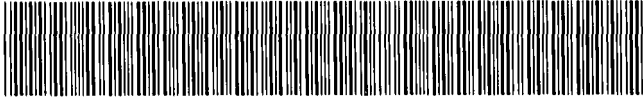


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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/5/2012 08:40:59.89



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**AMENDMENT TO DECLARATION OF  
RESTRICTIVE COVENANTS**

UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION,

CITY OF OMAHA, NEBRASKA,

LOT 9, LLC, A NEBRASKA LIMITED LIABILITY COMPANY,

and

DAVIS BUSINESS VENTURE II, L.L.C., A NEBRASKA LIMITED LIABILITY COMPANY

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Return to:  
Robert W. Rieke  
Fraser Stryker PC LLO  
500 Energy Plaza  
409 South 17<sup>th</sup> Street  
Omaha, Nebraska 68106

## AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

This Amendment to Declaration of Restrictive Covenants ("Amendment") is executed this 1 day of Oct, 2012, by UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific"), the CITY OF OMAHA, NEBRASKA ("City"), and LOT 9, LLC, a Nebraska limited liability company ("Lot 9"), and DAVIS BUSINESS VENTURE II, L.L.C., a Nebraska limited liability company ("Vision"), hereinafter collectively referred to as "Declarants".

### Recitals

A. Union Pacific was the owner of certain real estate property that was previously operated as a railroad maintenance facility and transferred to the City by deed recorded with the Register of Deeds of Douglas County, Nebraska, on November 3, 2000, at Book 2167, Pages 61 through 77 (the "UP Property"). Restrictions were placed on the UP Property as more fully described in the Declaration of Restrictive Covenants recorded with the Register of Deeds of Douglas County, Nebraska, on November 3, 2000, at Book 1357, Pages 297 through 316, and on August 21, 2001, at Book 1395, Pages 741 through 749 (collectively, the "Declaration"). The Declaration prohibits certain uses of the UP Property, including a prohibition on residential use.

B. The City redeveloped a portion of the UP Property as a convention center, parking lot and hotel. On November 3, 2009, the City sold a portion of the UP Property legally described on Exhibit "A" attached hereto (the "Lot 9 Property") to Lot 9. On April 27, 2011, Lot 9 converted the Lot 9 Property to Unit One, Unit Two, Unit Three and Unit Four, Lot 9 Mixed Use Condominium, and subsequently sold Unit Two to Vision.

C. Union Pacific has performed certain investigations and remediation activities ("Remediation") with respect to the contamination at the UP Property pursuant to an Administrative Order on Consent, EPA Docket No. RCRA-7-2000-0026, dated February 29, 2000, issued by the Environmental Protection Agency ("EPA") under the authority of section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h).

D. EPA has approved a remedial action plan ("RAP") identified as the "Final Corrective Measure Decision Operable Unit No. 1, Union Pacific Railroad, 9<sup>th</sup> and Webster Streets, Omaha, Nebraska, RCRA ID #NED000829754" dated June 12, 2000. EPA formally modified the RAP as set forth in the Final Corrective Measure Decision Addressing the Portion of Operable Unit No. 1 Included in Saddle Creek Records ("Modified RAP") on August 23, 2006. EPA's selection of the RAP and Modified RAP are supported by the Administrative Record located at USEPA Region 7, 901 N. 5<sup>th</sup>, Kansas City, Kansas.

E. Lot 9 and Vision have redeveloped the Lot 9 Property to include certain retail, office and residential uses. To accommodate such redevelopment and support the RAP and Modified RAP, the Declarants wish to amend the Declaration pursuant to paragraph 5 of the Declaration.

NOW THEREFORE, the Declarants hereby agree as follows:

a. Notwithstanding the restrictions in the Declaration, the Lot 9 Property may be used for second story (and above) level multi-family residences.

b. The Lot 9 Property shall not be used, developed or operated in any manner that violates any applicable state or federal laws, rules and regulations and/or zoning requirements.

c. The Lot 9 Property shall not be used, developed or operated in any manner that will impair, degrade or compromise the Remediation performed pursuant to the RAP or Modified RAP dated August 23, 2006.

d. If Lot 9, Vision, or their respective successors in interest, or other owners of all or any portion of the Lot 9 Property, seek to perform any excavation activities on the Lot 9 Property that may disturb the Remediation pursuant to the RAP or Modified RAP, a plan shall be submitted to EPA for review and approval setting forth the nature of the proposed excavation activities, the procedures that will be followed to ensure that human health and the environment are adequately protected during and after the excavation activity, and the actions that will be taken to ensure that all contaminated soils are properly covered following completion of any activity which disturbs the Remediation. The excavation activity may proceed only if the EPA or its assigns determines to allow such use or activity to be implemented pursuant to an approved plan.

e. The Lot 9 Property will hereinafter be bound by, held, sold and conveyed subject to the above terms, conditions, obligations and restrictions set forth herein, which will run with the land, and every part thereof, in perpetuity.

f. The EPA will be a third party beneficiary to this Amendment, and shall have the right to enforce the restrictions as set forth in this Amendment.

g. The effective date of this Amendment shall be the date of recording of this Amendment with the Register of Deeds of Douglas County, Nebraska.

