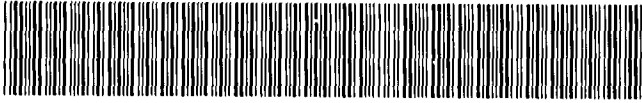


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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
2/24/2012 15:05:17.46



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SPACE ABOVE RESERVED FOR REGISTER OF DEEDS OFFICE RECORDING INFORMATION

File Number: 6063162

Please Return recorded document to:
Nebraska Title Company
PO Box 6169
6003 Old Cheney Road, 3rd Floor
Lincoln, NE 68506-0169

TITLE OF DOCUMENT: First Amendment to Joint Declaration of Restrictive Covenants

✓ 113386

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**FIRST AMENDMENT TO JOINT DECLARATION
OF RESTRICTIVE COVENANTS**

This FIRST AMENDMENT TO JOINT DECLARATION OF RESTRICTIVE COVENANTS (“**Amendment**”) is made and entered into this 24th day of February, 2012, by and between Legacy Development, L.L.C., an Iowa limited liability company (“**Legacy Development**”), Legacy Upstream, L.L.C., an Iowa limited liability company (“**Legacy Upstream**”) The Shops of Legacy, L.L.C., a Nebraska limited liability company (“**Shops**”), Sammy’s, L.L.C., a Nebraska limited liability company (“**Sammy’s**”), and SNH LTF Properties, LLC, a Maryland limited liability company (“**LTF**”).

RECITALS:

WHEREAS, Legacy Development, Shops and LTF’s predecessor-in-interest entered into that certain Joint Declaration of Restrictive Covenants (the “**Declaration**”) dated June 29, 2006, recorded December 28, 2006, as Document No. 2006147091, Miscellaneous Records;

WHEREAS, Continental 159 Fund, L.L.C. a Wisconsin limited liability company (“**Continental**”) has a contract to purchase all or a portion of the Legacy Property and intends on developing a multifamily residential community thereon in accordance with the site plan, dated October 19, 2011, attached hereto as Exhibit C to this Amendment (the “**Site Plan**”);

WHEREAS, Continental is not willing to purchase, and Legacy Development is not willing to sell, all or such portions of the Legacy Property, unless Legacy Development, Legacy Upstream, Shops, Sammy’s and LTF execute and record this Amendment;

WHEREAS, in furtherance of Continental’s planned multifamily residential community, Legacy Development, Legacy Upstream, Shops, Sammy’s and LTF now desire to amend and modify the Joint Declaration of Restrictive Covenants as hereinafter set forth;

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 herein set forth and for other good and valuable consideration the parties hereby agree as follows:

AGREEMENT:

1. LTF Property. The LTF Property is legally described on the attached Exhibit A which replaces in its entirety the Exhibit A attached to the Declaration.
2. Legacy Property. The Legacy Property is legally described on the attached Exhibit B which replaces in its entirety the legal description of the Legacy Property on Exhibit B attached to the Declaration.
3. Shops Property. The Shops Property is legally described on the attached Exhibit B which replaces in its entirety the legal description of the Shops Property on Exhibit B attached to the Declaration.

4. Health or Fitness Club. Section 1 (A) (4) of the Declaration is hereby deleted and replaced as follows:

“health or fitness club, provided however that the Legacy Property may have a health, fitness center, or other activity center or area not exceeding five hundred (500) square feet incidental to a multi-family residential community for use solely by residents of such community;”

5. Multi Family Use. Notwithstanding Sections 1 (B) or 1 (C) of the Declaration, the Legacy Property may be used for multifamily residential uses which specifically includes multiple dwelling units in multiple buildings, it being the full intention of all parties hereto and their successors and assigns that the Legacy Property may be developed as a multi-family residential community, with all attendant and incidental uses; provided, however, that such multi-family residential community shall be developed strictly in accordance with the Site Plan. The owner of the Legacy Property shall not construct any improvements or permit any development not in strict accordance with Site Plan without the prior written approval of the owner of the LTF Property, which approval may be withheld by the owner of the LTF Property in its sole and absolute discretion.

