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Register of Deeds, Douglas County, NE
11/25/2015 15:22:54.00



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After recording, return to: Mark L. Brasee, Fraser Stryker PC LLO, 409 S. 17th Street, Suite 500, Omaha, NE 68102

**DECLARATION
OF
ARCHITECTURAL COVENANTS AND CONDITIONS**

This Declaration of Architectural Covenants and Conditions (the "Declaration") is made as of November 25, 2015, by and between **132nd and F Street Development, LLC**, a Nebraska limited liability company ("Declarant") and **TRP Properties, L.L.C.**, a Nebraska limited liability company ("TRP").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Douglas County, Nebraska legally described as follows (the "Declarant Property"):

Lots 4 through 8 and Outlot A, inclusive, Omaha Works Industrial Park Replat 11, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, TRP is the owner of certain real property in Douglas County, Nebraska legally described as follows (the "TRP Property"):

Lot 3, Omaha Works Industrial Park Replat 11, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

The Declarant Property and the TRP Property are collectively referred to as the "OWIP 11 Property" under this Declaration.

WHEREAS, the OWIP 11 Property is subject to that certain **Declaration of Covenants, Conditions, Reservations and Restrictions for Omaha Works Industrial Park** dated September 28, 2006, filed October 3, 2006, as Instrument Number 2006113608, as amended by that certain **First Amendment to Declaration of Covenants, Conditions, Reservations and Restrictions** dated March 4, 2008, filed March 4, 2008, as Instrument Number 2008020821 as further amended by that certain **Second Amendment to Declaration of Covenants, Conditions, Reservations and Restrictions** dated August 4, 2008, filed August 6, 2008, as Instrument Number 2008077937 (collectively, the "Original Declaration").

WHEREAS, the parties desires to provide certain architectural covenants and conditions for the development of the OWIP 11 Property in addition to the obligations imposed on the OWIP 11 Property under the Original Declaration.

NOW, THEREFORE, Declarant and TRP hereby declare that all of the OWIP 11 Property shall be held, sold and conveyed subject to the following covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, all of said Lots and Outlot.

1. **Definitions.**

(a) **Building.** The term "Building" shall mean any enclosed structure placed, constructed or located on the Property, which for purposes of this Declaration shall include any canopies, supports, loading docks, ramps or outward extensions or protrusions of physical structures.

(b) **Lot.** The term "Lot" shall mean Lots 3 through 8, inclusive, of the OWIP 11 Property, but this Declaration specifically excludes and shall not encumber or restrict Lots 1 and 2, OWIP 11.

(c) **Outlot.** The term "Outlot" shall mean Outlot A of the OWIP 11 Property.

(d) **Owner.** The term "Owner" shall mean the legal owner of fee title to a Lot or Outlot within the OWIP 11 Property, as reflected by the records of the Douglas County Register of Deeds. If a Lot or Outlot is owned by one or more Persons, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Lot or Outlot shall designate one of their number to represent all owners of the Lot or Outlot in question and such designated Person shall be deemed the Owner for such Lot or Outlot.

(e) **Permittee.** The term "Permittee" shall mean all Owners, their tenants or licensees of a Lot or Outlot, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

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

(g) **Plat.** The term "Plat" shall mean the Final Plat of Omaha Works Industrial Part, Replat 11, a copy of which is attached hereto as Exhibit A.

(h) **Storm Water Maintenance Agreement.** The term "Storm Water Maintenance Agreement" shall mean the Post Construction Storm Water Maintenance Agreement as contemplated by the Subdivision Agreement.

(i) **Storm Water Management Plan.** The term "Storm Water Management Plan" shall mean the Post Construction Storm Water Management Plan as contemplated by the Subdivision Agreement.

(j) **Subdivision Agreement.** The term "Subdivision Agreement" shall mean the Subdivision Agreement by and between the City of Omaha, Nebraska and Declarant dated August 25, 2015, as the same may be amended from time to time.

