



MISC Inst. # 2017081113, Pg: 1 of 4 Rec Date: 10/10/2017 10:37:04.090

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Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

DECLARATION OF

RESTRICTIVE COVENANT

LOTS 1 THROUGH 5, INCLUSIVE,

AND OUTLOTS 2 THROUGH 4, INCLUSIVE,

AT

MIDTOWN CROSSING AT TURNER PARK

THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

Kathryn Kovitz Arnold, Esq.
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601

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DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made this 17th day of June, 2016, by East Campus Realty, LLC, a Nebraska limited liability company ("Declarant").

RECITALS:

WHEREAS, Declarant is the owner and legal titleholder of those certain parcels of real estate in Omaha, Douglas County, Nebraska legally described as Lots 1 through 5, inclusive, and Outlots 2 through 4, inclusive, at Midtown Crossing at Turner Park (a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska), except for certain residential condominium units which have been sold to third parties ("Property"); and

WHEREAS, Declarant, for itself and its affiliates, has an interest in real estate adjacent to the Property and a vested interest in having unobstructed views from said adjacent property; and

WHEREAS, Declarant developed the Property pursuant to a specific plan and has a vested interest in the Property remaining at all times unimproved above elevation 1280.68 feet (NAVD 88) (the "Maximum Improvement Elevation"); and

WHEREAS, Declarant intends that the Property remain clear of any and all improvements, buildings, antennas, towers, decorative or architectural treatments, whether structural or not, dishes, or parapets of any type or manner whatsoever above the Maximum Improvement Elevation; and

WHEREAS, Declarant, as the owner of the Property above the Maximum Improvement Elevation, hereby encumbers the Property with this Declaration containing restrictive covenants.

DECLARATIONS:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purpose stated herein, Declarant declares as follows:

1. The recitals set forth hereinabove are fully incorporated herein by reference.
2. The Property above the Maximum Improvement Elevation shall at all times remain clear of any and all improvements, structures, buildings, antennas, towers, decorative or architectural treatments, whether structural or not, dishes, or parapets of any type or manner whatsoever. No items may be hung in or suspended in or onto the Property.
3. All covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all parties and persons owning any portion of the Property.

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4. Breach of any of the covenants or violation of any other provision of this Declaration shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any portion of the Property, but all provisions of this Declaration shall be binding and effective against any owner of any portion of the Property whose title thereto is acquired by foreclosure, trustee sale or otherwise under such mortgage or trust deed, and shall remain effective as to each portion of the Property so acquired.

5. Enforcement of the provisions of this Declaration shall be by any proceeding at law or in equity, brought by the Declarant, its successors or assigns or by any Benefitted Party (as defined below), against any person or persons violating or attempting to violate any covenant, restriction or other provision hereof, either to restrain or prevent such violation or attempted violation or to recover damages, or both. Failure by the Declarant, its successors or assigns or any Benefitted Party, to promptly enforce any covenant, restriction or other provision of this Declaration shall in no event be a bar to enforcement thereafter and shall not waive any rights of the Declarant, its successor or assigns or any Benefitted Party, to so enforce any covenant, restriction or other provision of this Declaration. For any violation of this Declaration, damages may be inadequate to remedy the unique injuries incurred as a result thereof and therefor Declarant, its successors and assigns, and any Benefitted Party hereto shall be entitled to specific performance of any and all provisions of this Declaration.

6. In the event of any litigation arising out of this Declaration, the prevailing party shall be entitled to payment of court costs and reasonable attorneys' fees.

7. Invalidation of any covenant, restriction or other provision of the Declaration by judgment or court order shall in no way affect any of the other provisions of the Declaration and such other provisions shall remain in full force and effect.

8. If the rule against perpetuities or any other rule of law limits the time during which any provision of this Declaration shall be effective, then each such provision shall continue to be effective until twenty-one (21) years after the death of the last survivor of all of the President and Vice President of the United States of America, serving at the date at execution of this Declaration, and all of their children and grandchildren living on the date of execution of this Declaration.

9. Mutual of Omaha Insurance Company ("M of O"), its successors in interest as fee title owner of Lot 3, Mutual of Omaha Campus, a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska ("Benefitted Party") is intended to be and shall always be an intended third party beneficiary of this Declaration. The Benefitted Party shall have authority to enforce the terms, conditions and provisions of this Declaration.

10. No modification, addition, deletion, revision, alteration or other change to this Declaration shall be effective unless and until such change is reduced to writing and approved by the Benefitted Party.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above written.

Declarant:

East Campus Realty, LLC, a Nebraska limited liability company

By:

Kenneth R. Cook

Kenneth R. Cook
President

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

I, JANICE J. PACKARD, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth R. Cook, President of EAST CAMPUS REALTY, LLC, a Nebraska limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of the company, for the uses and purpose therein set forth.

GIVEN, under my hand and Notarial Seal this of 17 day of JUNE, 2016.

Janice J. Packard

Notary Public

