford  
Notary Public



DONNA J. LUNSFORD  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
April 22, 2012

**BELLEVUE PHYSICIANS, LLC,**  
A Delaware limited liability company

By: DRF BELLEVUE LLC,  
a Minnesota limited liability company  
its Managing Member

By: 


Name: Richard Wicka

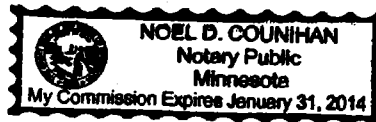
Its: manager

STATE OF Minnesota)  
) ss.  
COUNTY OF Hennepin)

On the 30<sup>th</sup> day of September, 2010, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came Richard Wicka, Manager of DRF Bellevue, LLC, the Managing Member of Bellevue Physicians, LLC, to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the corporation.


WITNESS my hand and notarial seal on the day and year last written above.

  
Notary Public



Bellevue Medical Center, LLC executes this Declaration solely for purpose of agreeing to the provisions of Article V.

**BELLEVUE MEDICAL CENTER, LLC**  
A Nebraska limited liability company

By: 


Name: Martin T. Carmody

Its: CEO

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

On the 20th day of September, 2010, before me, the undersigned a Notary Public, duly commissioned and qualified for said County, personally came Martin T. Carmody, as Chief Executive Officer of BELLEVUE MEDICAL CENTER, LLC, to me known to be the identical person whose name is subscribed to the foregoing instrument and who acknowledges the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the corporation.

WITNESS my hand and notarial seal on the day and year last written above.

  
Notary Public



**EXHIBIT A**

**DESCRIPTION OF LOT 5**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lot 5, Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.

**EXHIBIT B**

**DESCRIPTION OF THE MEDICAL CAMPUS**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lots 1, 2, 3, 4 and 5 Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.

**EXHIBIT C**

**DESCRIPTION OF LOT 2**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lot 2, Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.

**EXHIBIT D**

**DESCRIPTION OF LOT 3**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lot 3, Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.

**EXHIBIT E**

**DESCRIPTION OF LOT 1**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lot 1, Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.



**EXHIBIT F**

**DESCRIPTION OF LOT 4**

The land referred to is situated in the State of Nebraska, County of Sarpy and is described as follows:

Lot 4, Clarkson Medical Campus Subdivision Replat One, being a replat of Lots 1 thru 4, Clarkson Medical Campus Subdivision, a Subdivision located in the South 1/2 of Section 33, and also the SE1/4 of Section 34; and also together with Lot 2 Marijo Estates, a subdivision located in said SW1/4 of Section 34; all located in Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.