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Recorder John Sciortino  
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Current Transfer Tax Paid: \$0.00



# COMPARED

## DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

### Recorder's Cover Sheet

**Preparer Information:** (name, address and phone number)

Sara L. Gude, 10250 Regency Circle, Suite 525, Omaha, NE 68114, Phone: (402) 898-7415  
Iowa State Bar No. 25187

**Taxpayer Information:** (name and complete address)

The 4<sup>th</sup> Park, L.L.C., 3802 Leavenworth Street, #100, Omaha, NE 68105

**Return Document To:** (name and complete address)

Michael D. Matejka, 10250 Regency Circle, Suite 525, Omaha, NE 68114, Phone: (402) 898-7415

**Legal Description:** See Exhibits "A" and "B"

**Document or instrument number of previously recorded documents:**

**COMPARED**

**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS ("Declaration") is made this \_\_\_\_ day of March, 2010, by **405 WEST BROADWAY LIMITED LIABILITY COMPANY**, an Iowa limited liability company ("405 West Broadway"), and **THE 4<sup>TH</sup> PARK L.L.C.**, a Nebraska limited liability company ("4<sup>th</sup> Park").

**RECITALS:**

A. 4<sup>th</sup> Park is the owner of the real property described on Exhibit "A" attached hereto (the "Parking Garage").

B. 405 West Broadway is the owner of the real property described on Exhibit "B" attached hereto (the "Bennett Building").

C. 4<sup>th</sup> Park has agreed to grant to 405 West Broadway the easements described herein over and upon the Parking Garage for the benefit of the Bennett Building.

NOW, THEREFORE, in consideration of the good and valuable consideration received by 4<sup>th</sup> Park, 4<sup>th</sup> Park hereby grants and conveys to 405 West Broadway the following described easements upon the following terms and conditions:

1. **Grant of Easement.** 4<sup>th</sup> Park hereby grants and conveys to 405 West Broadway an exclusive, irrevocable and perpetual easement for the parking by tenants, occupants, and their respective employees and invitees of the Bennett Building (the "Permittees") in and to the 35 parking stalls located on the middle floor of the Parking Garage closest to the Bennett Building (the "Parking Stalls") together with a nonexclusive easement over the Parking Garage for pedestrian and vehicular ingress and egress by the Permittees to and from the Parking Stalls.

2. **Parking Rental.** 4<sup>th</sup> Park shall enter into contracts directly with the Permittees for the use of the Parking Stalls. The monthly rental charged by 4<sup>th</sup> Park to the Permittees for the Parking Stalls shall not exceed of the average monthly rent paid by the other occupants of the Parking Garage under monthly contracts for parking stalls other than the Parking Stalls in the previous 12 months. The determination of the "average monthly rent" shall not include any parking stalls that are leased on an hourly, daily or weekly basis or any other basis other than a monthly basis.

3. **Maintenance.** 4<sup>th</sup> Park shall maintain, repair, operate, replace, and keep the drive and parking areas located in the Parking Garage in good condition and state of repair, including, without limitation, maintaining the surfaces in a level, smooth, and evenly-covered condition with the type of surfacing material as originally installed or such substitute as shall in all respects

be equal in quality, use, and durability; removing all papers, ice and snow, mud and sand, debris, filth, and refuse to the extent reasonably necessary to keep the area in a clean and orderly condition; repainting the lane striping; inspecting, maintaining, repairing, and replacing, as necessary, the drive surfaces, gutters, curbs, and other drive improvements; inspecting, maintaining, repairing, and replacing the lighting and directional signage, if any, installed along the drive and/or parking areas; and inspecting, maintaining, repairing, and replacing any storm drainage system installed along or within the drive and/or parking areas. No barricades, signs, fences, or other dividers will be constructed and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within the areas of the easements for ingress and egress and parking granted herein except as is necessary for the temporary construction, repair, maintenance, and replacement of the surface in such easement areas. Nothing contained herein shall be deemed nor interpreted to require 4<sup>th</sup> Park to perform any maintenance or construct any improvements upon any property not owned by 4<sup>th</sup> Park.

