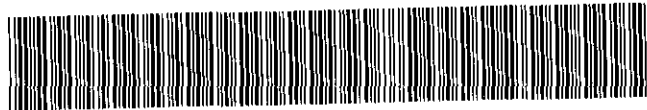




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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND OF  
 CERTAIN RECIPROCAL RIGHTS AND EASEMENTS  
 PERTAINING TO THE PROJECT  
 COMMONLY KNOWN AS MIDTOWN CROSSING AT TURNER PARK  
 OMAHA, NEBRASKA**

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Kathryn Kovitz Arnold, Esq.  
SHEFSKY & FROELICH LTD.  
111 East Wacker Drive, Suite 2800  
Chicago, Illinois 60601

*-41-*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND OF  
CERTAIN RECIPROCAL RIGHTS AND EASEMENTS  
PERTAINING TO THE PROJECT  
COMMONLY KNOWN AS MIDTOWN CROSSING AT TURNER PARK  
OMAHA, NEBRASKA**

This Declaration Of Covenants, Conditions and Restrictions and of Certain Reciprocal Rights and Easements Pertaining to the Project Commonly Known as Midtown Crossing at Turner Park, Omaha, Nebraska (“**Agreement**”) is made and entered into as of the 10TH day of ~~December~~ 2009, by East Campus Realty LLC, a Nebraska limited liability company (“**Developer**”).

**RECITALS:**

**A.** The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in **Article I** hereof.

**B.** Developer is the owner in fee simple of the property located at and around Turner Park in Omaha, Nebraska, legally described on **Exhibit A** attached hereto and made a part hereof (the “**Total Parcel**”) and commonly known as Midtown Crossing at Turner Park.

**C.** The Total Parcel will be operated as seven (7) separate parcels of real estate hereinafter referred to, respectively, as Parcel 1 (“**Parcel 1**”), Parcel 2 (“**Parcel 2**”), Parcel 3, 4, 5 (“**Parcel 345**”), Parcel 6 (“**Parcel 6**”), Parcel 7 (“**Parcel 7**”), Garage C (“**Garage C Parcel**”) and Ramp A (“**Ramp A Parcel**”) (each a “**Parcel**” and collectively, the “**Parcels**”), each of which is depicted on **Exhibit B** attached hereto and incorporated herein.

**D.** Developer desires to grant for itself and the Owners of the Parcels certain easements, rights and privileges over, under, in and upon the Parcels for structural support, access, utilities, and encroachments as well as providing for, among other things, an allocation between the Owners of the Parcels for the sharing of common obligations and expenses.

**E.** Developer currently operates the Total Property (as hereafter defined).

**F.** Each of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel may be structurally and/or functionally dependent on one or more of the others and may depend upon one or more of the others, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

**G.** Developer, as the Owner of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel desires by the execution of this Agreement to provide for the efficient operation of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel to assure the harmonious relationship of the Owners of each such Property, and to protect the respective values of each such Property, by providing for, declaring and creating certain easements, covenants and restrictions benefiting and burdening the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

**NOW, THEREFORE**, Developer, as the Owner of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel, as applicable, hereby agrees and declares that the Total Parcel is and shall be owned, held, mortgaged, transferred, assigned, sold, conveyed and accepted subject to this Agreement and do hereby further agree and declare that this Agreement and each of the provisions, easements, covenants, conditions, restrictions, burdens, uses, privileges and charges set forth herein or created hereunder shall, subject to the terms hereof, exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Total Parcel and each of the foregoing shall run with the land subjected to this Agreement.

## ARTICLE I

### Definitions

- 1.1 **2008 equivalent dollars** has the meaning set forth in **Section 12.2** hereof.
- 1.2 **Agreement** means this Declaration of Covenants, Conditions and Restrictions and of Certain Reciprocal Rights and Easements Pertaining to the Project Commonly Known as Midtown Crossing at Turner Park, Omaha, Nebraska dated as of even date herewith, including all exhibits, appendices, amendments and supplements thereto.
- 1.3 **Alterations** has the meaning set forth in **Section 18.1** hereof.
- 1.4 **Altering Owner** has the meaning set forth in **Section 18.1** hereof.
- 1.5 **Annual Reserve Assessment** has the meaning set forth in **Section 6.3** hereof.
- 1.6 **Arbitration** has the meaning set forth in **Section 12.1** hereof.
- 1.7 **Award** has the meaning set forth in **Section 14.1** hereof.
- 1.8 **Building(s)** means any improvements, including, but not limited to, the footings, foundations, columns, piles, buildings, improvements, fixtures, equipment, machinery, Facilities, sidewalks, walkways, driveways, parks and landscaping now or hereafter located in, on, under, within or upon the Total Parcel or upon any individual Parcel, as appropriate, including all alterations, rebuildings, replacements and additions thereto.
- 1.9 **Condominium Act** means the Nebraska Condominium Act, as amended.
- 1.10 **Condominium Association or Association** means any not-for-profit common owner's association formed for the purpose of administering a Parcel or portion thereof pursuant to a Declaration, as the case may be.
- 1.11 **Condominium Unit** means any unit in any condominium established on any Parcel.

1.12 **Condominium Unit Owner** means the owner of any unit in any condominium established on any Parcel.

1.13 **Consumer Price Index** has the meaning set forth in **Section 12.2** hereof.

1.14 **Creditor Owner** means, except where otherwise defined hereunder in a specific context, an Owner to whom a payment of money or other duty or obligation is owed under this Agreement by any other Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder.

1.15 **Declaration** means any document of covenants, conditions and restrictions pursuant to which a Parcel or portion thereof is submitted to the Condominium Act or other form of common ownership.

1.16 **Defaulting Owner** means, except where otherwise defined hereunder in a specific context, an Owner who has failed to make a payment of money owed under this Agreement to any other Owner or has failed to perform any of its duties or obligations as and when required under this Agreement and such failure is not under any applicable grace and cure period.

1.17 **Developer** means East Campus Realty LLC, a Nebraska limited liability company, and its successors and assigns.

1.18 **Easement** means any one or more of the easements provided for, granted, declared or created pursuant to or in accordance with the terms and provisions of this Agreement.

1.19 **Emergency Situation** means (a) a situation impairing or imminently likely to impair structural support or any Facilities critical to the operation of the Total Parcel as a whole or to the operation of any component part thereof; or (b) a situation causing or imminently likely to cause bodily injury to persons or material physical damage to all or any portion of the Total Parcel or any property within or about the Total Parcel; or (c) a situation which materially interferes with the beneficial use of any Owner of its respective portion of the Total Parcel. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

1.20 **Estoppel Certificate** has the meaning set forth in **Section 16.1** hereof.

1.21 **Expense Percentage Allocations** means the pro-rata share of joint or common obligations and expenses assessed or incurred with respect to the Total Parcel, attributable to each Owner, identified in **Schedule 1.25** as “Expense Percentage Allocations”.

1.22 **Facilities Account** has the meaning set forth in **Section 6.3** hereof.

1.23 **Facilities Management Agreement** has the meaning set forth in **Section 6.6** hereof.

1.24 **Facilities Management Budget** has the meaning set forth in **Section 6.2** hereof.

1.25 **Facilities Management Fee** has the meaning set forth in **Section 6.4** hereof.

1.26 **Facilities Manager** means the person or entity selected and engaged to undertake management of the Shared Facilities and the Shared Facilities Easement Area on behalf of all the Owners, all as provided in said **Article VI**.

1.27 **Facilities** means all systems, and the component parts thereof, and any replacements or substitutions therefor, forming a part of any Building and designated or utilized to furnish support, enclosure, utility or any other services to any portion of any Building, including without limitation: chilled and condenser water, central air handling and fan, temperature control, domestic water, fire suppression, sanitary waste, storm water, electrical, emergency generator, gas, fire detector and alarm, security systems, master satellite antenna, emergency power, telephone, elevator, stairwells, lightning protection, kitchen waste and any other systems, together with any and all equipment and component parts thereto, including, without limitation, annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, control centers, cooling towers, couplers, devices, ducts, elevator cars and related equipment, equipment, fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, tanks, transformers, valves, wiring, davits, pegs and suspension equipment for window washing and façade maintenance and the like.

1.28 **First Mortgage** means any mortgage or trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, granted by one Owner as a lien and encumbrance upon such Owner's title to its respective portion of the Total Parcel; provided, however, with respect to any Submitted Property, the term "First Mortgage" shall not apply to any mortgage granted by a Condominium Unit Owner with respect to its Condominium Unit.

1.29 **Garage C Parcel** means that portion of the Total Parcel currently consisting of a 4-story, 667-parking space, approximately 252,150 square foot building, such Garage C Parcel being depicted on **Exhibit B** attached hereto and made a part hereof.

1.30 **Hazardous Substances** means any dangerous, toxic or hazardous pollutant, contaminant, chemical, waste, material or substance as defined in or governed by any Environmental Law, and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos or asbestos containing materials, nuclear or radioactive fuel or waste, radon, explosives, known carcinogens, petroleum, petroleum products, or any other waste, material, substance, pollutant or contaminant to which liability or standards of conduct may be imposed under any applicable Environmental Law.

1.31 **Indemnifying Owner** has the meaning set forth in **Section 7.4** hereof.

1.32 **Indemnitees** has the meaning set forth in **Section 7.4** hereof.

1.33 **Laws** mean all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary and extraordinary, which now or at any time hereafter may be applicable to the Owners, the Building, the Total Parcel or any parts thereof.

1.34 **Losses** has the meaning set forth in **Section 7.4** hereof.

1.35 **Maintenance** means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of the Facilities and the Shared Facility Easement Area and, subject to any limitations set forth elsewhere in this Agreement, includes: (i) the right of access to such Facilities and Shared Facility Easement Area; and (ii) the right to remove from a Building portions of such Facilities and Shared Facility Easement Area for any of the above purposes.

1.36 **Monthly Facilities Assessment** has the meaning set forth in **Section 6.3** hereof.

1.37 **Non-Performing Owner** has the meaning set forth in **Article XIII** hereof.

1.38 **Non-Submitted Property** means any Parcel or portion thereof not submitted to the provisions of the Condominium Act or otherwise governed by a Condominium Association.

1.39 **Outlots** means Outlots 2 through 4 at Midtown Crossing at Turner Park.

1.40 **Owner** means the Owner of Parcel 1, the Owner of Parcel 2, the Owner of Parcel 345, the Owner of Parcel 6, the Owner of Parcel 7, the Owner of the Garage C Parcel or Owner of the Ramp A Parcel, as the context requires. "Owners" means any combination of the above, as the context may require.

1.41 **Owner of Garage C Parcel or Garage C Parcel Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Garage C Parcel.

1.42 **Owner of Parcel 1 or Parcel 1 Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Parcel 1.

1.43 **Owner of Parcel 2 or Parcel 2 Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Parcel 2.

1.44 **Owner of Parcel 345 or Parcel 345 Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Parcel 345.

1.45 **Owner of Parcel 6 or Parcel 6 Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Parcel 6.

