



MISC 2004036436



MAR 23 2004 13:05 P 15

Received - RICHARD TAKECHI  
Register of Deeds, Douglas County, NE  
3/23/2004 1:05:11 PM  
  
2004036436

THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

*misc* FEE 76.50 FB 23-08143 Rep 2  
15 BKP \_\_\_\_\_ CIO \_\_\_\_\_ COMP \_\_\_\_\_ *[Signature]*  
3 DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

Temp. 12.4.01

SPENCE TITLE SERVICES, INC.  
1905 HARNEY STREET SUITE 210  
OMAHA, NEBRASKA 68102

TA 47742

V 113757

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Union Pacific Railroad Company  
Attn: General Manager-Real Estate  
1800 Farnam Street  
Omaha, Nebraska 68102

(Space above for recorder's use only.)

2210-78

**RECIPROCAL ACCESS EASEMENT AGREEMENT**

THIS RECIPROCAL ACCESS EASEMENT AGREEMENT (the "Agreement") is made this 16<sup>th</sup> day of March, 2004, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific"), and COURTLAND PLACE NO. 1, LLC, a Nebraska limited liability company ("Grantee").

**RECITALS:**

A. Union Pacific owns fee title to the real property in the City of Omaha, County of Douglas, State of Nebraska, described in **Exhibit A** attached hereto and made a part hereof (the "Union Pacific Property").

B. Grantee owns fee title to the real property located adjacent to the Union Pacific Property, described in **Exhibit B** attached hereto and made a part hereof (the "Grantee Property").

C. Union Pacific and Grantee each desire to grant to the other a non-exclusive easement for their common benefit for utility lines and appurtenant facilities and pedestrian and vehicular access, ingress, egress and travel to and from Leavenworth Street onto the Union Pacific Property and the Grantee Property over that portion of the Union Pacific Property described in **Exhibit C-1** ("Easement Area I") and that portion of the Grantee Property described in **Exhibit C-2** ("Easement Area II").

NOW, THEREFORE, in consideration of the above recitals, the parties hereto agree as follows:

1. Grant of Reciprocal Access Easement I. Union Pacific for itself, its successors and assigns, grants to Grantee, its successors and assigns, a non-exclusive easement for the use



and benefit in common with Union Pacific and Grantee and their respective successors, assigns, agents, employees, tenants, subtenants, customers, licensees, concessionaires and invitees (collectively, the "Permittees") over Easement Area I (the "Reciprocal Access Easement I") for utility lines and appurtenant facilities and pedestrian and vehicular access, ingress, egress and travel to and from Leavenworth Street onto the Grantee Property.

2. Grant of Reciprocal Access Easement II. Grantee, for itself, its successors and assigns, grants to Union Pacific, its successors and assigns, a non-exclusive easement for the use and benefit in common with Union Pacific and Grantee and the Permittees over Easement Area II (the "Reciprocal Access Easement II") for utility lines and appurtenant facilities and pedestrian and vehicular access, ingress, egress and travel to and from Leavenworth Street onto the Union Pacific Property.

3. Character of the Reciprocal Access Easements. Reciprocal Access Easement I on the Union Pacific Property shall be appurtenant to and for the benefit of the Grantee Property (and each and every parcel into which it may be divided) as the dominant tenement and shall be a burden upon Easement Area I as the servient tenement. Reciprocal Access Easement II on the Grantee Property shall be appurtenant to and for the benefit of the Union Pacific Property (and each and every parcel into which it may be divided) as the dominant tenement and shall be a burden upon Easement Area II as the servient tenement. Neither Reciprocal Access Easement shall in any way be construed as an easement in gross to the holder of legal title to either dominant tenement or to any other person or entity. Reciprocal Access Easement I and Reciprocal Access Easement II are sometimes collectively referred to in this Agreement as the "Reciprocal Access Easement".

4. Use of the Reciprocal Access. Union Pacific and Grantee and their respective Permittees, covenant and agree not to construct any wall, barrier, building, fence, or other impediment at any time within Easement Area I and/or Easement Area II which would hinder or impede the use of Easement Area I and/or Easement Area II as provided herein, and agree not to use Easement Area I and/or Easement Area II for the parking of motor vehicles. Notwithstanding the foregoing, structures for the control of traffic flow may be constructed so long as use of the Reciprocal Access Easement by all of Union Pacific and Grantee and their respective Permittees is thereby facilitated. No signs may be placed by a party within Easement Area I and/or Easement Area II without the prior written consent of the other party, except for directional and traffic control signs reasonably necessary to maintain traffic flow and compliance with traffic rules and regulations.

