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**MASTER DECLARATION OF COVENANTS,
EASEMENTS, CONDITIONS AND RESTRICTIONS OF
RIVERFRONT PLACE MASTER ASSOCIATION, INC.**

By Riverfront Partners, LLC

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**MASTER DECLARATION OF COVENANTS,
EASEMENTS, CONDITIONS AND RESTRICTIONS OF
RIVERFRONT PLACE MASTER ASSOCIATION**

THIS MASTER DECLARATION is made this 4th day of October, 2006, by Riverfront Partners, LLC, a Nebraska limited liability company, herein referred to as "Declarant," with reference to the following facts:

A. The Declarant is the lawful owner of the following legally described real property, to-wit:

Lot 1 and Outlot A and B, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (herein called "the Property");

B. The Property is part of a "mixed-use development", currently consisting of a "condominium project" (within the meaning of the Nebraska Condominium Act -- hereinafter referred to as "the Act") included within the Residence Lot Area, as defined Article I.

C. This is a "phased project," and certain additional property may be annexed to the Development in the manner set forth in Section 2.02. Such additional property may include Common Area, Condominiums within the Residence Lot Area, and Commercial Lots within the Commercial Lot Area, as those terms are defined in Articles I and II. However, there is no guarantee that all phases will be annexed.

D. Declarant has formed a Nebraska nonprofit corporation known as Riverfront Place Master Association, Inc. for the purposes of, among other things, holding title to or otherwise controlling the Common Areas and the Outlots, preserving the values and amenities of the Property in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and Outlots and enforcing this Master Declaration, collecting, disbursing and enforcing the assessments created herein; subject to the powers, rights and duties reserved by Declarant as set forth in this Master Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of the covenants, conditions, easements and restrictions shall run with the Property, shall be binding upon all parties having or acquiring any right, title or interest therein or any part thereof, shall be for the benefit of each owner of any portion of the Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

ARTICLE I

Definition of Terms

Unless expressly provided otherwise, the following terms as used herein shall have the following meaning:

1.01. Articles. The Articles of Incorporation of the Association filed with the Nebraska Secretary of State, as may be amended from time to time.

1.02. Association. Riverfront Place Master Association, a Nebraska nonprofit mutual benefit corporation.

1.03. Board. The Board of Directors of the Association.

1.04. Bylaws. The duly adopted Bylaws of the Association as may be amended from time to time.

1.05. Commercial Lot Area. That portion of the Development comprising the Commercial Lots.

1.06. Commercial Lot or Lots. Lot 6, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, as shown on Exhibit "A" attached hereto, which may be used for commercial retail and/or office purposes. The Declarant intends the Commercial Lots will be located in Phase 2 of the Development as shown in Exhibit "B" attached hereto. The Members acknowledge, understand and accept that Lots 2 and 5, Riverfront Place, as shown on Exhibit "A", may also be developed as a Commercial Lot.

1.07. Common Area. "Common Area" shall mean Outlots A and B, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. Lot 3 and Outlot C, Riverfront Place, shall become part of the Common Area upon the annexation of Lot 3 or Outlot C into the Development pursuant to Section 2.02, below. The Common Area shall be owned by the Association for the common use and enjoyment of the Owners of property within the Development.

1.08. Common Facilities. Any improvements constructed in the Common Area.

1.09. Condominium. The estate in property declared by master deed to the condominium form of ownership and in conformance with a recorded declaration, as defined by Section Neb. Rev. Stat. 76-838 of the Act. A Condominium in the Residence Lot Area shall consist of an undivided interest in the Residence Lot Common Area, more particularly described in Section 1.22, and a Residential Unit.

1.10. Condominium Declaration. The Condominium Declaration on file for those Condominiums located on Lot 1 in the Residence Lot Area of Phase 1 of the Development which will be recorded in the office of the Register of Deeds of Douglas County subsequent to the recording of this Master Declaration. All those notes and definitions set forth in the Condominium Declaration are incorporated herein by reference.

1.11. Declarant. The Declarant shall be Riverfront Partners, LLC, a Nebraska limited liability company, its successors and assigns, but shall not include any person(s) acquiring a Commercial Lot or persons acquiring any Residential Unit within any Condominium within the Development.

1.12. Development. The Development shall include the Phase 1 Property and any additional property annexed in accordance with Section 2.02, below.

1.13. Master Declaration. This Master Declaration, as it may be amended from time to time.

1.14. Mixed Use Development Agreement. The Agreement executed by and between Declarant and the City of Omaha, Nebraska, dated August 10, 2004, more fully discussed in Section 4.13 below.

1.15. Mortgage. A deed of trust as well as a Mortgage, both of which are defined as security for the performance of an obligation.

1.16. Mortgagee. A beneficiary under or holder of a deed of trust as well as a Mortgage.

1.17. Owner or Member. The record Owner, whether one or more persons or entities, of the fee simple title to any Commercial Lot or Residence Lot (including contract purchasers in possession, but excluding those having such interest merely as security for performance of an obligation); provided that upon the close of escrow for the sale of the first Condominium constructed on a Residence Lot, Riverfront Place Condominium Association, Inc. shall be the Member for purposes of such Lot.

1.18. Phase 1 or the Phase 1 Property and Phase 2 or the Phase 2 Property. Phase 1 or the Phase 1 Property shall include Lot 1, and Outlots A and B, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, as shown on Exhibit "B" attached hereto. Phase 2 or the Phase 2 Property shall include Lots 2, 3, 4, 5, 6 and Outlot C, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, as shown on Exhibit "B" attached hereto.

1.19. Redevelopment Agreement. The Agreement executed by and between Declarant and the City of Omaha, Nebraska, dated July 27, 2004, more fully discussed in Section 4.08 below.

1.20. Residence Lot or Residential Lot. A Residence or Residential Lot shall include Lot 1, Riverfront Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, as shown on Exhibit "A" which shall be limited to residential uses. Lot 4, Riverfront Place, shall become a Residential Lot if Lot 4, Riverfront Place, is annexed into the Development pursuant to Section 2.02, below. The Members acknowledge and accept that Lot 5, Riverfront Place, may, at any time, be developed as a Residence Lot in the sole discretion of the Declarant.

1.21. Residence Lot Area. That portion of the Development comprising the Residence Lots.

1.22. Residence Lot Common Area. All real property owned in common (either in fee or as an easement) by the Owners of Condominiums in the Residence Lot Area as provided in Article II, consisting of the entire Residence Lot Area, except the separate Residential Units.

1.23. Residential Unit or Unit. A Condominium estate, exclusive of any undivided interest or easements in the Residence Lot Common Area, consisting of the fee airspace elements and Exclusive Use Common Area described in Section 2.02.

1.24. Riverfront Place Condominium Association, Inc. The Condominium Association to be organized and established to operate, maintain and manage the Residence Lot Common Areas and Common Facilities of that condominium project located within the Development to be known as Riverfront Place Condominiums, pursuant to a Declaration of Covenants, Conditions and Restrictions of Riverfront Place Condominium Association, Inc. to be recorded in the office of the Register of Deeds, Douglas County, Nebraska ("Condominium Declaration").

1.25. Subdivider. Riverfront Partners, LLC, a Nebraska limited liability company, herein sometimes referred to as "Declarant."

1.26. Voting Power of the Association. The Association shall have three (3) classes of voting membership as follows:

(a) **Class A.** The Class A Members shall be all Owners of the Commercial Lots, with the exception of Declarant. Class A Members shall be assigned one (1) vote for each Commercial Lot owned by such Member. If any lot has a mix of uses, i.e., commercial retail/office and residential, then the Owner of the commercial retail/office portion of the lot or any condominium association formed to govern such lot shall be deemed to be a Class A Member and shall be entitled to cast one (1) vote for that portion of the lot that is used for commercial retail/office purposes.

(b) **Class B.** The Class B Members shall be all Owners of the Residence Lots, with the exception of Declarant; provided, however, that upon conveyance of the first condominium constructed on a Residence Lot, the Riverfront Place Condominium Association, Inc. shall become the Member for purposes of such Lot. The Class B Member shall be assigned one (1) vote for each Residence Lot. If any lot has a mix of uses, i.e., commercial retail/office and residential, then the Owner of the residential portion of the lot or any condominium association formed to govern such lot shall be deemed to be a Class B Member and shall be entitled to cast one (1) vote for that portion of the lot that is used for residential purposes.

(c) **Class C.** The Class C Member shall be the Declarant. The Class C Member shall be assigned seven (7) votes until such time as Declarant no longer has an ownership interest in any of the Commercial Lots or in any Condominium located in the Residence Lot Area.

Any action by the Association which must have the approval of the Members before being undertaken shall require the vote or written assent of a majority of the total Voting Power of the Association

So long as there is a Class C Member, no amendment of this Section 1.26 shall be adopted unless such amendment is also consented to in writing by the Class C Member.

ARTICLE II

Property Subject to Master Declaration; Description of Land and Improvements; Annexation

2.01. Description of Land and Improvements. The land and improvements shall initially consist of the Phase 1 Property that is improved by one (1) building. There is a total of fifty-seven (57) Residential Units within the building. The airspace elements comprising the Residential Units and the ownership interests in the Residence Lot Common Area are more fully described in the Condominium Declaration.

2.02. Annexation. Additional property may be annexed to the Development only as follows:

(a) Under a phased development plan, the Declarant shall have the right to annex all or a part of the Phase 2 Property, in any order of sequence as determined by the Declarant from time to time in its sole discretion, without the approval of the Association or its Members. The Annexation of the Phase 2 Property, or any portion thereof, shall be effectuated by the following procedure:

[i] Recording of a Notice of Annexation of Territory which shall contain the following:

aa. A reference to this Master Declaration, which reference shall state the date of its recording and the instrument number of this Master Declaration as recorded; and

bb. A statement that the provisions of this Master Declaration shall apply to the annexed territory in the manner as set forth below and which may contain such additional or different covenants, conditions, restrictions and reservations with respect to the annexed property as Declarant may deem to be appropriate for the development of the annexed property.

[ii] Recording of a condominium plan, where applicable, for the real property to be annexed;

[iii] Compliance with subsection (d) below.

Upon recording of the documents referred to in subsections [i] and [ii] above, as appropriate, the covenants, conditions, restrictions and reservations contained in this Master Declaration shall apply to the annexed land in the same manner as if it was originally covered by this Master Declaration, and, thereafter, the rights, powers and responsibilities of the parties to this Master Declaration with respect to the annexed land shall be the same as with respect to the original land, except for any additional or different covenants, conditions and restrictions that Declarant may impose pursuant to the foregoing authority. Upon the annexation of any additional property, the term "Property" (as set forth in Recital A, above) shall be deemed to include any such additional property annexed into the Development.

(b) Upon recording the Notice of Annexation as provided for in Section 2.02(a)[i] to annex the Phase 2 Property, Declarant shall be deemed to grant to each Owner of a Condominium within the Phase 1 Property, who shall thereby acquire and have, a nonexclusive easement over, under, across and through any Common Areas located within the Phase 2 Property for the purposes set forth herein, and Declarant shall be deemed to grant to each Owner of a Commercial Lot or Condominium in the Phase 2 Property, who shall thereby acquire and have, a nonexclusive easement over, under, across and through any Common Areas within the Phase 1 Property for the purposes set forth herein.

(c) Upon recordation hereof, this Master Declaration shall apply only to the Phase 1 Property. Pursuant to the annexation provisions of subsection (a) herein, Declarant may annex the Phase 2 Property into the Development and subject the Phase 2 Property to the provisions of this Master Declaration. The purpose of this subsection is to provide for the reservation and conveyance of reciprocal easements for use, enjoyment, ingress, egress and incidental purposes over, under, across and through the Common Area within the Development for the use and benefit of the Owners. In order to provide for the creation of the easements over, under, across and through Common Area located within the Phase 1 Property or the Phase 2 Property under Section 2.02(b), the Declarant hereby reserves to itself, its successors and assigns, the right to grant nonexclusive easements for use, enjoyment, ingress, egress and incidental purposes over, under, across and through the Common Area subject to this Master Declaration for the purposes of establishing reciprocal easements in each of such respective phases for the Owners of Commercial Lots and Residential Lots.

(d) The following condition shall have been satisfied by Declarant prior to recording the Notice of Annexation of Territory referred to above for any phase in the Development:

(i) All taxes and other assessments relating to the property in such later phase shall have been paid or otherwise satisfactorily provided for; and

(ii) A budget for the Association that includes such phase has been prepared.

(e) Declarant in its sole and absolute discretion may grant easements over Common Area for the exclusive and/or non-exclusive use and benefit of Lots 2, 4, 5 and/or 6, as the case may be, for parking and other purposes.

(f) Construction of improvements to the Commercial Lots or Residence Lots in any phase that has been annexed to the Development as set forth above need not necessarily proceed in the order that the phase was annexed. To illustrate the foregoing, Declarant may, in its discretion, construct improvements to the Commercial Lots or Residence Lots within Phase 2 prior to constructing the improvements to the Commercial Lots or Residence Lots in Phase 1. In the event the foregoing causes modifications to the budget of the Association for any such annexed phase, Declarant shall modify the budget prior to the close of escrow for the sale of the first Commercial Lot, the lease of a Commercial Lot subsequent to the issuance of a certificate of occupancy for the improvements constructed on the Lot, or close of escrow for the sale of the first Residential Unit, in such phase.

(g) Other than the Phase 2 Property, above, no additional property may be annexed to the Development without the approval of a majority of the Voting Power of the Association, including the Declarant. Upon such approval, the

annexation shall be effected by the procedures set forth in Section 2.02(a)[i]-[ii] above, and the Owner shall file a Notice of Annexation of Territory consistent with the provisions of Section 2.02(d)[i] and [ii] above.

(h) Declarant shall have the right, at any time, to change the design, size and configuration, or make any other changes as it deems appropriate with respect to Phase 2 of the Development. There is no guaranty that the Development will be developed as originally planned.

ARTICLE III

The Master Association

3.01. Management and Operations. The Development, to be known as Riverfront Place, shall be organized and operated as a mixed use development comprised of Residence Lots improved with Condominiums and Commercial Lots improved with commercial buildings. The grant deeds conveying interests to individual purchasers shall expressly refer to and incorporate by reference this Master Declaration. All Owners of Commercial Lots and the Residence Lots (or the Riverfront Place Condominiums Owners' Association as provided in Section 1.16) shall be Members of the Riverfront Place Master Association, a nonprofit mutual benefit corporation which will exercise the powers as granted to the Association which are for the purpose of owning, operating, maintaining and managing the Common Area and Common Facilities for the benefit of the Owners of the Commercial Lots, Residence Lots, and Condominiums and for providing such service for and conducting such common business affairs of its Members as is specified in this Master Declaration and in the Bylaws.