1.46 **Owner of Parcel 7 or Parcel 7 Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Parcel 7.

1.47 **Owner of Ramp A Parcel or Ramp A Parcel Owner** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Ramp A Parcel.

1.48 **Ownership Majority** means, with respect to any matter for which consent, approval, or agreement of the Owners hereunder is required to be obtained, the consent, approval or agreement of Owners holding a majority of Ownership Votes.

1.49 **Ownership Votes** means the number of votes that each Owner is allocated hereby and is entitled to cast in each case where the consent, approval or agreement of an Ownership Majority is required to be obtained under the terms of this Agreement. The schedule set forth immediately below indicates the number of Ownership Votes attributable to and held by each respective portion of the Total Parcel and therefore available to be cast by the respective Owner thereof:

<b>Owner:</b>	<b>Number of Ownership Votes:</b>
Parcel 1	11%
Parcel 2	11.56%
Parcel 345	43.65%
Parcel 6	7.73%
Parcel 7	16.06%
Garage C Parcel	5%
Ramp A Parcel	5%

1.50 **Parcel 1** means that portion of the Total Parcel currently consisting of an eight-story, approximately 16,206 square foot building, such Parcel 1 being depicted on **Exhibit B** attached hereto and made a part hereof.

1.51 **Parcel 2** means that portion of the Total Parcel currently consisting of a 7-story, approximately 115,732 square foot building, such Parcel 2 being depicted on **Exhibit B** attached hereto and made a part hereof.

1.52 **Parcel 345** means that portion of the Total Parcel currently consisting of an eight-story, approximately 537,085 square foot building, such Parcel 345 being depicted on **Exhibit B** attached hereto and made a part hereof.

1.53 **Parcel 6** means that portion of the Total Parcel currently consisting of a 5-story, approximately 77,419 square foot building, such Parcel 6 being depicted on **Exhibit B** attached hereto and made a part hereof.

1.54 **Parcel 7** means that portion of the Total Parcel currently consisting of a 7-story, approximately 160,765 square foot building, such Parcel 7 being depicted on **Exhibit B** attached hereto and made a part hereof.

1.55 **Parcel** means Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel or the Ramp A Parcel.

1.56 **Park** means Turner Park, the oval landscaped green space along 31<sup>st</sup> Avenue as shown on **Exhibit B**, which is a public park. The Park shall be considered part of the Shared Facilities under this Agreement solely for purposes of discussion of maintenance and usage, but shall be and remain a public park.

1.57 **Plat** means the Plat of Survey or drawing consisting of the Total Parcel Survey, attached hereto as **Exhibit B** and made a part hereof. In the event that drawings are attached hereto instead of plats, the Developer shall have the right to amend this Agreement to incorporate surveys of each Parcel as, and if, they become available.

1.58 **Ramp A Parcel** means that portion of the Total Parcel currently consisting of an 8-story, 1836-parking space, approximately 595,390 square foot building with approximately 1,100 square feet of office use, such Ramp A Parcel being depicted on **Exhibit B** attached hereto and made a part hereof.

1.59 **Ramp C** means the area adjacent to Garage C Parcel and Parcel 345 containing loading areas, entrance and exit ramps and equipment for the Total Property for purposes of delivery and moving of furniture, goods and equipment.

1.60 **Recorder** means the Register of Deeds of Douglas County.

1.61 **Responsible Owner** or **Responsible Owners** has the meaning set forth in **Section 5.2** hereof.

1.62 **Shared Facilities Easement Area** means any portion of the Total Property that contains Shared Facilities.

1.63 **Shared Facilities** means those Facilities located wholly or partially within the Shared Facilities Easement Area and listed on **Schedule 1.69** attached hereto and made a part hereof or such other Facilities which may be located within any of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel and/or the Park, that are intended to be utilized on a non-exclusive basis by two or more Owners or provide a service or function to more than one portion of the Total Parcel.

1.64 **Submitted Property** means any Parcel or portion thereof submitted to the provisions of the Condominium Act or otherwise governed by a Condominium Association. In the event that any portion of the Total Property becomes Submitted Property, the Owner of that portion of the Total Property shall mean the Condominium Association for the Submitted Property, which shall be the sole entity entitled to act on behalf of all of the Unit Owners in said Condominium Association collectively, and no individual Unit Owner or Unit Owners shall have the right to take any action hereunder except through the Condominium Association.



1.65 **Supplemental Assessment** has the meaning set forth in **Section 6.3** hereof.

1.66 **Total Parcel** means the parcel of real estate described in **Exhibit A** attached hereto (excluding the Buildings).

1.67 **Total Property** means the Total Parcel improved with the Building(s).

1.68 **Unavoidable Delay** has the meaning set forth in **Article XIII** hereof.

## ARTICLE II

### Grants of Easements

2.1 **Easements Burdening Parcel 1.** The Owner of Parcel 1 hereby grants, declares and creates the following perpetual Easements burdening Parcel 1, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of Parcel 1 for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through Parcel 1 to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon Parcel 1 that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within Parcel 1, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of Parcel 1 situated outside of the exterior walls of the Building on Parcel 1.

2.2 **Easements Burdening Parcel 2.** The Owner of Parcel 2 hereby grants, declares and creates the following perpetual Easements burdening Parcel 2, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of Parcel 2 for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through Parcel 2 to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon Parcel 2 that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within Parcel 2, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of Parcel 2 situated outside of the exterior walls of the Building on Parcel 2.

(D) An Easement in favor of Parcel 345 for the portion of the shared fire exit and to use and maintain the covered walkway between Parcel 2 and Parcel 4.

**2.3 Easements Burdening Parcel 345.** The Owner of Parcel 345 hereby grants, declares and creates the following perpetual Easements burdening Parcel 345, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 2, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of Parcel 345 for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through Parcel 345 to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 2, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon Parcel 345 that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within Parcel 345, for the right to

use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of Parcel 345 situated outside of the exterior walls of the Building on Parcel 345.

(D) An Easement in favor of Parcel 2 for the portion of the shared fire exit and to use and maintain the covered walkway between Parcel 2 and Parcel 4.

**2.4 Easements Burdening Parcel 6.** The Owner of Parcel 6 hereby grants, declares and creates the following perpetual Easements burdening Parcel 6, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 2, Parcel 345, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of Parcel 6 for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through Parcel 6 to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 2, Parcel 345, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon Parcel 6 that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within Parcel 6, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of Parcel 6 situated outside of the exterior walls of the Building on Parcel 6.

(D) An Easement in favor of Ramp A Parcel to use and maintain the covered walkway between Ramp A Parcel and Parcel 7.

**2.5 Easements Burdening Parcel 7.** The Owner of Parcel 7 hereby grants, declares and creates the following perpetual Easements burdening Parcel 7, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 2, Parcel 345, Parcel 6, the Garage C Parcel and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located

within or constituting a part of Parcel 7 for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through Parcel 7 to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, the Garage C Parcel and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon Parcel 7 that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within Parcel 7, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of Parcel 7 situated outside of the exterior walls of the Building on Parcel 7.

(D) An Easement in favor of Ramp A Parcel to use and maintain the covered walkway between Ramp A Parcel and Parcel 7

**2.6 Easements Burdening the Garage C Parcel.** The Owner of the Garage C Parcel hereby grants, declares and creates the following perpetual Easements burdening the Garage C Parcel, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and the Ramp A Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Garage C Parcel for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through the Garage C Parcel to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and/or the Ramp A Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon the Garage C Parcel that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within the Garage C Parcel, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks

and driveways located within any portion of the Garage C Parcel situated outside of the exterior walls of the Building on the Garage C Parcel.

**2.7 Easements Burdening the Ramp A Parcel.** The Owner of the Ramp A Parcel hereby grants, declares and creates the following perpetual Easements burdening the Ramp A Parcel, and, except to the extent the grant of any Easement is specifically made for the exclusive use and enjoyment of one or more, but not all, specific portion(s) of the Total Parcel, all such Easements shall be for the mutual, non-exclusive benefit of all of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and the Garage C Parcel.

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Ramp A Parcel for the support, whether direct or indirect of any other portion of the Total Property.

(B) A non-exclusive Easement over, on, across and through the Ramp A Parcel to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of any of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and/or the Garage C Parcel, as required or permitted pursuant to this Agreement, (ii) to exercise the Easements set forth in this Section, and (iii) for ingress and egress by persons, materials and equipment during an Emergency Situation. No access, for purposes of this section, shall be allowed within the building upon the Ramp A Parcel that is not related to Shared Facilities Easement Areas.

(C) A non-exclusive Easement (i) in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within the Ramp A Parcel, for the right to use and enjoy said portion of the Shared Facilities Easement Area, and (ii) for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and driveways located within any portion of the Ramp A Parcel situated outside of the exterior walls of the Building on the Ramp A Parcel.

(D) An Easement in favor of Parcel 7 to use and maintain the covered walkway between Parcel 7 and Ramp A Parcel.

**2.8** Each Easement created under this **Article II** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Facilities Manager (pursuant to the provisions of **Article VI**) may prescribe, or, to the extent **Article VI** is inapplicable, the Owner of the burdened portion of Total Property may, from time to time after consultation with the Owner of the benefited portion of Total Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of such portion of Total Property and in order to assure the reasonable security thereof; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

2.9 Easements provided for, granted, declared or created under **Section 2.1** shall be binding upon Parcel 1 and the Owner of Parcel 1. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

2.10 Easements provided for, granted, declared or created under **Section 2.2** shall be binding upon Parcel 2 and the Owner of Parcel 2. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

2.11 Easements provided for, granted, declared or created under **Section 2.3** shall be binding upon Parcel 345 and the Owner of Parcel 345. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 2, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

2.12 Easements provided for, granted, declared or created under **Section 2.4** shall be binding upon Parcel 6 and the Owner of Parcel 6. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 2, Parcel 345, Parcel 7, the Garage C Parcel and the Ramp A Parcel.

2.13 Easements provided for, granted, declared or created under **Section 2.5** shall be binding upon Parcel 7 and the Owner of Parcel 7. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 2, Parcel 345, Parcel 6, the Garage C Parcel and the Ramp A Parcel.

2.14 Easements provided for, granted, declared or created under **Section 2.6** shall be binding upon the Garage C Parcel and the Owner of the Garage C Parcel. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and the Ramp A Parcel.

2.15 Easements provided for, granted, declared or created under **Section 2.7** shall be binding upon the Ramp A Parcel and the Owner of the Ramp A Parcel. Subject to the provisions of **Article XVIII**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7 and the Garage C Parcel.

2.16 For access to its Parcel, each Parcel Owner shall have a non-exclusive easement into, on, over, across and through portions of the other Parcels which are necessary for ingress and egress of pedestrians and vehicles, as applicable, over the various sidewalks and private streets located within those portions of the other Parcels. Developer or each Parcel Owner shall have the right to reasonably relocate the sidewalks and private streets on its Parcels, which relocated sidewalks and private streets will be reasonably equivalent to the existing sidewalks and private streets. This right shall include the promenade sidewalk between the Park and the Buildings on Parcel 345, the ramp between Garage C Parcel and the Buildings on Parcel 345 and the Dodge Street Outer Court and the Farnam Street Outer Court.