5. Construction of the Road.

(a) When Grantee commences its development of the Grantee Property, Grantee agrees to grade and gravel Easement Area I and Easement Area II as a temporary road. Union Pacific and Grantee shall share equally in the actual out-of-pocket cost of installing such temporary road.

(b) Grantee further agrees that at such time as it determines a permanent road is necessary in connection with its development of the Grantee Property, Grantee will construct

and install a permanent concrete road (using the temporary road as a base) within Easement Area I and Easement Area II. Grantee shall be responsible for the payment of all costs associated with such permanent road; provided, in the event the Union Pacific Property (or any portion thereof that is provided with access by such road) is developed for residential, commercial or industrial purposes (other than for railroad operations) by any person or entity other than Grantee, Christian Christiansen, any member of his immediate family, or any entity in which Grantee, Christian Christiansen, or any member of his immediate family owns a 25% or greater interest, then Union Pacific, as a personal obligation and not as a covenant running with the Union Pacific Property, shall be obligated to reimburse Grantee for one-half of the actual out-of-pocket cost incurred by Grantee in constructing and installing such permanent road, up to a maximum reimbursement amount of Thirty Thousand Dollars (\$30,000.00).

(c) Nothing contained herein shall prevent Union Pacific at any time or from time to time from constructing street improvements and/or installing utilities under, over and across any and all portions of Easement Area I and Easement Area II. The actual out-of-pocket costs of installing any temporary road installed by Union Pacific shall be shared equally by Union Pacific and Grantee. The actual out-of-pocket cost of constructing and installing any permanent road installed by Union Pacific shall be borne by Union Pacific, provided, in the event the Grantee Property (or any portion thereof that is provided with access by such road) is ever developed for residential, commercial or industrial purposes, then Grantee, as a personal obligation and not as a covenant running with the Grantee Property, shall be obligated to reimburse Union Pacific for one-half of the actual out-of-pocket cost incurred by Union Pacific in constructing and installing such permanent road, up to a maximum reimbursement amount of Thirty Thousand Dollars (\$30,000.00).

(d) Except as set forth in subparagraphs (a) and (b) of this Paragraph 5, neither party shall be obligated to make any improvements to Easement Area I and/or Easement Area II.

6. Maintenance.

(a) Grantee shall be responsible for maintaining and repairing Easement Area I and Easement Area II (including, without limitation, any temporary or permanent roadway constructed thereon) in good condition, provided any damage to Easement Area I or Easement Area II caused by Union Pacific or the Permittees of Union Pacific shall be repaired or restored by Union Pacific.

(b) If Union Pacific determines that Grantee has failed to properly fulfill its maintenance and repair obligations under subparagraph (a) above, Union Pacific may at its election notify Grantee in writing, specifying with particularity the maintenance and/or repair required. Within thirty (30) days following Grantee's receipt of such notice, Grantee shall have either (i) effected such maintenance and repair, (ii) if such maintenance and repair is of a nature that it cannot reasonably be completed within thirty (30) days, commenced such maintenance and repair and be diligently prosecuting the same to completion, or (iii) responded to Union Pacific in writing, objecting to the necessity of completing all or a portion of the requested maintenance and repair (a "Dispute Notice"), provided, that if Grantee objects to performing only

a portion of the requested maintenance and repair, Grantee shall have completed, or commenced and be diligently prosecuting, that portion of the maintenance and repair to which it does not object. If Union Pacific does not agree with a Dispute Notice, Union Pacific may initiate the dispute resolution procedure set forth in subparagraph (c) below. As to any portion of the requested maintenance and repair that Grantee has not addressed, in the manner specified in clauses (i), (ii) or (iii) above, within such thirty-day period, Union Pacific may effect such maintenance and repair and recover the costs thereof, which amount shall be paid by Grantee to Union Pacific within thirty (30) days following the date on which Grantee receives Union Pacific's written demand therefor, together with interest on the amount expended by Union Pacific, from the date of expenditure by Union Pacific to the date paid by Grantee, at the prime rate then charged by Wells Fargo Bank, N.A., plus two percent (2%).