6. Exterior Elevations. Section 1 (D) (1) of the Declaration is hereby deleted and replaced as follows:

“all exterior elevations of any buildings shall be predominately brick with a minority Hardie-board siding;”

7. Height. Section 1 (D) (5) of the Declaration is hereby deleted and replaced as follows:

“no building elevations (excluding architectural features, parapets, and mechanical rooms) shall exceed forty five feet (45) in height;”

8. Additional Design Restrictions on Restricted Zone 1 and Restricted Zone 2. Section 1(E) of the Declaration is hereby amended to read in its entirety as follows:

E. Additional Design Restrictions on Restricted Zone 1 and Restricted Zone 2. In addition to the prohibitions set forth in Section 1(D) of the Declaration, with respect to all buildings, structures and improvements on any portion of Restricted Zone 1 or Restricted Zone 2:

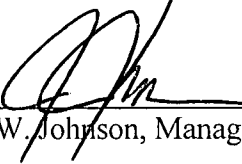
- (1) no building or structure shall be constructed within sixty-five feet (65’) of the LTF Property, except that Buildings 1, 2, 6 and 7, as depicted on the Site Plan, may be located no closer than twenty-four and one-half feet (24.5’) from the property line of the Legacy Property;

- (2) no building shall contain more than 45,000 square feet, except that a Whole Foods, or other similar high-end, upscale, specialty grocer, may be up to 60,000 square feet;
 - (3) no non-residential building, except one used exclusively for office, shall contain more than six (6) tenants on the ground level;
 - (4) no back of any building shall face the LTF Property, except that non-residential buildings constructed in accordance with the Site Plan shall be permitted; and
 - (5) any improvements located on a parcel adjacent to the LTF Property shall include a landscape buffer having a width of at least ten feet (10') abutting those certain internal drives depicted on the plat of Legacy Replat 16, which landscape buffer may contain the seating area and sidewalks as depicted on the Site Plan.
9. Definitions. Terms utilized in this Amendment with an initial capitalized letter and which are not otherwise defined herein shall have the meaning ascribed to them by the Declaration.
10. Shops Property. Nothing contained in this Amendment, including references to the Site Plan, shall alter or affect the provisions of the Declaration as they apply to the Shops Property and inclusion of the Site Plan in this Amendment shall not constitute modification of the Declaration regarding the Shops Property or approval by LTF of any of the improvements on the Shops Property depicted on the Site Plan.
11. No Other Changes. Except as specifically amended and modified herein, the Declaration shall remain unchanged and in full force and effect according to its terms. Without limiting the foregoing, the residential development on the Legacy Property shall comply with the approval requirements of Section 1(D)(6) of the Declaration.
12. Counterparts. This Amendment may be executed in multiple counterparts which, when taken together, shall constitute one and the same document.
13. Joinder by Mortgagees. Each of the parties hereto represent and warrant to the other parties hereto that there are no holders of mortgages or other liens on its respective parcel other than by those holders of mortgages and other liens joining in this instrument.

[signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first set forth above.

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

By:  _____
Jeff W. Johnson, Managing Member

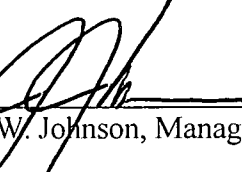
The Shops of Legacy, L.L.C., a
Nebraska limited liability company

By: _____
Terrance A. Hogan, Managing Member

SNH LTF Properties, LLC,
a Maryland limited liability company

By: _____
(print name) _____
Its: _____

Legacy Upstream, L.L.C., an
Iowa limited liability company

By:  _____
Jeff W. Johnson, Managing Member

Sammy's, L.L.C., a
Nebraska limited liability company

By: _____
Terrance A. Hogan, Managing Member

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first set forth above.