3.02. Consent to Becoming Member of Association. The purchaser of any Commercial Lot, by the acceptance of a deed therefor, whether from Declarant or from subsequent Owners of that property, or by the signing of a contract or agreement to purchase the Lot, shall by the acceptance of such deed or by the signing of a contract or agreement, automatically become a Member of the Association until such time as its ownership ceases for any reason at which time its membership in the Association shall cease. All owners agree to abide by the Articles, the Bylaws, and the Master Declaration and to accept all of the benefits and obligations of Members thereof. Upon the organization of Riverfront Place Condominium Association, Inc. (as evidenced by the sale of the first Condominium in the Development), such Condominium Association likewise shall automatically become a Member of the Association, and agree to abide by the Articles, the Bylaws, and the Master Declaration and to accept all of the benefits and obligations of Members thereof.

3.03. Powers of the Association. The powers of the Association, its membership and their voting rights and the authority of its officers and directors shall be set forth in its Articles, Bylaws and this Master Declaration.

3.04. Vesting of Voting Power. The Voting Power of the Association shall vest when the power of assessment has passed to the Association, as set forth in Section 6.01.

ARTICLE IV

Property Rights of Owners and Members; Easements; Partition

4.01. Common Area. The Common Area in Phase 1 shall be conveyed by Declarant to the Association prior to the conveyance of the first Condominium in Phase 1. The Common Area in each subsequent phase will be conveyed by Declarant to the Association prior to the conveyance of the first Commercial Lot or Condominium, or the lease of a Commercial Lot subsequent to the issuance of a certificate of occupancy for the improvements constructed on the Lot, in such phase. The Common Area shall be owned by the Association (whether in fee or pursuant to an easement) for the use, enjoyment and convenience of the Owners, and shall contain the Common Facilities. Each Commercial Lot, Residence Lot, and Condominium is hereby declared to have an easement over all of the Common Area, for the benefit of the Commercial Lots, Residence Lots, and Condominiums, the Owners of the Commercial Lots, Residence Lots, Condominiums and each of them for their respective families, guests and invitees, tenants and lessees, and employees for all of the purposes and uses herein set forth and without limiting the generality of the foregoing, for ingress, egress and utilities, over and through the Common Area, and the right of the Association:

(a) To limit, by appropriate rules, the number of guests of Members and their use of the Common Area and Common Facilities or as otherwise provided in Section 4.05.

(b) To borrow in accordance with its Bylaws money for the purpose of improving the Common Area and to Mortgage the Common Area, the rights of such Mortgagee in the Common Area shall be subordinate to the rights of the Owners.

(c) Subject to the provisions of Section 4.02 below, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Unless authorized by Section 4.02, no such dedication or transfer shall be effective unless it has been approved in writing by a majority of the Voting Power of the Association. Written notice of the proposed action must be sent to every Member not less than seven (7) days nor more than thirty (30) days in advance of any execution of such instrument.

The foregoing notwithstanding, in the event Declarant has established a sales office and/or model home or homes in the Development pursuant to Section 5.01, Declarant, its sales agents and employees, shall have the right to the nonexclusive use of the Common Area roadways for the purpose of maintaining the sales offices and/or model home(s) and signs reasonably necessary to market the Commercial Lots and Condominiums. This right shall terminate seven (7) years after the sale of the first Condominium in the first phase of the Development, or upon sale of the last Commercial Lot or Condominium in all annexed phases of the Development, whichever shall first occur. Use of the Common Area roadways by Declarant and its agents and employees shall not unreasonably interfere with the use thereof by other Members.

4.02. Easements for Benefit of Association and Declarant; Grants of Easements. The Association shall have an easement over, under, across and through each Commercial Lot, Residence Lot, and Condominium where necessary for any construction, maintenance, repair or other functions required of the Association by this Master Declaration. Declarant shall have an easement over, under, across and through the Common Area where necessary for any construction, maintenance and repair or other functions required of Declarant by this Master Declaration and for entry onto adjacent property in connection with the development of additional phases of the project. Declarant shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time-to-time for construction, access, utilities, drainage and other purposes for the development and sale of the Property in, on, under, over and across any Lots or other portion of the Property owned by Declarant, and the Common Areas. The foregoing notwithstanding, Declarant shall not grant an easement which adversely impairs the use of such Common Areas for the purposes originally intended. The rights of Declarant to grant such easements hereunder shall cease upon the completion of construction of the improvements in all phases of the Development. The Board shall have the right to grant nonexclusive and specific as well as blanket easements in, on, over, under and through the Common Area for all utility services and purposes as the Board deems appropriate. Any other transfer or dedication of all or any part of the Common Area to any public agency or authority, or to other persons or entities, for such purposes as the Board deems appropriate, must be approved in writing by a majority of the Voting Power of the Association pursuant to written notice sent to every Member not less than seven (7) days nor more than thirty (30) days in advance of any execution of such instrument by the Board.

4.03. Establishment of Easements. Each of the easements herein referred to shall be deemed to be established upon the recordation of this Master Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Commercial Lots, Residence Lots, and Condominiums and hereafter be applied against or in favor of the Property which is the subject of this Master Declaration or any portion thereof with the exception of (a) utility easements granted under Section 4.02 and (b) licenses granted under Section 4.04.

4.04. License. The Association may license portions of Common Area Lot 3 in Phase 2 and the Common Facilities located thereon to a Member or third party provided that (1) the license is revocable at will; (2) the Member or third party maintains such Common Area in a manner determined by the Association; and (3) upon termination of the license such Common Area and Common Facilities shall be restored by the Member or third party to its condition as existing upon the grant of the license or as directed by the Board provided that the latter is not of greater cost than restoring such area to its pre-existing condition.

4.05. Delegation of Use. Any Member may delegate its right of enjoyment in the Common Area to persons who are actually occupying and/or residing in the Commercial Lots or Residential Units, their family members, guests, tenants, lessees, employees, or contract purchasers, subject to such rules and regulations as the Board may adopt.

4.06. Partition. Except as may be provided by law, or pursuant to an action for condemnation described in Article X hereof, there shall be no judicial partition of all or any part of the Development, and Declarant and any person acquiring an interest in all or any part of the Development absolutely waive the right to partition the Development in kind and waive the right to seek partition for the purpose of a sale of the Property, or any portion thereof; provided, that if any Commercial Lot, Residence Lot, or Condominium shall be owned by two or more co-tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

4.07. Encroachments. Each Residence Lot and Commercial Lot is hereby declared to have an easement over the Common Area and other Residence Lots and Commercial Lots for the purpose of accommodating any encroachment due to engineering or surveying errors, errors in original construction, settlement or shifting of any building, overhangs and projections in original construction, or for any other cause not due to willful misconduct of any Member or Members. There shall be, in addition, valid and appropriate easements for the maintenance of such encroachments. If any portion of the Common Area encroaches upon any

Residence Lot or Commercial Lot, or any Residence Lot or Commercial Lot encroaches upon the Common Area or another Residence Lot or Commercial Lot, as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Development, a valid easement for the encroachment and for the maintenance thereof shall exist so long as the encroachment exists.

4.08 Redevelopment Agreement. On July 27, 2004, Declarant and the City of Omaha entered into a Redevelopment Agreement (which was approved by Ordinance No. 36716) wherein, among other things, the City of Omaha approved the Development as consisting of two residential condominium towers of approximately seventy-eight (78) units, twenty-seven (27) residential townhome units, and approximately thirteen thousand five hundred (13,500) square feet of commercial space, to be developed in multiple phases.

In addition, the Redevelopment Agreement identifies and defines several duties and obligations of the City and Declarant, its successors and assigns, which include among other things:

- (a) City's environmental remediation obligations, representations and warranties, indemnification and environmental insurance obligations;
- (b) City's obligation to maintain and repair the Riverwalk Recreation Trail along the eastern boundary of the Development and the plaza located on Common Area Lot 3 of the Development and indemnification obligations associated therewith (see Section 4.11 below);
- (c) City's obligation to landscape and maintain the Bridge Landing Parcel to the south of the Development;
- (d) City's obligation to lease the existing dock along the Missouri River to Declarant (see Section 4.12 below);
- (e) City's obligation to provide TIF (Tax Incremental Financing) for the Development;
- (f) City and Declarant's obligation to cooperate with Gallup, Inc. and its affiliate Riverfront Campus Developers, LLC, regarding architectural approvals and use restrictions (pursuant to that Declaration of Redevelopment Covenants, as amended, recorded in the Register of Deeds of Douglas County, Nebraska, on July 31, 2003, as Instrument Number 2003144737);
- (g) Declarant's obligation to construct the improvements, purchase the land, build the streets and other infrastructure;
- (h) Declarant's obligation to grant to City for public use easements over the Riverwalk Recreation Trail and Common Area Lot 3;
- (i) Declarant's obligation to construct and maintain harmonious and compatible landscaping on the Bridge Landing View Corridor;
- (j) Certain obligations of Declarant, its successor and assigns, regarding real estate taxes which, among other things, include the waiver of any protest of real estate assessed values less than the assessed value at the time of first sale of a unit or parcel as defined by the TIF (Tax Incremental Financing) bonds;
- (k) Declarant's obligation of timely performance, excused delays and cures; and
- (l) City's reacquisition rights of undeveloped property.

The Members are advised to refer to the Redevelopment Agreement for a fuller understanding of the terms and conditions of the Agreement.

The Association and its Members acknowledge and accept the rights and obligations of the Association and Members under the Redevelopment Agreement and agree to be bound to the terms and conditions set forth therein.

4.09. Landscape Maintenance Easements. The Association shall have a non-exclusive easement over, under, across and through those portions of each Residence Lot and Commercial Lot abutting the Common Area roadway as more particularly shown on Exhibit "C" attached hereto for purposes of installing, maintaining and repairing landscaping and landscape facilities therein. The costs thereof shall be included in the Association's budget for assessment against the Residence Lots and Commercial Lots in the manner provided in Article V1. No Member/Owner of any such Lot shall landscape the easement area of his respective Lot

as shown on Exhibit "C" (or otherwise interfere with the purposes for which the easement has been granted), such landscaping being the responsibility of the Association.

4.10. Utilities.

(a) The Association shall maintain all utility lines and facilities located in, on, or under the Common Area and Common Facilities, except for those lines and facilities maintained by utility companies (public, private or municipal) and those required to be maintained by the Members as described below. The Association shall pay all charges for utilities supplied to the Development, except those metered or charged separately to the Commercial Lots, the Residence Lots, or Condominiums.

Accordingly, if any utility line or facility which the Association is required to maintain, repair or replace becomes clogged, stopped-up, damaged, destroyed or otherwise requires repair, the Association shall furnish such maintenance, replacement or repair, including repair of any collateral damage or loss in the Common Area or Common Facilities. However, if it can be determined that the cause of such clogging, stoppage, damage, destruction or repair originated in any particular Lot, the Association may charge the Owner of the Lot (or with respect to the Residence Lots and Condominiums the Riverfront Place Condominium Association, Inc.) the cost of the repair, replacement or maintenance. If one or more Owners or the Riverfront Place Condominium Association, Inc., as the case may be fail to pay such costs, the Association may collect them by levying a special assessment upon the Lot or Lots of the Members who are responsible therefore under the provisions of this subsection. Except as otherwise provided in section 8.01(a) below, the Association shall not be responsible for damage to any Lot or Condominium or personal property located therein caused by a damaged or defective utility line or facility.

In the event of a failure or inability of the Board to take timely action to maintain, replace or repair utility lines or facilities for which it is responsible (including repair of any collateral damage or loss in the Common Area or Common Facilities), the Member(s) served by the lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Common Area or Common Facilities in, under, or upon which these lines, facilities or any portion thereof are located to repair, replace or maintain them (including collateral damage as provided above). The Association shall reimburse the Member(s) the costs incurred by the Member(s) in making such maintenance, repair or replacement; provided that if a dispute arises between Members and/or the Board as to the person or entity responsible for maintaining, repairing or replacing such lines, facilities, or collateral damage, or as to the necessity or scope of the work, the matter shall be resolved pursuant to arbitration conducted under Nebraska Rev. Stat. 25-2601 et seq. If entry onto the Common Area or Common Facilities is required hereunder, the party making such entry must give reasonable notice to the Association.

(b) Unless otherwise maintained by a utility company, a Member shall be deemed to own the utility lines and facilities and outlets of all utility lines and facilities located within and serving only his or her Lot, and shall be responsible for the maintenance of such utility lines, facilities and outlets.

(c) Whenever such utility lines or facilities serve more than one Lot, the Member(s) served by the lines or facilities shall be entitled to the full use and enjoyment of the portions of the lines or facilities as service his/her Lot.

4.11. Lot 3 –Phase 2. Upon the annexation of Phase 2 to the Development, Lot 3 shall be included in the Common Area of the Development. Lot 3 is intended to be improved as a public plaza with certain public amenities. Pursuant to the Redevelopment Agreement, the City of Omaha among other things (i) shall have an easement over Lot 3 to maintain, repair and replace the plaza to City standards, and (ii) shall indemnify, defend and hold Declarant and all future owners and occupants of the Development harmless against any loss, liability, damage or expense resulting from causes of action associated with the use or maintenance of the public plaza and recreational trail, except for liability resulting from the indemnified party's own gross negligence or willful misconduct.

4.12. Dock Lease – Phase 2. Upon the annexation of Phase 2 to the Development, Declarant shall have the right to lease from the City of Omaha an existing barge dock lying in Lot 3 east of and adjacent to Lot 2 in Phase 2 of the Development. Declarant shall have the unilateral right to assign the dock lease to the Owners of Lot 2, and in such event, Declarant shall have the unilateral right to create easements for the benefit of Lot 2 over Common Area Lot 3 for access by the Owners of Lot 2 to the dock, subject to such terms and conditions as Declarant may impose in its discretion.

4.13. Mixed Use Development Agreement. On August 10, 2004, Declarant and the City of Omaha entered into a Mixed Use Development Agreement (which was approved by Ordinance No. 36726) wherein, among other things, the parties agreed that unless otherwise further restricted, the Development shall be developed in conformance with the City of Omaha Master Plan, the City of Omaha Zoning and Subdivision regulations, the Mixed Use Development Agreement, and the Development Plan for the Development.

In addition, the Mixed Use Development Agreement requires among other things, the following:

- (a) The Developer agrees to grant to the City an access and maintenance easement across Common Area Outlot A and an access, maintenance and recreation easement over future Common Area Lot 3;
- (b) Unless otherwise prohibited (see Section 5.01), Lots 1-6 shall be developed in accordance with the applicable uses allowed in the CBD- Central Business District per sections 55-423, 55-424 and 55-425 of the Omaha Municipal Code;
- (c) Landscaping for the Development shall be in accordance with the approved Landscape Plan; and
- (d) Signage shall conform to the requirements set forth in the Mixed Use Development Agreement. A summary of such requirements is attached hereto as Exhibit "D".