(c) Within ten (10) days following Union Pacific's receipt of a Dispute Notice, Union Pacific shall deliver to Grantee a list of three reputable property management firms operating in the Omaha metropolitan market area, each of which has not less than five (5) years' experience managing multi-family residential properties, that Union Pacific is nominating to act as arbitrator hereunder. Within ten (10) days following Grantee's receipt of such list, Grantee shall select one such firm to act as arbitrator hereunder. If Grantee fails to make such selection within such 10-day period, Union Pacific may select one such firm as the arbitrator hereunder. The firm selected shall be directed to determine whether and the extent to which maintenance and repair is required to be performed. Such arbitrator's decision shall be final and binding between the parties, and all costs of such arbitrator shall be borne equally by Union Pacific and Grantee.

7. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of Easement Area I or Easement Area II to the general public or for the general public or for any public purpose whatsoever, and this Agreement shall be strictly limited to and for the purposes expressed herein.

8. Not a Grant of a Superior Right. Nothing contained in this Reciprocal Easement Agreement shall be deemed to convey to either party to this Agreement, or their Permittees, a right to use either Reciprocal Access Easement superior to that of the other, or its Permittees. Union Pacific and Grantee acknowledge that the Reciprocal Access Easements are for their common benefit and the common benefit of their respective Permittees. Union Pacific and Grantee each retain any and all rights not specifically granted herein, including, without limitation, (a) any and all rights which are not directly incompatible with the easements granted herein, and (b) the right to grant easements to other third parties over, under and through Easement Area I and Easement Area II, respectively, for any purpose, including rights of way for similar use and utility easements. Each party covenants to act reasonably so as to minimize any interference with the other's use of the Reciprocal Access Easements. Notwithstanding the foregoing, each party acknowledges that from time to time such use and/or the ingress to or egress from the other's property by way of the Reciprocal Access Easements may be interrupted as a result of construction, reconstruction, maintenance or repair by the other to its property. Any such construction, reconstruction, maintenance or repair work shall be effected as expeditiously as reasonably practicable and in a manner that minimizes disruption of use of the Reciprocal Access Easements. Subject to the foregoing, and provided either that such

interruption does not preclude substantial use of the Reciprocal Access Easements, or that alternative temporary access is available, each party expressly consents to such interruption and acknowledges that the other party, or its Permittees, shall in no event be liable to it or its Permittees as a result of such interruption.

9. Termination of this Agreement.

(a) A party may, at its discretion, terminate this Agreement as to all or any portion of the Easement Area benefiting such party by giving the other party not less than thirty (30) days written notice of termination.

(b) Upon termination under subparagraph (a) above, and if requested to do so by the other party, each party agrees to execute a recordable instrument evidencing such termination in form and substance reasonably acceptable to the other party.

10. Indemnification.

(a) Union Pacific shall indemnify, defend and hold harmless Grantee and Grantee's officers, employees and agents from and against any and all claims, demands, fees, damages, losses, expenses or liabilities (including, without limitation, all reasonable attorneys and experts' fees and costs incurred in connection with any of the foregoing, whether incurred before any action is filed, at trial or on any appeal or petition for review therefrom) and arising in any way from (i) use of the Reciprocal Access Easement by Union Pacific or Union Pacific's Permittees, or (ii) breach of any of the provisions of this Agreement by Union Pacific or Union Pacific's Permittees; but only to the extent that the same is not caused by the acts or omissions of Grantee or Grantee's Permittees, including, without limitation, any breach of this Agreement by Grantee or Grantee's Permittees.

(b) Grantee shall indemnify, defend and hold harmless Union Pacific and Union Pacific's officers, employees and agents from and against any and all claims, demands, fees, damages, losses, expenses or liabilities (including, without limitation, all reasonable attorneys and experts' fees and costs incurred in connection with any of the foregoing, whether incurred before any action is filed, at trial or on any appeal or petition for review therefrom) and arising in any way from (i) use of the Reciprocal Access Easement by Grantee or Grantee's Permittees, or (ii) breach of any of the provisions of this Agreement by Grantee or Grantee's Permittees; but only to the extent that the same is not caused by the acts or omissions of Union Pacific or Union Pacific's Permittees, including, without limitation, any breach of this Agreement by Union Pacific or Union Pacific's Permittees.

11. Real Property Taxes. Grantee shall pay, with respect to the Grantee Property, and Union Pacific shall pay, with respect to the Union Pacific Property, all real property taxes and other governmental assessments levied against such property. If a party objects in good faith to the validity or amount of any such tax or assessment, it may contest the validity or amount thereof or the lien therefor, so long as the other party's interest in the Reciprocal Access Easements is not thereby jeopardized. A party may pay taxes and assessments on any installment method permitted by the taxing authority. Upon the other party's request, a party

7

shall provide the requesting party with written evidence that the taxes and assessments it is required to pay under this Paragraph 11 have been paid prior to delinquency.

