



MISC 2013014116



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FB: 66-22291  
COMP: CC

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
02/11/2013 15:17:35.00



2013014116

Space above reserved for recording information

After Recording, Return to:  
Mark A Williams  
Parsonage Vandennack Williams LLC  
5332 South 138<sup>th</sup> Street, Suite 100  
Omaha, NE 68137

**FOURTH AMENDMENT TO DECLARATION OF EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR A PART OF LEGACY,  
A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA**

This Fourth Amendment to Declaration of Easements, Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska (this "**Amendment**") is made effective as of December 5, 2012, by and among the undersigned signatories (collectively the "**Parties**", or in the singular, a "**Party**") to further amend the Declaration of Easements, Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska dated April 20, 2005 and recorded with the Douglas County Register of Deeds on April 26, 2005 as Instrument No. 2005047001 (the "**Original Declaration**"), as amended by the First Amendment Declaration of Easements, Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska, recorded September 9, 2005, as Instrument No. 2005112708, Miscellaneous Records, as amended by Second Amendment Declaration of Easements, Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska, recorded December 28, 2006, as Instrument No. 2006147307, Miscellaneous Records, and as amended by the Third Amendment to Declaration of Easements, Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska, recorded February 24, 2012, as Instrument No. 2012017925, Miscellaneous Records (collectively, the "**Declaration**").

The Declaration was made in connection with the development of the real property legally described on Exhibit "A" attached hereto and by this reference made a part hereof. Such referenced lots are herein referred to collectively as the "**Parcels**" and individually as a "**Parcel**".

Heritage at Legacy, LLC, a Nebraska limited liability company ("**Heritage**"), has a contract to purchase all or a portion of the real property legally described as Lots 5 and 6, Legacy, a subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska (the

“Heritage Property”). Heritage is not willing to purchase the Heritage Property, unless the Parties execute and record this Amendment.

The Parties have considered amending various provisions of the Declaration. Section 9.4 of the Declaration allows the Parties to amend the Declaration by written consent of no less than eighty percent (80%) of the member votes of Owners. The Parties, constituting at least eighty percent (80%) of the member votes of the Parcel Owners have investigated the impact which the proposed amendment to the Declaration would have on the Parcels and have determined that the amendment would further the character and integrity of the Property, and would further the benefits and protection afforded to the Parcels by the Declaration.

NOW, THEREFORE, for good, lawful and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, pursuant to the authority granted in Section 9.4 of the Declaration, the Parties hereby agree as follows:

1. Land Use and Building Type. The following sentence is added to the end of Section 3.1 of the Declaration:

“The Heritage Property may be used for and operated as an assisted living facility, including all incidental uses thereto.”

2. Design and Construction. The following sentence is added to the end of Section 4.2(a) of the Declaration:

“Notwithstanding anything to the contrary herein, any buildings, structures or other improvements constructed on the Heritage Property shall be permitted to exceed the height restrictions of this Section 4.2(a), provided such buildings, structures or other improvements do not exceed (i) forty-eight (48) feet from the finished floor elevation of the basement of the buildings or (ii) thirty-eight (38) feet from the finished floor elevation of the first floor of the buildings, all in accordance with and as depicted on the depiction attached hereto as Exhibit ‘B.’ Without limiting the foregoing, the top of the second floor windows on such buildings shall not exceed a height of 1206’ 8”, as depicted on Exhibit ‘B’.”

3. “Parking Area” Ratio. The following sentence is added to the end of Section 5.1(a) of the Declaration:

“Notwithstanding anything to the contrary herein, the Heritage Property shall not be subject to the 4:1 parking ratio noted above. Rather, the Heritage Property shall be required to have a minimum of a combined total of one hundred (100) parking stalls, thirty-eight (38) of which are underground.”

4. Definitions. Terms used in this Amendment shall have the meanings set forth in the Declaration except as otherwise defined herein.
5. No Other Amendments. Except as set forth herein, the Declaration shall remain in full force and effect.
6. Counterparts. This Amendment may be executed in any number of counterparts, all of which shall constitute a single agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to form one legally effective document.
7. Joinder by Mortgagees and Other Interest Holders. Each of the Parties represent and warrant to the other Parties that there are no tenants, holders of mortgages, or lienholders that have a contractual, legal or equitable right to consent to or reject the matters set forth in this Instrument with respect to such Parties' respective Parcel other than by those holders of mortgages, liens and rights joining in this Amendment.

WHEREFORE, the Parties, representing not less than eighty percent (80%) of the Owners, have executed this Amendment as of the effective date stated above.

**[SIGNATURES ON FOLLOWING PAGES]**

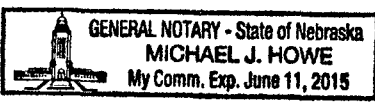
17070 Wright Plaza, LLC,  
a Nebraska limited liability company,

By: [Signature]  
Name: BRIAN R. MAGGE  
Its: MANAGING MEMBER  
17070 PARTNERS, LLC  
MANAGING MEMBER

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me on this 4 day of February, 2013,  
by Brian Magge, the Managing Member of 17070 Wright Plaza, LLC, a Nebraska  
limited liability company, by and on behalf of the limited liability company.

(SEAL)



Michael J. Howe  
Notary Public  
Printed Name: Michael J. Howe

My commission expires: June 11, 2015

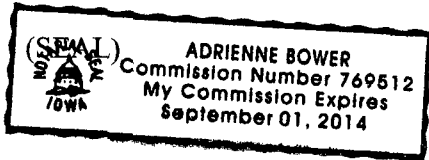
\* Managing member of 17070 Partners, LLC,

Legacy Development, L.L.C., an Iowa limited liability company fka Legacy Development, L.L.C. fka Utopia, L.L.C.

