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Register of Deeds, Douglas County, NE  
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**PARKING EASEMENT AGREEMENT  
AND EXERCISE ROOM LICENSE AGREEMENT**

THIS PARKING EASEMENT AGREEMENT AND EXERCISE ROOM LICENSE AGREEMENT (this "Agreement") is made and entered into as of this 20<sup>th</sup> day of October, 2005, by and between Shamrock Parking, LLC, a Nebraska limited liability company, and its successors and assigns (hereinafter referred to as "Shamrock") and Karl Kehm and Suzanne Kehm, husband and wife (hereinafter referred to as "Kehm").

**RECITALS:**

This Agreement is made with respect to the following facts:

A. Prior to or concurrent with the execution of this Agreement, Kehm has executed and delivered a Declaration of Covenants, Conditions, Restrictions and Easements to Shamrock (the "Declaration"), and, in consideration of the execution and delivery of the Declaration, Shamrock has agreed to: (i) grant Kehm up to ten (10) memberships to the exercise room to be constructed within The Paxton Condominium Property Regime (the "Exercise Room"), and (ii) grant Kehm a permanent exclusive easement to use three (3) parking spaces as shown on Exhibit "A" attached hereto (the "Parking Spaces") located within the common elements of the parking facility constructed or to be constructed on the East 1/2 of lot 6, and lots 7 and 8, in Block 138\*, in the a Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska (the "Parking Facility"), including the right of ingress and egress from the Parking Spaces over and across such portions of Parking Facility subject to the rules and regulations established by Shamrock as set forth in Section 4.1, below. \*now known as Lot 1, Block 138 Original City of Omaha  
Replat 1

B. Shamrock and Kehm desire to enter into this Agreement to set forth their respective rights and obligations with respect to the use of the Parking Spaces and such collateral rights by Kehm.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and agreements contained herein, Shamrock and Kehm agree a follows:

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**ARTICLE 1**  
**PARKING SPACES AND EXERCISE ROOM MEMBERSHIPS**

1.1 **Parking Spaces.** Shamrock, at no cost or expense to Kehm, hereby assigns and grants to Kehm, and all future owners of the Kehm Property (as defined in this Section 1.1) or any portion thereof, and Kehm's Authorized Users (as defined below), a permanent exclusive Easement to use and occupy the Parking Spaces, and Kehm hereby accepts and assumes the right to use and occupancy such Parking Spaces subject to the terms and conditions of this Agreement, together with a non-exclusive right of ingress to and egress from the Parking Spaces over and across such portions of the Parking Facility subject to the rules and regulations as established by Shamrock as set forth in Section 4.1, below. For the purposes of this Agreement, the term Authorized Users shall be limited to Kehm's respective immediate family members and any other persons residing in the building located on Lot 3, Block 138 M 1/3 (22' x 132'), in Original City of Omaha, as surveyed, lithographed and recorded in Douglas County, Nebraska, commonly known as 1415 Farnam Street, Omaha, Nebraska (the "Kehm Property"). The Parking Spaces are identified in Exhibit "A" attached hereto. The Parking Spaces may be changed from time to time with mutual written consent between Shamrock and Kehm.

1.2 **Exercise Room Memberships.** The memberships to the Exercise Room may only be used by Kehm and Kehm's Authorized Users. The memberships to and for the use of the Exercise Room shall be subject to the condominium documents of The Paxton Condominium Property Regime and all reasonable rules and regulations implemented from time to time by Shamrock or the condominium association to be formed. Any and all rules and regulations promulgated by Shamrock or the association shall be non-discriminatory and uniformly enforced.

**ARTICLE 2**  
**TERM**

2.1 **Parking Spaces.** The term of this Agreement, with respect to the Parking Spaces, shall commence on the date the Parking Facility is substantially completed and ready for use and occupancy (the "Parking Facility Commencement Date"), and terminate upon the date the Parking Facility ceases to exist as determined by Shamrock or the condominium property association in its sole discretion (the "Parking Facility Expiration Date"). In the event Shamrock or the association causes the Parking Facility to cease to exist, except for casualty, condemnation, reconstruction, renovation, or repairs, Shamrock or the association as the case may be, shall compensate Kehm for the loss of the Parking Spaces on the same terms, conditions, and dollar amounts, of equivalent parking stalls in the Parking Facility.

2.2 **Exercise Room.** The term of this Agreement, with respect to the Exercise Room, shall commence on the date the Exercise Room is substantially completed and ready for use and occupancy (the "Exercise Room Commencement Date"), and terminate upon the date the

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Exercise Room ceases to exist as determined by Shamrock or the condominium property association in its sole discretion (the "Exercise Room Expiration Date").