2. **Architectural Covenants.**

2.1 **Prohibited Features.** The following shall be prohibited features and shall not be allowed on any Lot or Outlot (each, a "Prohibited Feature"):

(a) no fence may extend beyond the front façade of a Building;

- (b) no permanent storage on any Lot beyond the front façade of a Building;
- (c) any metal or galvanized steel may not constitute more than twenty-five percent (25%) of the Building front façade exterior surfaces;
- (d) all loading docks on a Lot shall be located on the side or rear façade of a Building (it being understood that 132nd Street shall be deemed the Lot 8 front street right of way for purposes of this Section 2.1 (d)); and
- (e) any use or Improvement located on the Outlot except as provided in Section 5.1.

2.2 Landscape and Sprinkler System Maintenance. Each Owner of a Lot shall, at the time of construction of a Building on their Lot (the "Landscape Requirements"): (i) install sod and/or green landscape features within the front twenty feet (20') of their Lot immediately abutting street right-of-way as measured from the back of the curb; (ii) install sod and/or green landscape features within at least thirty percent (30%) of the five foot (5') area immediately adjacent to the front of the Building constructed on the Lot; and (iii) install a sprinkler system to water green and landscape areas on the Lot. Following installation of the sprinkler system and green and landscape features, the Owner of each Lot will, at their expense, maintain, fertilize, mow, trim, and water such areas so they are kept in neat and good appearance.

2.3 Buildings and Building Areas. After completion of construction of a Building, each Owner covenants and agrees to maintain and keep the exterior portion of the Buildings located on its Lot in good condition and state of repair, and in compliance with all governmental laws, rules, regulations and ordinances applicable thereto. Each Owner further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are reasonably screened and not readily visible, and to arrange for regular removal of such trash or garbage.

2.4 Owner Rights. In the event any Owner shall include a Prohibited Feature on such Owner's Lot, or if an Owner shall fail to comply with the requirements of Sections 2.2 or 2.3 of this Declaration, and if such failure continues for fourteen (14) days after written notice to the Owner from any other Owner, such objecting Owner may pursue any and all remedies at law or in equity. Each Owner further acknowledges and agrees that its obligations to fulfill the covenants set forth in this Declaration are unique and that any breach or threatened breach of any Owner's obligations under any such covenants may result in irreparable harm and substantial damages to the other Owners. Accordingly, in the event of a breach or threatened breach by either party of any covenant set forth in this Declaration, any other Owner shall have the right, in addition to exercising any other remedies at law or equity which may be available to it under this Declaration or otherwise, to obtain ex parte, preliminary, interlocutory, temporary or permanent injunctive relief, specific performance, declaratory judgment and other equitable remedies to prevent the breach, and/or to prevent the continuance of any breach, of any such covenant, together with an award or judgment for any and all damages, losses, liabilities, expenses and costs incurred by the non-breaching Owner as a result of such breach or threatened breach. Each Owner expressly waives any requirement based on any statute, rule or procedure, or other source, that the Owner pursuing such remedies post a bond as a condition of obtaining any of the above-described remedies. Notwithstanding any set forth in this Declaration to the contrary, no Owner has a right to object and all Owners waive any rights or claims against an Owner or against Declarant if an Owner obtains a waiver from the obligations or prohibitions under Sections 2.1 or 2.2 from Declarant pursuant to Section 2.5 below.

2.5 Waiver of Requirements. An Owner may seek a waiver of the requirements set forth in Sections 2.1 or 2.2 by submitting to Declarant detailed construction plans, site plans, grading plans, signage plans, landscaping plans, plot plans and other details requested by Declarant (collectively, the "Plans") of its initial Building, fence, wall, drive or parking area, or other external improvement, including landscaping,

above or below ground (an "Improvement"). Such Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement, details on the requested waiver(s) sought by such Owner and such other detailed drawings as may reasonably be requested by Declarant. Concurrent with the submission of the Plans, Owner shall notify the Declarant of the Owner's mailing address. An Owner seeking a waiver from Declarant pursuant to this Section 2.5 shall indemnify and hold Declarant, its employees, officers, members and agents thereof (each of the foregoing being hereinafter referred to individually as the "Indemnified Party") harmless from and against any and all claims, damages, losses and expenses suffered by the Indemnified Party and asserted by other Owner or any other person or persons, (including, but not limited to attorneys' fees, including its own attorneys, which an Indemnified Party has a right to engage at the Indemnifying Party's cost) arising out of the request for a waiver from Declarant.

