

FILED

200903334
WASHINGTON COUNTY, STATE OF NEBRASKA

RECORDED July 20, 2009 AT 2:52 PM.

BOOK 543 PAGE(S) 721-730

Karen A. Madsen

REGISTER OF DEEDS

Recorded	_____
General	_____
Numerical	_____
Photostat	_____
Proofed	_____
Scanned	_____

2009 JUL 20 PM 2: 52

KAREN A. MADSEN
WASHINGTON COUNTY
REGISTER OF DEEDS
BLAIR, NE

(Space above line for recording information)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 17th day of July, 2009, by Hayden Place Development, LLC, a Nebraska limited liability company (referred to herein as "Declarant").

RECITALS

WHEREAS, Declarant is the owner of the following legally described real property, to wit:

Lots 4, 5 and 6, Hayden Place First Addition Replat One, an addition to the City of Blair, Washington County, Nebraska (hereinafter collectively referred to as the "Property" or the "Lots", or individually as a "Lot");

WHEREAS, the Declarant and Ryan Companies US, Inc., a Minnesota corporation (referred to herein as "Ryan"), have entered into a Purchase Agreement, as amended (the "Purchase Agreement"), whereunder the Declarant agreed to sell and Ryan agreed to purchase the following legally described real property, to-wit:

Lot 6, Hayden Place First Addition Replat One, an addition to the City of Blair, Washington County, Nebraska ("Lot 6"); and

WHEREAS, pursuant to the terms of the Purchase Agreement, Declarant and Ryan agreed to the recording of this Declaration; and

WHEREAS, by virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in the Property or any portion thereof, by acceptance of a deed or other conveyance of such interest,

and every Owner of the Property or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Declarant agrees as follows:

ARTICLE I.
DEFINITIONS

- 1.1 City. "City" shall mean the City of Blair, Nebraska.
- 1.2 Improvements. "Improvements" shall mean all buildings, structures, parking areas, paved areas, landscaped areas, site lighting, signs and other improvements, except any and all public improvements installed or to be installed and maintained by the City.
- 1.3 Lessee. "Lessee" shall mean the owner of a leasehold interest (including any subtenancy) or license or other occupancy right in any Lot or a portion thereof.
- 1.4 Mortgage. "Mortgage" means any instrument recorded or filed in the office of the Washington County Register of Deeds encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot or Lots (such as leasehold mortgage).
- 1.5 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust.
- 1.6 Owner. "Owner" shall mean the fee simple interest owner of any Lot or Lots, including, without limitation, one who is buying a Lot or Lots under a recorded contract, but excluding Mortgagees and others who hold such title merely as security. Owner shall not include a

Lessee of a Lot or Lots.

ARTICLE II
REGULATION OF IMPROVEMENTS

2.1 Construction. The exterior design and construction of all Improvements constructed upon a Lot shall be of high quality and aesthetically compatible with the initial Improvements constructed upon Lot 6. No building shall have a metal exterior, except for architectural accent purposes. All Improvements shall be constructed in compliance with all applicable laws, codes, ordinances and regulations of the City and other governmental authorities having jurisdiction over the Property.

2.2 Completion of Work. All construction, refinishing, alteration or excavation of any Improvements shall be pursued diligently to completion, but in any event shall be completed within two (2) years after the date of issuance of a building permit by the City for the applicable Lot. All paving and landscaping will be finished upon completion of the building upon the Lot, but in no event shall it be installed later than ninety (90) days after the building is occupied, weather permitting and subject to unavoidable delays beyond the reasonable control of the applicable Lot Owner. Notwithstanding anything herein to the contrary, to the extent any separate agreement between Declarant and any Owner provides for any shorter deadline for completion of the foregoing items, then the terms of such other agreement shall control.

2.3 Maintenance. Each Owner shall maintain or cause to be maintained, at its expense, its Lot, and all Improvements completed thereon in a well-maintained, clean, neat and attractive condition, free of unsightly or unattractive weeds or other growth or the accumulation of rubbish, junk, and debris thereon, at all times and shall comply with all governmental health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. All construction activities shall be carried out in an orderly and diligent manner and all partially completed Improvements shall be kept in an orderly condition during construction. Dust from all construction sites shall be controlled at all times. If trucks entering and leaving the Lot deposit mud or dust on any streets or walkways, the Owner of the Lot on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean condition on a daily basis. Each Owner shall maintain its Lot with sufficient landscaping and plantings to prevent any erosion upon its Lot that will result in damage to that Lot or to any adjacent Lot.

2.4 Presumption of Compliance; Estoppel Certificate. Notwithstanding anything in this Declaration to the contrary, after the expiration of one (1) year from the date of issuance of a certificate of occupancy for a building constructed upon a Lot (whether issued for initial construction of a building or any alteration, renovation, or addition to building), all Improvements constructed upon the Lot shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with the provisions of Section 2.1 unless a notice of non-compliance or non-completion with respect thereto has been executed by a Lot Owner and recorded in the office of the Register of Deeds of Washington County, Nebraska or unless legal proceedings shall have been instituted to enforce compliance or completion with respect to said Improvements. Each Lot Owner, within ten (10) business days after written request by any other Lot Owner, shall execute and deliver an estoppel certificate in form and substance reasonably acceptable to the party issuing such certificate, which shall indicate whether the Improvements are in compliance with the provisions of this Article II.