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

By: _____
Jeff W. Johnson, Managing Member

The Shops of Legacy, L.L.C., a
Nebraska limited liability company

By: Terrance A. Hogan
Terrance A. Hogan, Managing Member

SNH LTF Properties, LLC,
a Maryland limited liability company

By: _____
(print name) _____
Its: _____

Legacy Upstream, L.L.C., an
Iowa limited liability company

By: _____
Jeff W. Johnson, Managing Member

Sammy's, L.L.C., a
Nebraska limited liability company

By: Terrance A. Hogan
Terrance A. Hogan, Managing Member

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first set forth above.

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

By: _____
Jeff W. Johnson, Managing Member

The Shops of Legacy, L.L.C., a
Nebraska limited liability company

By: _____
Terrance A. Hogan, Managing Member

SNH LTF Properties, LLC,
a Maryland limited liability company

By: David J. Hegan
(print name) DAVID J. HEGAN
Its: PRESIDENT

Legacy Upstream, L.L.C., an
Iowa limited liability company

By: _____
Jeff W. Johnson, Managing Member

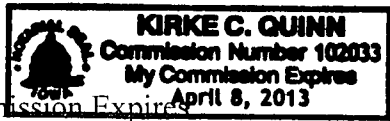
Sammy's, L.L.C., a
Nebraska limited liability company

By: _____
Terrance A. Hogan, Managing Member

ACKNOWLEDGMENTS

Iowa
STATE OF ~~NEBRASKA~~ }
Boone
COUNTY OF ~~DOUGLAS~~ } ss.

The foregoing instrument was acknowledged before me this 6th day of January 2011, by Jeff W. Johnson, the Manager of Legacy Development, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company



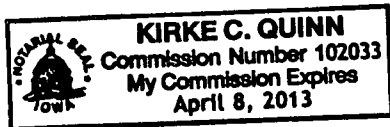
My Commission Expires _____

Kirke C. Quinn

Notary Public

Iowa
STATE OF ~~NEBRASKA~~ }
Boone
COUNTY OF ~~DOUGLAS~~ } ss.

The foregoing instrument was acknowledged before me this 6th day of January 2011, by Jeff W. Johnson, the Manager of Legacy Upstream, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company



My Commission Expires: _____

Kirke C. Quinn

Notary Public

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Terrance A. Hogan, the Managing Member of The Shops of Legacy, L.L.C., a limited liability company under the laws of Nebraska, by and on behalf of said company

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENTS

STATE OF NEBRASKA
COUNTY OF DOUGLAS } ss.

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Jeff W. Johnson, the Manager of Legacy Development, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company

Notary Public

My Commission Expires: _____

STATE OF NEBRASKA
COUNTY OF DOUGLAS } ss.

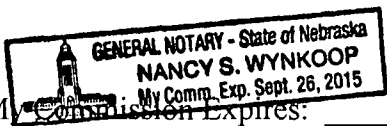
The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Jeff W. Johnson, the Manager of Legacy Upstream, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company

Notary Public

My Commission Expires: _____

STATE OF NEBRASKA
COUNTY OF DOUGLAS } ss.

² The foregoing instrument was acknowledged before me this 3rd day of February 2011, by Terrance A. Hogan, the Managing Member of The Shops of Legacy, L.L.C., a limited liability company under the laws of Nebraska, by and on behalf of said company



Nancy S. Wynkoop
Notary Public

My Commission Expires: _____

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

² The foregoing instrument was acknowledged before me this 3rd day of February 2011, by Terrance A. Hogan, the Managing Member of Sammy's, L.L.C., a limited liability company under the laws of Nebraska, by and on behalf of said company



Nancy S. Wynkoop
Notary Public

My Commission Expires: 9-26-15

STATE OF _____ }
COUNTY OF _____ } ss.

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by _____, the _____ of SNH LTF Properties, LLC, a limited liability company under the laws of Minnesota, by and on behalf of said company

Notary Public

My Commission Expires: _____

STATE OF NE BRASKA }
COUNTY OF DOUGLAS } ss.