(a) Declarant shall review such Plans and waiver request and the decision to approve or refuse approval of any waiver under this Section to a proposed Improvement shall be exercised by Declarant in light of the impact the waiver would have on the OWIP 11 Property and in light of the zoning applicable to the OWIP 11 Property by the City of Omaha and made by Declarant in its sole discretion.

(b) Written notice of any approval or denial of a waiver shall be mailed to the Owner at the address specified by the Owner upon submission of the Plans. Such notice shall be mailed, if at all, within ten (10) business days after the date of submission of the Plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

(c) Notwithstanding any set forth in this Declaration to the contrary, no Owner or combination of Owners, or any other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of Declarant with respect to any proposed Improvement. In the absence of gross negligence, no responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to the Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. **Building and Construction.**

3.1 **Compliance With Laws.** Each Owner agrees that all construction activities performed by it on a Lot or Outlot shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, and workmanlike manner. The Improvements constructed on a Lot or Outlot shall be designed so that the exterior elevation of each shall be contained within such Lot or Outlot.

3.2 **Non-Interference.** Each Owner agrees that its construction activities shall not:

(a) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the OWIP 11 Property by any other Owner or its Permittees; and

(b) Unreasonably interfere with the construction work being performed on any other part of the OWIP 11 Property.

3.3 **Temporary Staging.** In connection with any construction, reconstruction, repair or maintenance on a Lot or Outlot, the Owner shall have the right to create a temporary staging and/or storage area on its Lot or Outlot at such location as will not unreasonably interfere with other Owners and their Permittees access to their Lots or Outlot.

3.4 Common Area. Contemporaneously with the construction of a Building upon a Lot, the constructing Owner shall cause any parking and drive areas on its Lot to be completed in a good and workmanlike manner in accordance with good engineering standards and otherwise in conformance with this Declaration.

3.5 Due Diligence in Construction. It is acknowledged and agreed that no Owner shall have an obligation to commence construction of any Building on its Lot; however, the Owners agree that once construction has been commenced, such Building shall be completed in a reasonably diligent and workmanlike manner.

4. Easements.

4.1 Utility Easements. The Owners of the Lots shall cooperate in the granting of appropriate and proper temporary and perpetual easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the OWIP Property. The Owners of the Lots shall use their best efforts to cause the installation of such utility and service lines prior to the paving of the parking and drive areas.

4.2 Surface water. The parties hereby reserve, grant and convey to the Owner owning an adjacent Lot the perpetual right and easement to discharge surface storm drainage and/or runoff from the Owner's Lot over, upon and across the drive, parking and landscaped areas of the Owner's Lot, provided, however, no Owner shall alter or permit to be altered the surface of the drive, parking and landscaped areas or the drainage/retention system constructed on its Lot if such alteration would materially increase the flow of surface water onto the adjacent Lot either in the aggregate or by directing the flow of surface water to a limited area.

5. Outlot Improvements, Ownership and Maintenance.

5.1 Outlot Use. No Improvement may be built or maintained on the Outlot other than as specifically provided in this Declaration or any prior covenants, conditions and restrictions of record against the Outlot and it being understood that initial landscaping and other improvements intended to improve the aesthetics of the Outlot may be constructed on the Outlot, provided such improvements do not in any way adversely affect the operation of the Outlot for its intended purpose. The Outlot shall be used for: (a) landscaping; (b) ingress and egress pursuant to that certain Declaration of Access Agreement dated September 29, 2009 and recorded October 3, 2006 as Instrument No. 2006113611 with the Register of Deeds of Douglas County, NE, as amended from time to time ("Access Declaration"); and (b) storm water drainage, detention and treatment as set forth in the succeeding sentence. Declarant and TRP grant the Outlot, to and for the benefit of Lots 2 and 3, OWIP 11 Property, a non-exclusive perpetual easement to construct, maintain, repair, replace and to otherwise use the Outlot for storm water drainage, detention and treatment for the benefit of Lots 2 and 3, OWIP 11 Property, subject to the prior rights established under the Original Declaration, the Access Declaration and any prior covenants, conditions and restrictions of record. The Owners of Lots 2 and 3, OWIP 11 Property, shall be maintained in good order, condition and repair, subject to the obligations of the Association (as such term is defined in the Original Declaration) under the Original Declaration.

