



MISC Inst. # 2018013917, Pg: 1 of 6 Rec Date: 02/22/2018 14:05:06.150
 Fee Received: \$40.00 Electronically Recorded By: ER
 Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

(The above space for use of Register of Deeds.)

WHEN RECORDED TO BE RETURNED TO:

Amy L. Lawrenson
 Baird Holm LLP
 1700 Farnam St., Ste. 1500
 Omaha, NE 68102-2068

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made this 9th day of January 2018, by **Spielbound Board Game Café LLC**, a Nebraska limited liability company (the "Declarant").

WHEREAS, the Declarant is the fee simple owner of certain real property commonly known as 3229 Harney Street, Omaha, Nebraska (the "**Burdened Parcel**") and legally described as follows:

LOT 8 IN REEDS 6TH ADDITION, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

WHEREAS, ("**East Campus Realty, LLC**", a Nebraska limited liability company ("**East Campus**") is the fee simple owner of certain real property commonly known as Midtown Crossing at Turner Park (the "**Benefited Parcel**"), which is located in the vicinity of the Burdened Parcel and legally described as follows:

SEE EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN

WHEREAS, East Campus has a leasehold interest, as tenant, in the Burdened Parcel pursuant to that certain Lease dated January 24, 2012 (the "**Lease**") by and between East Campus and Cheran Investments, LLC, the predecessor in interest to Declarant in the Burdened Parcel;

WHEREAS, in consideration of East Campus' termination of the Lease, the Declarant has agreed to impose certain use and development restrictions on the Burdened Parcel, as further set forth in this Declaration; and

WHEREAS, the Declarant is executing this Declaration to memorialize such use and development restrictions.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant hereby declares, covenants and agrees as follows:

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1. DECLARATION. All of the covenants, conditions, and restrictions set forth in this Declaration are imposed upon the Burdened Parcel for the benefit of East Campus and the Benefited Parcel and are to be construed as restrictive covenants running with the land for the Term (defined below) and shall bind Declarant and all owners and the respective assigns and successors in interest of Declarant and any lessees, tenants, and other occupants of any building on the Burdened Parcel.

2. USE RESTRICTIONS. No portion of Burdened Parcel shall be used for any of the following purposes:

- a. Pawn, flea market or swap show;
- b. So-called "off-track betting" operation, or any operation selling keno and pickle cards;
- c. Store specializing in the sale of drug paraphernalia;
- d. Store specializing in any sexually-oriented business, including, without limitation, a massage parlor, adult book, novelty or video store, adult cabaret, night club, gentlemen's club, go-go club or strip bar, adult theater, and nude model studio;
- e. Except as otherwise expressly permitted by East Campus, a theater;
- f. Except as otherwise expressly permitted by East Campus, a grocery store;
- g. Except as otherwise expressly permitted by East Campus, a bowling alley;
- h. Mobile home park, trailer court, labor camp, junkyard, or stockyard (except the temporary use of construction trailers during periods of construction);
- i. Dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear of any building);
- j. Fire sale or bankruptcy sale (unless pursuant to a court order);
- k. Except as otherwise expressly permitted by East Campus, a central laundry, dry cleaning plant, or laundromat;
- l. Automobile, truck, trailer, recreational vehicle, or motor vehicle sales, leasing, display, or repair;
- m. Veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- n. Mortuary or funeral parlors;
- o. Establishment renting, selling, or exhibiting pornographic materials (this exclusion shall not apply to: (a) a Blockbuster Video or a Hollywood Video or any other video stores that are substantially similar to the foregoing video stores as such stores operate as of the date hereof in the State of Nebraska; or (b) a Barnes & Noble, Borders, Half Price Books, or Books a Million or any other full line book stores that are substantially similar to the foregoing book stores as such stores operate as of the date hereof in the State of Nebraska);
- p. Auditorium, meeting hall, school, church, or other place of public assembly;

- q. Car wash or gas station;
- r. Carnival, amusement park, or circus;
- s. Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building; and
- t. Except as otherwise expressly permitted by Landlord, a hotel, living quarters, sleeping apartments, or lodging room.

3. CONDITION OF BURDENED PARCEL. The Declarant shall at all times during the Term keep the Burdened Parcel in a safe, clean, and attractive condition and comply in all respects with all government, health, fire, and police requirements and regulations and the covenants, conditions, and restrictions contained in this Declaration. Further, the Burdened Parcel shall at all times be kept reasonably free from debris, paper, leaves, fallen branches, and trash of all kinds and all exterior building walls and retaining walls and all other exterior surfaces shall be maintained in good condition and repair, and all broken or damaged exterior glass shall be promptly replaced.

4. TERM. This Declaration and all covenants, conditions, and restrictions herein shall continue and remain in full force and effect, commencing on the date this Declaration is executed and for a period of ten (10) years thereafter (the "Term").

5. WAIVER, MODIFICATION OR AMENDMENT BY DECLARANT. The Declarant, or any subsequent owner of the Burdened Parcel may petition East Campus to waive compliance with or grant a variance to any of the terms or conditions of this Declaration. Subject to the limitations set forth below, and based on its reasonable discretion, East Campus shall have the power to grant such waiver or variance upon such request and upon a finding by East Campus that such request is in conformity with the general scheme for the Benefited Parcel. Notwithstanding any other provision contained herein, if East Campus fails to approve or disapprove any such requests for waiver, variance, modification, or amendment within thirty (30) days after such request has been submitted to East Campus, such request shall be deemed conclusively to have been disapproved unless or until East Campus takes further action on the same, if ever.

