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Register of Deeds, Douglas County, NE  
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Return to: Michael D. Matejka, Woods Aitken LLP, 10250 Regency Cir., Ste. 525, Omaha, NE 68114

**INGRESS AND EGRESS  
EASEMENT AGREEMENT**

This Ingress and Egress Easement Agreement (the "Agreement"), is made and entered into as of this <sup>13<sup>th</sup></sup> day of June, 2014, by and between **OMAHA PUBLIC POWER DISTRICT**, a public corporation and political subdivision of the State of Nebraska ("Grantor"), and **415 LEAVENWORTH STREET LIMITED LIABILITY COMPANY**, a Nebraska limited liability company ("Grantee").

**Preliminary Statement**

WHEREAS, Grantor is the owner of the real property in Douglas County, Nebraska legally described on Exhibit "A" attached hereto (the "Grantor Property");

WHEREAS, Grantee is the owner of the real property in Douglas County, Nebraska, legally described on Exhibit "B" attached hereto (the "Grantee Property");

WHEREAS, the Grantee Property is being developed for apartments and commercial uses;

WHEREAS, the Grantor and Grantee have entered into the Development Agreement (the "Development Agreement") for certain development activities that Grantee will perform on Grantor Property;

WHEREAS, the Plat and Dedication of Powerhouse, recorded with the Douglas County, Nebraska Register of Deeds on May 6, 2014, as Instrument No. 2014033151 (the "Plat"), shows a proposed access easement in the north twenty-five (25) feet of vacated Marcy Street located on the Grantor Property (the "Easement Area");

WHEREAS, while the Plat reflects the proposed access easement that benefits and burdens the Grantor and Grantee Property, the Plat does not identify, describe and allocate the respective owner's rights and obligations relating to the ongoing use, maintenance and operation of such easement; and

WHEREAS, this Agreement is being made and entered into for the purposes of memorializing the respective party's agreements and obligations pertaining to the ingress and egress easement provided herein.

NOW, THEREFORE, the parties hereto hereby declare that the Grantor Property and Grantee Property shall be held, sold and conveyed subject to the following conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall run with, each of the Grantor Property and Grantee Property.

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**ARTICLE I**  
**Definitions**

1.1 Easement Area. The term "Easement Area" shall mean the area depicted in the Plat as the proposed access easement.

1.2 Owner. The term "Owner" shall mean the legal owner of fee title to either the Grantor Property or the Grantee Property, as reflected by the records of the Douglas County, Nebraska, Register of Deeds. If the Grantor Property or the Grantee Property is owned by one or more Persons, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in such property shall designate one of their number to represent all owners of the property in question and such designated Person shall be deemed the Owner of such property.

1.3 Permittee. The term "Permittee" shall mean Grantee and its licensees, tenants, guests and invitees.

1.4 Person. The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

**ARTICLE II**  
**Easement**

2.1 Ingress and Egress Easement. Grantor hereby grants and conveys in favor of the Owner of the Grantee Property and for the use of its Permittees, a nonexclusive easement for vehicular and pedestrian ingress and egress over and across the Easement Area, as the same may be from time to time constructed and maintained by the Owner of the Grantee Property for such use. This easement shall terminate upon the completion of the dedication of the street rights of way over Grantor Property resulting in Grantee Property having direct access to such public streets as provided in the Development Agreement.

2.2 Grantor's Use. Nothing herein shall otherwise exclude Grantor from otherwise using the Easement Area in any manner not inconsistent with the provisions of this Agreement.

**ARTICLE III**  
**Maintenance and Repair**

3.1 Maintenance. The Owner of the Grantee Property shall maintain, repair and replace the Easement Area as deemed necessary or appropriate by the Owner of the Grantee Property at its sole expense.

**ARTICLE IV**  
**MISCELLANEOUS**

4.1 Enforcement. In the event of a breach or threatened breach of this Agreement, only an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach. Time is of the essence for purposes hereof.

4.2 Benefits; Amendment. This Agreement and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Agreement may be modified, amended or terminated only by an instrument signed by the Owners of the Grantor Property and Grantee Property and recorded with the Douglas County, Nebraska, Register of Deeds.

4.3 Survival. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

**[Signature Page to Follow]**

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

OMAHA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska

By: *Sherryl L. Hutcherson*

Printed Name: Sherryl L. Hutcherson

Title: Vice President - Corporate Services and C.A.O.

415 LEAVENWORTH STREET LIMITED LIABILITY COMPANY, a Nebraska limited liability company

By: *Todd Heistand*

Printed Name: Todd Heistand

Title: Mgr.

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

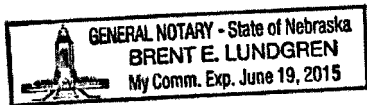
The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2014, by Sherryl L. Hutcherson V.P. Corporate Services & C.A.O. of Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska, on behalf of the District.



*Brent E. Lundgren*  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 2014, by Todd Heistand, Manager of 415 Leavenworth Street Limited Liability Company, a Nebraska limited liability company, on behalf of the company.



*Brent E. Lundgren*  
Notary Public

**EXHIBIT "A"**  
**GRANTOR PROPERTY**

**Lot 1, Powerhouse, City of Omaha, Douglas County, Nebraska**

**EXHIBIT "B"**  
**GRANTEE PROPERTY**

**Lot 2, Powerhouse, City of Omaha, Douglas County, Nebraska**