5.2 Title to Outlot. TRP and, as required, Declarant may quitclaim title to the Outlot to (i) the owner of Lots 2 and 3 of the OWIP Property, or (ii) the Association, subject to the conditions of this Declaration, the Original Declaration, the Access Declaration and any prior covenants, conditions and restrictions of record. If, at the time that Declarant transfers title to the Outlot, there remains any responsibility of Declarant to construct improvements as provided under the Subdivision Agreement, notwithstanding such conveyance, Declarant shall have and hereby reserves a temporary easement for

construction and such other purposes as may be necessary or appropriate for Declarant to satisfy any remaining obligations under the Subdivision Agreement, such easement to also be for the benefit of Declarant's agents and contractors.

6. Miscellaneous.

6.1 Enforcement. Only the Declarant and Owners shall be entitled to institute proceedings for full and adequate relief from consequences of a breach or threatened breach of this Declaration, including without limitation, the remedies set forth in Section 2.2.

6.2 Perpetual Duration. This Declaration and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Declaration shall be perpetual, provided, however, that this Declaration may be amended by the Owners holding title to at least eighty percent (80%) of the total acreage of the buildable lots in the OWIP 11 Property.


6.3 Termination of Declarant Status. Declarant, or its successors or assigns, may terminate its status as Declarant under this Declaration at any time by filing a notice of termination of status as Declarant with the Douglas County Register of Deeds.

6.4 Survival. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Time is of the essence for purposes of this Declaration.

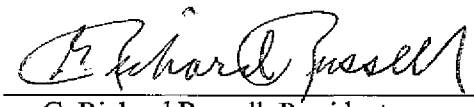
**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

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

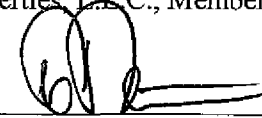
TRP Properties, L.L.C., a Nebraska limited liability company

By: 
Terry R. Peterson, Manager

132nd and F Street Development, LLC, a Nebraska limited liability company

By: Millard Lumber Inc., Member
By: 
G. Richard Russell, President

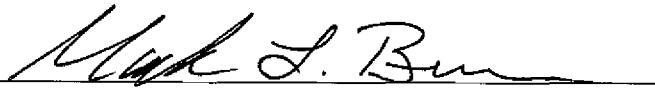
TRP Properties, L.L.C., Member

By: 
Terry R. Peterson, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

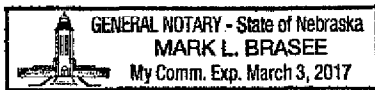
The foregoing instrument was acknowledged before me this 24th day of November, 2015, by Terry R. Peterson, Manager of TRP Properties, L.L.C. and G. Richard Russell, President of Millard Lumber Inc., Managers of 132nd and F Street Development, LLC, a Nebraska limited liability company, for and on behalf of the company.





Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24th day of November, 2015, by Terry R. Peterson, Members of TRP Properties, L.L.C., a Nebraska limited liability company, for and on behalf of the company.




Notary Public

FS1372066.5

EXHIBIT "A" FINAL PLAT

ASSLON ASSOCIATES	OMAHA WORKS INDUSTRIAL PARK	REPLAT 11	FINAL PLAT
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DESIGNER: ASSLON ASSOCIATES, INC., 2120 SOUTH GARDEN AVENUE, SUITE 100, LINCOLN, NE 68503
DATE: 11/14/95

APPROVED: [Signatures and Stamps]

ACKNOWLEDGEMENT OF NOTARIES:
I, [Notary Name], Notary Public for the State of Nebraska, do hereby certify that the foregoing is a true and correct copy of the plat as recorded in the public records of the State of Nebraska.