The Members are advised to refer to the Mixed Use Agreement for a fuller understanding of the terms and conditions of the Agreement.

The Association and its Members acknowledge and accept the rights and obligations of the Association and Members under the Mixed Use Agreement and agree to be bound to the terms and conditions set forth therein.

ARTICLE V

Uses of the Property

5.01. Permitted Uses. Except as otherwise provided herein or in the Redevelopment Agreement, the Mixed Use Development Agreement, the Declaration of Redevelopment Covenants referenced in Section 4.08(f), the Development Plan, and subject to all other provisions of this Master Declaration, the Condominium Declaration and any subsidiary declarations or other recorded restrictions, all permitted uses in the City's "Central Business District" (CBD) shall be allowed on any Lot, or any portion thereof. Notwithstanding the foregoing, in no event shall any Lot, or any portion thereof, be used or operated for any industrial, warehousing, distribution, or manufacturing purpose or any use or operation that requires a conditional or special use permit from the City, without the express written consent of the Board. A Member or occupant shall have the right to request a "compliance letter" from the Board. Any such compliance letter shall be limited to compliance under the terms of this Master Declaration and in a form acceptable to the Board and shall be in recordable form.

Declarant shall have the right to designate from time to time and use the improvements constructed on one or more of the Commercial Lots, and/or Condominiums in the Residence Lot Area, owned or leased by it for model homes and/or sales offices in the Development. This right shall terminate seven (7) years after the sale of the first Condominium in the Phase 1 the Development, or upon sale of the last Commercial Lot or Condominium in all phases of the Development, whichever shall first occur.

5.02. Restrictions on Use. In addition to the Permitted Uses set forth above, the Property shall be subject to the following restrictions:

- (a) Residence Lot Area. The restrictions on use set forth in the Condominium Declaration shall be applicable to the Residence Lot Area.

- (b) Commercial Lot Area; Common Area.

- (i) No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Commercial Lot Area or in the Common Area and no agricultural use (including but not limited to pet stores and veterinary uses) shall be permitted in the Commercial Lot Area or in the Common Area.

- (ii) Signage shall conform to the requirements of the Mixed Use Development Agreement, as may be amended from time to time; except that a sign of customary and reasonable dimensions may be used for the sole purpose of advertising for sale or lease any improvements on the Commercial Lots.

- (iii) No Owner, Lessee or other person shall create a nuisance in or use any Commercial Lot or Common Area for any activity or purpose which is considered by the Board, in its sole and absolute discretion, to be objectionable due to sound, odor, visual effect or physical impact and which in the opinion of the Board will disturb or tend to disturb other Members or Lessees in the Development, or which is deemed by the Board to constitute a nuisance.

Included among the uses, activities or operations prohibited hereunder because of their detrimental effect upon the general appearance, enjoyment and use of the commercial or residential property in the Development, and their conflict with the reasonable standards of appearance and maintenance required by this Master Declaration, are the following:

1. Any public or private nuisance.
2. Any vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness or pulsating effect.
3. Any lighting which is flashing or intermittent or is not focused downward or away from adjacent Lots, unless otherwise approved by the Board.
4. Any rubbish, trash or debris of any kind placed or permitted to accumulate upon or adjacent to any Lot, except as provided in subparagraph (xvii) below.
5. Any electro-mechanical or electromagnetic disturbance or radiation.
6. Any air pollution or water pollution, including without limitation any dust, dirt or ash in excessive quantities.
7. Any emission of odor, or noxious, caustic or corrosive gas or matter, whether toxic or non-toxic.
8. Any explosion or other damaging or dangerous firing, detonation or activity, including the firing or detonation of ammunition or explosives or the storage, display or sale of explosives or fireworks.
9. Open burning of paper, trash, debris, garbage or construction materials of any kind.

To the extent an Owner is unclear whether the foregoing restrictions may apply to any use, activity or operation being proposed by the Owner on his/her Lot, the Owner may request from the Board a written determination as to the applicability of the restrictions to the proposed use, submitting to the Board any documentation or other materials requested by the Board that would enable the Board to make such a determination.

(iv) No storage yards for bulk materials; public or private parking lots, except lots in conjunction with approved projects; truck, bus, or heavy equipment garages; dispatching and weighing stations; bulk storage and distribution of petroleum or other hydrocarbon products or other chemicals; or tent shelters (except temporary use thereof for promotional events as may be approved in advance in writing by the Board, who may prescribe requirements and conditions to be met to engage in such temporary use) shall be permitted on the Commercial Lots or in the Common Area.

(v) No manufacturing or processing of fish products, sauerkraut, vinegar, sugar beets, coffee roasting, chocolate or cocoa products; grain mills, grain storage bins and elevators; feed grain manufacturing and/or processing; seed treatment, processing or extraction of oil; processing of paper or wood pulp shall be permitted on the Commercial Lots or in the Common Area.

(vi) No fat rendering; stockyards or slaughtering of animals; meat smoking or packing shall be permitted on the Commercial Lots or in the Common Area.

(vii) No auto wrecking and salvage; junk yards; house movers and related machinery and equipment; storage or wrecking yards; metals crushing or separating for salvage; waste paper or glass recycling or other recycling operations shall be permitted on the Commercial Lots or in the Common Area.

(viii) No surface mining operations, including aggregate or minerals; subsurface mining of any kind; drilling for and/or the removal of gas, oil or hydrocarbons or geothermal steam; any commercial excavation of materials for building and construction shall be permitted on the Commercial Lots or in the Common Area.

(ix) No manufacture of bricks, blocks or large concrete precast items such as pipe and construction shapes, cast stone items; processing of cement, clay, cinders, aggregate or pumice; concrete and asphaltic concrete mixing plants; saw mills or planing mills; plating works; battery manufacturing; refining of petroleum or other hydrocarbon products; manufacturing or distillation of chemicals, including paint, insecticides and herbicides; smelting of metals; rolling

or stamping of metal; foundry casting; steel fabrication (plate, structural, reinforcing bar, tanks); or sand blasting yards shall be permitted on the Commercial Lots or in the Common Area.

(x) No sewage disposal or treatment plants; equipment yards for septic tanks or cesspool servicing; or the processing of garbage, dead animals, refuse or silage shall be permitted on the Commercial Lots or in the Common Area.

(xi) No stadiums; cemeteries; carnivals, circuses, rodeos and the like, except on a special "one-time" temporary basis - with written approval of the Board; hospitals; jail or detention facilities shall be permitted on the Commercial Lots or in the Common Area.

(xii) No automobile, passenger truck and/or recreational vehicle sales, leasing and services shall be permitted on the Commercial Lots or in the Common Area.

(xiii) All streets, driveways, sidewalks, entries and passages in the Common Area shall remain unobstructed and shall not be used for purposes other than ingress and egress to and from the Residence Lot Area and Commercial Lot Area; provided, however, that the Board may from time to time adopt and enforce a parking management plan or similar plan applicable to the parking of vehicles in the Development. Notwithstanding prior approvals of parking plans or layouts by Declarant, the Board, the City or any other governmental jurisdiction or authority, if parking requirements increase on any Commercial Lot as a result of any change in use or number of employees or invitees, additional on-site parking shall be provided by the Owner on said lot to eliminate the need for any parking in the Common Area.

(xiv) Automobiles and other motorized vehicles customarily used for general transportation shall be maintained in running order on the Commercial Lots. No noisy or smoky vehicles shall be kept or operated on the Lots. The Association may establish rules and regulations from time to time for the parking of vehicles in the Lots.

(xv) No exterior radio antenna shall be used or installed in the Commercial Lot Area. No exterior video or television antenna (including satellite dish) that has a diameter or diagonal measurement of more than eighteen (18) inches (or as otherwise may be permitted under applicable governmental regulations) shall be used or installed in the Commercial Lot Area. A video or television antenna (including satellite dish) that satisfies the above requirements may be used and installed by an Owner in his Lot; provided that the antenna or satellite dish is not attached to, or located in or upon, any Common Area or Common Facilities. The antenna or satellite dish shall be screened from view from the other Lots, the Residence Lot Area, and Common Areas; provided that such screening does not unreasonably interfere with signal strength or cost an unreasonable amount of money. The Board may establish reasonable restrictions on the installation of video or television antennae (including satellite dishes) that have a diameter of eighteen (18) inches or less as above set forth, consistent with the foregoing.

(xvi) A landscaping plan for the Development has been prepared by Declarant. The Association shall landscape and maintain the Common Area in accordance with the landscaping plan and shall not alter or modify the plan without prior written approval of the Board. Similarly, each Owner shall maintain her/his Lot in accordance with the landscaping plan and shall not alter or modify the plan without the prior written approval of the Board.

(xvii) All refuse collection areas on a Commercial Lot shall be located in areas approved by Declarant or by the Board. No refuse collection area shall be permitted between any street and the respective building setback line. All exterior refuse collection areas shall be screened by building walls or screen walls as required by Declarant or the Board as provided above, and all dumpster enclosures shall also meet the requirements of the City. All dumpsters and containers shall remain within said screening walls. The location of all such enclosures shall allow for adequate ingress and egress by collection trucks within the boundaries of the Lot.

(xviii) No storage containers, locker, unit, trailer or the like shall be permitted between any street and the respective building setback line of any building on a Commercial Lot. Storage areas shall be located in the least visible area of each Lot. All outdoor storage areas and service yards shall be visually screened from streets and adjoining property by a continuous screen wall as required by Declarant or the Board. No work in progress, stored merchandise, inventory or racks shall extend above the height of such screen wall.

(xix) Unless otherwise permitted by the Board in writing, all roof-mounted equipment and ventilators projecting above the roof parapet of any building on a Commercial Lot shall be screened by an enclosure designed and painted to be compatible with the building; no wall-mounted equipment shall be permitted on the front or sides of any such

building; any ground-mounted building, electrical or mechanical equipment will be allowed and only in side or rear yards, and the same must be screened from view by walls or dense landscaping; and no above-ground storage tanks shall be allowed on any of the Lots.

(xx) Each Owner or occupant of Commercial Lot shall, upon the opening of any business to the public, adequately light its Lot during the normal business hours (7:00 a.m. to 10:00 p.m., or as otherwise modified by the Association), and for one (1) hour thereafter.

(xxi) Operations and uses which are neither specifically prohibited nor specifically authorized under Section 5.01 above may be permitted in a specific case if approved in writing by the Board and permitted by the ordinances, codes, regulations and requirements of the City of Omaha. Any approval or disapproval shall be in the sole and absolute discretion of the Board.

(xxii) Prior to the close of a sale of a Commercial Lot or Lots by Declarant, Declarant may record additional restrictions on said Lot or Lots. If such restrictions refer to this Master Declaration and provide for incorporation by that reference, said restrictions shall be deemed to be part of this Master Declaration and shall be enforceable as provided herein. Any such restrictions may not be inconsistent with the provisions of this Master Declaration, except that such restrictions may be more restrictive than the provisions set forth herein.

5.03. Leases. Any lease of a Condominium shall comply with the provisions of the Condominium Declaration. Any lease of all or any portion of a Commercial Lot shall provide that the lease is subject to in all respects the provisions of the Master Declaration, the Articles and the Bylaws. Such lease shall further provide that any failure by the lessee to comply with the terms of such document shall be a default under the lease. All leases and rental agreements of any portion of a Commercial Lot shall be in writing. Any Owner leasing or renting his or her Commercial Lot shall notify the Board in writing of the names and addresses of all persons occupying the Lot and of the address where the Owner resides. Notwithstanding any agreement between the Owner and the prospective tenant to the contrary, the leasing or rental of any portion of a Commercial Lot shall not operate to relieve the Owner of the primary responsibility for compliance with all provisions of this Master Declaration, the Bylaws and the rules of the Association, including the payment of all charges and assessments.

ARTICLE VI

Assessments and Liens

6.01. Assessment Power; Vesting. Each Commercial Lot and Residence Lot within the Property and the improvements thereon, except such improvements that are owned by the Association, shall be subject to general and special assessments and liens to secure their payment. The Association, by the Board, shall have the sole authority to fix and establish the amounts of the general assessments provided for in this Master Declaration and the amounts of such interest, costs and late charges for the late payment or nonpayment thereof. The power of assessment shall vest, as to the Residence Lot Area in Phase 1, on the first day of the month following the first conveyance of a Condominium in Phase 1. As to each remaining phase, the power of assessment shall commence after annexation of each such phase as follows: (a) with regard to the Residence Lots, on the first day of the month following the first conveyance of a Condominium; and (b) with regard to the Commercial Lots, on the first day of the month following the first conveyance of a Lot(s), or upon issuance of a certificate of occupancy by the City of Omaha for the improvements constructed on the Lot(s), whichever first occurs. The Association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

Construction and sales of improvements to the Commercial Area Lots and Residential Units in any phase that has been annexed pursuant to Article II above need not necessarily proceed in the order that the phase was annexed. Accordingly, the power of assessment in any annexed phase need not necessarily commence in the order that the phase was annexed.

6.02. General Assessments. The general assessment shall be fixed and established annually or more often by the Board and shall be collected monthly by the Association as follows:

(a) **Budget - General:** By resolution duly adopted, the Board shall have in effect at all times an operating budget setting forth the cash requirements and reserves for future maintenance or contingencies reasonably necessary and proper for the management, operation, maintenance, care and improvement of the Common Area and Common Facilities in accordance with the provisions of this Master Declaration and the Bylaws. Except as otherwise provided below, the Board may modify any budget at any time by resolution to meet changed circumstances or unforeseen events.

(b) **Annual Budget:** The Board shall at a regular or special meeting held during the month of October of each year, or at such other time as may be designated by the Board, make its estimate of cash requirements for the ensuing calendar year concerning such things as costs of administration, operation, maintenance, repair and replacement of the Common Areas and Common Facilities, taxes, insurance and carrying out the duties, rights and obligations of the Association. Following the estimation of cash requirements, the Board shall prepare an annual budget for the ensuing calendar year based thereon and shall distribute the budget not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the calendar year as provided in Article X, Section 4 of the Bylaws. If the Board elects a fiscal year other than the calendar year, such estimate shall be made at least two (2) months prior to the beginning of that fiscal year, and the annual budget for the ensuing fiscal year shall be prepared and distributed to the Members as above set forth.

(c) **General Assessments:** The Board may from time to time, by resolution set general assessments based upon duly adopted budgets as provided above, or modify any budget previously made and raise or lower the amount previously estimated as cash requirements of the Association for all or any part of a year. The Board may raise or lower the amount of the general assessment to correspond to such revised budget. Such estimate of cash requirements and reserves shall be apportioned among all the Commercial Lots and Residential Lots as provided herein, and the sum allocable to each Commercial Lot or Residential Lot shall be the general assessment against such Lot for the ensuing calendar year or other period.