By: [Signature]  
Name: Serry J. Johnson  
Its: MEMBER/MANAGER

STATE OF Iowa )  
COUNTY OF Woodbury ) ss.

The foregoing instrument was acknowledged before me on this 11 day of Dec., 2012, by Serry J. Johnson, the member/manager of Legacy Development, LLC fka Utopia, L.L.C., by and on behalf of the limited liability company.



Adrienne Bower  
Notary Public  
Printed Name: Adrienne Bower

My commission expires: 9/01/2014



Continental 159 Fund, LLC,

a Wisconsin limited liability company,

By: Continental Properties Company, Inc., its manager

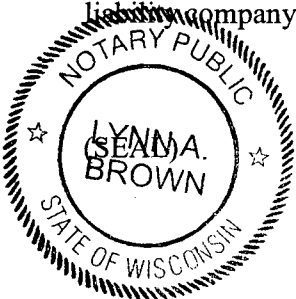
By: Daniel J. Minahan

Name: Daniel J. Minahan

Its: President

STATE OF Wisconsin )  
 ) ss.  
COUNTY OF Waukesha )

The foregoing instrument was acknowledged before me on this 14<sup>th</sup> day of December, 2012, by Daniel J. Minahan, the President of Continental Properties Company, Inc., its manager of Continental 159 Fund, LLC, limited liability company, by and on behalf of the limited liability company.



Lynn A. Brown  
Notary Public

Printed Name: Lynn A. Brown

My commission expires: 9/14/14

**SNH LTF Properties, LLC,**  
a Maryland limited liability company,

By: David J. Hegarty  
Name: David J. Hegarty  
Its: President

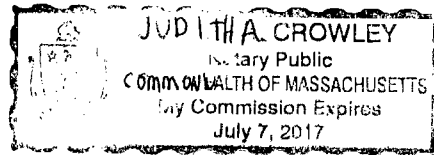
STATE OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of Dec, 2012,  
by David J. Hegarty, the President of SNH LTF Properties, LLC, a Maryland  
limited liability company, by and on behalf of the limited liability company.



Judith A. Crowley  
Notary Public  
Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_





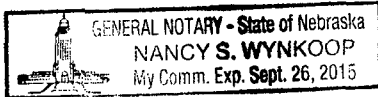
Sammy's LLC,  
a Nebraska limited liability company,

By: Terry Hogan  
Name: Terry Hogan  
Its: Managing Member

STATE OF Nebraska)  
) ss.  
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me on this 27 day of Dec., 2012,  
by Terry Hogan, the <sup>managing</sup> ~~member~~ of Sammy's LLC, a Nebraska limited  
liability company, by and on behalf of the limited liability company.

(SEAL)



Nancy S. Wynkoop  
Notary Public  
Printed Name: Nancy S. Wynkoop

My commission expires: \_\_\_\_\_

CONSENT

LTF Real Estate Company, Inc., a Minnesota corporation, hereby consents to and joins in the foregoing instrument.

LTF REAL ESTATE COMPANY, INC.

By: [Signature]

Name: Tami Kozikowski

Its: EVP of Real Estate

STATE OF Minnesota )  
COUNTY OF Carver ) ss.

The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of Dec., 2012, by Tami Kozikowski, the EVP of LTF Real Estate Company, Inc., a Minnesota corporation, by and on behalf of the corporation.

(SEAL)



[Signature]  
Notary Public  
Printed Name: Nicole K. Sjoquist

My commission expires: January 31, 2013

My commission expires: \_\_\_\_\_

CONSENT

Great Southern Bank hereby consents to and joins in the foregoing instrument.

GREAT SOUTHERN BANK

By: [Signature]

Name: Steve Sorenson

Its: Market Manager

STATE OF Nebraska )

COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me on this 19<sup>th</sup> day of February 2012, by Steve Sorenson, the Market Manager of Great Southern Bank, by and on behalf of the bank.

(SEAL)



Lois Kosch  
Notary Public  
Printed Name: Lois Kosch

My commission expires: 7-18-2016

CONSENT

Upstream Brewing Company West, LLC, a Nebraska limited liability company, hereby consents to and joins in the foregoing instrument.

UPSTREAM BREWING COMPANY WEST, LLC

By: Upstream West Partners managing member

By: \_\_\_\_\_

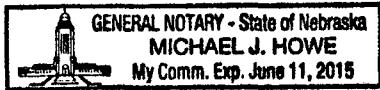
Name: BRIAN K. MAGEE

Its: MANAGING MEMBER  
UPSTREAM WEST PARTNERS  
MANAGING MEMBER

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me on this 4 day of February, 2013, by Brian K Magee\*, the managing member of Upstream Brewing Company West, LLC, a Nebraska limited liability company, by and on behalf of the limited liability company.

(SEAL)



Michael J. Howe  
Notary Public  
Printed Name: Michael Howe

My commission expires: June 11, 2015

\* managing member of Upstream West Partners,

**EXHIBIT "A"**

**M1-22268**

**LEGAL DESCRIPTION**

**66-22291**

**M1-22275**

Lots 4 through 6, inclusive, Legacy, Lots 1 and 2 Legacy Replat 5, and Lots 1 through 3, inclusive, Legacy Replat 16, each a subdivision, as surveyed, platted and recorded in Douglas County Nebraska.

**EXHIBIT "B"**  
**ELEVATION EXHIBITS**