12. Binding Covenants. Except as provided in Paragraph 5(b) and (c) regarding reimbursement for one-half of the costs incurred by Grantee or Union Pacific in constructing and installing a permanent road, the parties intend that the covenants, conditions and restrictions contained herein shall be enforceable as an equitable servitude and shall constitute a covenant, the burden and benefit of which shall run with the land and bind successive owners and therefore declare that the covenants of Union Pacific herein to do or to refrain from doing something on the Union Pacific Property (a) are for the benefit of the Grantee Property, (b) run with the Grantee Property, and (c) shall benefit or be binding upon each successive owner, during its ownership, of any portion of such land affected thereby, and upon each person having any interest therein derived from any owner thereof. Further, the covenants of Grantee herein to do or refrain from doing some act on the Grantee Property (a) are for the benefit of the Union Pacific Property, (b) run with the Union Pacific Property, and (c) shall benefit or be binding upon each successive owner, during its ownership, of any portion of such land affected thereby, and upon each person having interest therein derived through any owner thereof. Notwithstanding any of the provisions of this instrument, a breach of any of the covenants contained herein shall not render invalid the lien of any mortgage or deed of trust made in good faith and for value, but such covenants shall be binding and effective against any owners of the Union Pacific Property, the Grantee Property, respectively, or any portions thereof, whether acquired by foreclosure, trustee sale or otherwise.

13. Attorneys' Fees. In the event of any dispute between the parties hereto involving the performance or interpretation of the covenants or conditions contained in this Agreement or arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonably attorneys' fees, expert witness fees, expenses and costs.

14. Sale of Fee Title. In the event any party to this Agreement, or its successors and assigns, shall convey its fee interest in all or any portion of the property affected herein, the conveying party shall be automatically free from and after the date of such conveyance of all liabilities, respecting the performance of the restrictions, covenants or conditions contained in this instrument thereafter to be performed with respect to the property which is conveyed. It is intended that the restrictions, covenants or conditions contained in this instrument shall be binding upon the owners of the properties affected hereby only during such time as they own the same, provided that the conveying owner shall remain liable for any actions taken prior to the date of the conveyance.

15. Recordation of Agreement. This Agreement shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska, and shall serve as notice to all parties succeeding to the interest of the parties hereto that their use of such property shall be benefitted and/or restricted in the manner herein described.

16. Execution of Documents. Union Pacific and Grantee and their respective successors or assigns agree to execute any and all documents necessary to effectuate the intent of the parties hereto.

17. Notices. Any notice which either party may desire to give to the other party must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party hereinafter set forth, or at such other addresses as the parties may hereafter designate in writing.

To Union Pacific:                   UNION PACIFIC RAILROAD COMPANY  
Real Estate Department  
ATTN: General Director - Real Estate  
1416 Dodge Street, WP001  
Omaha, Nebraska 68102

With a copy to:                    UNION PACIFIC RAILROAD COMPANY  
Law Department  
Attn: General Contract Counsel  
1416 Dodge Street, Room 830  
Omaha, Nebraska 68179

Grantee:                             COURTLAND PLACE NO. 1, LLC  
ATTN: Christian G. Christensen, President  
11422 Miracle Hills Drive, Suite 400  
Omaha, Nebraska 68154-4420  
Telephone: (402) 997-7511  
Facsimile: (402) 997-7502

Any notice given by mail shall be deemed given forty-eight (48) hours after such notice is deposited in the United States Mail, addressed as provided, with postage fully prepaid.

18. Integration. All previous agreements and negotiations between the parties hereto relating to the subject matter of this Agreement are merged into this Agreement which is intended to fully and completely express the parties' rights and obligations.