DESCRIPTION

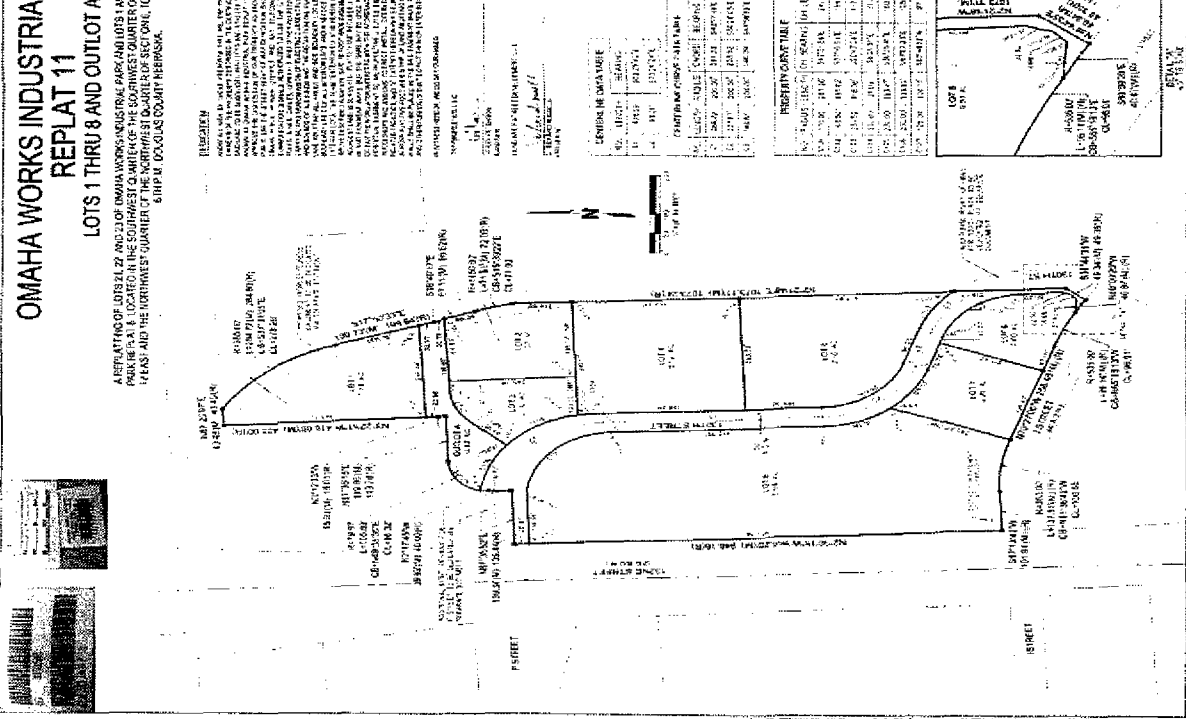
ALL THAT PART OF LOT 231 AND 232 OF OMAHA WORKS INDUSTRIAL PARK AND LOTS 1 AND 2 OF OMAHA WORKS INDUSTRIAL PARK BEING PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 18 RANGE 2 EAST OF THE 10TH MERIDIAN, BOHARDE COUNTY, NEBRASKA, TOGETHER WITH THE INTERESTS THEREIN, AS SHOWN ON PLAT 11, BEING REPLAT 11, BEING RECORDED IN THE PUBLIC RECORDS OF THE STATE OF NEBRASKA, AND THE INTERESTS THEREIN, AS SHOWN ON PLAT 11, BEING RECORDED IN THE PUBLIC RECORDS OF THE STATE OF NEBRASKA.

OWNER:

1. ASLON ASSOCIATES, INC.	1. 231 & 232
2. OMAHA WORKS INDUSTRIAL PARK	2. 1 & 2

LEGAL DESCRIPTION:

LOT 1, BEING 100' X 100', TOGETHER WITH THE INTERESTS THEREIN, AS SHOWN ON PLAT 11, BEING RECORDED IN THE PUBLIC RECORDS OF THE STATE OF NEBRASKA.



REMARKS: THIS PLAT IS A REPLAT OF PLAT 11, BEING RECORDED IN THE PUBLIC RECORDS OF THE STATE OF NEBRASKA, AND THE INTERESTS THEREIN, AS SHOWN ON PLAT 11, BEING RECORDED IN THE PUBLIC RECORDS OF THE STATE OF NEBRASKA.