## ARTICLE III

### Relocation and Temporary Interference with Use of Easements;

#### Security Plans; Development of Parcels; Signs; Landscaping; Appearance

3.1 **Temporary Closing of Easements.** Each Owner, in connection with the use and operation of its Parcel and upon reasonable advance written notice to the other Owners, as appropriate, but in no event less than 48 hours except in the case of an Emergency Situation, may temporarily obstruct, block, close off or impede the flow of pedestrian or vehicular ingress, egress or use over, across and through any Easement created by this Agreement which is located on such Owner's Parcel; provided, however, that such Owner shall use commercially reasonable efforts to minimize the effects on the other Parcels, and shall provide alternate means of ingress, egress or use if practicable and if reasonably required by the Owners of the other Parcels.

3.2 **Maintenance Standards.** The manner in which Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel shall be maintained and the expenditures in connection therewith shall be at the sole discretion of the respective Owners of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel; provided, however, that each of the Owners shall maintain their respective Parcel in accordance with all applicable laws, regulations and ordinances. Each of the Owners of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel shall have the sole right to designate the type and amount of lighting, security services, and other services related thereto, if any, to be provided to such Owners' Parcels. In all events, the Owner of any Parcel shall not be liable to the other Parcel Owners, and the other Parcel Owners hereby waive any claims against the Owner of any Parcel, as applicable, for: (i) any damage to persons or property, regardless of the condition or state of repair of the other Parcels; or (ii) any loss of property in and about the Parcels, by and from any unauthorized acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the services provided by the Owner thereof, as applicable. The foregoing shall not apply in any instance in which the party released thereunder was grossly negligent or acted in a willful manner.

3.3 **Security Plans.** Each Owner shall periodically, upon request of the Facilities Manger, submit a report of its security program ("**Security Plan**") for its Parcel to the Facilities Manager.

3.4 **Development of Parcel 1.** The Owner of Parcel 1 shall have the right at any time to develop Parcel 1 in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of Parcel 1 desires to further develop Parcel 1, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

3.5 **Development of Parcel 2.** The Owner of Parcel 2 shall have the right at any time to develop Parcel 2 in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of Parcel 2 desires to further develop Parcel 2, such Owner may elect to temporarily or permanently relocate any of the

Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.6 Development of Parcel 345.** The Owner of Parcel 345 shall have the right at any time to develop Parcel 345 in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of Parcel 345 desires to further develop Parcel 345, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.7 Development of Parcel 6.** The Owner of Parcel 6 shall have the right at any time to develop Parcel 6 in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of Parcel 6 desires to further develop Parcel 6, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.8 Development of Parcel 7.** The Owner of Parcel 7 shall have the right at any time to develop Parcel 7 in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of Parcel 7 desires to further develop Parcel 7, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.9 Development of the Garage C Parcel.** The Owner of the Garage C Parcel shall have the right at any time to develop the Garage C Parcel in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of the Garage C Parcel desires to further develop the Garage C Parcel, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.10 Development of the Ramp A Parcel.** The Owner of the Ramp A Parcel shall have the right at any time to develop the Ramp A Parcel in any manner consistent with applicable Laws and to develop and provide for any common areas in connection therewith. If the Owner of the Ramp A Parcel desires to further develop the Ramp A Parcel, such Owner may elect to temporarily or permanently relocate any of the Easements granted by it herein provided, however, that such relocation does not materially, adversely affect any other Owner's use of the Easements granted to such Owner hereunder.

**3.11 Signs.** All signs on all Buildings and otherwise located on the Total Parcel shall be displayed in accordance with all applicable laws and ordinances. New signs and modifications to existing signs shall be allowed when approved by the Developer, the Facilities Manager, or in the absence of a Facilities Manager, by a Majority Vote of the Owners. The Developer may install signage of any type so long as the signage complies with all applicable laws and ordinances.



3.12 **Landscaping.** Every parcel except the portions on which a Building is placed shall be landscaped and maintained in a manner which conforms with the original landscaping set forth for the Total Parcel or as approved by the Facilities Manager.

3.13 **Exterior Appearance.** All buildings shall be compatible and in general harmony with all other buildings in existence or originally as existing at the Total Parcel as of the date hereof with respect to matters of exterior design and materials used. No Owner shall alter, paint or otherwise modify the exterior appearance of any building to allow non-conformance with this standard unless approved by the Developer, the Facilities Manager, or in the absence of a Facilities Manager, by a Majority Vote of the Owners.

#### ARTICLE IV

##### Use Restrictions and Certain Agreements among Owners

4.1 **Rules and Regulations.** Use of any Shared Facilities Easement Areas shall be subject to reasonable rules and regulations as established by the Facilities Manager. No Parcel Owner shall use its Parcel in any manner which constitutes a nuisance to any other Parcel Owner.

4.2 **Parking Use by Others.** The owners of any of the parking spaces in the Garage C Parcel or the Ramp A Parcel may permit the use of the parking spaces by, and grant parking to, persons other than the tenants, employees, customers, invitees and guests of the Total Property, but such use or rights shall not diminish the Easement rights of the other Owners.

4.3 **Delivery Docks.** Each Parcel Owner shall use only the delivery docks located on its Parcel.

4.4 **Outdoor Surface Parking Areas.** The Dodge Street Outer Court (as marked on Exhibit A) and the Farnam Street Outer Court (as marked on Exhibit A) shall at all times be maintained as loading and drop-off areas for the Total Parcel and the Facilities Manager shall provide for all care and maintenance of such outdoor parking areas. All expenses related to the care and maintenance of such outdoor areas shall be borne by the Owners in their Expense Percentage Allocations. The Facilities Manager may create reasonable rules and regulations for the use of such outdoor area.

4.5 **Grease Line for Parcel 345.** The common grease line located under Turner Park which serves Parcel 345 shall be maintained by the Facilities Manager, and the costs and expenses associated therewith shall be borne by the Owner of Parcel 345.

4.6 **31st Avenue Lighting.** The additional street lighting located along the Park and 31<sup>st</sup> Avenue shall be maintained by the City of Omaha or the Facilities Manager, as appropriate, and the costs and expenses associated therewith shall be borne by the Owners in their Expense Percentage Allocations.

4.7 **Emergency Generator.** The emergency generator located west of Parcel 345 which serves Parcel 345 shall be maintained by the Facilities Manager, and the costs and

expenses associated therewith shall be borne by the Owner of Parcel 345. The generator shall be allowed to remain in its current location in perpetuity.

**4.8 Securities Communications System.** The Total Property is served by a Securities Communication System which originates from the Ramp A Parcel, and there is a security office located in the Ramp A Parcel for such system. The system and the security office shall be maintained by the Facilities Manager, and the costs and expenses associated therewith shall be borne by the Owners in their Expense Percentage Allocations. The Owner of the Ramp A Parcel shall allow the security office to remain at the Ramp A Parcel but may charge a reasonable market rent for the space.

**4.9 Holiday Light Displays.** The Facilities Manager shall create and maintain holiday light displays on the Total Parcel and the Buildings and easements are granted by each Owner for the installation, maintenance and renewal of such displays. The costs and expenses associated therewith shall be borne by the Owners in their Expense Percentage Allocations.

**4.10 Turner Park.** Turner Park may, in accordance with approvals from the City of Omaha, be used as a place of public gathering and entertainment. The Facilities Manager shall schedule and handle all entertainment and other uses of Turner Park for the Total Parcel and all Owners. The Facilities Manager shall also provide all required maintenance, landscaping, permits, utilities (including but not limited to water and electricity) for Turner Park and for any events to be held at Turner Park on behalf of the Total Property. The costs and expenses associated therewith shall be borne by the Owners in their Expense Percentage Allocations. Any use of Turner Park shall be in accordance and subject to with the agreement for use of Turner Park executed with the City of Omaha.

**4.11 Management Office for Total Property.** The Management Office for the Total Property is currently located in the Building located on Parcel 2. The Management Office will be allowed to remain in Building 2 unless and until the Facilities Manager desires to obtain a different location for the Management Office. The costs and expenses associated with the Management Office (including Fair Market Rent) shall be borne by the Owners in their Expense Percentage Allocations.

## ARTICLE V

### Structural Support; Party Walls

**5.1 Structural Support.** No Owner shall take any action which would adversely affect the structural safety or integrity of any Building on its Parcel or any other Parcel.

**5.2 Party Walls.** There currently exists several party walls between Parcels (“**Party Walls**”). Any dividing wall which straddles the boundary line between the affected Parcels or otherwise serves as a Party Wall and which serves and supports affected Parcels shall at all times be considered a Party Wall and each Owner adjacent thereto shall have the right to use said Party Wall below and above the surface of the ground for the support of its affected Parcel and for the support of any repair, restoration or reconstruction of any affected Parcel. No affected Owner or any successor in interest to any affected Owner shall have the right to extend or diminish said

Party Wall in any manner either in length, height or thickness. In the event any damage to or destruction by fire or any casualty of the Party Wall, including the foundation thereof, each affected Owner shall have the obligation to repair or rebuild such wall. However, if only one affected Parcel is damaged in connection with the Party Wall, that affected Parcel Owner shall pay the expense of rebuilding or repairing the Party Wall. If both affected Parcels are damaged in connection with any Party Wall the affected Owners shall each pay one-half of the cost of such repair or rebuilding. Notwithstanding the foregoing, however, if the damage to the Party Wall is precipitated by the negligent or willful act of one affected Owner then that affected Owner shall be fully responsible for the repair expense. All such repair or rebuilding shall be done within a responsible time in a workman-like manner and with materials comparable to those used in the original wall and shall conform in all respects to the laws and ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. A non-exclusive easement right is hereby granted to the affected Owner of the adjacent Parcel for reasonable access onto the adjoining affected Parcel for the purpose of rebuilding a destroyed or materially damaged Party Wall upon reasonable written notice. Whenever a Party Wall or any portion thereof shall be rebuilt it shall be erected in the same location and on the same line and be the same size as the original wall. If the affected Owner elects not to rebuild or restore the affected Parcel but to maintain the Party Wall the affected Owner may construct an alternate structure on its affected Parcel so long as the same does not materially adversely affect the adjoining affected Parcel. If both affected Parcels have been completely destroyed or substantially destroyed and the affected Owners unanimously agree not to rebuild they shall be relieved of the obligation to rebuild and agree to execute appropriate documentation to release this Party Wall provision with respect to a new Party Wall. The foregoing provisions of this Article are not intended to nor shall they be construed as making any party forego any right they may have under any rule of law regarding liability for negligent or willful acts or omissions except to the extent where there is full insurance coverage in which event each affected Parcel Owner forgives any negligent act of the affected Owner or its lessee and each shall be obligated to use their insurance to pay their proportionate share. The title of each affected Parcel Owner to its portion of the Party Wall is subject to a cross right in favor of the adjoining affected Owner for use of said Party Wall.

