

**DRAINAGE EASEMENT**

~~THIS DRAINAGE EASEMENT~~ (this "Easement") is made and entered into as of this 25 day of June, 2015, by and between **RFO, L.L.C.**, a Kansas limited liability company (hereinafter "RFO"), and **OMA LODGING, LLC**, a Nebraska limited liability company (hereinafter "OMA").

**RECITALS:**

**WHEREAS**, OMA is the owner of certain real property legally described as Lots 2, 3 and 4, OWEN PARKWAY, a subdivision Carter Lake, Pottawattamie County, Iowa;

**WHEREAS**, RFO is the owner of certain real property legally described as Lots 1 and 5, OWEN PARKWAY, a subdivision Carter Lake, Pottawattamie County, Iowa;

**WHEREAS**, RFO and OMA have entered into a Purchase and Sale Agreement pursuant to which (1) RFO has agreed to sell to OMA a portion of Lots 1 and 5, OWEN PARKWAY, as legally described on **EXHIBIT A** attached hereto (the "Easement Area"), and (2) in connection with such sale, the parties' respective properties will be replatted, after which OMA will be the owner of the real property legally described on **EXHIBIT B** attached hereto (the "OMA Property"), and RFO will be the owner of the real property legally described on **EXHIBIT C** attached hereto (the "RFO Property"),

**WHEREAS**, as a condition of the sale of the Easement Area, RFO has requested and OMA has agreed to grant an easement over the Easement Area, which is also depicted on **EXHIBIT D** attached hereto and incorporated herein by reference, for the use and benefit of RFO for drainage purposes;

**WHEREAS**, OMA and RFO desire that adequate drainage volume be maintained in and adjacent to the Easement Area, which will be benefit both the RFO Property and the OMA Property after the closing of the sale of the Easement Area;

**NOW, THEREFORE**, in consideration of the foregoing premises which are incorporated in this Easement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Easement. OMA does hereby grant to RFO, and its successors, assigns and transferees, for the benefit of the RFO Property, (i) a perpetual and irrevocable non-exclusive easement on, under, within and over the Easement Area for the construction, installation, maintenance, repair, replacement and removal of storm water drainage facilities (but excluding any permanent retention facilities), (ii) a temporary construction easement on, under, within and over the Easement Area (including reasonable access over the OMA Property adjacent to the Easement Area) for the purpose of constructing, installing, repairing, maintaining, replacing and removing (a) drainage facilities constructed and maintained by RFO, and (b) any facilities, systems, and appurtenances related to and necessary for the proper utilization and preservation of such drainage facilities.

2. Construction Activity in Easement Area.

(a) OMA Facilities. OMA shall bear the cost of grading and constructing drainage facilities or any other improvements in or adjacent to the Easement Area which are constructed by OMA for the benefit of the OMA Property, including without limitation, the construction and maintenance of a storm water drainage pipe along the west side of the Easement Area, as depicted on **EXHIBIT D** attached hereto. Such OMA facilities shall be designed and sized to accommodate the drainage of the OMA Property. OMA, its successors, assigns and transferees shall indemnify RFO from and against all liabilities incurred by RFO for personal injuries or property damage resulting from any such work, unless such injuries were the result of the negligence or intentional acts of RFO or its agents, employees or contractors. The foregoing indemnification will survive the termination of this Easement.

(b) RFO Facilities. RFO shall bear the cost of grading and constructing additional drainage facilities which are constructed by RFO in the Easement Area for the benefit of the RFO Property. Any such additional drainage facilities shall be designed by a professional engineer and sized to add the RFO Property. RFO, its successors, assigns and transferees shall indemnify OMA from and against all liabilities incurred by OMA for personal injuries or property damage resulting from any such work, unless such injuries were the result of the negligence or intentional acts of OMA or its agents, employees or contractors. The foregoing indemnification will survive the termination of this Easement. RFO shall complete such construction and restore the Easement Area to a finished condition.

Either party may store equipment or vehicles within the Easement Area during the performance of construction activities contemplated in this Easement, and may construct temporary fences or take such other actions within the Easement Area to shield adjacent property from such grading and construction activities.

3. Easement Area. The contour of the Easement Area may be reduced, modified or changed by OMA so long as the volume of storm water to be drained in the Easement Area remains the same or is exceeded in the reduced, modified or changed Easement Area. In the event OMA desires to reduce, modify or change the contour of the Easement Area, OMA shall demonstrate to RFO prior to any reduction, modification or change to the Easement Area that the storm water to be drained in the reduced, modified or changed area remains the same or exceeds such volume to be drained in the Easement Area based upon sound engineering standards and calculations. Upon such demonstration, reasonably acceptable to RFO, the parties shall execute and record all documents to amend the Easement Area.