4. **Indemnification.** 4<sup>th</sup> Park shall indemnify, defend and hold harmless 405 West Broadway from claims for losses, injuries, or damages, including reasonable attorney fees, incurred in defending such claims, caused by 4<sup>th</sup> Park's failure to maintain, repair, or replace the Parking Garage in the manner required by this Declaration.

5. **Nature of Easements.** The easements hereby created are not public easements, but are permanent, private easements which run with the land. The parties hereto expressly disclaim the creation of any rights in or for the benefit of the public generally. The foreclosure of any mortgage covering all or a portion of an affected property shall in no way affect or diminish any easement granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein.

6. **Effect of Covenants.** Any successor or assign of 4<sup>th</sup> Park or 405 West Broadway, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens, and charges, and the jurisdiction, rights, and powers granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest in said property, and shall inure to the benefit of such owners on like manner as though the provisions, terms, and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

7. **Waiver.** No provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

8. **Savings Clause.** The invalidity of any provision of this Declaration herein contained, as the case may be, shall not render the remainder of the Declaration invalid, or any other part therein contained.

9. **Amendment and Modifications.** This Declaration may be amended by the written consent and agreement of 4<sup>th</sup> Park and 405 West Broadway or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the office of the County Recorder in the county in which said property is situated.

10. **Governing Law.** This Declaration shall be construed and governed in accordance with the laws of the State of Iowa.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreement and understanding, oral and written, between the parties with respect to the subject matter of this Agreement.

EXECUTED this 15 day of March, 2010.

405 WEST BROADWAY LIMITED LIABILITY  
COMPANY, an Iowa limited liability company

By: Nustyle Investment Corporation, a Nebraska  
corporation, its Manager


By: Tammy Barrett  
Title: pres.

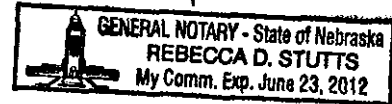
THE 4<sup>TH</sup> PARK L.L.C., a Nebraska limited  
liability company

By: Roger L. Hale  
Name: Roger L. Hale  
Title: Manager

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged on this 17<sup>th</sup> day of March, 2010, before me, the undersigned, a Notary Public duly commissioned and qualified for in said county, personally by Roger Hale, Manager of THE 4<sup>th</sup> PARK L.L.C., a Nebraska limited liability company, for and on behalf of said company.

  
\_\_\_\_\_  
Notary Public



STATE OF Iowa )  
 ) SS.  
COUNTY OF Harrison )

The foregoing instrument was acknowledged on this 15 day of March, 2010, before me, the undersigned, a Notary Public duly commissioned and qualified for in said county, personally by Tammy Barrett, the President, of NUSTYLE INVESTMENT CORPORATION, the Manager of 405 West Broadway Limited Liability Company, an Iowa limited liability company, for and on behalf of said company.

Carrie Murdock  
Notarial Seal-Iowa  
Commission #740066  
My Commission Expires 4/3/2009  
2012

  
\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

Lot 5 in Keller and Bennett's Subdivision of Lot 176, Original Plat, Council Bluffs, Pottawattamie County, Iowa;

Lot 7, Auditor's Subdivision of James Subdivision of Original Plat Lot 177 of Council Bluffs, Pottawattamie County, Iowa;

Lots 3, 4 and 5, in the Subdivision of Lot 178, in the Original Plat of the City of Council Bluffs, Pottawattamie County, Iowa;

Lots 3 and 4 in the Subdivision of Lot 179 in the Original Plat of the City of Council Bluffs, Pottawattamie County, Iowa;

Lot 2 in the Subdivision of Lot 180, in the Original Plat of the City of Council Bluffs, Pottawattamie County, Iowa;

Lots 8 and 9 and all that part of Lot 7, lying North of the North line of First Avenue, in the Subdivision of Lot 181 in the Original Plat of the City of Council Bluffs, Pottawattamie County, Iowa.

**Exhibit "B"**

Lots 1 and 2 in Keller and Bennett's Subdivision of Lot 176 in the Original Plat of Council Bluffs, Pottawattamie County, Iowa, and the vacated Westerly 4 inches of Fourth Street from the Southerly line of Broadway to the Northerly line of the first alley south of Keller and Bennett's Subdivision.