Failure by the Board to fix general assessments as provided herein before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Master Declaration or a release of an Owner from the obligation to pay the assessments, or any installment thereof, for that or any subsequent year. The assessment fixed for the preceding fiscal year shall continue until a new general assessment is fixed.

(d) **Apportionment of Assessments:** The general assessments shall be apportioned among the Residence Lots and Commercial Lots as follows:

- (i) Residence Lots: 100% of Phase 1, which shall be allocated pursuant to the Condominiums Declaration.
- (ii) Upon the annexation of the Phase 2 Property, the Declarant shall determine the appropriate apportionment of assessments among the Residence Lots and Commercial Lots in its sole discretion.

In the event Lot 5 becomes a Commercial Lot as provided in Section 1.06 above, Declarant in its absolute discretion may re-apportion the general assessments among the Residence Lots and Commercial Lots, including a re-allocation of the general assessment among the Commercial Lots as provided above.

(e) **Payment:** Unless otherwise determined by the Board, the general assessments shall be paid in twelve (12) equal monthly installments, due on the first day of each month to which such assessment pertains.

(f) **First Assessments:** The notice provisions of Section 6.07(a) notwithstanding, assessments on the Residence Lot in Phase 1 shall commence upon the first day of the month following the first conveyance of a Condominium in such Phase 1 in an amount per month equal to that set forth in the initial budget for the Association prepared by Declarant until the Board at any meeting thereafter legally held shall determine by resolution in accordance with the provisions of this section a change in the amount of the assessment and the first date for payment of such changed assessment. Assessments on all Commercial Lots and Residence Lots in each remaining phase shall commence after annexation of each such phase as follows: (i) with regard to the Residence Lots, on the first day of the month following the first conveyance of a Condominium, and (ii) with regard to the Commercial Lots, on the first day of the month following the first conveyance of a Lot(s), or issuance of a certificate of occupancy by the City of Omaha for the improvements constructed on the Lot(s), whichever first occurs, in the amount set forth in the budget for the Association prepared by Declarant that includes such phase as may be modified as above set forth.

The foregoing notwithstanding, Declarant may, at its option, delay the start of general assessments so long as Declarant elects to perform all maintenance and other obligations of the Association at its sole cost and expense.

(g) **Obligations of Declarant, Riverfront Place Condominium Association, Inc., and Owners:** Declarant (for each Residence Lot and Commercial Lot), Riverfront Place Condominium Association, Inc. (for each Condominium), and each Owner of any Commercial Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in such deed), as the case may be covenants and agrees: (1) to pay to the Association general assessments or charges, and special assessments for purposes permitted herein; and (2) to allow the Association to enforce any assessment lien established hereunder and to foreclose any recorded assessment lien in any manner provided or permitted for the foreclosure of realty mortgages in the State of Nebraska (including the right to recover any deficiency). Neither Declarant, the Riverfront Place Condominium Association, Inc., nor any Owner of a

Commercial Lot may exempt itself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot or Condominium.

The foregoing notwithstanding, until such time as improvements have been constructed on a Residence Lot or Commercial Lot, the Owner of such Lot (including Declarant) and/or the Riverfront Place Condominiums Owners' Association shall be exempt from the payment of that portion of any general or special assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a Common Facility that is not complete at the time assessments commence.

Any exemption from the payment of assessments attributable to Common Facilities shall be in effect only until the earliest of the following events:

- [i] A notice of completion of the Common Facility has been recorded.
- [ii] The Common Facility has been placed into use.

6.03. Special Assessments. Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the general assessments necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Master Declaration, costs of construction or unexpected repairs, replacements or reconstruction of improvements in the Common Areas, or if funds are otherwise required for any activity or purpose of the Association permitted under this Master Declaration.

(a) The Board shall determine the approximate amount necessary to defray the expenses set forth above, and, if the amount is approved by a majority vote of the Board, it shall become a special assessment.

(b) The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot. Special assessments shall be due and payable within ten (10) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

6.04. Reimbursement Assessment. The Board may levy a reimbursement assessment against any Member who fails to comply in any respect with this Master Declaration, the Articles, Bylaws, the rules promulgated by the Board or the Building Guidelines, or as otherwise permitted elsewhere in this Master Declaration, in an amount equal to any monies expended by the Association in remedying a Member's failure to comply under this Master Declaration or in the amount of a fine or penalty imposed pursuant to this Master Declaration. All such reimbursement assessments shall be paid to the Association within five (5) days after demand.

6.05. Capital Improvement Assessment.

(a) Capital improvement assessments may be levied by the Association for the purpose of defraying, in whole or in part, the cost of construction of any Improvements deemed reasonably necessary by the Board for the benefit of the Development.

(b) Capital improvement assessments shall be due and payable by all Members in such installments and during such period or periods as the Board shall designate for the payment thereof.

6.06. Rate of Assessment. All assessments (other than a reimbursement assessment levied against a Member pursuant to Section 6.04) shall be apportioned in accordance with the provisions of Section 6.02(d).

6.07. Notice of Assessments.

(a) Notice of the amount of any general or special assessment imposed by the Association shall be mailed to each Member not less than thirty (30) days prior to the date the assessment or charge becomes due and payable.

(b) The Association shall provide notice by first class mail to the Member of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

6.08. Right to Enforce.

(a) With respect to the Commercial Lots, the right to collect and enforce assessments, including all related interest,

late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Members to pay assessments provided for in this Master Declaration by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Member's Lot by judicial or non-judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid assessments, together with all other amounts described in this Article VI, may be pursued with or without foreclosing or waiving the lien rights.

(b) Any assessment levied against the Residence Lots shall be allocated among the Condominiums located on the Lot(s) in the manner provided in the Condominium Declaration. Such assessment, including all related interest, late charges, costs and fees shall be collected from and enforced against the Condominiums on behalf of the Riverfront Place Master Association by Riverfront Place Condominium Association, Inc. in the manner set forth in the Condominiums Declaration and as set forth below; provided, however, that any monies collected by Riverfront Place Condominium Association, Inc. from assessments against Condominiums that include assessments owing to Riverfront Master Association shall first be paid to Riverfront Master Association.

6.09. Notice of Default; Interest; Late Charges; Creation of Lien. Failure to make payment of any assessment or installment thereof related to any Lot on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to the lesser of sixteen percent (16%) or the maximum rate permitted by law on the date of default, and if not paid within ten (10) days, a late charge of five percent (5%) (or such lower interest and late charges as the Board shall determine in its discretion) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the assessment past due and the full assessment shall be a lien against such Lot. The lien created pursuant to this Article shall not be foreclosed until the Board or its authorized representative has delivered written notice to the delinquent Member or Members and any first mortgagee that has filed a request for notice with the Declarant or Board not less than fifteen (15) days before commencement of any proceedings to enforce such lien, which shall set forth notice of default and a demand for payment, and unless such delinquency has not been cured in full within said 15-day period, including payment in full of all interest and late charges.

6.10. Notice of Lien; Foreclosure. With respect to the Commercial Lots, upon the giving of notice and failure to cure as provided in Section 6.09, the Association may record a notice of assessment lien against the Lot of the defaulting Member. With respect to the Residence Lots, upon the giving of notice and failure to cure as provided in Section 6.09, the Association may record a notice of assessment lien against each Condominium located on a Residence Lot; provided that upon certification by the Riverfront Condominium Association, Inc., that specified Condominium owners have duly paid the assessments due the Association and that such sums have been duly remitted to the Association, the Association will release the lien against such specified Condominiums (or not record the lien in the first instance if the certification by the Riverfront Condominium Association, Inc., is provided the Association prior to the recordation of the notice of assessment lien). After recording such notice of assessment, all payments due in satisfaction of the delinquent sums shall be paid directly to the Association and not through the Riverfront Condominium Association, Inc. In addition, the Association may proceed to foreclose the recorded assessment lien provided for in this Article in any manner provided or permitted for the foreclosure of realty mortgages in the State of Nebraska (including the right to recover any deficiency). The Association shall not be obligated to release any recorded assessment lien against a Commercial Lot or Condominium until all delinquent assessments, including interest, late charges, attorneys' fees and collection costs assessed against the Lot or Condominium, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any assessments or installments thereof, each delinquent Member or owner of a Condominium shall be deemed to have absolutely assigned all rents, issues and profits of its Lot or Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Members, shall have the power to bid upon the Lot or Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot or Condominium.

6.11. No Offsets. All assessments shall be payable in the amounts covered by the particular assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, nonuse or abandonment of a Lot or Condominium or a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.12. Priority; Subordination of Lien to First Mortgages.

(a) The assessment lien herein shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in subsection (b) below), federal and state tax liens, judgment liens, and liens for labor or materials, which may be hereafter imposed against any portion of the Property.

(b) Notwithstanding the foregoing, the assessment liens provided for herein shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior hereto by applicable law and the lien of any first Mortgage encumbering a Lot or Condominium which is recorded prior to the recorded assessment lien referred to in Section 6.10, but only as to advances or payments made pursuant to said Mortgage prior to the time the recorded assessment lien is placed of

record, and provided further that each such first Mortgage must have been made in good faith and for value and duly recorded in the office of the Douglas County Register of Deeds prior to the recording of the recorded assessment lien. The sale or transfer of any Lot or Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the owner of such Lot or Condominium from any obligation to pay any assessments thereafter becoming due nor from the lien securing any subsequent assessments. Where the holder of a first Mortgage or other purchaser of a Lot or Condominium obtains title to the same as a result of foreclosure, such title holder, its successors and assigns, shall not be liable for assessments by the Association chargeable to such Lot or Condominium which became due prior to the acquisition of title to such Lot or Condominium by such acquirer, except for the share of assessments resulting from a reallocation of assessments which are made against all Lots or Condominiums. The assessment lien herein shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

6.13. *Transfer of Property.* After the sale of any Lot or Condominium within the Development, the selling Owner or Owners shall not be personally liable for any assessment levied on its Lot or Condominium after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. However, except as provided in Section 6.12 with respect to a transfer of a Lot or Condominium pursuant to foreclosure proceedings, the transferred Lot or Condominium shall remain subject to the lien securing payment of all assessments, including assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally responsible for all assessments and charges levied on his or her Lot or Condominium prior to any such transfer. Upon the transfer of ownership of any Lot or Condominium (excluding the initial sale by Declarant), the Board, in its discretion, may charge a reasonable transfer assessment to cover administrative costs associated with said transfer of ownership.

6.14. *Contracts with Members.* If the Association elects to enter into contracts with a Member for the performance of special maintenance or other services to that Member's Lot, any fees charged to that Member for such services shall be due within ten (10) days after billing, shall be an assessment, shall be secured by the assessment, shall be the Member's personal responsibility, and shall be enforceable as provided herein with respect to the assessments.

6.15. *Payment of Taxes.* The Association shall have the right, to the extent not paid by the Members, to pay all real property taxes and assessments levied upon any part or portion of the Property by a duly authorized governmental or quasi-governmental authority. The Board shall have the right to impose a special assessment and lien against such portion of the Property for the amount paid by the Association pursuant to the right given by this section. Such assessment and lien imposed by the Association shall be enforced as provided in this Article.

ARTICLE VII

Insurance; Destruction of Improvements

7.01. *Liability Insurance.* Commercial general liability and property damage insurance shall be purchased by the Board as promptly as possible following its election, and shall be maintained in force at all times, and the Board shall pay the premiums out of the general assessment fund. Until the beginning of assessments pursuant to Section 6.02(f), such insurance shall be procured by Declarant. The Board shall continue Declarant's policy and pay the premiums accruing thereon after the date of the beginning of assessments until such new policy as selected by the Board is in force. In the event Declarant has prepaid the premiums prior to the date of commencement of assessments, such prepaid premium shall be reimbursed to Declarant by the Association. The insurance shall be carried with reputable companies authorized to do business in the State of Nebraska in such amounts as the Board may determine. The policy or policies shall (1) insure against any liability incidental to the ownership and/or use of the Common Area; (2) include contractual exposures of the Association and/or the Board; and (3) include "severability of interest" in its terms (or a specific endorsement to preclude the insurer's denial of a Member's claim because of negligent acts of the Association or of other Members).

7.02. *All Risk Hazard Insurance.* Fire, extended coverage, vandalism, malicious mischief and other hazard insurance, with demolition and contingent liability from operation of building ordinance or law endorsements, (and inflation guard endorsement when it can be obtained at commercially reasonable rates), shall be purchased by the Board as promptly as possible following its election and shall be maintained in force at all times and the Board shall pay the premiums out of the general assessment fund. The insurance shall be carried with generally acceptable and reputable companies authorized to do business in the State of Nebraska. The policy shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by the respective Mortgagees. The policy or policies shall insure against loss from perils therein covered as to all insurable improvements in the Common Area, except such as may be separately insured by the Association. The amount of insurance under this section shall be an amount equal to one hundred percent (100%) of the full replacement cost of such improvements, and the policy or policies shall contain a stipulated amount clause or determinable cash adjustments clause, or similar clause to permit a cash settlement covering specified value upon destruction and the inability to rebuild pursuant to this Master Declaration. The policy or policies shall name as insured the Association and Declarant so long as Declarant is the owner of any of any portion of the Residence Lots or Commercial

Lots. The policy or policies shall also cover personal Property owned in common and shall further contain waiver of subrogation rights by the carrier as to negligent Owners/ Members. Until the beginning of assessments pursuant to Section 6.02(g), such insurance shall be procured by Declarant. The Board shall continue Declarant's policy and pay the premiums accruing thereon after the date of the beginning of assessments until such new policy as selected by the Board is in force.

7.03. Other Insurance Coverage; Notice of Expiration; Waiver by Members

(a) **Other Insurance Coverage:** The Board may purchase and maintain in force at the expense of the general assessment fund debris removal insurance, flood insurance, assessment loss insurance, fidelity bonds, and other insurance and/or bonds that are necessary or appropriate in the discretion of the Board. The Board shall purchase and maintain workers' compensation insurance to the extent of that required by law respecting employees of the Association. Any and all policies purchased pursuant hereto by the Association may be combined into one or more blanket or consolidated policy or policies at the Board's discretion.

(b) **Notice of Expiration:** If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) days prior written notice to the Board, Declarant, and to each Member and Mortgagee, insurer and guarantor of a Mortgage who has filed a written request with the carrier for such notice and every other person in interest who requests such notice of the insurer.

(c) **Waiver by Members:** As to each policy of insurance obtained by the Association, which policy will not be valid or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, other Members, Declarant, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

7.04. Member's Liability and All Risk Hazard Insurance. In addition to the Common Area liability insurance and Common Area hazard insurance provided in Sections 7.01 and 7.02, respectively, a Member may carry such personal liability insurance as it may desire and may separately insure its Residence Lot or Commercial Lot or any part thereof against loss by fire or other casualty. The Association shall not be responsible for providing liability insurance against loss arising from perils in a / Member's Residence Lot or Commercial Lot nor shall the Association provide all risk hazard insurance for any improvements or personal property located on any Residence Lot or Commercial Lot.