4. Compliance with Standards. Each party represents and warrants to the other that all facilities and improvements in or adjacent to the Easement Area shall be constructed in compliance with all applicable laws and in accordance with sound engineering standards and practices for similar facilities situated in Pottawattamie County, Iowa.

5. OMA's Use of the Easement Area. OMA reserves and retains for itself and its assigns all rights and interest in the Easement Area not expressly granted herein, including but not limited to the right of use of the Easement Area and the right to grant such other easements to other parties, across, over, in or under the Easement Area, as OMA deems proper, including the construction of drainage facilities for the benefit of the OMA Property, provided such use does not interfere with the use of the Easement Area for RFO's drainage purposes or does not reduce or hinder the storm water drainage volume existing within the Easement Area which is later established by RFO, from time to time, pursuant to this Easement. OMA also retains the right to approve any lien, restriction, easement or any other encumbrance of any kind hereafter placed on the Easement Area and no such encumbrance shall be valid or effective with respect to the Easement Area without the prior written consent of OMA.

6. Duration. The easements, rights and restrictions granted pursuant to this Easement shall commence on the date hereof and shall continue in perpetuity unless mutually terminated by the written consent of both the then record owner of the RFO Property and the then record owner of the Easement Area.

7. Amendments. This Easement may be modified or amended in writing and only with the written consent of both the then record owner of the RFO Property and the then record owner of the Easement Area.

8. Covenants Running With the Land. The rights, privileges, agreements and easements granted in this Easement are granted for the benefit of RFO, and its successors, assigns and transferees. Such rights, privileges, agreements and easements shall run with the RFO Property and shall burden the Easement Area. This Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective assigns, successors in title and transferees.

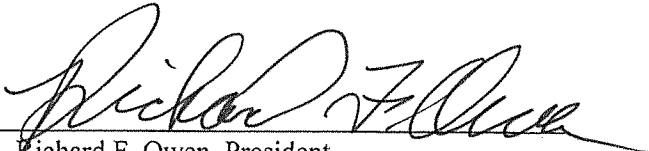
[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Drainage Easement as of the date first above written.

“RFO”

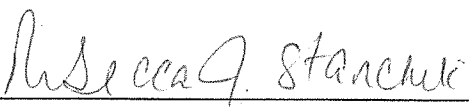
RFO, L.L.C.,

By: Richard F. Owen Companies, Inc.,  
Sole Member

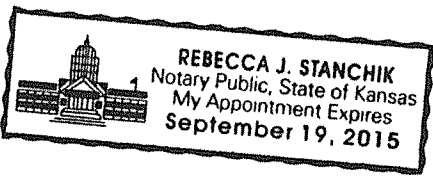
By:   
Richard F. Owen, President

STATE OF Kansas )  
COUNTY OF Johnson ) ss.

On this 24<sup>th</sup> day of June, 2015, before me, a Notary Public in and for said County and State, personally appeared Richard F. Owen, the President of Richard F. Owen Companies, Inc., the sole member of RFO, L.L.C., a Kansas limited liability company, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as the free act and deed of said LLC for the purposes stated therein.

  
Signature of Notary Public  
Rebecca J. Stanchik  
Printed Name of Notary Public

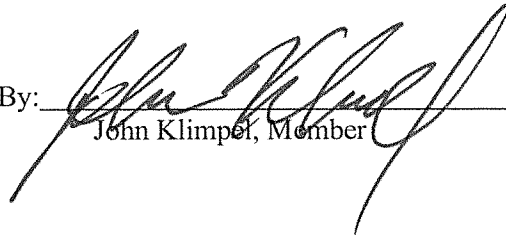
My commission expires:



“OMA”

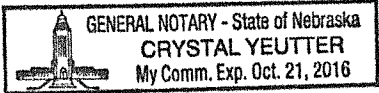
**OMA LODGING, LLC,**

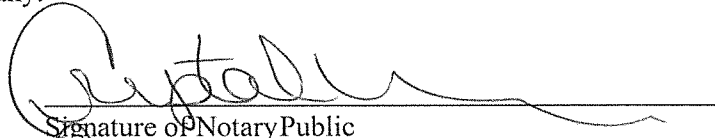
By:   
Mike Works, Member

By:   
John Klimpel, Member

STATE OF Nebraska )  
COUNTY OF Lincoln ) ss.