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Terrance A. Hogan, the Managing Member of Sammy's, L.L.C., a limited liability company under the laws of Nebraska, by and on behalf of said company

Notary Public

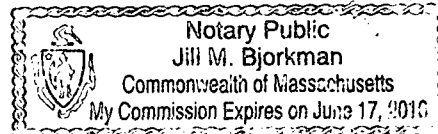
My Commission Expires: _____

STATE OF Massachusetts
COUNTY OF Middlesex ss.

The foregoing instrument was acknowledged before me this 1st day of February 2012 by David J. Hogan President of SNH LTF Properties, LLC, a limited liability company under the laws of Minnesota, by and on behalf of said company

Jill M. Bjorkman
Notary Public

My Commission Expires: 6-17-2016



CONSENT

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

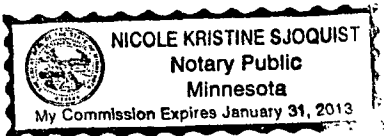
LTF REAL ESTATE COMPANY, INC.

By: [Signature]
Name: Mark Zaebst
Its: Executive Vice President of
Real Estate and Construction

STATE OF MINNESOTA)
) SS.
CARVER COUNTY)

Personally came before me this 26th day of January, 2012, the above named Mark Zaebst, the EVP of Real Estate Construction of LTF Real Estate Company, Inc., to me known to be such EVP and acknowledge that he executed the foregoing instrument as the deed of said Corporation, by its authority.

Nicole K. Sjoquist
Notary Public Carver County, MN
My Commission Expires: January 31, 2013



LENDER CONSENT

The undersigned, on behalf of Great Western Bank, its successors and/or assigns, as Beneficiary under that certain Construction Deed of Trust recorded in the Land Records of Douglas County, Nebraska as Instrument No. 2003190253, and Lender under that certain Assignment of Rents recorded as Instrument No. 2003190255, encumbering the property described therein and located in the City of Omaha, Douglas County, Nebraska, hereby consents to that certain First Amendment to Joint Declaration of Restrictive Covenants dated as of February 24, 2012, and agrees to subordinate the Construction Deed of Trust and Assignment of Rents to the First Amendment to Joint Declaration of Restrictive Covenants.

Dated this 6 day of January, 2012

GREAT WESTERN BANK

By: Mary Claire Fick
 Its: Loan Officer

STATE OF NEBRASKA.)
) SS:
 COUNTY OF DOUGLAS.)

I, DAVID L. PROUGH. a Notary Public for the aforementioned State, do hereby certify that MARY CLAIRE FICK, the LOAN OFFICER of Great Western Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this 6th day of JAN, 2012.

David L. Prough
 Printed Name: DAVID L. PROUGH.

My commission expires: JAN. 11, 2014

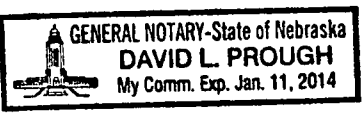


EXHIBIT A

Lot 2 of LEGACY REPLAT 16, being a replatting of Lot 2, LEGACY REPLAT 10, and Lots 1 and 2 LEGACY REPLAT 12, subdivisions as surveyed, platted and recorded in Douglas County, Nebraska

EXHIBIT B

Legacy Property

Lot 1 of LEGACY REPLAT 16, being a replatting of Lot 2, LEGACY REPLAT 10, and Lots 1 and 2 LEGACY REPLAT 12, subdivisions as surveyed, platted and recorded in Douglas County, Nebraska

Shops Property

Lot 3 of LEGACY REPLAT 16, being a replatting of Lot 2, LEGACY REPLAT 10, and Lots 1 and 2 LEGACY REPLAT 12, subdivisions as surveyed, platted and recorded in Douglas County, Nebraska

EXHIBIT C

LEGACY PROPERTY SITE PLAN DATED 10/19/2011