ARTICLE III ENFORCEMENT

3.1 Enforcement. In the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration by an Owner, its agents, contractors, Lessee, or any party under the reasonable control of said Owner with respect to the Lot of an Owner (collectively referred to herein as a “default”), and the default is not cured within thirty (30) days after written notice describing the default is given to such Owner (or if any such default is not reasonably capable of being cured within such thirty (30) day period, then if such Owner has not commenced to cure the default promptly after such notice is given and does not thereafter diligently continue to prosecute such cure to completion), then, subject to the mediation provisions of Section 3.2 herein, any Owner with the right to enforce this Declaration may enforce any one or more of the following rights or remedies in this Section 3.1, or any other rights or remedies available at law or in equity, whether or not set forth in this Declaration. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

3.1.1 Damages. Owner may bring a suit for damages arising from or with respect to any such default.

3.1.2 Declaratory Relief. Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

3.1.3 Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a

default.

3.2 Mediation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Declaration through mediation before a neutral. Without limiting the generality of the foregoing, all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Declaration, including but not limited to breach or default thereof, shall be referred to non-binding mediation before, and as a condition precedent to, the initiation of any claim, litigation, action or proceeding pertaining to this Declaration. Either party may initiate the mediation process by notifying the other party in writing of its demand for mediation. The mediation shall be held within sixty (60) days after the date the mediation demand notice is given. The mediation shall be held in the Omaha, Nebraska metropolitan area at a location mutually agreeable to the parties. The mediation shall be attended by one or more executives or officers of each company who shall have authority to settle the dispute. The mediator shall be a retired state or federal judge mutually agreed upon by the parties. If the parties are not able to agreed upon the identity of a mediator on or before fifteen (15) days following the demand for mediation, either party may request the Chief Judge of the Washington County, Nebraska District Court to appoint the mediator. All applicable statues of limitations and all defenses based on the passage of time are tolled while the mediation procedures described above are pending, and for a period of thirty (30) days thereafter.

3.3 Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any Mortgage or similar instruments securing a loan made in good faith and for value with respect to the development or permanent financing, or any refinancing, of any Lot or portion thereof, or any Improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such Mortgage or similar instrument.

3.4 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties and/or to enforce or restrain the violation of this Declaration, the losing party or parties, as determined by the court for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties, as fixed by the court in such proceedings.

3.5 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed to be a duty upon Declarant or any Owner a duty to take any action to enforce the provisions of this Declaration.

3.6 No Termination For Breach. No breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the

520722v3

easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

ARTICLE IV
ADDITIONAL PROVISIONS

4.1 Duration of Covenants. This Declaration, and all covenants, conditions, and restrictions herein shall continue and remain in full force and effect at all times with respect to the Property and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 4.2 below) for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Washington County, Nebraska. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated as provided in Section 4.2 below.

4.2 Termination or Modification. This Declaration, or any provisions hereof, may be terminated, modified or amended in whole or in part with respect to all or any portion of the Property only by written instrument executed by all of the Owners of the Lots within the Property and recorded with the Office of the Register of Deeds of Washington County, Nebraska.

4.3 Constructive Notice and Acceptance of Declaration. Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said the Property.

4.4 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Washington County, Nebraska, and each Person with rights hereunder hereby waives the right to sue or be sued in any other place.

4.5 Mutuality and Reciprocity. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot within the Property; shall create mutual, equitable servitudes upon each Lot within the Property in favor of every other Lot within the Property; and shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in the Property, their heirs, successors and assigns.

4.6 Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of the Property can or will be carried out, or that any Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the

520722v3

development of the Property or the enforcement of this Declaration.

4.7 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

4.8 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

4.9 Notices.

4.9.1 To Declarant. Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant, as the case may be (a) when personally delivered against receipted copy, or (b) four (4) business days after being mailed by certified or registered mail, postage prepaid; in either case to the Declarant at the following address:

Hayden Place Development, LLC
Attn: Mary Berg
12049 CRP 30
Blair, NE 68008

Declarant may change its address by (i) giving notice to all Owners, or (ii) recording a Notice of Change of Address in the Office of the Register of Deeds of Washington County, Nebraska.

4.9.2 To Owners. A notice to any Owner shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, or (b) four (4) business days after mailing by certified or registered mail, postage prepaid; in either case to the address of the Owner's Lot or to such other address as the Owner has specified (i) in a written notice to the other Owners, or (i) in a Notice of Address (or Change of Address) recorded in the Office of the Register of Deeds of Washington County, Nebraska.

4.10 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City on the use, operation and development of the Property. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City applicable to the Property, then the more restrictive requirement shall govern.

520722v3

(Signatures on following page)

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year first above written.

DECLARANT:

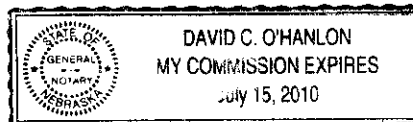
HAYDEN PLACE DEVELOPMENT, LLC, a
Nebraska limited liability company,

By: Mary Berg
Its: Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me on this 17th day of July, 2009, by Mary Berg, the Managing Member of Hayden Place Development, LLC, a Nebraska limited liability company, on behalf of the company.

David C. O'Hanlon
Notary Public



CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEED OF TRUST

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Two Rivers State Bank, as Trustee and Beneficiary, under that certain Deed of Trust with Future Advance Clause dated October 20, 2006 and filed November 6, 2006 in Record Book 499, Pages 278-285, in the of the Office of the Register of Deeds of Washington County, Nebraska (the "Recorder's Office"), hereby consents to the foregoing Declaration of Covenants, Conditions and Restrictions (the "Declaration") such that the Deed of Trust shall be subject to said Declaration, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the foregoing Declaration.

Executed this 17th day of July, 2009.

TWO RIVERS STATE BANK,
as Trustee and Beneficiary

By: *Randy W. Lock*
Name: RANDY W. LOCK
Its: President/CEO

STATE OF NEBRASKA)
)ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me on this 17th day of July, 2009, by *Randy W. Lock*, as *President* of Two Rivers State Bank, as Trustee and Beneficiary, on behalf of said banking corporation.

David O'Hanlon
Notary Public