7.05. Board Appointed Attorney in Fact. The Board is hereby appointed attorney in fact for all Owners to negotiate loss adjustments on the policies carried under Sections 7.01, 7.02, and 7.03 above.

7.06. Damage or Destruction. Upon damage to or destruction of all or any portion of a Common Facility by fire or other casualty, all insurance proceeds paid in satisfaction for claims of said loss, and the proceeds of any special assessment as hereinafter provided, shall be used by the Board to repair or rebuild the damaged portion of such Common Facility substantially in accordance with the original plans and specifications thereof, unless within ninety (90) days from the date of such destruction two-thirds (2/3rds) or more of the Voting Power of the Association present and entitled to vote in person or by proxy at a duly constituted meeting determine that such a reconstruction shall not take place or that such facility be reconstructed in a manner differing from the original plans and specifications. If there is any deficiency between the insurance proceeds paid for the damage to the Common Facility and the contract price for repairing or rebuilding such facility, the Board shall levy a special assessment against each Member as provided in Section 6.03(a). If all or any portion of the insurance proceeds are not devoted to the repair or rebuilding of any Common Facility, the same shall be distributed equally among the Members and their respective Mortgagees as their interests appear.

7.07. Review of Insurance Coverage. Insurance coverage shall be analyzed by the Board, or its representative, at least annually from the date hereof.

ARTICLE VIII

Maintenance, Replacement and Improvement

8.01. Common Area; Common Facilities.

(a) The Common Area will be conveyed by Declarant to the Association, and all such Common Area and Common Facilities (including, but not limited to, roadways, sidewalks, curbs, gutters, street lighting, landscaping, entry and

directional signs, and private utilities pursuant to Section 4.10) shall be maintained, cared for and managed exclusively by the Association for the benefit and use of the Members as provided herein. In addition, the Association may maintain and improve any adjacent public areas, including street rights-of-way, not otherwise maintained by a public agency, to the extent it deems the same reasonably necessary for the maintenance of the appearance of the Property or any part thereof.

The Association shall not be liable for damage to any Residence Lot, Condominium, or Commercial Lot (and personal property located therein) caused by a damaged or defective Common Facility, unless such damage is caused by the gross negligence of the Association, the Board, officers or employees of the Association. To illustrate the foregoing, the Association shall not be liable for damage to a Residence Lot, Condominium, or Commercial Lot (and personal property located therein) resulting from water which may leak or flow from outside the Lot or Condominium or from any roadway, pipes, drains, conduits, or equipment, or from any other place or cause, unless caused by the gross negligence of the Association, the Board, officers or employees of the Association.

(b) The Association shall maintain all landscaping improvements installed by Declarant in Common Area, and the easement areas described in Section 4.09, in accordance with the Landscape Plan referred to in Section 5.02(b)(xvi).

(c) If any Common Area or Common Facility is damaged or destroyed through the act or omission of any Member or his or her guests or invitees, family members, agents, tenants, lessees, customers, or employees, whether or not such act or omission is negligent or otherwise culpable, such Member shall forthwith proceed to rebuild, repair, or replace it to as good condition as formerly existed, without cost to the Association, or the Association may proceed to effect such repair or replacement.

If the Association undertakes the rebuilding, repair, maintenance, or replacement of any Common Area or Common Facility for which a Member is liable hereunder, the Association may recover the cost thereof through a special assessment against the Member pursuant to Section 6.03(a)[i].

8.02. *Residence Lots; Commercial Lots.*

(a) Except for the Common Area and Common Facilities to be maintained by the Association pursuant to Section 8.01, each Member shall, at its sole cost and expense, maintain and repair its Residence Lot or Commercial Lot and all improvements thereon, and all landscaping thereon (except as provided in Section 4.09), keeping the same in good condition.

If any improvements or landscaping on a Residence Lot or Commercial Lot are damaged or destroyed by fire or other casualty, the Member shall at its sole cost and expense (1) immediately take such steps as reasonably may be required to secure any hazardous conditions resulting from the damage or destruction, and (2) unless otherwise approved by the Board, repair and reconstruct the improvements and landscaping in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction.

Unless otherwise extended in writing by the Board or City of Omaha, the repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one (1) year after such date.

(b) If a Member fails to maintain, repair or reconstruct the landscaping and improvements on its Lot as above set forth, the Association may enter into the Lot and perform the necessary maintenance, repairs or reconstruction.

If the Association undertakes the rebuilding, repair, maintenance, or replacement of any improvements or landscaping on a Residence Lot or Commercial Lot for which a Member is liable hereunder, the Association may recover the cost thereof through a special assessment against the Member pursuant to Section 6.03.

ARTICLE IX

Architectural Control

9.01. *Approval Required.* Except to the extent reasonably necessary for the construction, reconstruction, repainting, or alteration of any improvement on a Residence Lot or Commercial Lot for which the Member has obtained approved plans pursuant to this Article, no structures of any type whatsoever shall be constructed, reconstructed, repainted, or altered on the Lot until and unless the Member first obtains the approval therefore from the Board as herein provided and such Member complies with all provisions of this section. The foregoing shall not be applicable to any improvements constructed on the Residence Lots, Commercial Lots, or Common Areas by Declarant.

The Member shall obtain approval from the Board as herein provided prior to obtaining any necessary approval from the City of Omaha or other applicable governmental agency.

9.02. Standards. Except as provided above, the following standards and restrictions are applicable to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing upon Residence Lots or Commercial Lots:

(a) All improvements shall be constructed in accordance with applicable building guidelines as set forth from time to time by the Board pursuant to Section 9.03(e) below and subject to zoning and other applicable ordinances of the City of Omaha, the Redevelopment Agreement, the Mixed Use Development Agreement, the Gallup Redevelopment Covenants defined in the Redevelopment Agreement, or other applicable governmental authority.

(b) No reflective finishes (other than glass and surfaces of hardware fixtures) shall be used on exterior surfaces unless otherwise approved by the Board.

(c) Any improvements constructed on a Residence Lot or Commercial Lot shall conform to the setback requirements established by applicable governmental regulations. In the absence of established setbacks, the Board will establish reasonable setbacks for all improvements.

(d) No structures of a temporary character, basements, tents, shacks, garages, barns or other outbuildings or any trailer, camper or recreational vehicle shall be used on any such Lot at any time as a residence either temporarily or permanently. All temporary structures placed on any Lot during construction shall be used only as a construction office or to store materials and must be removed when construction is completed. All such temporary structures must be approved by the Board.

(e) Interior improvements and alterations not visible from the exterior shall not require approval hereunder. Further, no approval by the Board shall be required to repaint in accordance with Declarant's original color scheme (or with a color scheme previously approved by the Board, or to rebuild in accordance with Declarant's original plans and specifications (or with plans and specifications previously approved by the Board).

9.03. Procedure. The Member proposing to construct reconstruct, refinish, stain, paint or alter any part of the exterior of any improvements on or within its Residence Lot or Commercial Lot or perform any work which requires the prior approval of the Board, shall apply to the Board for approval as follows:

(a) The Member shall submit to the Board for approval such plans and specifications for the proposed work as the Board may from time to time request including when deemed appropriate by the Board, but without limitations, the following:

[i] The plot plan of the Lot showing contour lines at the locations of all the existing and proposed improvements, proposed drainage plan, easements, location of existing trees, such trees the Member proposes to remove and the location of proposed utility installations.

[ii] Floor plans.

[iii] Drawings showing all elevations.

[iv] Description of exterior materials and colors with color chips.

[v] Working drawings and construction specifications.

[vi] The Member's proposed construction schedule.

(b) If at any time during the Member's application for approval, the Board shall determine that it would be in the best interest of the Development for the Member to employ an architect to design any improvement involved in the proposed work, the Board shall inform the Member in writing of its determination, whereupon all plans and specifications submitted pursuant to this subsection must be prepared by an architect or professional engineer who is licensed in the State of Nebraska.

(c) Subject to the provisions of subsections (b) above, the Board shall approve the plans, drawings and specifications submitted to it pursuant to subsection (a) only if the following conditions have been satisfied:

[i] The Member and its architect, if any, shall have supplied all documents as requested by the Board; and

[ii] The Board finds that the plans and specifications conform to this Master Declaration and any building guidelines in effect at the time the plans were submitted to the Board.

All approvals shall be in writing and may be conditions upon the submission by the Member or its architect, if any, of additional plans and specifications as the Board shall deem appropriate for the purpose of ensuring that the construction of the proposed improvements shall be in accordance with the approved plans; provided, however that the plans, drawings and specifications which have been neither approved nor rejected within forth-five (45) days from the date of submission thereof to the Board shall be deemed approved. One set of plans as finally approved shall be retained and maintained by the Board as a permanent record.

(d) Despite the provisions of subsection (c) above, if within the forty-five (45) day period referred to above, the members of the Board in their sole discretion of the proposed improvements and the probable effect on the Members and the use and enjoyment of their Residence Lots or Commercial Lots would be incompatible with the Development, then the Board shall not approve the plans, drawings and specifications submitted to it pursuant to subsection (a) above and shall so notify the Member concerned in writing, setting forth the reasons for such disapproval. If the Board in its discretion finds that it may approve the proposed improvements subject to various conditions to render the proposal compatible with this Master Declaration and applicable building guidelines, then it may so approve the applications by written notice to the Member subject to those conditions which in the Board's discretion are appropriate.

(e) The Board may, from time to time, and in its sole discretion, adopt, amend and repeal rules and regulations to be known as "Building Guidelines" which interpret or implements the provisions of this Master Declaration with respect to construction or alteration of improvements.

(f) The approval by the Board of any plans, drawings or specifications for any work done or proposed or in connection with any other matter requiring the approval of the Board under this Master Declaration shall not be deemed to be or constitute a waiver of any right to withhold approval as to any similar plan, drawing specification or other matter whenever submitted for approval. In addition, the failure to act on such project shall not be deemed to be or constitute a waiver of any right to review any subsequent building plans within the purview of the Board.

(g) Neither the Board nor any member thereof shall be liable to any Member for any damage, loss or prejudice suffered or claimed on account of:

[i] The approval or disapproval of plans, drawings and specifications, whether or not defective;

[ii] Any course of action, act omission, error, negligence or the like;

[iii] The construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications;

[iv] The Development or manner of development of any Property within the Property; provided, however that the member has acted in good faith.

(h) Any action taken by a majority of the Board shall be deemed an action by the entire Board.

(i) Where circumstances, such as topography, location of property lines, location of trees, or other matters, require, the Board may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Master Declaration under the jurisdiction of the Board on such terms and conditions as it shall require; provided that all such variances shall be in keeping with the general plan for the improvement and development of the Property. Such variances shall not waive the right to the Board to require strict adherence to this Master Declaration in all other circumstances.

9.04. Compliance. With respect to compliance with the architectural controls of this Master Declaration, the following rules shall apply in addition to those set forth elsewhere in this Master Declaration:

(a) All improvements as to which a permit has been issued shall be completed in accordance with such permit within one year after its issuance unless extended by the Board upon request of the Member.

(b) The exterior color of any improvement cannot be changed from that originally approved pursuant to this section without the consent of the Board.

(c) Any duly authorized agent of the Board may at any reasonable time enter and inspect any Residence Lot or Commercial Lot and those portions of an improvement covered by this Master Declaration, if the Board believes that a violation of any part of this Master Declaration is occurring or has occurred.

9.05 Enforcement. Upon any violation of the architectural control provisions of this Master Declaration, the Building Guidelines then in effect, or the conditions of any permit or approval given by the Board, the Board shall seek to enforce the provisions of this Master Declaration, the Building Guidelines and such other applicable conditions of approval, by any proceeding at law or in equity, and may utilize either or both of the following remedies in addition to such other recourse provided in this Master Declaration:

(a) The Board may restore such affected Lot to its state existing immediately prior to the violation, and the Member shall reimburse the Board for all expenses incurred by it in exercising its rights and obligations under this subsection. Such amounts may be assessed to the Lot as a reimbursement assessment pursuant to Section 6.04.

(b) The Board may notify the Condominiums Association or Owner to restore the affected Lot to its state existing immediately prior to the violation, and provide the Member reasonable time in which to do so. If the Member fails to comply with the request within the provided time period or any authorized extension, the Board may impose a fine pursuant to the Bylaws, in an amount not to exceed Fifty Dollars (\$50) per day per violation as such sum may be adjusted annually after the recording of this Master Declaration for inflation in accordance with the Consumer Price Index, or comparable index, and such penalty may be collected as a reimbursement assessment, pursuant to Section 6.04.

(c) Failure of the Board to require a Member to correct a violation of this Master Declaration upon first discovery by the Board shall not be deemed a waiver or the violation at a later time, or to make correction of all existing violations a precondition to the Board's approval of other matters requested by the Member.

9.06 Deemed Compliance. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of issuance of a building permit by applicable governmental authority for any improvement, the improvement shall, for the benefit of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless actual notice of such noncompliance or noncompletion, executed by the Board or its designated representatives, shall be recorded in the office of the Register of Deeds of Douglas County, Nebraska, or unless legal proceedings have been instituted to enforce compliance or completion.

ARTICLE X

Condemnation

If a taking occurs by condemnation of a portion or all of the Common Area and improvements thereon, the award made to the Association, if any, for the condemned Common Area and Common Facilities shall be paid to the Association as trustee for division among all Members as their interests appear.

ARTICLE XI

General Provisions

11.01. Interpretation: Inconsistency. The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Members. If the provisions of this Master Declaration conflict with any of the provisions of the Articles of Incorporation, Bylaws or Condominium Plan, the provisions of this Master Declaration shall control. The foregoing notwithstanding, the covenants, conditions and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City of Omaha on the Development (including the Redevelopment Agreement and the Mixed Use Development Agreement mentioned above). In the event of a conflict or inconsistency between the provisions of this Master Declaration and the requirements, codes or ordinances of the City applicable to the Development, then the more restrictive requirement shall govern.

11.02. Severability. The provisions herein shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any of these provisions shall not affect the validity of the remaining provisions.

11.03. Enforcement; Waiver; Actions, Disputes Involving Repair Issues.

(a) **Enforcement; Waiver.** Except as otherwise provided herein, the Association, or any Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by this Master Declaration. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

(b) **Actions, Disputes Involving Repair Issues.** It is the intent of Declarant that the Common Area and Common Facilities be built in compliance with all applicable building codes and ordinances in effect at the time the building permits for the Development were obtained and that they be of a quality that is consistent with good construction and development practices for a project of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the party responsible therefore. It is Declarant's intent to amicably resolve all disputes and claims regarding "Repair Issues" (as that term is defined below), in an effort to avoid time-consuming and costly litigation. Accordingly, the Association, Board and all Members shall be bound by the pre-litigation dispute resolution procedures described below.