## ARTICLE VI

### Management of Shared Facilities

6.1 **Facilities Manager's Responsibilities.** The Facilities Manager shall be responsible for the care and Maintenance of the Shared Facilities Easement Areas and for the operation and Maintenance of the Shared Facilities located therein or wherever else located within the Building, and for the provision of the following services to the Parcels, all of which shall be conducted in a commercially reasonable manner and pursuant to such rules, regulations and restrictions as adopted by the Facilities Manager in its commercially reasonable discretion. The Facilities Manager shall furnish or cause to be furnished to the Owners when, as and if required, at the expense of all of the Owners pro-rata in accordance with their respective Expense Percentage Allocations (except as otherwise provided herein), the following services and any other services set forth in this Declaration to be provided by Facilities Manager:

(A) **Streets.** Maintenance of all private streets and surface parking areas which are a part of the Total Parcel, including the Dodge Street Outer Court and the Farnam Street Outer Court.

(B) **Security.** Provision of private security to any Parcels to the extent the Security is deemed necessary to the Facilities Manager in its commercially reasonable discretion. Any additional security to a Parcel Owner shall be billed to that Parcel Owner.

(C) **Park.** The Facilities Manager shall provide Maintenance, repair and replacement of the Park as further described in Section 4.10.

(D) **Landscape Maintenance.** The Facilities Manager shall provide for all landscaping, lawn maintenance, trash pick up (from areas other than garbage dumpster areas), tree and parkway care and snow removal for the Total Parcel.

(E) **Grease Line.** The grease line for Parcel 345 shall be maintained by the Facilities Manager.

(F) **31st Avenue Lighting.** The 31st Avenue Lighting as required under Section 4.6 shall be maintained by the Facilities Manager.

(G) **Emergency Generator.** The emergency generator discussed in Section 4.7 shall be the responsibility of the Facilities Manager.

(H) **Securities Communication System.** The securities communication system as discussed in Section 4.8 shall be the responsibility of the Facilities Manager.

(I) **Holiday Light Display.** The holiday light displays discussed in Section 4.9 shall be the responsibility of the Facilities Manager.

(J) **Outlots.** All Outlots shall be maintained by the Facilities Manager.

6.2 **Facilities Management Budget.** With respect to each calendar year commencing with the year of execution of this Agreement, the Facilities Manager shall prepare and submit to the Owners a budget (the "**Facilities Management Budget**") setting forth the items and amounts of expense the Facilities Manager anticipates to incur in such calendar year in providing the services and otherwise fulfilling its obligations under **Section 6.1** above or as otherwise set forth herein. Such Facilities Management Budget shall include line items for reasonable contingencies, for reserves for Maintenance of Shared Facilities and Shared Facilities Easement Area, and for the Facilities Management Fee to be paid to the Facilities Manager as compensation for its services provided hereunder. The Facilities Management Budget shall be prepared by the Facilities Manager and delivered to all Owners not later than September 1 of any other calendar year with respect to the ensuing calendar year. The Facilities Management Budget shall be subject to review by all of the Owners and to approval by an Ownership Majority, which approval shall not be unreasonably withheld or delayed (and which shall be deemed given if notice of disapproval is not delivered to Facilities Manager within sixty (60) days after delivery to the Owners). If approval of an Ownership Majority is not obtained (or

deemed given) within ninety (90) days following delivery, Facilities Manager may submit the issue to Arbitration hereunder, and in the interim may make good faith expenditures based upon the proposed Facilities Management Budget (if for the first year) or the prior year's Facilities Management Budget (if for any subsequent year). Once approved by an Ownership Majority or by Arbitration, the Facilities Management Budget shall be utilized as a basis for expenditures to be made by Facilities Manager for the ensuing year, provided, however, Facilities Manager shall not be responsible for increased expenditures resulting from increases in usage by the Owners of any services, Emergency Situations, or by reason of Unavoidable Delay. Notwithstanding any provisions herein to the contrary, each Owner's share of the Monthly Facilities Assessments and Supplemental Assessments shall be capped at the same percentage each Owner is allocated for voting under Section 1.55 above.

**6.3 Payment of Facilities Management Expenses and Assessments therefor.** All costs and expenses incurred by Facilities Manager in connection with the provision of the services and the performance of the other obligations required of Facilities Manager under this **Article VI**, and the Facilities Management Fee payable to Facilities Manager as compensation for the provision of the aforesaid services and performance of the other obligations, shall be paid by the Owners in accordance with the allocations stated in **Section 6.1** or, if not stated therein, in reasonable proportion to the benefits derived by each Owner from those services and activities. Each Owner shall be obligated to remit to Facilities Manager each month an amount (the "**Monthly Facilities Assessment**") based upon the approved Facilities Management Budget in effect from time to time and estimated and determined by Facilities Manager to be sufficient to provide Facilities Manager with the funds necessary to pay the costs of provision of the services and performance of the obligations of the Facilities Manager for the ensuing month; provided however, that at the commencement of each calendar year (and as of the year of execution of this Agreement), Facilities Manager shall be entitled to bill and receive from each Owner a reserve assessment (the "**Annual Reserve Assessment**") in an amount equal to each Owner's share of the amount determined to be necessary to fund (or, after the first year, to supplement) a reserve account with sufficient monies to pay the expenses anticipated for a three (3) month period during the ensuing calendar year. In addition to the Monthly Facilities Assessment, Facilities Manager shall be entitled to deliver supplemental billings ("**Supplemental Assessment**") to any Owner whose use of services exceeds that anticipated by the current Facilities Management Budget. Facilities Manager shall prepare billings for the Monthly Facilities Assessment and any Supplemental Assessments and deliver same to each of the Owners on a monthly basis, and the amounts due thereunder shall be paid by each Owner to Facilities Manager within thirty (30) days after billing. Billings for the Annual Reserve Assessment shall be prepared and delivered to each Owner promptly after approval of the Facilities Management Budget for the first calendar year, or portion thereof, after execution of this Agreement and shall be due and payable within fifteen (15) days after billing. All funds received by Facilities Manager in payment of the Monthly Facilities Assessment, any Supplemental Assessment, and the Annual Reserve Assessment shall be held by Facilities Manager as fiduciary for all the Owners in a segregated interest bearing account or accounts (collectively, the "**Facilities Account**") established by Facilities Manager with a bank or other savings institution selected by Facilities Manager subject to the approval of an Ownership Majority, having an office located in Omaha, Nebraska. The interest earned on amounts so deposited shall inure to the benefit of each of the Owners in proportion to the amount delivered by each of the Owners respectively. Facilities Manager shall have full authority to expend the funds held in the Facilities Account in accordance with the

Facilities Management Budget in effect from time to time and as otherwise herein provided. No such authority of Facilities Manager to expend Facilities Account funds shall include the authority to expend Facilities Account funds in amounts in excess of the amounts set forth in, or for purposes other than as set forth in, the approved Facilities Management Budget without the prior consent of an Ownership Majority, except that (a) Facilities Manager may expend amounts in excess of a line item of the Facilities Management Budget or for a purpose not otherwise contemplated by the Facilities Management Budget without prior consent in the event of an Emergency Situation, and (b) Facilities Manager, in connection with any capital expenditure included in the approved Facilities Management Budget, may expend up to the lesser of (i) Five Thousand Dollars (\$5,000) (in 2008 equivalent dollars), or (ii) ten percent (10%) in excess of the amount budgeted for such expenditure or line item category without the necessity of obtaining prior consent of an Ownership Majority. Facilities Manager, as a Facilities Management Budget expense, shall annually obtain a fidelity bond for all employees of Facilities Manager having access to the Facilities Account in the amount of not less than 150% of the largest amount anticipated to be held at any time in the Facilities Account during the ensuing year. Facilities Manager shall also prepare annual operating statements showing the costs and expenses and allocation thereof for each year within sixty (60) days following the end of each calendar year, and shall reconcile and adjust with each Owner all assessments paid by it during such prior year. Such year end adjustments shall include, as applicable, a Supplemental Assessment billing to any Owner determined to have underpaid its obligation in the prior year, or a notice of credit to be given against Monthly Facilities Assessments next coming due for any Owner that is determined to have overpaid its obligation in the prior year and give written notice to each Owner of the reconciliation within thirty (30) days of completion of any reconciliation.

**6.4 Facilities Management Fee.** The Owners shall pay a fee (the “**Facilities Management Fee**”) to Facilities Manager as consideration for its provision of the services and performance of the obligations required of it under this **Article VI**. The Facilities Management Fee shall be determined annually and shall be payable to the Facilities Manager in equal monthly installments during the year from funds held in the Facilities Account. The amount of the Facilities Management Fee in any year shall be approved by an Ownership Majority. The Facilities Management Fee shall be borne by the Owners pro-rata based on their respective Expense Percentage Allocations. The Facilities Management Fee shall be at a rate commensurate with rates being charged for comparable projects.

**6.5 Good Faith Obligations and Indemnification of Facilities Manager.** Facilities Manager shall make a good-faith effort to furnish all services as required under this **Article VI** in a manner which will provide each Owner with reasonable occupancy and enjoyment of its Parcel for each Parcel’s intended use, and each Owner agrees to provide to Facilities Manager its reasonable cooperation and assistance in connection with the provision of such services; provided, however, in no event shall Facilities Manager be obligated to use more than reasonable diligence in performing the services required of it under this **Article VI**, be liable for consequential damages for failure to perform hereunder, or be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason, unless caused by the gross negligence or willful misconduct of the Facilities Manager. In consideration of the services rendered by the Facilities Manager, the Owners jointly and severally agree to indemnify and hold harmless the Facilities Manager from any and all claims, loss, damage, liability or expense of any kind whatsoever (including, but not limited to,

reasonable attorneys' fees and expenses) incurred in the course of the Facilities Manager's duties hereunder or in the defense of any claim or claims made against the Facilities Manager by reason of its appointment hereunder, except where due to the gross negligence or willful misconduct of the Facilities Manager or actions not taken in good faith by the Facilities Manager.

**6.6 Selection of Facilities Manager; Delegation of Duties by Facilities Manager.**

The Owners, acting through an Ownership Majority, shall from time to time select and engage on behalf of all Owners a management company to act as the Facilities Manager hereunder. The Owners forming the Ownership Majority selecting a Facilities Manager shall have no liability or owe any fiduciary duty to any other Owner for selecting the Facilities Manager or for any action taken by the Facilities Manager in the exercise of its duties hereunder, it being expressly acknowledged and agreed that the sole responsibility of the Owners in connection with the Facilities Manager shall be to utilize their good faith judgment in selecting a Facilities Manager meeting the qualifications expressed in this **Section 6.6**. Any Facilities Manager, once so selected, shall enter into a written agreement specifically outlining its duties hereunder, which written agreement (the "**Facilities Management Agreement**") shall incorporate the terms and provisions in this Agreement and may contain such additional provisions as the Owners may require, so long as such additional provisions do not increase the obligation of any Owner beyond its obligations stated herein, or increase the power or authority of the Facilities Manager vis-à-vis any Owner (unless, in either case, such affected Owner specifically consents to same in writing), and shall include, without limitation, provisions relating to the Facilities Management Fee applicable thereto and shall impose a standard of commercial reasonableness upon the Facilities Manager. The Facilities Management Agreement shall be executed on behalf of all Owners by the Owners constituting the Ownership Majority approving its terms. Notwithstanding the above, Developer is to be the initial Facilities Manager for the Total Parcel and the Total Property.