### ARTICLE 3 INSURANCE

**3.1 Insurance.** Throughout the Term, Shamrock will, at its sole expense, obtain and keep in force commercial general liability insurance with a combined single limit of a reasonable amount as determined by Shamrock or the Association to be formed, including coverage for contractual liability and personal injury without limitation. Kehm shall have the right to obtain its own liability and/or hazard insurance with respect to the use and occupancy of the Parking Facility or Exercise Room as Kehm determines appropriate in its discretion. Shamrock shall not be liable or responsible to Kehm or any Authorized User for any injury to person or damage to property that may occur within the Parking Facility or Exercise Room unless caused by the gross negligence or willful misconduct of Shamrock.

**3.2 Waiver of Subrogation.** Shamrock and Kehm each waive any and all rights to recover against the other party, any occupant, subtenant or Kehm of the Parking Facility or Exercise Room who is required to or who does maintain a policy of property insurance covering any real or personal property located in the Parking Facility or Exercise Room, and the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of any of the foregoing, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such party or actually carried by such party to the extent of the limits of such policy. To the extent reasonably available, Shamrock and Kehm will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements in accordance with this Section 3.2 to all property insurance policies carried in connection with the Parking Facility or Exercise Room.

### ARTICLE 4 USE

**4.1 Manner of Use and Access of Parking Facility.** Kehm and Authorized Users shall use the Parking Spaces only for the parking of passenger model vehicles, small vans, and small trucks. No commercial vehicles shall be allowed. Kehm and Authorized Users shall use the Parking Spaces in a safe, careful and proper manner, in compliance with (i) reasonable rules and regulations and operating procedures adopted by Shamrock or the condominium association from time to time; provided such rules shall be non-discriminatory and uniformly enforced, and (ii) any present or future governmental or quasi-governmental laws, rules, regulations or orders. Kehm and Authorized Users shall have unrestricted access and use of the Parking Spaces twenty-four (24) hours per day, seven (7) days per week throughout the entire Term. Kehm, at its expense, may post signs indicating which Parking Spaces are reserved for Kehm. Shamrock shall not be liable for the unauthorized use of any of the Parking Spaces by any person or persons other than Authorized Users so long as Shamrock makes reasonable efforts to prevent such usage

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(including towing unauthorized vehicles parked in the Parking Spaces upon notification thereof by Kehm).

4.2 Casualty or Condemnation. In the event the Parking Facility is substantially destroyed by casualty or taken by or under threat of eminent domain and the Parking Facility is not reconstructed or replaced within twenty-four (24) months after such destruction or taking, Shamrock or the association, as the case may be, shall compensate Kehm for the loss of the Parking Spaces on the same terms, conditions, and dollar amounts, of equivalent parking stalls in the Parking Facility.

## **ARTICLE 5 MAINTENANCE AND ALTERATIONS**

5.1 Operation and Maintenance of Parking Facility. Shamrock shall, at no cost or expense to Kehm, through such agents, representatives or independent contractors as it may designate, operate, maintain and keep the Parking Facility in good condition and repair, reasonable wear and tear excepted, in such manner as will ensure Kehm and any Authorized Users the continued availability, use and enjoyment of the Parking Spaces during the Term. Such maintenance shall include, but not be limited to, keeping the Parking Facility reasonably clean, free of debris, ice and snow, and appropriately sanding, salting, painting and striping the Parking Facility and Parking Spaces. Shamrock shall have, the right to enter upon or restrict access to the Parking Spaces or any of them for purposes of performing the Shamrock's obligations under this Section 5.1, provided that Shamrock will use its best efforts in connection with such entry or restriction of access to minimize any disruption to any Kehm's or Authorized User's use of the Parking Spaces.

5.2 Alterations and Improvements. Shamrock may, from time to time, make additions, improvements and alterations to the Parking Facility or Exercise Room in Shamrock's sole discretion; provided, however, that any addition, alteration, or improvement (other than one necessary to operate and maintain the Parking Facility as provided in Section 5.1) which materially impairs access to or use of the Parking Spaces, either temporarily or permanently, shall be made only with reasonable prior notice to Kehm.