(c) **Pre-Litigation Dispute Resolution Procedures.** The following pre-litigation dispute resolution procedures shall apply to all disputes and claims regarding Repair Issues (as defined below):

[i] **Right to Cure.** In the event that the Association, Board, or any Member (collectively "Claimant") claim, contend, or allege that Declarant and/or its principals (including officers, directors, shareholders, managers, members, partners, and/or trustees, as the case may be), agents, employees, consultants, contractors or subcontractors (collectively, "Declarant's Agents") are responsible for deficiencies in the construction, design, specifications, surveying, planning, supervision, testing or observation of construction of any portion of the Development or any other improvements related thereto (collectively, a "Repair Issue"), Declarant and Declarant's Agents hereby reserve the right to address such Repair Issue as set forth herein.

If the Repair Issue pertains to the Common Area or a Common Facility as defined in Sections 1.07 and 1.08, respectively, the Association shall have the right to bring a claim for such Repair Issue. Notwithstanding any other provision in the Master Declaration to the contrary (including without limitation any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant or any of Declarant's Agents with respect to any Repair Issue in the Common Area or concerning a Common Facility. The decision to initiate any such claims for Repair Issues shall, instead, rest with the majority of the Owners/ Members other than Declarant.

[ii] **Notice.** In the event that a Claimant discovers any condition which Claimant believes to be a Repair Issue, Claimant shall notify Declarant and, if appropriate, one or more of Declarant's Agents, in writing, within a reasonable time not to exceed thirty (30) days of discovery of such condition. The notice shall describe the specific nature of such Repair Issue and such other matters as are or may be required by applicable law ("Notice of Repair Issue").

[iii] **Notice of Water Intrusion.** Notwithstanding any other provision herein, in the event there is intrusion of water onto any Residence Lot or Commercial Lot or in any Common Area or Common Facility (including, without limitation, as a result of rising river water, any roof, window, siding or other leaks, including plumbing leaks), and whether or not the cause of such water intrusion constitutes a Repair Issue, the Member/Owner of the affected Lot, or the Association in the case of water intrusion in the Common Area or Common Facility, shall be obligated immediately to notify Declarant and, if appropriate, one or more of Declarant's Agents of such event. In addition, the Member/ Owner or Association, as the case may be, shall take all reasonably necessary and appropriate action to stop any such water intrusion. Declarant and Declarant's Agents shall thereafter have all of the rights specified under this Section 11.03(c) to inspect the conditions, including the right to access the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Each Member/Owner and the Association shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant and/or any of Declarant's Agents to take any action, nor shall any rights of Declarant or Declarant's Agents under this subsection constitute an admission or acknowledgment that any causes of water intrusion are the result of defective construction or design. The failure of any Member/Owner or the Association, as the case may be, to timely notify Declarant and/or Declarant's Agents of any such water intrusion shall be cause to deny future claims against Declarant and/or any of Declarant's Agents relating thereto, which claims could have been mitigated had earlier action been taken.

[iv] **Right to Enter, Inspect, Repair and/or Replace.** Within sixty (60) days after the receipt by Declarant of a Notice of Repair Issue, or the independent discovery of any Alleged Defect by Declarant or any of Declarant's Agents, as part of their reservation of right to address any Repair Issue, Declarant and Declarant's Agents shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, Common Facilities, Residence Lots, Commercial Lots and/or any improvement constructed in the Development for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant and/or Declarant's Agents, repairing and/or replacing any defective condition discovered by them. In conducting such inspection, testing, repairs and/or replacement, Declarant and Declarant's Agents shall be entitled to take any actions as they shall deem reasonable and necessary under the circumstances. Declarant and/or Declarant's Agents shall restore the area inspected and tested to its pretesting condition unless Declarant or Declarant's Agents will be repairing and/or replacing a defective condition in such area.

[v] **Meeting of Parties.** Within a reasonable period following the inspection and testing of any area to address a Repair Issue as provided in subsection [iv] above, upon their mutual agreement, the parties and/or authorized representatives of the parties may meet at a mutually acceptable place in the City of Omaha to discuss the dispute or claim. The parties and/or their representatives shall negotiate in good faith in an attempt to resolve the dispute or claim. At such meeting, or at another mutually agreeable time, the parties and their representatives shall have full access to the Common Area, all Common Facilities, any Residence Lot and any Commercial Lot within the Development, and any other improvement for the purposes of inspecting such property to assist in the resolution of the claim or dispute. If Declarant and/or any of Declarant's Agents elect to take any corrective action to address a Repair Issue, such party and its representatives and agents shall be provided full access to the Common Area, Common Facilities, Residence Lots and Commercial Lots within the Development and any other improvement to take and complete such corrective action.

[vi] **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this section shall be construed to impose any obligation on Declarant or any of Declarant's Agents to inspect, test, repair, or replace any item or address any Repair Issue for which Declarant or any of Declarant's Agents are not otherwise obligated. The right of Declarant or and Declarant's Agents to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, executed and recorded by Declarant in the Official Records of Douglas County.

(d) **Third Party Claims.** If any dispute or claim is filed by a third party against Declarant or any of Declarant's Agents arising out of, relating to or resulting from a Repair Issue, and such dispute or claim is the subject of a legal proceeding, the Association, its Members, Declarant and Declarant's Agents, as appropriate, agree to be included in and bound by such proceeding without first requiring compliance with the foregoing provisions of this Section 11.03.

(e) **Amendment of this Section.** This Section 11.03 shall not be amended without the prior written consent of Declarant.

11.04. Association as Claimant.

(a) **Notice to Members.** If the Association is the Claimant, it must provide written notice to all Members prior to initiation of litigation against Declarant and/or Declarant's Agents, which notice shall include the following:

- (i) A description of the Repair Issue.
- (ii) A description of the attempts of Declarant and/or Declarant's Agents to address such Repair Issue and the opportunities provided to Declarant and/or Declarant's Agents to address such Repair Issue.
- (iii) A description of the scope of work necessary to address the Repair Issue to the extent known, or an explanation as to why such a description is not obtainable or appropriate.
- (iv) The estimated cost to satisfactorily address the Repair Issue to the extent known.
- (v) An affirmative statement from the Board that the action is in the best interests of the Association and its Members.
- (vi) That a meeting will take place to discuss the matter and the time and place of such meeting.
- (vii) The options that are available to address the problems.

- (viii) A description of the proposed contract or arrangement between the Association and the attorney retained by the Association to pursue the claim against Declarant and/or Declarant's Agents
- (ix) The estimated attorneys' fees and expert fees and costs necessary to pursue the claim and the source of funds which will be used to pay such fees and expenses.

(b) **Incurring Legal Expenses by Association.** The Association shall not incur legal expenses, including attorneys' fees, where the Association initiates litigation or is joined as a plaintiff in legal proceedings without the approval of a majority of the Voting Power of the Association, excluding the Voting Power of any Member who would be a defendant in such litigation or proceedings against Declarant and/or Declarant's Agents for a Repair Issue. Except as may be otherwise provided in the Bylaws, the Association must finance any such legal proceeding with monies that are specifically collected for same and may not use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event the Association commences any litigation described herein, a Member must give notice to prospective purchasers of his/her interest in the Development of such litigation and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this subsection (b).

(c) **Amendment of Section.** This Section 11.04 shall not be amended without the prior written consent of Declarant.

11.05. LITIGATION. UNLESS AN ALTERNATIVE FORM OF DISPUTE RESOLUTION IS AGREED TO BY THE PARTIES, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN THE DOUGLAS COUNTY DISTRICT COURT, WITHOUT A JURY. THE JUDGE SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES. EACH MEMBER/OWNER ACKNOWLEDGES THAT HE/SHE VOLUNTARILY AND KNOWINGLY WAIVES AND COVENANTS NOT TO ASSERT HIS/HER CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR FAILURE TO DISCLOSE MATERIAL FACTS, AND COVENANTS AND AGREES THAT THIS WAIVER OF JURY TRIAL SHALL BE BINDING UPON HIS/HER SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF ANY MEMBER/OWNER, THE ASSOCIATION, OR THEIR SUCCESSORS AND ASSIGNS.

THIS SECTION 11.05 SHALL NOT BE AMENDED WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

11.06. Recovery of Monetary Damages. If the Association or any Member recovers monetary damages from any party pursuant to the foregoing, the Association or Member shall first apply such funds to repair any defect that has resulted in the award of such damages (reasonable costs and attorneys' fees excepted). Included in the foregoing shall be the responsibility of the Association to fund or reimburse reserves for the purpose of repairing the defect that has resulted in such award. If the Association has excess funds remaining after repair of such defect by the Association, such funds shall be paid into the Association's reserve account.

This Section 11.06 shall not be amended without the prior written consent of Declarant.

11.07. Binding on Successors. This Master Declaration shall be binding upon, and shall inure to the benefit of, the successors and assigns of Declarant and the successors, assigns, heirs, personal representatives, grantees, lessees, sublessees, contract purchasers, guests and assignees of the Member/Owners.

11.08. Attorney's Fees. In any action whatsoever arising from rights and obligations established under this Master Declaration, including but not limited to actions for damages resulting from a breach of this Master Declaration or actions for specific enforcement hereof, the prevailing party shall be entitled to recover such a reasonable sum as the court, arbitrator, referee, or other decision-maker may fix as attorney's fees and costs.

11.09. Breaches; Effect on Liens. A breach of any of the provisions of this Master Declaration will not render invalid or otherwise affect the lien of any Mortgage or deed of trust.

11.10. Reports to Prospective Purchasers. The Member/Owner of a Residence Lot or Commercial Lot shall, as soon as practicable before transfer of title or execution of a real property sales contract therefore, provide the following to the prospective purchaser:

- (a) A copy of the Master Declaration, Bylaws, Articles and rules and regulations of the Association, if any;
- (b) A copy of the most recent financial reports described in Article X, Sections 4 and 5 of the Bylaws;
- (c) A certificate signed by an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Member's Residence Lot or Commercial Lot which are unpaid on the date of the statement. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Member's Lot. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance; and
- (d) Any change in the Association's current regular and special assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided.

Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Member/Owner of a Residence Lot or Commercial Lot with a copy of the requested items specified hereinabove. The Association may charge a fee for this service, which shall not exceed the reasonable cost to prepare and reproduce the requested items.

11.11. Delivery of Documents to Members. Documents shall be delivered to Members in one or more of the following ways: (a) personal delivery, (b) first-class mail, postage prepaid, addressed to the Member at the address last shown on the books of the Association or as otherwise provided by the Member (delivery deemed complete on deposit into the mail), (c) e-mail, facsimile or other electronic means if the Member has agreed to such method of delivery (delivery complete at time of transmission), or (d) inclusion of document with a billing statement, newsletter or other documents being delivered to the Member by an authorized method.

11.12. No Liability Regarding Enforcement. Neither Declarant, the Board or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without willful or intentional misconduct) shall be liable to any Owner/ Member or Lessee of any real property subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Master Declaration, or any part hereof. Each Owner/ Member and Lessee acquiring an interest in the Development agrees that it will not bring any action or suit against Declarant, the Board or any member thereof, from time to time, or their successors and assigns, to recover any such damages or to seek equitable relief.

11.13. Reasonable Exercise of Rights. The easements and rights provided herein above granted shall be used and enjoyed by Declarant, the Board, and/or the Association, as applicable, and each Member in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Member at any time conducted on its Lot, including, without limitation, public access to and from said business and the receipt or delivery of merchandise in connection therewith.

11.14. Governing Law. This Master Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska, and each person with rights hereunder hereby waives the right to sue or be sued in any other place.

11.15. Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of Riverfront Place can or will be carried out, or that any Residence or Commercial Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Master Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of Riverfront Place or the enforcement of this Master Declaration.

11.16. Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Master Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

11.17. Consent. Whenever consent or approval is required hereunder, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) specify the section hereof which requires that such notice be given or that such consent or approval be obtained, and (b) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. In order to be effective, such consent must be given, denied or conditioned expressly and in writing.

ARTICLE XII

Reserved Rights of Declarant

12.01. Right to Use Common Areas to Promote Riverfront Place. Declarant shall have, and hereby reserves the right to reasonable use of the Common Areas, Common Facilities, and services offered by the Association in connection with the promotion and marketing of Lots and Condominiums within the Property. The rights of Declarant shall include, without limitation, the right (i) to erect and maintain on any part of the Common Areas and on any portion of the Property owned by Declarant, such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper from time to time in connection with the promotion, development and marketing of Lots and Condominiums within the Development; and (ii) to use vehicles and equipment on the Common Areas or any portion of the Property owned by Declarant for promotional purposes

12.02. Right to Construct Additional Improvements Within Common Areas. Declarant shall have, and hereby reserves the right, to construct additional Improvements within the Common Areas from time to time for the improvement and enhancement of the Common Areas and the Development and for the benefit of the Association and its Members, and the same shall thereafter be maintained by the Association pursuant to Section 8.01.

12.03. Right to Complete Development of Riverfront Place. Declarant shall have, and hereby reserves, the right (i) to construct or alter improvements on any Lot owned by Declarant; (ii) to maintain an office for construction, sales, promotion or leasing purposes or other similar facilities on any Lot owned by Declarant or by the Association within the Property; and (iii) without the approval of the Association, to excavate, cut, fill or grade any Lot owned by Declarant, or to construct, alter, demolish or replace or renovate any Improvements owned by Declarant or to alter its construction plans or design or to rezone or amend its master plan or any development documents agreed to by Declarant and the City, and to permit any activity, use or improvement by Declarant on any Lot owned by Declarant. Without limiting the generality of the foregoing, Declarant shall be exempt from the provisions of Section 9.01.

12.04. Right to Approve Conveyance or Change in the Use of Common Areas. The Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of the Common Areas, record a Mortgage against the Common Areas, or use Common Areas other than for the benefit of the Members.

12.05. Reserved Rights Do Not Create Obligations. Anything in this Article XII to the contrary notwithstanding, the foregoing rights in favor of Declarant shall not in any way be construed as creating any obligation on the part of Declarant to exercise any such rights or to perform any of the activities, construct any improvements, convey any property or grant any easements referred to in this Article.

ARTICLE XIII

Assignment of Declarant's Rights and Duties

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant from time to time, in its discretion, to any person or entity who will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such person or entity assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Master Declaration. Any assignment made under this Article shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Notwithstanding any provision of this Master Declaration to the contrary, Declarant may, at any time and from time to time without the consent of the Board or other Members, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Master Declaration by filing in the Register of Deeds of Douglas County, Nebraska, a notice stating that Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and obligations so specified shall immediately vest in the Board of Directors unless otherwise specified therein.