**6.7 Ability to Discontinue Services to Defaulting Owner under certain Circumstances.** If at any time a Defaulting Owner fails to pay to a Creditor Owner any sum of money payable to such Creditor Owner or the Facilities Manager within fifteen (15) days after receipt of written notice from such Creditor Owner or the Facilities Manager demanding payment of said sum of money, then such Creditor Owner may discontinue furnishing to the Defaulting Owner the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes its obligation to pay said sum of money, pays the undisputed portion of said sum and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner or the Facilities Manager may not discontinue furnishing any such services to the Defaulting Owner unless and until it shall finally be determined by Arbitration in accordance with **Article XII** hereof or by a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid for ten (10) days thereafter; and further provided, however, that Creditor Owner or the Facilities Manager may not discontinue any such services if such discontinuance would cause an Emergency Situation or hinder steps to remedy or otherwise exacerbate an existing Emergency Situation.

6.8 **Replacement of Shared Facilities.** Whenever the Facilities Manager is obligated to replace any Shared Facilities, Facilities Manager shall, subject to any constraints contained in the Facilities Maintenance Budget, replace such Shared Facilities with Shared Facilities substantially equivalent or better and providing substantially the same quality of service or better.

6.9 **Estimates of Usage.** If at any time the actual allocation of cost of Maintenance of Shared Facilities is based on an Owner's usage recorded by meters but cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the Facilities Manager shall make such reasonable determination of costs based on usage, using such experts or systems as it may consider helpful or may be necessary to achieve an estimate of usage. The Facilities Manager shall notify the Owners in detail of its determination of estimated usage and the method for such determination at the time such Owner sends its billings for Monthly Facilities Assessment and/or applicable Supplemental Assessments. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that such method of estimating usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties. If any Owner receiving such notice, in good faith, disputes that the method of estimating usage has been determined reasonably, he shall so notify the other Owners. If the Owners fail to agree on the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then the Owners shall submit the question to an independent qualified consulting engineer familiar with the subject matter, and the consulting engineer shall issue a determination as to the propriety of the methodology utilized, which determination shall be final and binding on the Owners and the holders of the First Mortgages. The consulting engineer shall be selected by an Ownership Majority and the costs of the consulting engineer shall be shared by the Owners pro-rata based on Expense Percentage Allocations.

## ARTICLE VII

### Compliance With Laws; Removal of Liens

7.1 The Owners shall each comply with all laws, codes, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Nebraska, City of Omaha and any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Total Parcel or any portion thereof, if noncompliance would subject the other Owners or any of the holders of the First Mortgages to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to such other Owners or for the Building(s) itself or would jeopardize such other Owner's right to occupy or utilize beneficially their respective portion or portions of the Total Parcel or any part thereof, or would result in the imposition of a lien against any portion of the Total Parcel of the other Owners.

7.2 The Owners shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Total Parcel or any portion thereof and the requirements of any insurance policy affecting insurance coverage on any of the other Owners' portion of the Total Parcel, if noncompliance by it with respect to its portion of the Total Parcel



or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owners or the premiums of any policy of insurance maintained by all Owners, or (ii) render any of the other Owners' portion of the Total Parcel uninsurable, or (iii) create a valid defense to any of the other Owners' rights to collect insurance proceeds under policies insuring such other Owner's portion of the Total Parcel; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any of the other Owners' portion of the Total Parcel, such other Owner or Owners shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any of the other Owners, then any Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice any such cure of the noncompliance is still not proceeding diligently, then each Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. Each Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in connection with causing any such compliance to occur. (The provisions of this paragraph shall not apply to any policy of insurance maintained by any individual Condominium Unit Owner, but shall apply to the insurance policy maintained by the Condominium Associations on behalf of all of the Condominium Unit Owners.)

7.3 Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Owner's portion of the Total Parcel, or on its Parcel if the existence or foreclosure of such lien on its Parcel would adversely affect the Shared Facilities or any Easement created hereunder or services to be furnished pursuant to **Article VI** hereof, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, each Creditor Owner may take such action as such Creditor Owner may deem necessary to remove such lien. Each Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in removing or attempting to remove such lien. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien and no other Owner may take any action so long as within said thirty (30) day period such lien cannot be foreclosed and the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to each Creditor Owner and the Facilities Manager of its intention to contest the validity or amount of such lien, and (B) shall deliver to the Creditor Owner, if only one, or to the Facilities Manager on behalf of all Creditor Owners, if more than one, either: (i) cash or a surety bond from a responsible surety company acceptable to such Creditor Owner(s) (and to the holder of the First Mortgage of each portion of the Building owned by a Creditor Owner(s)) in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim, or (ii) such other form of security providing substantially equivalent protection as may be proposed by the Defaulting Owner provided the same is reasonably acceptable to all such Creditor Owners (and to the holder of the First Mortgage of each portion of the Building owned by a Creditor Owner).

7.4 Each of the Owners (hereinafter in this **Section 7.4**, the “**Indemnifying Owner**”) covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners and their respective shareholders, partners, members, officers, directors, managers and employees (hereinafter in this **Section 7.4**, the “**Indemnitees**”) from and against any and all claims against Indemnitees for losses, liabilities (civil or criminal), damages, judgments, costs and expenses, including reasonable attorneys’ fees (collectively, “**Losses**”), and any actions or proceedings arising therefrom, including, but not limited to, any action for injury or harm to persons or property, by or on behalf of any person, firm, corporation or governmental or quasi-governmental authority, other than the Indemnitees, arising from the Indemnifying Owner’s (or its employees’, contractors’, invitees’ or licensees’) use, possession or management of the Indemnifying Owner’s Parcel or activities therein or arising out of the Indemnifying Owner’s (or its employees, contractors, invitees or licensees) use, exercise or enjoyment of an Easement within the Indemnitee’s Parcel and from such Owner’s breach of the provisions of this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, the Indemnifying Owner shall not have any indemnification obligations hereunder with respect to Losses arising from the Indemnitees’ gross negligence or willful misconduct. In case any action or proceeding is brought against any of the Indemnitees by reason of any such claim, Indemnifying Owner, upon notice from any such Indemnitees, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnitees. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitees.

## ARTICLE VIII

### Real Estate Taxes

8.1 **Taxes prior to Tax Division.** At any time that Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel are not separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon or with respect to the Total Parcel. Each Owner’s portion of such taxes and assessments shall be reasonably determined by the Facilities Manager.

(A) Upon receipt of the real estate tax bills for the Total Parcel, the Facilities Manager shall forward a copy of same to the Owners of Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel together with the Facilities Manager’s determination of their respective shares of such tax bills. Each of the Owners of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel shall each deliver to the Facilities Manager a cashier’s or certified check made payable to the Facilities Manager for its allocable share, as determined by the Facilities Manager, of the tax bills within fifteen (15) days after demand is made therefor by the Facilities Manager. The Facilities Manager shall make payment of the tax bills to the appropriate authority from the amounts so collected and shall forward a copy of the receipt for same to each of the Owners when it is received.

(B) If the Facilities Manager, on behalf of the Owners, attempts to obtain a lowering of the assessed valuation upon the Total Parcel or takes other action for the

purpose of reducing taxes thereon with respect to any period prior to the time that the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and the Ramp A Parcel are separately assessed and taxed, the Owners of the various portions of the Total Parcel shall cooperate with the Facilities Manager in such attempt and shall each share in the costs incurred in proportion to its share of the real estate taxes. Any tax refund received as a result of such action shall be apportioned between the Owners in accordance with their respective portions of the real estate taxes. Nothing contained herein shall affect the independent right of each Owner to protest taxes and other charges to the extent the same affect only such Owner's portion of the Total Parcel.

## ARTICLE IX

### Insurance

9.1 **Owner's Property Insurance.** The Owner of each of the Parcel 1, Parcel 2, Parcel 345, Parcel 6, Parcel 7, the Garage C Parcel and/or the Ramp A Parcel shall, at its sole cost and expense, procure and maintain commercial property insurance insuring against loss or damage to the Building on its Parcel, including without limitation all Facilities within the Building on its Parcel, pursuant to an "all risk" or a broad scope of "covered perils" form of coverage (which shall, at a minimum, contain the coverages enumerated in Insurance Services Office, Inc. Broad Causes of Loss Form, together with earthquake coverage (if required by law) and insurance against boiler and machinery risks on a comprehensive, blanket basis covering the Building and Facilities on its Parcel on a repair or replacement basis), and as may be required to insure the improvements made by it on its Parcel and all of its personal property and fixtures within the Building on its Parcel, or as may be required by the holder of the First Mortgage encumbering such respective portion of the Total Parcel.

9.2 **Liability Insurance.** Each Owner shall maintain commercial general liability insurance covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about (i) the portion of the Total Parcel owned by such Owner, or as a result of operations thereon, or (ii) any other portion of the Total Parcel as a result of the actions of such Owner or its lessees, agents or employees. Such insurance shall be in such amounts as from time to time shall be carried by prudent owners of other comparable type properties (as the case may be) in the City of Omaha, Nebraska, or as may be required by the holder of the First Mortgage on their respective portion of the Building, but in all events with the commercial general liability insurance carried by each Owner shall contain limits of not less than \$1,000,000 per occurrence with an additional \$10,000,000 of umbrella liability insurance coverage.

9.3 **Insurer Standards.** Insurance policies required by this **Article IX** hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Nebraska who shall hold a current A.M. Best's Rating of "A" or better and an A.M. Best's Financial Size Category of not less than XII.

9.4 **Additional Agreements regarding Insurance.** All of the policies of insurance required to be obtained by or on behalf of the Owners pursuant to this **Article IX**: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other

insured party under such policy; (ii) except for liability insurance described in **Section 9.2**, shall provide by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy; and (iii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof.

**9.5 Review of Required Coverage and Limits.** Limits of liability or types of insurance specified in this **Article IX** or carried by the Owners shall be reviewed by the Facilities Manager no less often than annually at least thirty (30) day' before the expiration of each policy to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, are in compliance with this **Article IX** and whether, on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Such limits shall be increased or decreased, deductible amounts increased or decreased, or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided that the Facilities Manager shall have the right, in its reasonable discretion, and subject to the approval of an Ownership Majority, to increase, from time to time, the limits of liability for the insurance required under **Section 9.2** and further provided that no agreement regarding a decrease in limits of liability, an increase in the deductible amounts to an amount in excess of \$125,000.00 (in 2008 equivalent dollars) or elimination of any types of coverages shall be effective without the written consent of all of the Owners and the holders of the First Mortgages. Notwithstanding the foregoing, if the net worth (as determined under GAAP) of any Owner shall at any time exceed \$100,000,000.00 (in 2008 equivalent dollars), such Owner shall, for so long as its net worth exceeds that amount, be permitted to maintain policies under **Section 9.2** with deductibles of up to \$250,000.00 (in 2008 equivalent dollars). In order to take advantage of this permission to increase the deductible amount, the Owner in question shall first be required to provide the Facilities Manager with evidence reasonably satisfactory to Facilities Manager evidencing such net worth and shall be required to re-certify such net worth at least annually (and more often on Facilities Manager's request) to continue to be eligible for such benefit.

