



MISC 2013014115



FEB 11 2013 15:17 P 15

Fee amount: 94.00  
FB: m1-22268  
COMP: CC

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



2013014115

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

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

This **SECOND AMENDMENT TO JOINT DECLARATION OF RESTRICTIVE COVENANTS** (this "**Amendment**") is made and entered into as of December 5, 2012, by and among the undersigned signatories (collectively, the "**Parties**", or in the singular, a "**Party**") to further amend the Joint Declaration of Restrictive Covenants dated June 29, 2006, recorded with the Douglas County, Nebraska Register of Deeds on December 28, 2006 as Document No. 2006147091, as amended by that certain First Amendment to Joint Declaration of Restrictive Covenants dated February 24, 2012, recorded with the Douglas County, Nebraska Register of Deeds on February 24, 2012 as Document No. 2012017924 (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 (the "**Property**"). 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**"), which is part of the 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 4 of the Declaration allows the Parties to amend the Declaration by written consent of the owners and encumbrancers of the LTF Property and that portion of the Property affected by this Amendment. The Parties, constituting all of the owners and encumbrancers of the LTF Property and that portion of the Property affected by this Amendment 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 4 of the Declaration, the Parties hereby agree as follows:

AGREEMENT:

1. Height. Section 1(D)(5) of the Declaration is hereby amended by adding the following language:

“Notwithstanding anything to the contrary herein, any buildings, structures or other improvements constructed within Restricted Zone 3 shall be permitted to exceed the height restrictions of this Section 1(D)(5), 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’.”

2. Use. Notwithstanding anything in the Declaration to the contrary, the Heritage Property may be used for and operated as an assisted living facility, including all incidental uses thereto.
3. Parking. The following sentence is added to the end of Section 1.F. of the Declaration:

“Notwithstanding anything to the contrary herein, the Heritage Property shall not be subject to the parking requirement set forth 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 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. In order to avoid any ambiguity, the Heritage Property constitutes Restricted Zone 3, which is a part of the Legacy Property.
5. No Other Amendments. Except as amended and modified herein, the Declaration shall remain in full force and effect according to its terms.

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.
8. Reimbursement of Legal In-House Fees. Heritage shall reimburse LTF Real Estate Company, Inc., the sole tenant of the LTF Property, and SNH LTF Properties, LLC, the owner of the LTF Property, for their legal fees and in-house administrative time incurred in connection with the negotiation and execution of this Amendment (and the other amendment) in the amount of \$7,700.00 collectively, payable simultaneously with the execution of this Amendment.

WHEREFORE, the Parties, constituting all of the owners and encumbrancers of the LTF Property and that portion of the Property affected by this Amendment, have executed this Amendment as of the effective date stated above.

[Signatures on Following Pages.]

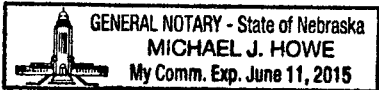
17070 Wright Plaza, LLC,  
a Nebraska limited liability company,

By: [Signature]  
Name: BRIAN R. MAGEE  
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 R. Magee\*, 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

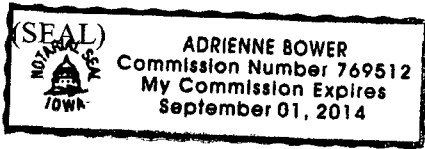
\* managing member of 17070 Partners, LLC

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: Manager. Utopia LLC

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





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

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

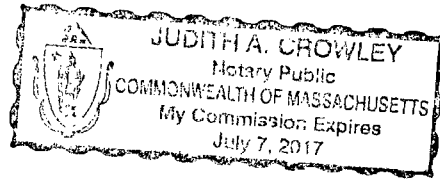
STATE OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of December, 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.

(SEAL)

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

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 Kozinkowski  
Its: EVP of Real Estate

STATE OF Minnesota )  
COUNTY OF Carver ) ss.

The foregoing instrument was acknowledged before me on this 12 day of Dec., 2012, by Tami Kozinkowski, the EVP of LTF Real Estate Company, Inc., a Minnesota corporation, by and on behalf of the corporation.