ARTICLE XIV

Duration and Amendment

14.01. Term of Master Declaration. The provisions contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until fifty (50) years from the date hereof, after which time this Master Declaration shall be deemed automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by not less than a majority of the Voting Power of this Association shall be recorded, canceling and terminating this Master Declaration.

14.02. Amendment. Subject to the provisions of Section 15.07, this Master Declaration may be amended or repealed in whole or part as to all or any part of the Development as follows:

a) Prior to the close of escrow for the sale of any Commercial Lot or any Residence Lot (or any Condominium located on a Residence Lot) to a member of the public, the Master Declaration may be amended or repealed by Declarant alone.

(b) After the sale of the first Commercial Lot or any portion of a Residence Lot, the Master Declaration may be amended or repealed by the affirmative vote of a majority of the Voting Power of the Association. Where applicable, such amendment also must be signed by Declarant as provided herein.

Such votes of the Members may be cast in person or by proxy at any duly called meeting of Members held pursuant to the Bylaws of the Association, by written ballot without a meeting of the Members pursuant to Section 21-1958 of the Nebraska Non-Profit Corporation Act, as amended, or by written consent of all members pursuant to Section 21-1954 of the Nebraska Non-Profit Corporation Act, as amended.

(c) Notwithstanding any other provisions of this Master Declaration, for so long as Declarant owns any portion of the Property or the area subject to annexation under Section 2.02 above, Declarant may unilaterally amend this Master Declaration to conform this Master Declaration to the requirements of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association then in effect, by recording a written instrument signed solely by Declarant.

(d) The amendment must be in writing. Unless otherwise provided in subsection (c) above, attached or appended to the amendment shall be the written certification of the President of the Association that such writing contains the amendment to the Master Declaration and that such amendment was approved by the percentage of the votes of the Members required by the Master Declaration. Such amendment shall then be recorded in the office of the Register of Deeds of Douglas County, Nebraska

(e) Notwithstanding the foregoing, the voting power required to amend a specific provision of the Master Declaration shall not be less than the percentage of affirmative votes required for action to be taken under that provision.

(f) Until such time as the real property described in Exhibits "B" and "C" has been annexed to the real property then subject to this Master Declaration in the manner set forth in Section 2.02 above, no amendment of this Master Declaration modifying the rights of Declarant to annex such property can be adopted unless such modification is also consented to in writing by Declarant.

(g) No amendment of this Section 14.02 modifying the rights of Declarant shall be adopted unless such amendment is also consented to in writing by Declarant.

ARTICLE XV

Protection of Mortgagees

15.01. Provisions Controlling. In addition to the protection of Mortgagees set forth in Article X and XII of the Condominium Declaration, which are incorporated herein by reference, the following additional protections of mortgagees shall apply for the benefit of Condominiums constructed in the Residential Lot Area.

15.02. Insurance; Supplement to Article VII. Those sections of Article VII (Insurance; Destruction of Improvements) set forth below are herein modified to include the following:

(a) **Section 7.01 - Liability Insurance:** The limits of comprehensive general liability and property damage insurance required by this section shall be not less than Three Million Dollars (\$3,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence.

(b) **Section 7.02 - All Risk Hazard Insurance:** If any portion of the Common Area is located within a special flood hazard as shown on a flood insurance rate map, the Association shall purchase and maintain a policy of flood insurance on the Common Facilities or other common property in an amount not less than the following:

The lesser of: (1) One hundred percent (100%) of the insurable value of the Common Facilities or other common property or (2) the maximum coverage available under the appropriate National Flood Insurance Administration program.

(c) **Section 7.05 - Board Appointed Attorney-in-Fact:** In addition to the powers enumerated in this section, the Board is also authorized as attorney-in-fact for all Members for the purpose of purchasing and maintaining the insurance required under this Article, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

15.03. Distribution of Insurance and Condemnation Proceeds Supplement to Section 7.06 and Article X. No Member or any other party shall have priority over any right of first Mortgagees of Commercial Lots, Residential Lots, or Condominiums pursuant to their Mortgages in case of a distribution to Members of insurance proceeds or condemnation awards for losses to or a taking of the Lots, Condominiums or Common Area. Any provisions to the contrary in this Master Declaration or in the Bylaws or other documents relating to the Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected first Mortgagees naming the Mortgagees, as their interests may appear.

15.04. Notices to Mortgagees of Records; Eligible Mortgage Holders. Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the applicable Condominium number or address, any such Mortgage Holder or insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Condominium on which there is a Mortgage held, insured or guaranteed by such Mortgage Holder or insurer or guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by Riverfront Place Condominium Association, Inc., subject to a Mortgage held, insured or guaranteed by such holder or insurer or guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgage Holders.

Any holder of a first Mortgage on a Condominium Unit that has made a request of the Association as set forth above shall be deemed an Eligible Mortgage Holder for purposes of this Article XV.

15.05. Assessments, Restrictions Binding. Any lien of the Association established pursuant to Article VI on any Residence Lot is subordinate to any lien or equivalent security interest of any first Mortgagee on any Condominium located on the Residence Lot, provided that the first Mortgage is recorded prior to the date any assessment against such Condominium became due. Any holder of a first Mortgage who comes into possession of a Condominium pursuant to the remedies provided in the Mortgage shall take the property free of any claims for unpaid assessments or charges against the Mortgaged Condominium which accrue prior to the time such holder comes into possession of the Condominium (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Condominiums, including the Mortgaged Condominium); provided, however, that any subsequent Owner of any such Condominium shall be bound by the restrictions, conditions, covenants, reservations, liens and charges set out in this Master Declaration or any modification thereof, whether obtained by foreclosure or trust deed sale or otherwise.

15.06. Acts Requiring Consent.

(a) Unless the prior written consent of at least fifty-one percent (51%) of Eligible Mortgage Holders and the prior written consent of at least sixty-seven percent (67%) of the Voting Power of the Association have been obtained, neither the Association nor the Members shall be entitled:

[i] By act or omission to seek to abandon or terminate the Development; and

[ii] By act or omission to seek to abandon, partition, subdivide, sell or transfer the Common Area.
The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the

Association or the Members shall not be deemed to be a transfer within the meaning of this clause.

(b) Unless the prior written consent of at least fifty-one percent (51%) of Eligible Mortgage Holder and the prior written consent of at least sixty-seven percent (67%) of the Voting Power of the Association, have been obtained, neither the Association nor the Members shall be entitled by act or omission to seek to abandon or terminate the Development after substantial destruction or condemnation has occurred on or in the Development.

(c) An Eligible Mortgage Holder shall be deemed to have cast an affirmative vote if it receives written notice (delivered by Certified or Registered Mail, with a "return receipt" requested) of the actions or omissions requiring consent as set forth herein, pursuant to Section 15.04, and does not deliver or post to the Association a negative response within thirty (30) days after such receipt.

15.07. Amendment; Supplement to Section 14.02. In addition to the requirements of Section 14.02, and unless a greater percentage is expressly required by this Master Declaration or the Bylaws, the prior written consent (or deemed consent as provided hereinafter) of at least fifty-one percent (51%) of Eligible Mortgage Holders and the consent of at least sixty-seven percent (67%) of the Voting Power of the Association, shall be required to add or amend any material provision of this Master Declaration, the Bylaws, the Condominium Plan or the Tract Map, which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Hazard or fidelity insurance requirements;
- (c) Responsibility for maintenance and repair of Common Area and the improvements thereon;
- (d) Any provisions which are for the express benefit of Mortgage Holders, insurers or guarantors.

An Eligible Mortgage Holder shall be deemed to have cast an affirmative vote if it receives written notice (delivered by Certified or Registered Mail, with a "return receipt" requested) of the amendments requiring consent as set forth herein, pursuant to Section 15.04, and does not deliver or post to the Association a negative response within thirty (30) days after such receipt.

15.08. Examination of Books and Records. All first Mortgagees of Condominiums shall have the right, upon request, to examine Association books and records during normal business hours, and receive written notice of all meetings of the Association (in the same manner prescribed in the Bylaws for Members) and designate a representative to attend all such meetings.

15.09. Payment of Taxes. The first Mortgagees of Condominiums may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Property; and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association.

IN WITNESS WHEREOF, the foregoing instrument was subscribed the day and year first above written.

[Signatures on Following Page]

RIVERFRONT PARTNERS, LLC, a Nebraska
limited liability company

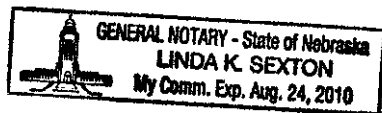
By: 
Kim R. McGuire, Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

Before me, a notary public, in and for said county and state, personally came Kim R. McGuire, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of such limited liability company. *as managing member*

Witness my hand and Notarial Seal this ²⁵3 day of October, 2006.


Notary Public



**CONSENT TO AND RATIFICATION
OF DECLARATION**

The undersigned hereby consents to the above and foregoing Declaration; agrees that the Property (as defined in Recital A, above) shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved, mortgaged or otherwise encumbered subject to the provisions of this Declaration; agrees that this Declaration and all of its provisions shall be and are covenants running with the Property, and shall be binding on the undersigned, its successors and assigns; and the undersigned hereby ratifies and approves of the recordation of this Declaration in the Office of the Douglas County Register of Deeds against the Property.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 7th day of October 2006.

LENDER:

FIRST NATIONAL BANK OF OMAHA, a National Association,

By: Daniel M. Shultz
Its: Vice President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

Before me, a notary public, in and for said county and state, personally came Daniel M. Shultz of First National Bank of Omaha, a National Association, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of such National Association.

Witness my hand and Notarial Seal this 7th day of October, 2006.

Linda K. Sexton
Notary Public



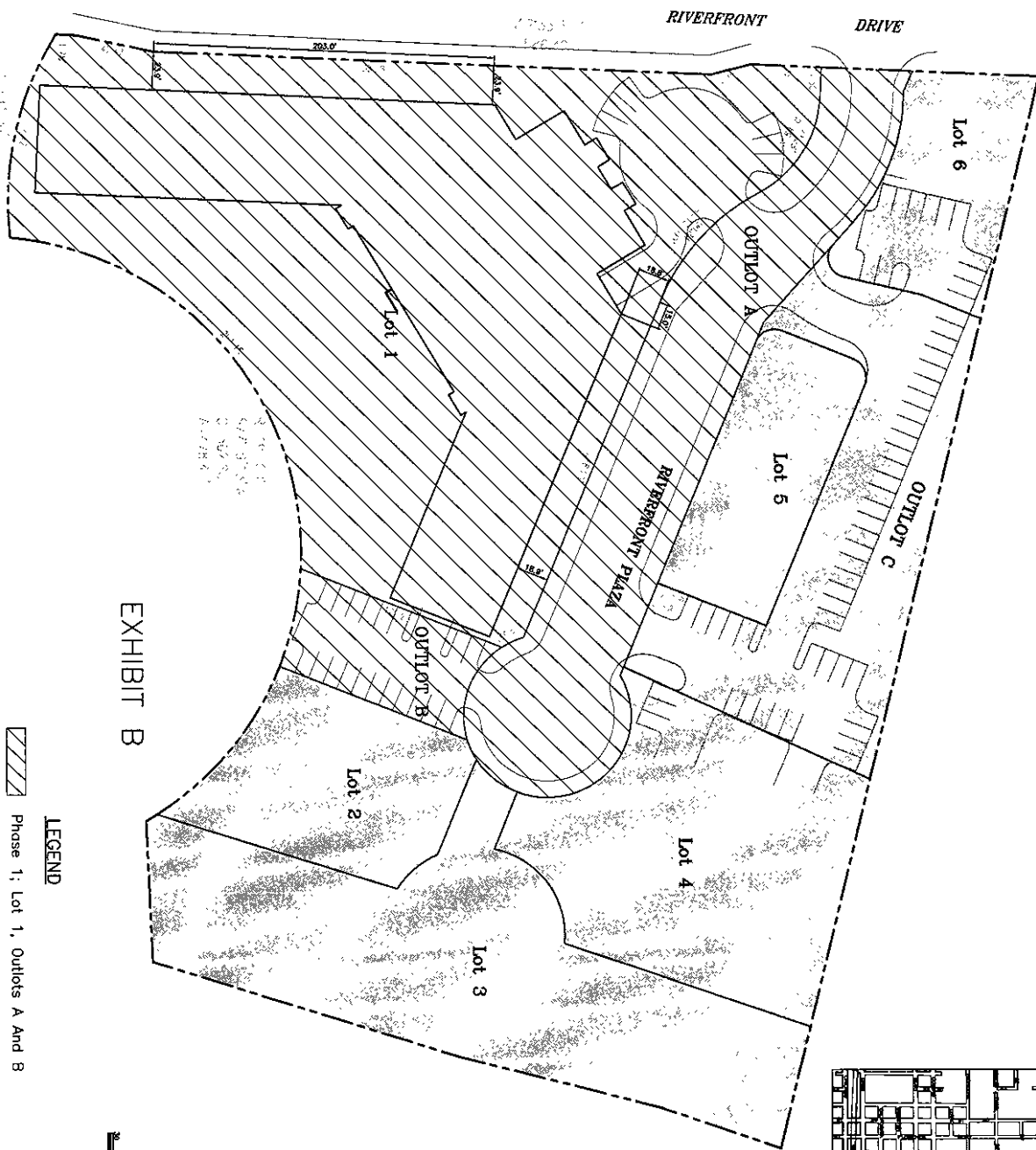


EXHIBIT B

LEGEND



Phase 1; Lot 1, Outlots A and B

Phase 2; Lots 2, 3, 4, 5, 6 And Outlot C

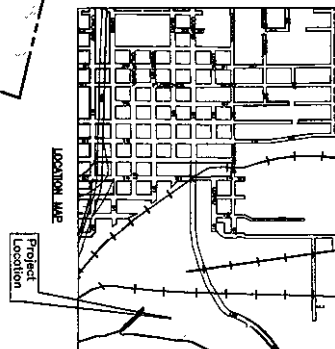


EXHIBIT B
PHASE 1 AND PHASE 2



Lamp, Rynearson & Associates, Inc.