**9.6 Copies of Policies.** Certificates of insurance evidencing such policies and the forms of coverage and endorsements required hereunder shall be delivered to the Facilities Manager at least thirty (30) days prior to the expiration date of any such expiring insurance policy.

**9.7 Failure to Obtain or Maintain Required Insurance.** Should any Owner fail to provide and maintain any policy of insurance required under this **Article IX**, then the other Owners may purchase such policy and the costs thereof shall be due from the Defaulting Owner within ten (10) days after the Creditor Owners' written demand therefor.

**9.8 Waiver of Subrogation.** Each of the Owners does hereby release the other Owners and all parties claiming under, by or through them, from all liability for damage due to

any act or neglect of the other Owners (except as hereinafter provided) occasioned to property owned by said Owners which is or might be incident to or the result of a fire or any other casualty against loss from which either of the parties is now carrying or hereafter may carry insurance; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful acts of any of the Owners or anyone acting by, through or under them. The parties further covenant that any insurance obtained on their respective properties shall contain an appropriate provision whereby the insurance company or companies consent(s) to the mutual release of liability contained in this paragraph.

## ARTICLE X

### Use of Garage C Parcel and Ramp A Parcel

10.1 **Use of Garage C Parcel and Ramp A Parcel.** The Owners of the Garage C Parcel and the Ramp A Parcel (for purposes of this **Section 10.1** only the "**Garages**") may elect to have the Garages used for parking operations which serve the general public. The use thereof shall be in the sole discretion of the Owners of the Garage C Parcel and the Ramp A Parcel, and all income derived therefrom shall belong the Owners thereof.

## ARTICLE XI

### Liens, Debts, Interest and Remedies

11.1 **Lien for Non-Payment of Obligations.** If, at any time, any Owner fails within the time period set forth for payment, or if no time period is set forth, then within fifteen (15) days after notice or demand to such Owner to pay to any other Owner any sum of money due any other Owner, as Creditor Owner (or, if applicable, Facilities Manager, as a "Creditor Owner" on behalf of the other non-Defaulting Owners) under or pursuant to the provisions of this Agreement, then, in addition to any other rights or remedies each Creditor Owner may have, such Creditor Owner shall have a lien against the Defaulting Owner's Parcel. Such lien shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such lien shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this **Section 11.1** shall be (i) subject and subordinate to the lien of any mortgage, trust deed or other encumbrance on the Defaulting Owner's Parcel at the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said mortgage, trust deed or other encumbrance, and (ii) subject to termination and defeat as provided in **Section 11.3** below.

11.2 **Effect of Lien against Condominium Unit Owners.** Subject to the limitations set forth in **Article XV** hereof, and without limiting any equitable remedies to which any Owner may be entitled, no Condominium Unit Owner shall be personally liable for all or any part of any claim against the Owner of the Submitted Property in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in the Common Elements allocated to such Condominium Unit Owner's Unit as set forth in the Declaration for the Condominium. Upon payment of such amount for which a Condominium Unit Owner may be

liable, (i) any lien arising against such Condominium Unit Owner's Unit on account of such claim shall be deemed released against such Condominium Unit Owner's Unit without further act or deed by any such Condominium Unit Owner, and (ii) upon the written request of such Condominium Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Condominium Unit Owner an instrument evidencing the release of such lien, but only with respect to said Condominium Unit Owner's Unit. When a Condominium Unit is owned by more than one "person" (as defined in the Act), the liability of each such person for any claim against the Condominium Unit shall be joint and several.

**11.3 Conveyance Does Not Affect Lien.** No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this **Article XI** other than a divestiture resulting from a foreclosure of a mortgage lien that is superior to the lien arising pursuant to this **Article XI**.

**11.4 Assignment of Lien to Mortgage Holder.** Any holder of a mortgage or trust deed on all or any portion of any Parcel or any individual condominium unit in any Submitted Property shall have the right to an assignment of any lien affecting the property secured by its mortgage or trust deed upon payment of the amount secured by such lien and shall in the event of said payment or satisfaction be subrogated to such other lien and any additional security held by the holder thereof. Such holder of a mortgage or trust deed may at any time give to the holder of the lien a written notice of its election to pay such amount. On a date not less than ten (10) and not more than thirty (30) days after such notice of election, the holder of a mortgage or trust deed shall pay the full amount of such lien, and the holder of the lien shall deliver to the holder of a mortgage or trust deed an instrument in recordable form assigning the lien together with the debt secured thereby.

**11.5 Interest on Past Due Amounts.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner or the Facilities Manager and shall be payable from the date any such amount was first advanced or paid by the Creditor Owner until paid in full, at a rate per annum ("**Default Rate**") equal to the lesser of: (a) the floating rate which is equal to four percent (4%) in excess of the rate of interest from time to time announced by Mutual of Omaha Bank, or its successors or assigns, as the prime rate, or (b) the then maximum lawful rate of interest in Nebraska applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a prime rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

**11.6 Remedies Cumulative.** Subject to the limitations set forth in **Article XV** hereof, the rights and remedies of an Owner provided for in this **Article XI** or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Agreement. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

**11.7 Separate Claims.** Each claim of any Owner arising under this Agreement shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the

enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

**11.8 Actions to Enforce.** Actions to enforce any right, claim or lien under this Agreement shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, any holder of a First Mortgage is diligently proceeding to foreclose the First Mortgage, then such period in which an action by the Owner of the portion of the Total Parcel encumbered by such First Mortgage must be commenced shall be further extended for such additional time as may reasonably be necessary in order for the holder of such First Mortgage to obtain possession of such portion of the Total Parcel.

**11.9 Attorney's Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Agreement.

## ARTICLE XII

### Arbitration

**12.1 Matters subject to Arbitration.** All questions, differences, disputes, claims or controversies arising under this Agreement involving an amount not exceeding \$200,000.00 (in 2008 equivalent dollars) or involving a matter specifically required under the provisions of this Agreement to be submitted for, or determined by, Arbitration, which shall be not resolved within sixty (60) days after same shall arise, except where otherwise expressly provided herein, shall be submitted for arbitration to a panel of three (3) arbitrators at the Omaha, Nebraska office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules. Such arbitration may be initiated at the request of any Owner. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne in equal shares by the Owners which are parties to such arbitration. The Owner requesting arbitration shall notify the holders of the First Mortgages of its request to arbitrate within five (5) days thereafter. Any award of the arbitrators shall be final and binding upon the Owners and judgment thereon shall be entered by any court exercising jurisdiction over the Total Parcel or the Owners.

**12.2 2008 Equivalent Dollars.** For purposes of this Agreement, "2008 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2008. The 2008 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the amount, if any, by which (x) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination exceeds (y) the Consumer Price Index for January, 2008, and the denominator of which is the Consumer Price Index for January, 2008. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Consumers, U.S. City Average, All Items (Base Year 1982-1984=100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or equivalent index agreed to by the Owners if such index is no longer available.

## ARTICLE XIII

### Unavoidable Delays

The Owners shall diligently perform their respective obligations set forth herein. No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (“**Unavoidable Delay**”) and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Owner unable to perform (the “**Non-Performing Owner**”) shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within ten (10) days after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any of the other Owners or the Facilities Manager, keep the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

## ARTICLE XIV

### Condemnation

14.1 **Award.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (the “**Award**”) resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Total Property shall be performed, in accordance with the requirements of this **Article XIV**.

14.2 **Award paid.** All Awards resulting from the taking of all or any part of the Total Property, shall be paid to the Owner of Parcel 1, Owner of Parcel 2, Owner of Parcel 345, Owner of Parcel 6, Owner of Parcel 7, Owner of the Garage C Parcel and the Owner of Ramp A Parcel as their interests appear. Each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property according to the law then applicable.

14.3 **Non-Substantial Taking.** In the event of a taking (other than a temporary taking) of a part of Parcel 1, a part of Parcel 2, a part of Parcel 345, a part of Parcel 6, a part of Parcel 7, a part of the Garage C Parcel and a part of Ramp A Parcel, which does not in each instance affect (i) any Shared Facilities Easement Area, or (ii) any Shared Facilities, benefiting any other portion of the Total Property, or (iii) any of the services described in **Section 6.1** except those having minimal or incidental effect, then, subject to the provisions of **Section 14.6** hereof, the Owner of the Parcel in which the taking occurred shall, subject to the rights of the holder of the First Mortgage encumbering such Parcel, repair and restore the remainder of its portion of the Buildings on its Parcel to form an architectural and functional whole. Such repair and restoration



shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the Parcel in which the taking occurred. Such Owner shall be entitled to receive directly any Award by reason of such taking; provided, however, that the right of the Owner of the Parcel to receive any excess award beyond the cost of repair and restoration, if any, shall be subject to the rights of the holder of the First Mortgage encumbering such portion of the Property with respect to any such award.

**14.4 Rebuilding Excused in certain Circumstances.** If, as a result of a taking (other than a temporary taking), (a) the owner of any Parcel reasonably determines, subject to the consent of the holder of the First Mortgage on the Parcel, that the Parcel no longer can be operated on an economically feasible basis, then the Owner of said Parcel shall not be obligated to repair or restore the Parcel. However, notwithstanding that an Owner may be permitted to elect not to restore its portion of the Total Parcel pursuant to this **Section 14.4**, the Award shall be used to repair or restore the affected portion of the Buildings (and the Facilities therein) on the Parcel to the extent, if any, as may be necessary to provide essential services (including, without limitation, provision of vehicular parking in an amount required by zoning or other applicable ordinances) or structural or utility support for the other portions of the Total Parcel.

**14.5 Controls over Condominium Act.** To the fullest extent permitted by law, with respect to any Submitted Property, the provisions of this **Article XIV** shall be controlling over the provisions of the Condominium Act insofar as the provisions of the Condominium Act purport to limit (i) the obligation of the Condominium Unit Owners to repair or restore the Submitted Property in the event of a taking, or (ii) the use of the Award as provided in this **Article XIV**.

**14.6 Parking.** In the event that as a result of a taking any of the Parcels is left with an insufficient number of parking spaces to comply with that Parcel's applicable zoning requirements, the Owners of all Parcels agree to work reasonably to provide viable parking alternatives among the Parcels.

## ARTICLE XV

### Limitation of Liability

Notwithstanding anything in this Agreement to the contrary, no judgment or decree enforcing obligations under this Agreement against any Owner of any portion of the Total Parcel shall be subject to execution on, or be a lien on any assets of, such Owner other than that Owner's portion, estate or interest in the Total Parcel or insurance or condemnation proceeds relating thereto.