## **ARTICLE 6 ASSIGNMENT AND SUBLETTING**

6.1 Kehm may not assign this Agreement or sublet one or more of the Parking Spaces to any other party without the prior written consent of Shamrock, which consent may be withheld in Shamrock's sole discretion; provided, however, this Agreement may be assigned without the prior written consent of Shamrock by Kehm to any future owner(s) of the Kehm Property or any portion thereof. If Kehm requests Shamrock to do so, Shamrock and Kehm will amend this Agreement, at no cost to Shamrock, to reduce the number of Parking Spaces assigned to Kehm

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hereunder and Shamrock will enter into a separate Parking Easement Agreement with such third party in substantially the form of this Agreement.

6.2 Shamrock shall have the right to assign this Agreement in its sole and absolute discretion.

## ARTICLE 7 QUIET ENJOYMENT

So long as Kehm observes and performs all the terms, covenants and conditions of this Agreement on Kehm's part to be observed and performed, Kehm may peaceably and quietly enjoy the Parking Spaces subject, nevertheless, to the terms and conditions of this Agreement.

## ARTICLE 8 DEFAULT

8.1 **Events of Default.** The following events are referred to collectively as "Events of Default," or individually, as an "Event of Default":

(a) This Agreement or the Parking Spaces are taken upon execution or by other process of law directed against either party hereto, or are subject to any attachment at the instance of any claimant against either party hereto, and such attachment is not discharged within thirty (30) days after its levy, and the party subject to such execution or attachment is not actively seeking such discharge;

(b) Either party hereto files a petition in bankruptcy or insolvency, or a petition for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved, or makes an assignment for the benefit of creditors;

(c) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of either party hereto are instituted against such party or a receiver or trustee is appointed for all or substantially all of the property of such party, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment, and such party is not actively pursuing the vacation of such action; or

(d) Either party hereto breaches any of its other obligations under this Agreement, and such breach continues for thirty (30) days after notice by the non-breaching party to the breaching party or, if such default cannot reasonably be cured within such 30-day period, the breaching party fails to commence such cure within such 30-day period or thereafter fails to proceed diligently to cure such breach within a reasonable time, provided, however, that if the nature of the default is such that more than thirty (30) days is required to cure the default

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and if the defaulting party commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, the cure period shall be extended accordingly.

**8.2 Remedies.** If an Event of Default occurs, then the non-defaulting party will have the right, at its election, either:

(a) To terminate this Agreement if the defaulting party is unable or unwilling to cure such default in accordance with Section 8.1(d), above; or

(b) To seek any other remedy at law or in equity, including, but not limited to, injunctive relief and/or specific performance.

**8.3 Cumulative Remedies.** Unless otherwise provided in this Agreement, each right and remedy provided in this Agreement will be cumulative and will be in addition to every other right or remedy provided in this Agreement now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party hereto of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by such party of any or all other such rights or remedies.

## ARTICLE 9 MISCELLANEOUS

**9.1 Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

**9.2 No Waiver.** The waiver by either party of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice which may occur between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Agreement.

**9.3 Estoppel Certificate.** At any time and from time to time but within ten (10) days after written request made by Shamrock or Kehm to the other party to this Agreement, such other party will execute, acknowledge and deliver to the requesting party a certificate certifying (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification, (b) that no notice has been delivered to such party of any default by such party which has not been cured, except as to defaults specified in such certificate, (c) that no Event of Default then exists under this Agreement and that no event has occurred which, with the giving of notice or passing of time, or both, could result in an Event of Default, except as to Events of Default or other events specified in such certificate. At any time and from time to time, promptly after written request made by Shamrock or Kehm to the other party to this

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Agreement, such other party will execute, acknowledge and deliver to the requesting party a certificate regarding such other matters as may be reasonably requested by such requesting party.

**9.4 Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth below, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below:

Shamrock: Shamrock Parking, LLC  
Attn: Michael T. Moylan  
1299 Farnam Street, 12<sup>th</sup> Floor  
Omaha, Nebraska 68102

Kehm: Karl Kehm  
1624 Nicholas Street  
Omaha, Nebraska 68102

All notices, demands and requests shall be effective upon receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least ten (10) days' prior notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**9.5 Severability.** If any provision of this Agreement should prove to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, a provision will be added as a part of this Agreement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**9.6 Written Amendment Required.** No amendment, alteration, modification or addition to this Agreement will be valid or binding unless expressed in writing and signed by the party or parties to be bound.

**9.7 Entire Agreement.** This Agreement contains the entire agreement between Shamrock and Kehm with respect to the subject matter hereof. This Agreement may be amended only by subsequent written agreement between the parties hereto.