14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2037

RIVERFRONT PLACE
DOUGLAS COUNTY, NEBRASKA

WWW.LRA-INC.COM

(Ph) 402.496.2498
(Fax) 402.496.2730

1 of 1

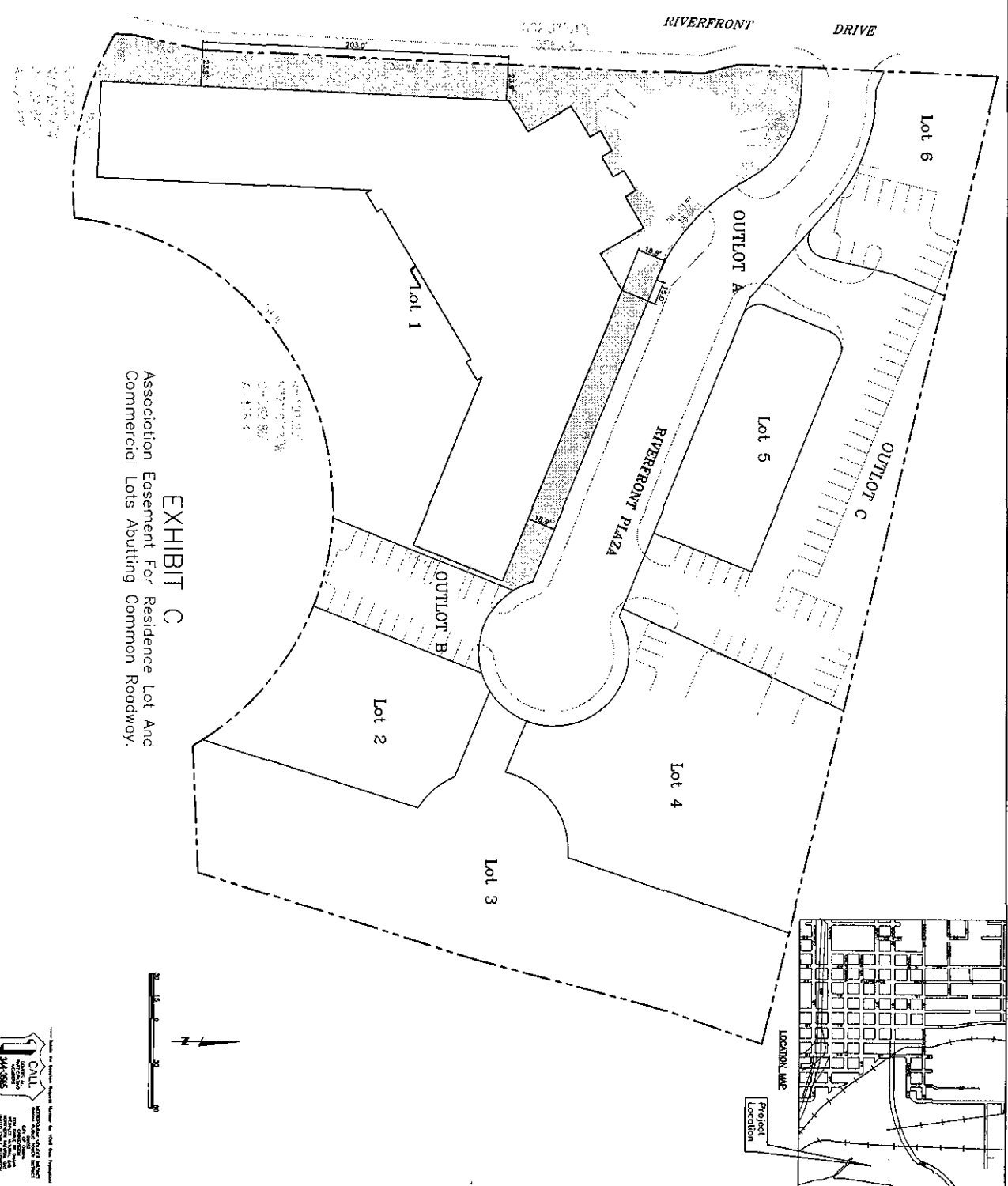
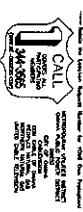
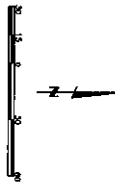


EXHIBIT C
 Association Easement For Residence Lot And
 Commercial Lots Abutting Common Roadway.



<p>EXHIBIT C ASSOCIATION EASEMENT</p>	<p>Lamp, Rynearson & Associates, Inc. 14710 West Dodge Road, Suite 100 Omaha, Nebraska 68154-3027</p> <p>WWW.LRA-INC.COM (Ph) 402.496.3498 (Fax) 402.496.2730</p>	<p>LOCATION MAP</p> <p>Project Location</p>
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EXHIBIT D

Signage

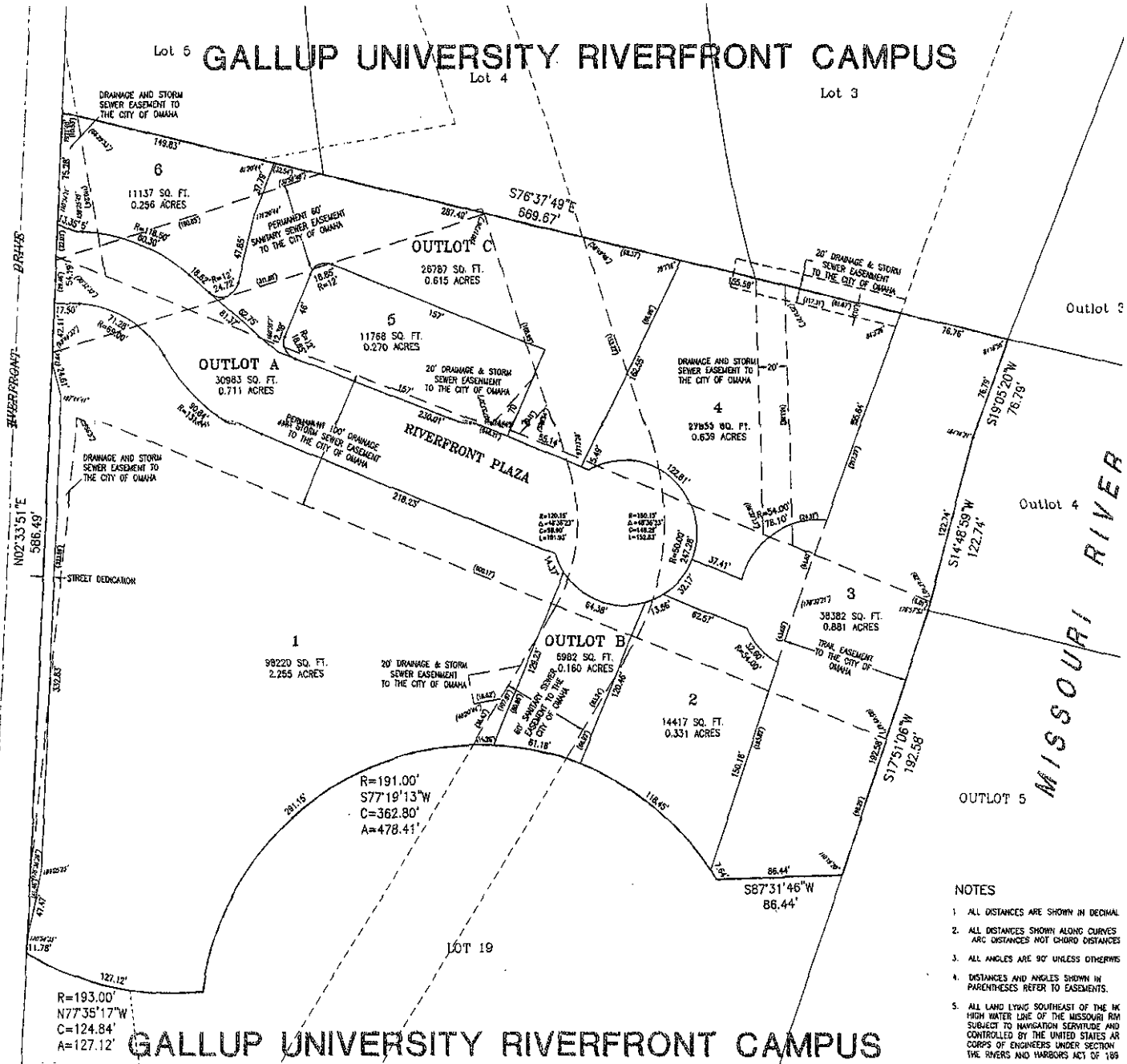
- A. Signage for the project shall meet the minimum requirements of the Omaha Municipal Code, Chapter 55, Article 18, Signs and Street Graphics. Lots 1-6, shall have the right to separate signage that will be installed pursuant to the applicable sign standards for the CBD.
- B. The project may have no more than one (1) center identification sign on Lot 1, which is included in the total sign budget. The general location of the center identification sign is shown on the Development Plan (Exhibit B).
- C. All other signage will be limited to wall signs, projecting signs, or ground monument signs, all as defined in Article 18, Chapter 55, OMC.
- D. No pole signs shall be allowed. Directional and information signs not exceeding four (4) square feet per sign face with no advertising copy on them, and located within parking lots, parking structures, and outlots are exempt from the sign budget.
- E. A sign budget is attached hereto as Exhibit E. The permitted sign area for each lot is based on the frontage of each lot in relation to the total net street frontage in the development. The total sign budget for the development is 2,180 square feet. The owner of each lot may allocate its pro-rata share of this sign budget for each lot between and among the various permitted sign types, and between and among the separate structures located or to be located on each lot.
- F. Allocated sign budget amounts may be transferred between lots on a square foot to square foot basis when an amendment to the agreement Exhibit E is filed with the Planning Department specifying the increase or decrease in budget for each lot.
- G. All signs will be installed subject to a sign permit from the City of Omaha. Unless provided for in this agreement, all other provisions and regulations governing signs in effect at the time of application for a sign permit shall apply.

SIGN PLAN

LOT #	SITE AREA	PRIMARY FRONTAGE	SECONDARY FRONTAGE	ADJ	MULTI	ALLOWABLE SIGN AREA	ALLOCATED SIGN AREA
1	98,220	455	450	225	2	450	200
2	14,417	140	0	140	2	280	600
3	38,382	250	0	250	2	500	100
4	27,833	180	0	180	2	360	200
5	11,768	165	0	165	2	320	200
6	11,137	75	120	135	2	270	630
Total allowed sign area						2180	
Lot 1, center ID							<u>300</u>
Total allocated sign area							1930

RIVERFRONT

Lots 1 through 6, inclusive, and Outlots A, B, and C,
UNIVERSITY RIVERFRONT CAMPUS, a subdivision, as surveyed



NOTES

1. ALL DISTANCES ARE SHOWN IN DECIMAL.
2. ALL DISTANCES SHOWN ALONG CURVES ARE CHORD DISTANCES NOT CHORD DISTANCES.
3. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.
4. DISTANCES AND ANGLES SHOWN IN PARENTHESES REFER TO EASEMENTS.
5. ALL LAND LYING SOUTHEAST OF THE HIGH WATER LINE OF THE MISSOURI RIVER SUBJECT TO NAVIGATION SERVICE AND CONTROLLED BY THE UNITED STATES ARMY CORPS OF ENGINEERS UNDER SECTION 109 OF THE RIVERS AND HARBORS ACT OF 1899.
6. THE EAST PROPERTY LINE OF LOT 3 IS ELEVATION 965.
7. LOTS 1 AND 6 WILL NO DIRECT VEHICULAR ACCESS TO RIVERFRONT DRIVE.

, being a replatting of Lots 16 and 18, GALLUP
d, platted and recorded in Douglas County, Nebraska.

I HEREBY CERTIFY THAT I have made a boundary survey of the subdivision herein and that permanent monuments have been placed at all angle points, corners and ends of curves of the boundary of the plat and that a bond has been posted with the City of Omaha, Nebraska, to ensure that permanent monuments will be placed at all angle points, corners and ends of curves on all lots and streets in the subdivision to be known as RIVERFRONT PLACE (Lots 1 through 6, inclusive, and Outlots A, B, and C) being a replatting of Lots 16 and 18, GALLUP UNIVERSITY RIVERFRONT CAMPUS, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described by metes and bounds as follows: Beginning at the southwest corner of Lot 5, GALLUP UNIVERSITY RIVERFRONT CAMPUS; Thence South 76°37'49" East (bearing referenced to the Final Plat of GALLUP UNIVERSITY RIVERFRONT CAMPUS) for 689.67 feet along the south line of Lot 3, 4 and 5, GALLUP UNIVERSITY RIVERFRONT CAMPUS to the northwest corner of Outlot 4, GALLUP UNIVERSITY RIVERFRONT CAMPUS; Thence South 19°05'20" West for 76.79 feet along said west line to an angle point therein; Thence South 14°45'59" West for 127.74 feet along said west line to the northwest corner of Outlot 5, GALLUP UNIVERSITY RIVERFRONT CAMPUS; Thence South 125°1'06" West for 192.50 feet along the west line of Outlot 5 to the northeast corner of Lot 19, GALLUP UNIVERSITY RIVERFRONT CAMPUS; Thence South 87°31'46" West for 86.44 feet along said north line; Thence along a curve to the left (having a radius of 191.00 feet and a long chord bearing South 77°19'13" West for 362.60 feet) for an arc length of 476.41 feet along said north line; Thence along a curve to the right (having a radius of 193.00 feet and a long chord bearing North 77°35'17" West for 124.84 feet) for an arc length of 127.12 feet along said north line to the east right of way line of Riverfront Drive; Thence North 02°33'51" East for 586.49 feet along said east, right of way, line to the Point of Beginning. Contains 6.182 acres.

KNOW ALL MEN BY THESE PRESENTS: That We, the CITY OF OMAHA a Municipal Corporation in the State of Nebraska, being the sole owner of the land described within the Land Surveyor's Certificate and embraced within this plat, have caused said land to be subdivided into lots and streets to be numbered and named as shown hereon, said subdivision to be hereafter known as RIVERFRONT PLACE, (Lots 1 through 6, inclusive, and Outlots A, B, and C) and we do hereby ratify and approve of the disposition of our property and premises as shown and described herein, and do hereby grant the easements as shown hereon. We do further grant a perpetual easement to the Omaha Public Power District and to each and to each of them, and to each of their successors and assigns, and to the City of Omaha, Nebraska, for the construction of their respective utilities over Outlot A. We do further grant a perpetual easement to the Omaha Public Power District and Qwest and to any company which has been granted a franchise under the authority of the City Council of Omaha, Nebraska, to provide a cable television system in the area to be subdivided, their successors and assigns, to operate, maintain, repair and renew cables, conduits and other related facilities; and to extend therein cables for the carrying and transmission of electric current for light, heat, and power and for the transmission of signals and sounds of all kinds including signals provided by cable television systems, and the reception thereof, through, under, and across an eight foot (8') wide strip of land abutting the perimeter of the plat. No permanent structures, trees, retaining walls, nor loose rock walls shall be placed in the above described easements, but the same may be used for gardens, shrubs, landscaping, and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

Mike Fahey
Mayor, City of Omaha



Diane M Brack
Notary Public



Date 1/15/50 **SEAL**
Douglas County Engineer

Douglas County Treasurer



[Signature]
City Engineer

Date 8/26/9
City Engineer Henry Villagran

Chairman, CITY PLANNING BOARD

President _____ May _____
City Clerk _____

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