## ARTICLE XVI

### Estoppel Certificates

**16.1 Delivery and Content of Estoppel Certificates.** Each of the Owners shall, from time to time, within fifteen (15) days after receipt of written request from any of the other Owners, execute, acknowledge and deliver to such other Owner or to any existing or prospective

purchaser or mortgagee designated by such other Owner, a certificate (“**Estoppel Certificate**”) stating:

- (A) that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (B) whether there is any existing default hereunder by any of the other Owners and, if so, specifying the nature and extent thereof;
- (C) whether there are any sums which the Owner executing such Estoppel Certificate is entitled to receive or demand from any of the other Owners, and if there is any such sum, specifying the nature and amount thereof; and
- (D) such other matters as may be reasonably requested.

**16.2 Estoppel by Condominium Associations.** With respect to any Submitted Property, (a) an Estoppel Certificate requested from the Owner or Owners of the Submitted Property shall be issued by the Condominium Associations on behalf of the Condominium Unit Owners and the Condominium Associations, and any Estoppel Certificate so issued shall be binding on the Condominium Unit Owners and the Condominium Associations, and (b) an Estoppel Certificate requested by the Owner of any Submitted Property may only be requested by the Condominium Associations on behalf of a Condominium Unit Owner or Condominium Unit Owners and the Condominium Associations.

## ARTICLE XVII

### Association Acting for Condominium Unit Owners

With respect to any Submitted Property, all rights, Easements and benefits under this Agreement appurtenant to or enjoyed by a Submitted Property shall be exercised by the Condominium Associations on behalf of the Condominium Unit Owners, except for such rights or benefits expressly granted to Condominium Unit Owners, and except for Easements which by their nature are exercisable only by Condominium Unit Owners. Any action to enforce rights, obligations, Easements, burdens and benefits under this Agreement on behalf of the Condominium Unit Owners or the Condominium Associations shall be taken on behalf of all Condominium Unit Owners and the Condominium Associations solely by the Condominium Associations by their duly authorized officers acting pursuant to authority granted by law, the Declaration, as applicable, or resolution of the board of managers of the Submitted Property. All responsibilities, obligations and assessments for a Submitted Property shall be the responsibility, obligation and assessment hereunder of the Condominium Association.

## ARTICLE XVIII

### Alterations

#### 18.1

(A) Except as otherwise expressly required or permitted in **Articles V, VI, X and XIV** hereof, any Owner (hereinafter in this **Article XVIII**, "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this **Article XVIII**, "**Alterations**") to its Building(s), provided that such Alterations comply with the restrictions contained herein, the provisions of this Section and of the other provisions of this **Article XVIII**. Prohibitions and restrictions on Alterations by the Owner of any Submitted Property shall also apply to individual Condominium Unit Owners as applicable.

(B) The Owners, in making Alterations, shall (i) perform all work in a first-class workmanlike manner and in accordance with good construction practices, (ii) comply with all then applicable federal, state, local and other governmental and quasi governmental laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Omaha Building Code, and (iii) comply with all of the applicable provisions of this Agreement.

18.2 None of the Owners shall make any Alterations, allow any use of or undertake any other action relating to their respective Parcels which would violate the provisions of (i) the zoning ordinance applicable to the Total Parcel, as said ordinance may be amended from time to time, or (ii) any applicable health codes, building codes, fire codes, or environmental and life safety regulations.

18.3 Applications for building permits to make Alterations which comply with the provisions of this **Article XVIII** shall be filed and processed by the Altering Owner without the joinder of the other Owners in such application, unless the City of Omaha or other government agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said Owners shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owners from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owners' execution of the application, permit or other instrument. If any Owner fails to execute said application or instruments when required hereunder to do so, each of the other Owners is hereby irrevocably appointed attorney-in-fact of such Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such Owner.

18.4 **Reservation for Developer.** The foregoing provisions of this Article shall not apply to any work or alterations made by Developer at the Total Property and no maintenance standards or construction restrictions set forth in this Agreement shall apply to Developer, its successors and assigns.

ARTICLE XIX

Notices; Procedures for Obtaining Consents or Approvals

19.1 **Notice Addresses.** All notices, demands, elections, or other communications required, permitted or desired to be served hereunder shall be in writing and shall be delivered in person or mailed as certified or registered mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier service addressed as below stated:

To the Owner of Parcel 1:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Parcel 2:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Parcel 345:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Parcel 6:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Parcel 7:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Garage C Parcel:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

To the Owner of Ramp A Parcel:                    East Campus Realty, LLC  
Mutual of Omaha Plaza  
Omaha, NE 68175  
Attn: President

**19.2 Procedures for Obtaining Consents or Approvals.** Wherever in this Agreement there is a requirement that the Facilities Manager or any Owner obtain the consent, approval or agreement of any other Owner or Owners as to any matter or as a prerequisite to the taking of any action, then the party requesting the approval, consent or agreement of the Owners (herein the “requesting party”) shall reduce its request to a writing which writing shall include all supplemental materials required by this Agreement or otherwise deemed reasonably necessary by the requesting party for the Owners to make an informed decision on the issue raised (collectively herein “request for approval”). The request for approval shall be delivered by the requesting party (in the manner and to all parties required of a Notice under **Section 19.1** above) to all Owners and, if the requesting party is an Owner, to the Facilities Manager. Each Owner receiving a request for approval shall use good faith efforts to review and respond to such request for approval within thirty (30) days after the effective date thereof, unless a shorter time for response is mandated by the terms of this Agreement (in which event the request for approval shall so state the shorter time period.) Responses to any request for approval shall be rendered by each Owner in a written response delivered to both the requesting party and, if the requesting party is an Owner, to the Facilities Manager. The Facilities Manager shall tally the responses and provide written notice to all Owners of those responses within three (3) business days following the earlier of its receipt of a response from all Owners or the expiration of the applicable response time. If no response is timely received from any Owner, it shall be deemed a denial of approval, consent or agreement by such Owner.

**19.3 Notices to Condominium Associations.** With respect to any Submitted Property, (a) the Owner of the Non-Submitted Property may, but shall not be obligated to, give personal notice to any Condominium Unit Owner, it being expressly agreed that the giving of a notice to the Condominium Associations shall be deemed sufficient notice to all Condominium Unit Owners for all purposes, and (b) the Condominium Associations alone shall be empowered to give notice on behalf of any or all Condominium Unit Owners under this Agreement, which notice shall be binding on the Condominium Unit Owners.

**19.4 Effective Date of Notices.** Any notice, demand, election or other communication delivered personally as aforesaid shall be deemed effective upon receipt, and any notice, demand, election or other communication mailed or forwarded by overnight courier as aforesaid shall be deemed received on the earlier of actual receipt or (a) five (5) days after deposit in the United States mail, if sent by certified mail, return receipt requested, or (b) one (1) business day following deposit with a reputable overnight courier service, with signature acknowledging delivery. Addresses for service of notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any notice, demand, election or other communication in the same manner that service of a summons or legal process may be made.

## ARTICLE XX

### General

**20.1** In fulfilling obligations and exercising rights under this Agreement, each Owner, and, with respect to Submitted Property, each Condominium Unit Owner, shall cooperate with

each other to promote the efficient operation of each respective portion of the Total Parcel and the harmonious relationship amongst them and to protect the value of each of their respective portion, estate or interest in the Total Parcel. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation and which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein): (i) such other instruments, documents, materials and information as any other Owner hereto may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owners hereunder, and (ii) such grants of easements to and agreements with utility companies as any other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by any Owner, provided that the holders of any First Mortgages having a lien on that portion of the Total Parcel affected by such easement have first consented in writing to such easements.

20.2 The illegality, invalidity or unenforceability of any covenant, restriction, condition, limitation or any other provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the other provisions of this Agreement.

20.3 The headings of Articles in this Agreement are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.

20.4 This Agreement may be amended or terminated only by an instrument signed by the then-existing Owner of Parcel 1, the then-existing Owner of Parcel 2, the then-existing Owner of Parcel 345, the then-existing Owner of Parcel 6, the then-existing Owner of Parcel 7, the then-existing Owner of the Garage C Parcel and the then-existing Owner of the Ramp A Parcel, and the holder of record of each mortgage encumbering Parcel 1 or any part thereof, Parcel 2 or any part thereof, Parcel 345 or any part thereof, Parcel 6 or any part thereof, Parcel 7 or any part thereof, the Garage C Parcel or any part thereof and the Ramp A Parcel or any part thereof, or in the event such modification only affects less than all Parcel Owners then by those Parcel Owners so affected. With respect to the Submitted Property, the Condominium Associations shall, by their authorized officers, execute all amendments to or any termination of this Agreement on behalf of all Condominium Unit Owners and the Owners of the Submitted Property, which amendments or termination shall be binding on all Condominium Unit Owners and the Owners of the Submitted Property. Any amendment to or termination of this Agreement shall be recorded with the Recorder.

20.5 Except as otherwise set forth herein, all Easements created herein are and shall be perpetual easements and all the covenants, conditions and restrictions contained in this Agreement, shall be perpetual in nature, shall run with the land and shall be enforceable by and inure to the benefit of the Owners and their respective successors and assigns forever.

20.6 Terms used in this Agreement, unless elsewhere defined in this Agreement, shall have the meanings set forth in **Article I**.

20.7 Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building(s) subject to an Easement unless the Owner benefited by such Easement (with the written consent of the holder of the First Mortgage encumbering such Owner's Parcel) states in writing its intention to abandon the Easement.

20.8 Except as otherwise specifically set forth herein, all of the Easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon the Owners and each subsequent holder of any interest in any portion of the Total Parcel and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Parcel or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees or mortgagees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents.

20.9 This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Nebraska, including without limitation, matters affecting title to all real property described herein.

20.10 This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary (except the holders of the First Mortgages) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

20.11 Each provision of the Recitals to this Agreement and each Exhibit and Schedule attached hereto is hereby incorporated in this Agreement and is an integral part hereof.

20.12 No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver is in writing signed by the party making such waiver. The failure of any party subject hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

20.13 If and to the extent that any of the covenants, Easements or other provisions of this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rules analogous thereto or otherwise imposing limitations upon the time for which such covenants, Easements or other provisions may be valid, then the provision in question shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of the current acting, as of the date of this Agreement, President and Vice President of the United States, living at the date of this Agreement.