BE IT REMEMBERED, that on this 25 day of June, 2015, before me, the undersigned, a Notary Public in and for said County and State, came Mike Works and John Klimpel, the members of OMA Lodging, LLC, a Nebraska limited liability company, personally known to me to be the same persons who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of said limited liability company.



  
Signature of Notary Public  
Crystal Yeutter  
Printed Name of Notary Public

My term expires:  
10-21-16

## EXHIBIT A

### Description of the Easement Area

#### Tract 1:

A TRACT OF LAND LOCATED IN PART IN LOT 1 AND LOT 5, OWEN PARKWAY, A SUBDIVISION LOCATED IN THE PART OF THE SW1/4 OF THE SW1/4 OF SECTION 21, AND PART OF THE NW1/4 OF THE NW1/4 OF SECTION 28, ALL LOCATED IN TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA, PARTICULARLY DESCRIBED AS FOLLOWING:

BEGINNING AT THE NORTHERLY CORNER OF LOT 2, SAID OWEN PARKWAY, SAID POINT ALSO BEING THE WESTERLY CORNER OF LOT 3, SAID OWEN PARKWAY, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID LOT 5, OWEN PARKWAY; THENCE S38°40'19"W (ASSUMED BEARING) ALONG SAID EASTERLY LINE OF LOT 5, OWEN PARKWAY, SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 2, OWEN PARKWAY, A DISTANCE OF 280.00 FEET TO THE WESTERLY CORNER OF SAID LOT 2, OWEN PARKWAY, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID LOT 1, OWEN PARKWAY; THENCE N88°43'19"W, A DISTANCE OF 108.11 FEET TO A POINT OF THE WEST LINE OF SAID LOT 1, OWEN PARKWAY; THENCE N01°16'41"E ALONG THE WEST LINE OF SAID LOT 1 AND LOT 5, OWEN PARKWAY, A DISTANCE OF 25.00 FEET; THENCE S88°43'19"E, A DISTANCE OF 76.87 FEET; THENCE N38°40'19"E, A DISTANCE OF 326.61 FEET; THENCE S51°19'46"E, A DISTANCE OF 40.00 FEET TO A POINT ON SAID EASTERLY LINE OF LOT 5, OWEN PARKWAY, SAID POINT ALSO BEING ON THE WESTERLY LINE OF SAID LOT 3, OWEN PARKWAY; THENCE S38°40'19"W ALONG SAID EASTERLY LINE OF LOT 5, OWEN PARKWAY, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 3, OWEN PARKWAY, A DISTANCE OF 47.50 FEET TO THE POINT OF BEGINNING.

#### Tract 2:

A TRACT OF LAND LOCATED IN PART IN LOT 5, OWEN PARKWAY, A SUBDIVISION LOCATED IN PART OF THE SW1/4 OF THE SW1/4 OF SECTION 21, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA, PARTICULARLY DESCRIBED AS FOLLOWING:

BEGINNING AT THE NORTHERLY CORNER OF SAID LOT 5, OWEN PARKWAY, SAID POINT ALSO BEING THE NORTHERLY CORNER OF LOT 4, SAID OWEN PARKWAY, SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF OWEN PARKWAY WEST; THENCE S38°40'19"W (ASSUMED BEARING) ALONG THE EASTERLY LINE OF SAID LOT 5, OWEN PARKWAY, SAID LINE ALSO BEING THE WESTERLY LINE OF LOTS 3 AND 4, OWEN PARKWAY, A DISTANCE OF 353.87 FEET; THENCE N51°19'46"W, A DISTANCE OF 40.00 FEET; THENCE N38°40'19"E, A DISTANCE OF 334.85 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 5, OWEN PARKWAY, SAID POINT ALSO BEING ON SAID SOUTH RIGHT-OF-WAY LINE OF OWEN PARKWAY WEST; THENCE SOUTHEASTERLY ALONG SAID NORTH LINE OF LOT 5, OWEN PARKWAY, SAID LINE ALSO BEING SAID SOUTH RIGHT-OF-WAY LINE OF OWEN PARKWAY WEST ON A CURVE WITH A RADIUS OF 160.00 FEET, A DISTANCE OF 44.43 FEET, SAID CURVE ALSO HAVING A LONG CHORD WHICH BEARS S76°45'26"E, A DISTANCE OF 44.49 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**

**Description of the OMA Property  
(including the Easement Area)**

LOTS 1 AND 2, OWEN PARKWAY REPLAT ONE, BEING A REPLAT OF LOTS 1 THROUGH 5, OWEN PARKWAY, A SUBDIVISION LOCATED IN PART OF THE SW1/4 OF THE SW1/4 OF SECTION 21, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA.