9.8 **Captions.** The captions of the various Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

9.9 **Termination to Construction.** If for any reason the Parking Facility or The Paxton Condominium Property Regime is not constructed, then this Agreement shall terminate at such time as it is determined that the Parking Facility will not be constructed, and Shamrock shall have the right to file a written instrument acknowledging the termination of this Agreement.

9.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska.


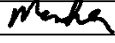
9.11 **Binding Effect.** Except as set forth in Article 6, the covenants, conditions and agreements contained in this Agreement will bind and inure to the benefit of Shamrock and Kehm and their respective successors and assigns.

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

SHAMROCK:

SHAMROCK PARKING, LLC, a Nebraska limited liability company,

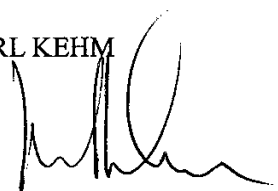
Dated: 10-20-05

By:   
Its: 

KEHM:

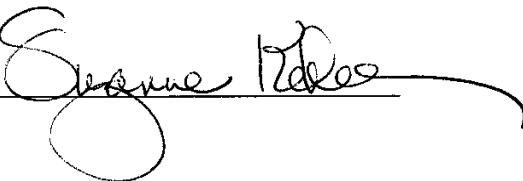
KARL KEHM

Date: 10/11/05



SUZANNE KEHM

Date: \_\_\_\_\_



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STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 20 day of OCTOBER, 2005, by MIKE MOYLAN, who is the MEMBER of SHAMROCK PARKING, LLC, on behalf of said limited liability company.

Kristen Campbell  
Notary Public

My Commission expires:



STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 20 day of OCTOBER, 2005, by Karl Kehm.

Kristen Campbell  
Notary Public

My Commission expires: 9/5/06

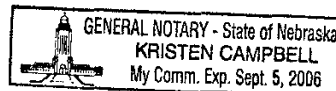


STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

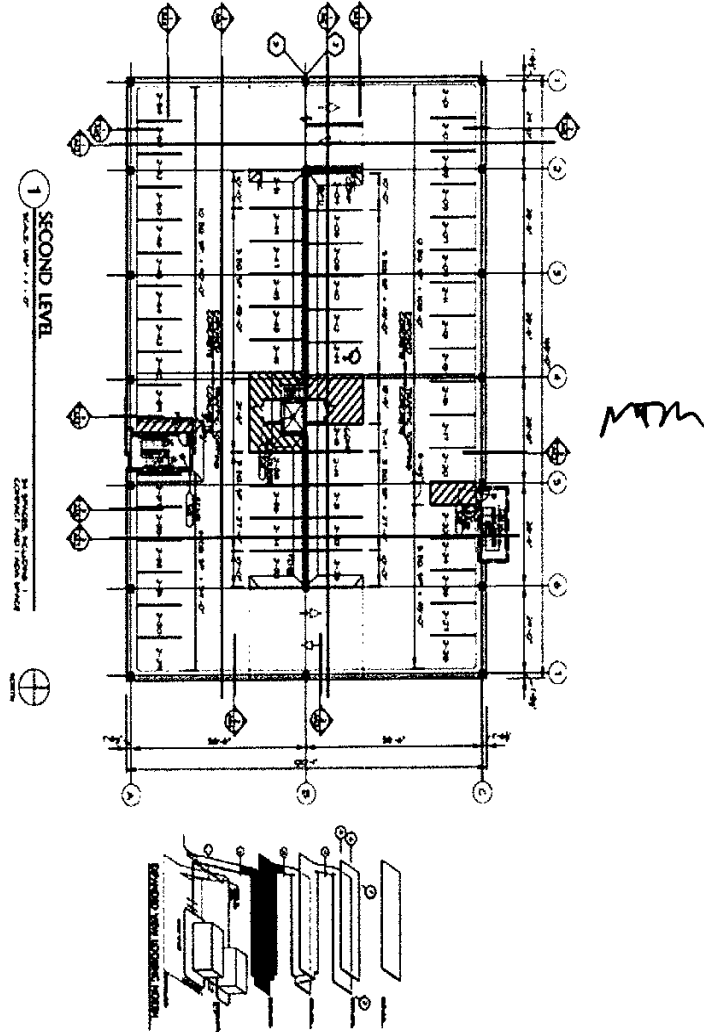
The foregoing instrument was acknowledged before me this 20 day of OCTOBER, 2005, by Suzanne Kehm.

Kristen Campbell  
Notary Public

My Commission expires: 9/5/06



### EXHIBIT "A" Parking Spaces



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