IN WITNESS WHEREOF, Lot 9, LLC, Davis Business Venture II, L.L.C., Union Pacific Railroad Company and the City of Omaha, Nebraska have executed this Amendment to Declaration of Restrictive Covenants.

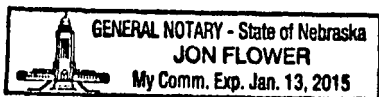
LOT 9, LLC, a Nebraska limited liability company  
BY: BLUESTONE DEVELOPMENT, LLC, Manager

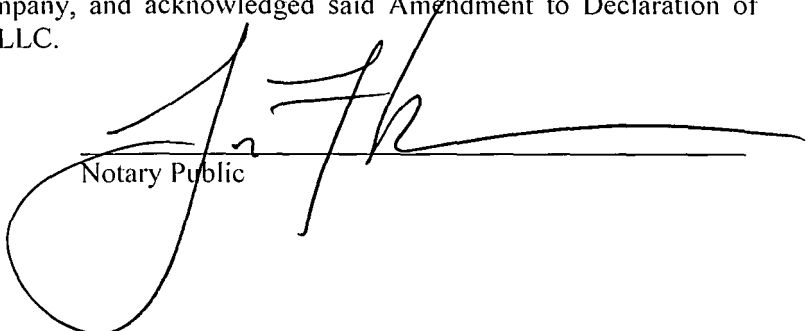
By   
Christian Christensen, President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of October, 2012, by CHRISTIAN CHRISTENSEN, President of BLUESTONE DEVELOPMENT, LLC, Manager of LOT 9, LLC, a Nebraska limited liability company, and acknowledged said Amendment to Declaration of Restrictive Covenants on behalf of Lot 9, LLC.

[SEAL]



  
Notary Public

DAVIS BUSINESS VENTURE II, L.L.C., a Nebraska  
limited liability company

By *[Signature]*  
Printed Name: Dick Davis  
Title: CEO

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this 31 day of July, 2012,  
by DICK DAVIS, the CEO  
of DAVIS BUSINESS VENTURE II, L.L.C., a Nebraska limited liability company, and acknowledged  
said Amendment to Declaration of Restrictive Covenants on behalf of Davis Business Venture II, L.L.C.

[SEAL]

*Sarah M Starks*  
Notary Public



UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation

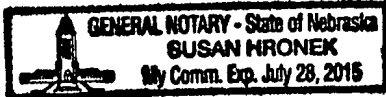
By Tony K. Love  
Printed Name: TONY K. LOVE  
Title: Assistant Vice President – Real Estate

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of September, 2012,  
by Tony K. Love, the Assistant Vice President – Real Estate  
of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, and acknowledged said  
Amendment to Declaration of Restrictive Covenants on behalf of Union Pacific Railroad Company.

[SEAL]

Susan Hronek  
Notary Public



ATTEST:

CITY OF OMAHA, NEBRASKA

[Signature]  
City Clerk of the City of Omaha, Nebraska

[Signature]  
Mayor of the City of Omaha, Nebraska

APPROVED:

[Signature]  
City Attorney of the City of Omaha, Nebraska

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2012, by Jim Suttle, the Mayor of the CITY OF OMAHA, NEBRASKA, and acknowledged said Amendment to Declaration of Restrictive Covenants on behalf of the City of Omaha, Nebraska.

[SEAL]

[Signature]  
Notary Public



27<sup>th</sup> This Amendment is hereby approved by the United States Environmental Protection Agency this day of July, 2012.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: 7/27/12

By [Signature]  
Printed Name: Rebecca Weber  
Title: Director, Air and Waste Management Division

STATE OF Kansas )  
COUNTY OF Wyandotte ) ss.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2012, by John Smith for the Director, Air and Waste Management Division of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and acknowledged said Amendment to Declaration of Restrictive Covenants on behalf of the United States Environmental Protection Agency. *Division DC*

[SEAL]

KENT JOHNSON  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appt. Exp 7/23/15

[Signature]  
Notary Public

**Exhibit "A"**  
**Lot 9 Property**

Lot 9, Union Pacific Place Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska, now known as Unit One, Unit Two, Unit Three and Unit Four, in Lot 9 Mixed Use Condominium, a condominium organized under the laws of the State of Nebraska, in the City of Omaha, in Douglas County, Nebraska, pursuant to Condominium Declaration dated September 17, 2010, and recorded April 27, 2011, as Instrument No. 2011036340 of the Records of Douglas County, Nebraska.