6. REMEDIES FOR VIOLATIONS. Upon a violation or breach of any of the covenants, conditions, or restrictions set forth herein, East Campus shall have the right to proceed at law or in equity to compel compliance with the terms of this Declaration or to prevent the violation or breach of any of them and to recover damages resulting from any violation thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

7. DECLARATION SHALL CONTINUE NOTWITHSTANDING BREACH. It is expressly agreed that no breach of this Declaration shall: (i) entitle any party to cancel, rescind or, otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value; provided, however, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

8. NOTICES. Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and: shall be (i) hand delivered, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (iii) delivered via facsimile transmission, confirmation of transmittal received, and addressed to the Declarant at its address as set forth below:

Spielbound Board Game Cafe LLC
Attn: Kaleb Michaud
3229 Hamey St
Omaha, NE 68131

East Campus Realty, LLC
Attn: President
c/o Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, Nebraska 68175

Inst. # 2018013917, Pages: 4 of 6

Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of hand delivery, one (1) business day after being deposited with a nationally recognized overnight courier, or upon confirmation of the facsimile transmittal as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication.

9. SUBORDINATION REQUIRED. Declarant shall cause the holder of any mortgage, deed of trust, or security interest in the Burdened Parcel to subordinate its interest in the Burdened Parcel and any and all rights thereto to this Declaration by execution, acknowledgment, and delivery of an instrument, in a form agreeable to East Campus, acknowledging such subordination.

10. MISCELLANEOUS. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Nebraska, without reference to principles of conflicts of law. No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the covenants, conditions, and restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein. In the event any one or more of the foregoing covenants, conditions, and restrictions are declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the other covenants, conditions, and restrictions not specifically declared to be void or unenforceable, but all of the remaining covenants, conditions, and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect. Execution of this Declaration by Declarant and the acknowledgement of East Campus may be executed in multiple counterparts, all of which taken together shall be deemed one original notwithstanding the fact that both of the parties are not signatories to the same counterpart.

[Signature page follows]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first written above.

Spielbound Board Game Café, LCC, a Nebraska limited liability company
By: [Signature]
Constant F Percosky III
Its: Chief Financial Officer

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

This instrument was acknowledged before me on the 14th day of December 2017, by Constant F Percosky III, in his capacity as CFO of Spielbound Board Game Café, LCC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

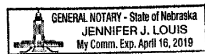
ACKNOWLEDGEMENT

TERMS AND CONDITIONS OF THE FOREGOING DECLARATION ARE HEREBY ACKNOWLEDGED BY EAST CAMPUS. UPON THE RECORDING OF THIS FULLY EXECUTED DECLARATION, EAST CAMPUS ACKNOWLEDGES THE TERMINATION OF ITS LEASEHOLD INTEREST IN THE BURDENED PARCEL.

East Campus Realty, LCC, a Nebraska limited liability company
By: [Signature]
Kenneth R. Cook, President

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

This instrument was acknowledged before me on the 9th day of January 2017, by Kenneth R. Cook, in his capacity as President of East Campus Realty, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF
BENEFITED PARCEL

Lot 1, Midtown Crossing at Turner Park, an addition to the city of Omaha in Douglas County, Nebraska; except that part thereof subjected to the Declaration of Midtown Crossing Building 200 Condominium recorded February 11, 2010 as Instrument No. 2010012980 of the Records of Douglas County, Nebraska; and except that part thereof subjected to the Declaration of Midtown Crossing Building 220 Condominium recorded January 15, 2013 as Instrument No. 2013004678 of the Records of Douglas County, Nebraska; and except that part thereof subjected to the Declaration of Midtown Crossing Building 120 Condominium recorded August 14, 2013 as Instrument No. 2013082650 of the Records of Douglas County, Nebraska; and except that part thereof subjected to the Declaration of Midtown Crossing Parcel 1 Condominium recorded October 11, 2017 as Instrument No. 2017081791 of the Records of Douglas County, Nebraska; and except that part thereof subjected to the Declaration of Midtown Crossing Building 2 Condominium recorded October 11, 2017 as Instrument No. 2017081793 of the Records of Douglas County, Nebraska.

Lots 3 and 5 and Outlots 2 through 4, inclusive, Midtown Crossing at Turner Park, an addition to the city of Omaha in Douglas County, Nebraska.

Lot 4, Midtown Crossing at Turner Park, an addition to the city of Omaha in Douglas County, Nebraska; except that part thereof subjected to the Declaration of Midtown Crossing Building 7 Condominium recorded October 12, 2017 as Instrument No. 2017082056 of the Records of Douglas County, Nebraska.

Units 1 and 2, Midtown Crossing Building 6 Condominium, a condominium organized and existing under the laws of the State of Nebraska pursuant to the Declaration thereof recorded October 12, 2017 as Instrument No. 2017082057 of the Records of Douglas County, Nebraska.

Units 1 and 2, Midtown Crossing Parcel 1 Condominium, a condominium organized and existing under the laws of the State of Nebraska pursuant to the Declaration thereof recorded October 11, 2017 as Instrument No. 2017081791 of the Records of Douglas County, Nebraska.

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