20.14 If it becomes clear that additional easements among the portions of the Total Parcel are necessary or desirable to effectuate the purposes of this Agreement, provided said proposed additional easements will not materially interfere with the use and occupancy of any portion of the Total Parcel, materially affect access to, or operation of, any portion of the Total Parcel, or materially increase the operating costs of, or create any additional expense for, any of the Owners, and subject to the agreement of the Owner or Owners of each portion of the Total Parcel affected by such easements and to the reasonable consent of the holders of the First Mortgages having a lien on that portion of the Total Parcel affected by such easements, the Owners hereby agree to reasonably cooperate with each other to determine, create and grant such additional easements as are necessary. If any Owner or Owners in good faith determine an additional easement or easement to be necessary to effectuate the purpose of this Agreement, but the Owner or Owners of the affected portion of the Total Parcel refuse to agree to grant such additional easement, the Owner or Owners proposing the additional easement may submit the issue for resolution by Arbitration pursuant to **Article XII** hereunder. In the event any such new easements are created, this Agreement and the Exhibits hereto shall be amended by designating and describing said easements and such amended Agreement shall be signed by the Owners and the holders of the First Mortgages, if necessary, to effectuate the grant or creation of such additional easements, and shall be recorded with the Recorder and shall have the same force, effect and priority as if such new easements were originally contained herein.

20.15 All consents and approvals of any of the Owners or any of the holders of the First Mortgages shall not be unreasonably withheld or delayed. Any disapproval of or failure to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor. In the event a First Mortgagee fails to disapprove written 30 days of notice of a request for consent or approval, consent or approval will be deemed given.

20.16 Each holder of a First Mortgage is given the right, but not the obligation, to act on behalf of the Owner whose interest is mortgaged to it to cure defaults of such Owner within any applicable cure period set forth herein, and each Owner agrees to accept performance by such holder of a First Mortgage.

20.17 The Developer hereby reserves to itself the right, without the consent of any other Parcel Owner or Mortgagee of a Parcel, to record an amendment to this Agreement. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make or consent to any such amendment on behalf of each Parcel Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record such amendments. The Developer shall mail notice to each Parcel Owner pursuant to the notice provisions hereof after recording of any such amendments. The Developer shall mail notice to each Parcel Owner pursuant to the notice provisions hereof after recording of any such amendments.

20.18 Each Parcel Owner may subdivide its Parcel into smaller Parcels and reallocate the ownership votes pertinent to its Parcel hereunder. Such reallocation shall be effective upon preparation of a notice of division of Parcel which shall be delivered to the Facilities Manager and recorded in the land records. Such notice of division of Parcel shall set forth the reallocation



of ownership votes and maintenance obligations set forth in this Agreement to each of the hereby created Parcels and shall set forth the new Parcel designations. No such division of interest by a Parcel Owner may be made which will materially effect any of the rights, covenants, obligations or restrictions set forth in this Agreement.

20.19 The defined terms used herein for identification of each Parcel shall be considered for identification purposes only and not as any type of restriction on the use of each Parcel.

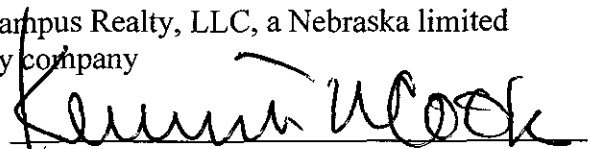
20.20 Upon the transfer of ownership of a Parcel, each subsequent owner of that parcel shall be bound by and have all rights, obligations and responsibilities under this Agreement of the Owner transferring to them.

IN WITNESS WHEREOF, the Developer has caused this Agreement to be duly executed as of the day and year first above written.

**DEVELOPER:**

East Campus Realty, LLC, a Nebraska limited liability company

By:

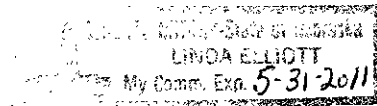


Kenneth R. Cook  
President

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

I, Linda Elliott, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth R. Cook of EAST CAMPUS REALTY, LLC, a Nebraska limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of the company, for the uses and purpose therein set forth.

GIVEN, under my hand and Notarial Seal this of 10 day of December, 2009.



Linda Elliott  
Notary Public

CONSENT OF MORTGAGEE

United of Omaha Life Insurance Company, a Nebraska stock insurance company, holder of a note secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing on the Total Tract recorded in the Mortgage Records in the Office of the Register of Deeds of Douglas County, Nebraska, on March 10, 2008, as Document No. 2008023004, hereby consents to the execution of and recording of the above and foregoing Declaration of Easements, Reservations, Covenants and Restrictions, and hereby subordinates said mortgage to the provisions of the foregoing Declaration.

IN WITNESS WHEREOF, said Lender has caused this instrument be signed by its duly authorized officers on its behalf at Omaha, Nebraska, on this 11<sup>th</sup> day of December, 2009.

United of Omaha Life Insurance Company, a  
Nebraska stock insurance company

By: *David A. Diamond*  
Name: David A. Diamond  
Its: Chief Financial Officer

STATE OF NEBRASKA    )

) SS

COUNTY OF DOUGLAS    )

I, Gail Baustian, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David A. Diamond, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Chief Financial Officer of United of Omaha Life Insurance Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of United of Omaha Life Insurance Company, for the uses and purpose therein set forth.

GIVEN, under my hand and Notarial Seal this of 11<sup>th</sup> day of December, 2009.



*Gail Baustian*  
Notary Public

## **SCHEDULE OF EXHIBITS AND SCHEDULES**

### **LIST OF EXHIBITS:**

Exhibit A	Legal Description of the Total Parcel Depiction
Exhibit B	Plat of Survey – Total Parcel

### **LIST OF SCHEDULES:**

Schedule 1.25	Expense Percentage Allocations
Schedule 1.69	Shared Facilities

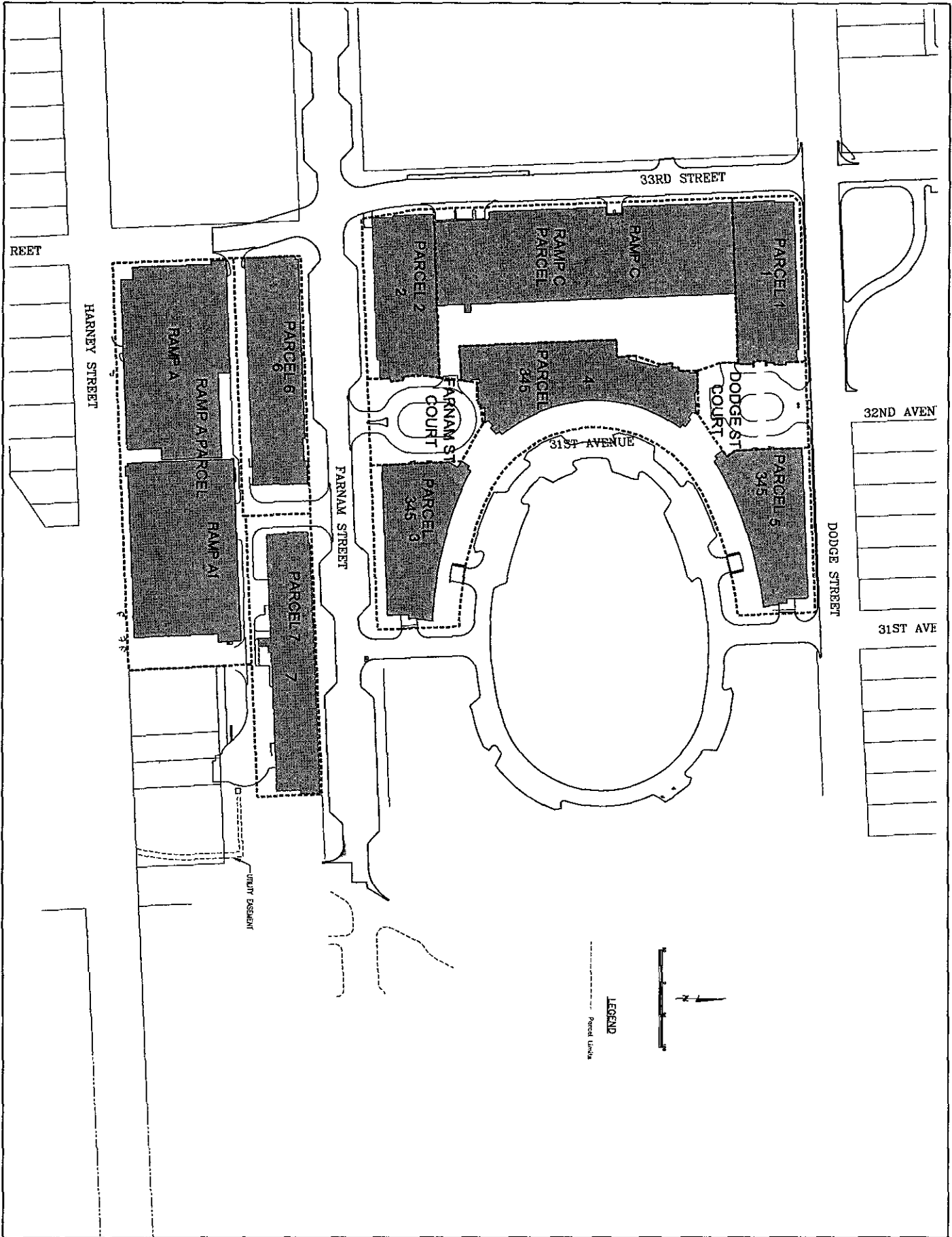
**EXHIBIT A**

**Legal Description of the Total Parcel Depiction**

LOTS 1 THROUGH 5, INCLUSIVE, AND OUTLOTS 2 THROUGH 4, INCLUSIVE,  
MIDTOWN CROSSING AT TURNER PARK, AN ADDITION TO THE CITY OF OMAHA,  
DOUGLAS COUNTY, NEBRASKA.

**EXHIBIT B**

**Plat of Survey - Total Parcel**



DATE	1/27/08
BY	...
PROJECT	...
SCALE	...

LOT PARCEL EXHIBIT

**Lamp, Kyriakos & Associates, Inc.**  
 2470 West Dodge Road, Suite 100  
 Omaha, Nebraska 68154-2027

WWW.LKA-INC.COM  
 (781) 402-4962/468  
 (781) 402-4962/736

MITTOMY CROSSING AT TURNER PARK  
 OMAHA, NEBRASKA

NO. OF SHEETS	1
TOTAL SHEETS	1
DATE	1/27/08
BY	...
PROJECT	...
SCALE	...

**SCHEDULE 1.25**

**Expense Percentage Allocations**

<b>Owner:</b>	<b>Expense Percentage Allocations:</b>
Parcel 1	11%
Parcel 2	11.56%
Parcel 345	53.65%
Parcel 6	7.73%
Parcel 7	16.06%
Garage C Parcel	0%
Ramp A Parcel	0%



**SCHEDULE 1.69**

**Shared Facilities**

<b><u>Facility</u></b>	<b><u>Location</u></b>	<b><u>Benefited Parcels</u></b>
Sanitary Sewer	Throughout	As in Plans
Conduit and Piping	Throughout	As in Plans
Overhead suspended wire	Throughout	As in Plans
Security Office	Ramp A	All
Park	as on survey	All
Generator and related equipment	West of Parcel 345	Parcel 345
Grease Line	Under Road and Park	Parcel 345
Promenade	All on 345 and Park	All
Walkways	as on survey	All
Dodge Street Outer Court	as on survey	All
Farnam Street Outer Court	as on survey	All