*(Remainder of page intentionally left blank)*



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

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

Barbara Holder  
Witness

By: [Signature]  
Title: Assistant Vice President - Law

**COURTLAND PLACE NO. 1, LLC,  
a Nebraska limited liability company**

By: **Bluestone Development, LLC, a Nebraska limited liability company, Manager**

Danya Wick  
Witness

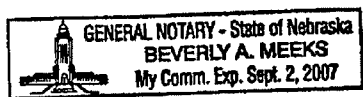
By: [Signature]  
Title: President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On March 15, 2004, before me, a Notary Public in and for said County and State, personally appeared Lawrence E. Wzorek, Assistant Vice President - Law of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Beverly A. Meeks  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On March 18, 2004, before me, a Notary Public in and for said County and State, personally appeared Christian Christensen, President of Bluestone Development, LLC, a Nebraska limited liability company, as Manager of COURTLAND PLACE NO. 1, LLC, a Nebraska limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Kathryn S Buckley  
Notary Public

**UNION PACIFIC RAILROAD COMPANY  
Omaha, Douglas County, Nebraska**

**EXHIBIT "A"**

**Lot 3, in COURTLAND PLACE REPLAT 2, an addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.**

**Contains 0.992 acres  
more or less.**

**OFFICE OR REAL ESTATE  
OMAHA, NEBRASKA  
WRITTEN BY: JEM  
February 24, 2004**

---

**UNION PACIFIC RAILROAD COMPANY  
Omaha, Douglas County, Nebraska**

**EXHIBIT "B"**

**Lot 2, in COURTLAND PLACE REPLAT, an addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.**

**Contains 3.487 Acres  
more or less.**

**OFFICE OR REAL ESTATE  
OMAHA, NEBRASKA  
WRITTEN BY: JCO  
February 27, 2003**

**Lot 2, in COURTLAND PLACE REPLAT 2, an addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.**

**Contains 0.415 Acres  
more or less.**

**OFFICE OR REAL ESTATE  
OMAHA, NEBRASKA  
WRITTEN BY: JEM  
February 17, 2004**

---

**UNION PACIFIC RAILROAD COMPANY**  
**Omaha, Douglas County, Nebraska**  
**EXHIBIT "C 1"**

A strip of land, 25.00 feet in width, being a portion of Lot 3, Courtland Place Replat 2, a subdivision as surveyed platted and recorded in the City of Omaha, Douglas County, Nebraska, said strip being more fully described as follows:

Beginning at the northeast corner of said Lot 3, Courtland Place Replat 2;

thence along the easterly line of said Lot 3, South 0 degrees 00 minutes 32 seconds West, 88.00 feet;

thence North 89 degrees 49 minutes 53 seconds West, 25.00 feet to a point that is 25.00 feet normally distant westerly from said easterly line;

thence parallel with said easterly line, North 0 degrees 00 minutes 32 second. East, 88.00 feet to a point on the northerly line of said Lot 3;

thence along said northerly line, South 89 degrees 49 minutes 53 seconds East, 25.00 feet to the Point of Beginning.

Said strip contains an area of 2,200 square feet (0.051 acres), more or less.

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA  
JCO  
February 20, 2004  
221078c1.leg

**UNION PACIFIC RAILROAD COMPANY**  
**Omaha, Douglas County, Nebraska**  
**EXHIBIT "C 2"**

A strip of land, 25.00 feet in width, being a portion of Lot 2, Courtland Place Replat and a portion of Lot 2, Courtland Place Replat 2, both being surveyed platted and recorded in the City of Omaha, Douglas County, Nebraska, said strip being more fully described as follows:

Beginning at the northwest corner of said Lot 2, Courtland Place Replat;

thence along the northerly line of said Lot 2, Courtland Place Replat, South 89 degrees 49 minutes 53 seconds East, 25.00 feet to a point that is 25.00 feet normally distant easterly from the westerly line of said Lot 2, Courtland Place Replat;

thence parallel with said westerly line, South 0 degrees 00 minutes 32 seconds West, 225.00 feet; thence North 89 degrees 49 minutes 53 seconds West, 25.00 feet to a point on said westerly line;

thence along said westerly line, North 0 degrees 00 minutes 32 seconds East, 88.00 feet to the southeast corner of said Lot 2, Courtland Place Replat 2;

thence along the southerly line of said Lot 2, Courtland Place Replat 2, North 89 degrees 49 minutes 53 seconds West, 25.00 feet to a point that is 25.00 feet normally distant westerly from the easterly line of said Lot 2, Courtland Place Replat 2;

thence parallel with said easterly line, North 0 degrees 00 minutes 32 seconds East, 137.00 feet to a point on the northerly line of said Lot 2, Courtland Place Replat 2;

thence along the northerly line of said Lot 2, Courtland Place Replat 2, South 89 degrees 49 minutes 53 seconds East, 25.00 feet to the Point of Beginning.

Said strip contains an area of 9,050 square feet (0.208 acres), more or less.

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA  
JCO  
February 20, 2004  
221078c2.leg