**EXHIBIT C**

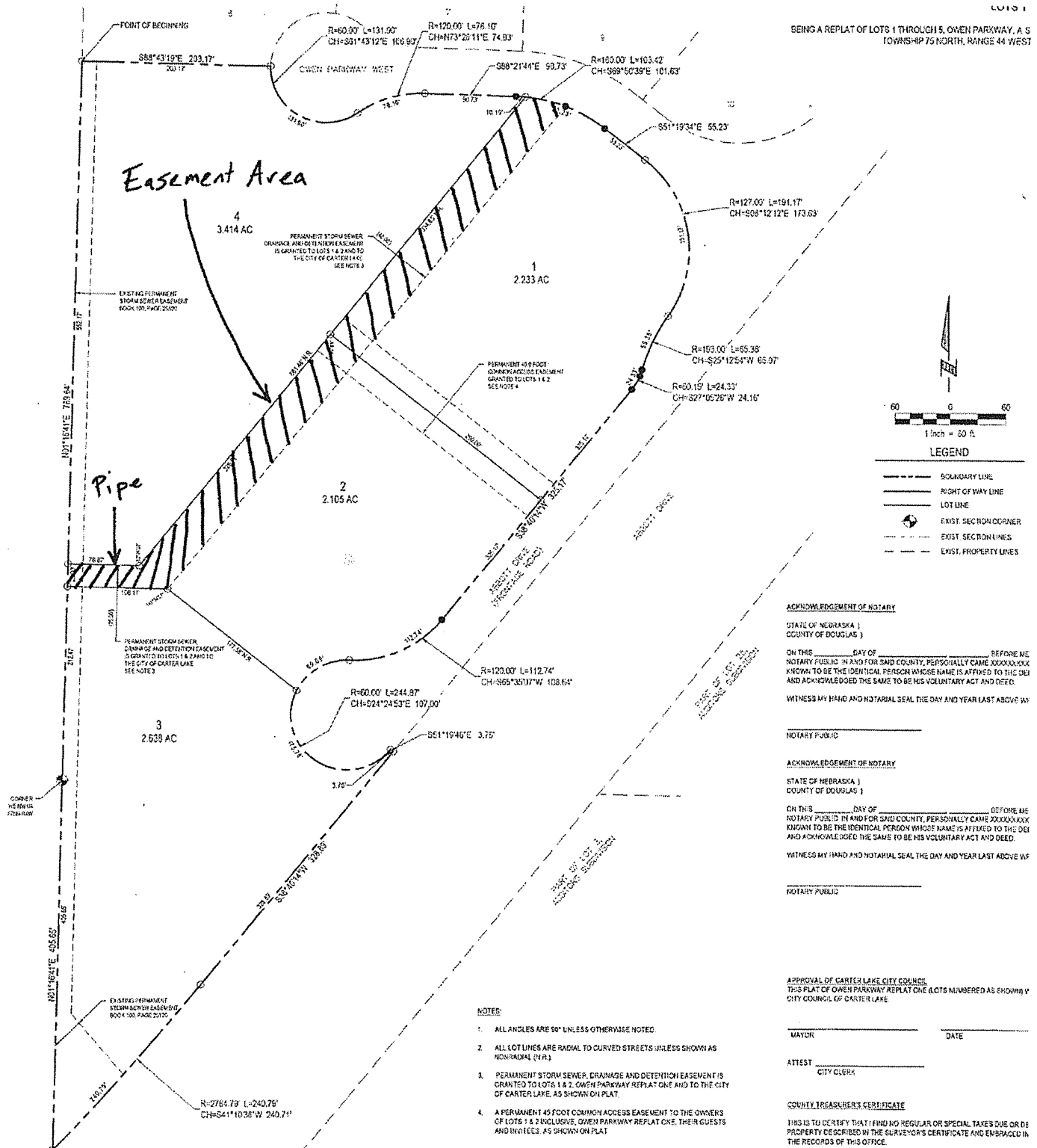
**Description of the RFO Property**

LOTS 3 AND 4, OWEN PARKWAY REPLAT ONE, BEING A REPLAT OF LOTS 1 THROUGH 5, OWEN PARKWAY, A SUBDIVISION LOCATED IN PART OF THE SW1/4 OF THE SW1/4 OF SECTION 21, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA.



# EXHIBIT D

## Depiction of Easement Area



4851-7463-7093, v. 1

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