[Signature]  
Notary Public  
Printed Name: Nicole K Sjoquist

My commission expires: January 31, 2013

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



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: [Signature]  
Name: BRIAN R. MAGEE  
Its: MANAGING MEMBER  
UPSTREAM WEST 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 R. 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 J. Howe

My commission expires: June 11, 2015

\* the managing member of Upstream West Partners, LLC,

**EXHIBIT "A"**

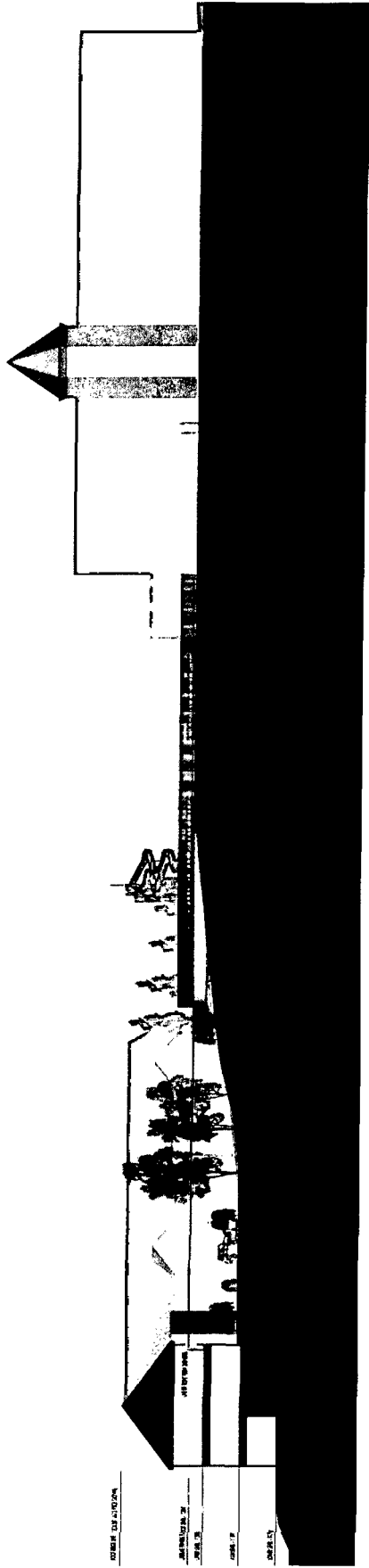
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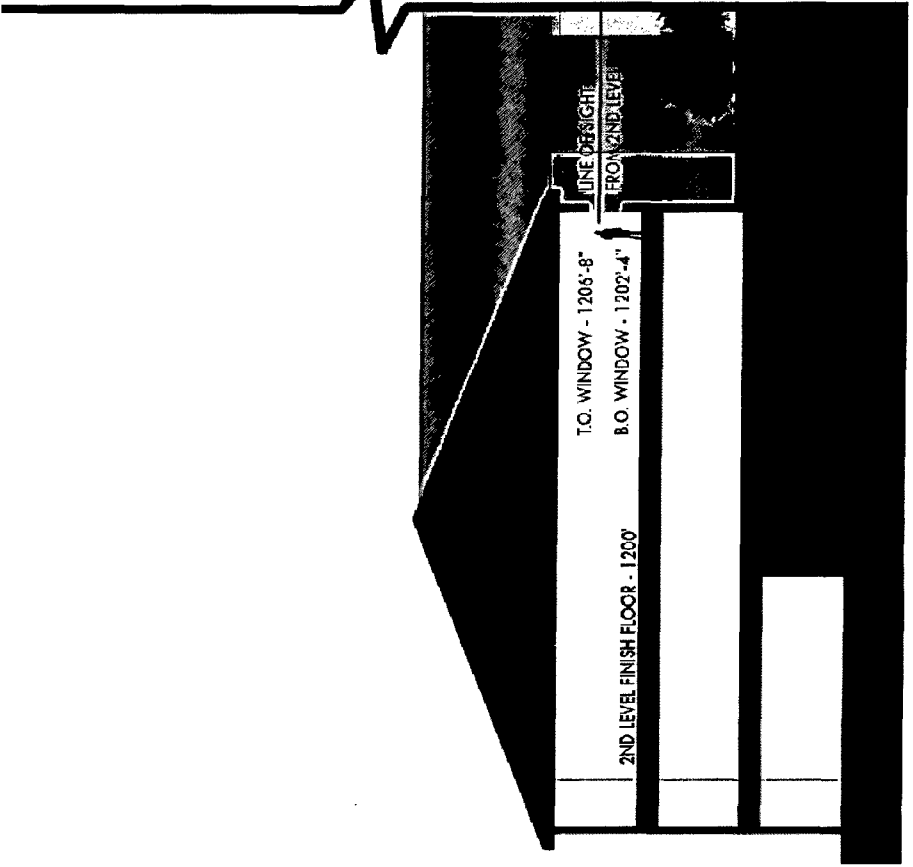
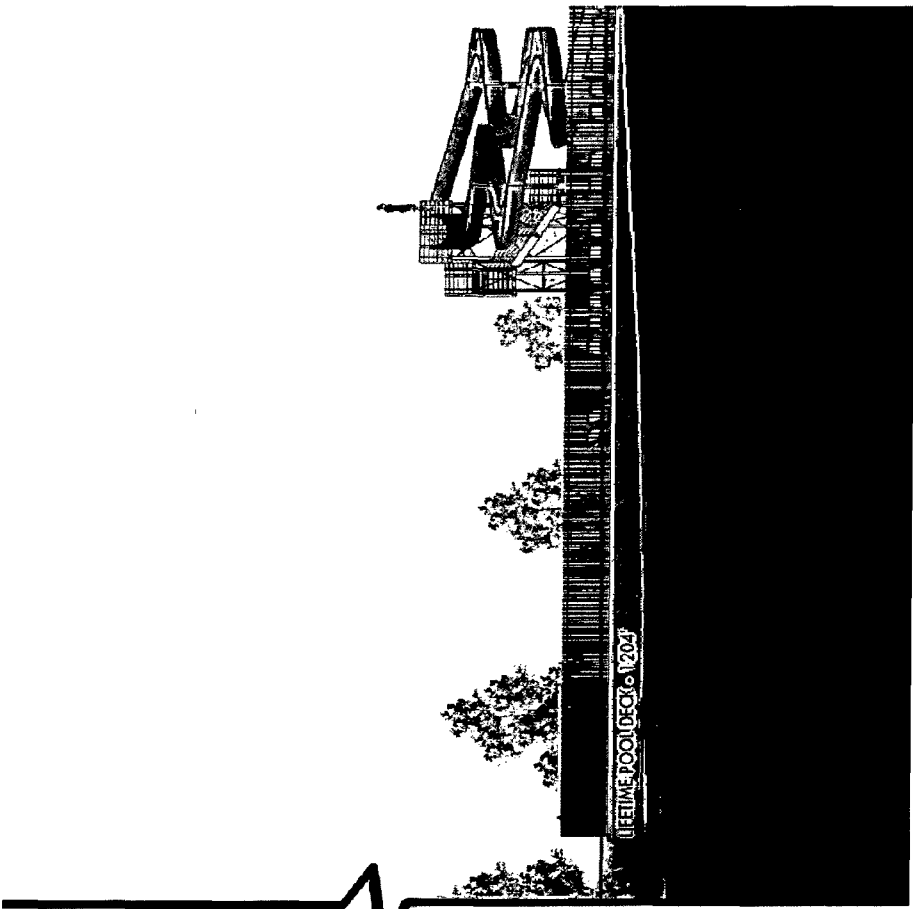
**LEGAL DESCRIPTION**

**66-22291**

Lots 5 and 6, Legacy, 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**





T.O. WINDOW - 1205'-8"

B.O. WINDOW - 1202'-4"

2ND LEVEL FINISH FLOOR - 1200'

LINE DESIGNATE  
FROM ZONE 1