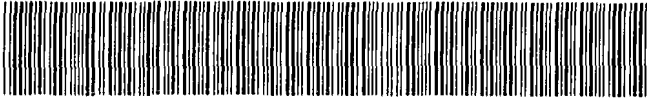




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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/12/2010 15:08:50.36



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## AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION,  
CITY OF OMAHA, NEBRASKA,  
and  
BLUES LOFTS, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

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

✓150209

## AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

This Amendment to Declaration of Restrictive Covenants ("Amendment") is executed this 11<sup>th</sup> day of October, 2009, by UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific"), the CITY OF OMAHA, NEBRASKA ("City"), and BLUES LOTS, LLC, a Nebraska limited liability company ("Blues"), 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 August 28, 2008, the City sold a portion of the UP Property legally described on Exhibit "A" attached hereto (the "Blues Property") to Blues.

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. Blues intends to further redevelop a portion of the Blues Property to include certain commercial 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 Blues Property may be used for second story (and above) level multi-family residences.

b. The Blues 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 Blues 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 Blues or its successors in interest or other owners of all or any portion of the Blues Property seek to perform any excavation activities on the Blues 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 Blues 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, Blues Lofts, LLC, Union Pacific Railroad Company and the City of Omaha, Nebraska have executed this Amendment to Declaration of Restrictive Covenants.

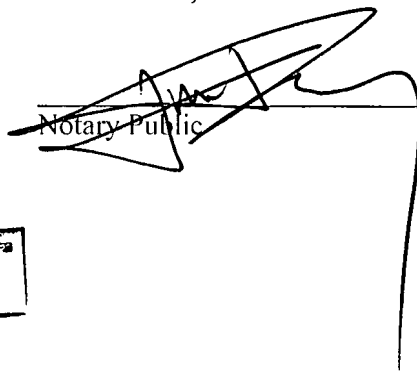
BLUES LOFTS, LLC, a Nebraska limited  
liability company  
BY: BLUESTONE DEVELOPMENT, LLC, Manager

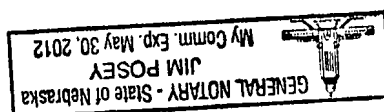
  
Christian Christensen, President

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 27 day of Aug, 200~~9~~<sup>10</sup>,  
by CHRISTIAN CHRISTENSEN, President of BLUESTONE DEVELOPMENT, LLC, Manager of  
BLUES LOFTS, LLC, a Nebraska limited liability company, and acknowledged said Amendment to  
Declaration of Restrictive Covenants on behalf of Blues Lofts, LLC.

[SEAL]

  
Notary Public



UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation

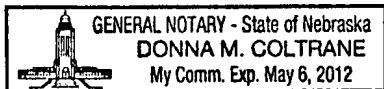
By *Lawrence E. Wzorek*  
Title: Assistant Vice President - Law

STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of October, ~~2009~~ <sup>2010</sup>,  
by Lawrence E. Wzorek, the Assistant Vice President - Law  
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]

*Donna M. Coltrane*  
Notary Public



ATTEST:

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

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 3rd day of August, 2010,  
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

29th This Amendment is hereby approved by the United States Environmental Protection Agency this day of July, 2010.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Dated: 7/29/10

By Betsy Weber  
Title:

STATE OF Kansas )  
COUNTY OF Wyandotte ) ss.

The foregoing instrument was acknowledged before me this 29th day of July, 2010, by Betsy Weber, the Division Director, AWMD, Region VII 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.

[SEAL]

KENT JOHNSON  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appt. Exp. 7/23/11

Kent Johnson  
Notary Public

**Exhibit "A"**  
**Blues Property**

Lot 2, Union Pacific Place Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska.