



MISC 2013062180



JUN 19 2013 11:26 P 5

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FB: 0C-38393  
COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/19/2013 11:26:47.00



2013062180

WHEN RECORDED RETURN TO:  
JERRY SLUSKY, ESQ.  
SMITH GARDNER SLUSKY LAW  
8712 W. DODGE RD, STE 400  
OMAHA, NE 68124

**DECLARATION OF RESTRICTIVE COVENANTS  
AFFECTING  
LOTS 2 AND 5, THE THOMSEN MILE REPLAT TWO 0C-38393  
AND  
LOTS 2 AND 3, THE THOMSEN MILE REPLAT THREE 0C-38394**

THIS DECLARATION OF RESTRICTIVE COVENANTS AFFECTING LOTS 2 AND 5, THE THOMSEN MILE REPLAT TWO AND LOTS 2 AND 3, THE THOMSEN MILE REPLAT THREE (the "Declaration") between THE THOMSEN MILE, LLC, a Nebraska limited liability company ("Thomsen"), THE THOMSEN MILE WF, LLC, a Nebraska limited liability company ("WF") and THE THOMSEN MILE SHOPPES, L.L.C., a Nebraska limited liability company ("Shoppes") and is dated this 18<sup>th</sup> day of June, 2013.

WITNESSETH:

WHEREAS, Thomsen is the owner of Lot 2, The Thomsen Mile Replat Two ("Lot 2 R2") and Lot 2, The Thomsen Mile Replat 3 ("Lot 2 R3"), Additions to the City of Omaha, Douglas County, Nebraska, collectively herein referred to as the "Thomsen Lots" as shown on the attached Site Plan ("Site Plan") which is marked as Exhibit 1.

WHEREAS, Shoppes is the owner of the adjacent Lot 3, The Thomsen Mile Replat 3 ("Lot 3 R3"), an Addition to the City of Omaha, Douglas County, Nebraska, herein referred to as the "Shoppes Lot" as shown on the attached Site Plan.

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WHEREAS, WF is the owner of the adjacent Lot 5, The Thomsen Mile Replat 2 (“Lot 5 R2”), an Addition to the City of Omaha, Douglas County, Nebraska, herein referred to as the “WF Lot” as shown on the attached Site Plan.

## 0c-38394

WHEREAS, WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust (“Wal-Mart”), is the owner of the adjacent Lot 1 and Outlot A of The Thomsen Mile Replat Three, an Addition to the City of Omaha, Douglas County, Nebraska, herein referred to as the “Wal-Mart Lots” as shown on the attached Site Plan.

WHEREAS, the Thomsen Lots, the Shoppes Lot, the WF Lot and the Wal-Mart Lots are all subject to the terms and conditions of the RESTATED EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND FOR LOTS 2 AND 5, INCLUSIVE, THE THOMSEN MILE REPLAT TWO AND LOTS 1 THROUGH 3 and OUTLOT “A”, INCLUSIVE, THE THOMSEN MILE REPLAT THREE, dated May 17, 2004 (“ECR”).

WHEREAS, Thomsen and Shoppes wish to grant an exclusive use clause to WF, as owner of Lot 5 R2, and its tenant, Wells Fargo Bank, N.A., a national banking association and to clarify the terms of ECR paragraph 7.b (3).

NOW, THEREFORE, for and in consideration of the premises, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Thomsen, Shoppes and WF do hereby agree as follows:

1. Definitions. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the ECR.

2. Exclusive Uses. In regards to Lot 2 R2, Lot 2 R3 and Lot 3 R3, Thomsen and Shoppes agree that neither shall lease space in the building premises or sell those lots or the buildings on those lots, to a financial services company; (2) permit those lots or the buildings on those lots to be used or occupied for providing financial services, including mortgage banking with a retail storefront, lending with a retail storefront, ATM’s, and the deposit of cash and other “bank teller” functions; (3) allow any of the uses prohibited by Section 2 of ECR. Further, Shoppes, as owner of Lot 3 R3 agrees that Lot 3 R3 shall not be used or occupied for the operation of a bowling alley, movie theater, skating rink, or video arcade not incidental to another use.

3. Maintenance. Shoppes and WF agree that the 11.2% maintenance reimbursement referred to in ECR paragraph 7.b.(3) shall be paid as follows:

a. Shoppes, as owner of Lot 3 R3 shall reimburse Wal-Mart for 5.84% of the cost of such maintenance.

b. WF, as owner of Lot 5 R2 shall reimburse Wal-Mart for 5.36% of the cost of such maintenance.

c. WF and Shoppes agree to indemnify one another from a claim by Wal-Mart if either fails to reimburse Wal-Mart as provided for above and as provided in ECR paragraph 7.b.(3).

4. Counterparts. This instrument may be executed in one or more counterparts, each of which will be deemed to be an original.

5. This Declaration shall be binding on the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the following have executed this Declaration as of the date first written above.

----- SIGNATURE PAGES TO FOLLOW -----

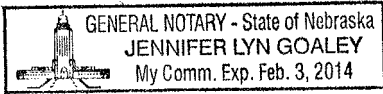
THE THOMSEN MILE, LLC, A Nebraska limited liability company

By: TM ASSOCIATES, L.L.C., a Nebraska limited liability company, a Member

By   
Trenton B. Magid, Managing Member

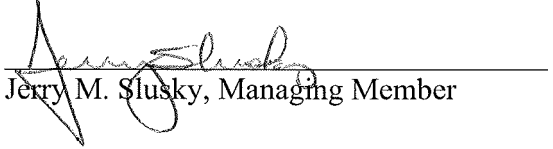
STATE OF NEBRASKA    )  
  )SS.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June 2013 by Trenton B. Magid, as Managing Member of TM ASSOCIATES, L.L.C., a Nebraska limited liability company on behalf of the limited liability company.



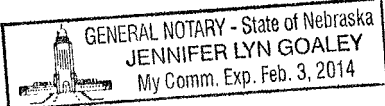
  
Notary Public

By: West Maple, L.L.C., a Nebraska limited liability company, a Member

By   
Jerry M. Slusky, Managing Member

STATE OF NEBRASKA    )  
  )SS.  
COUNTY OF DOUGLAS    )

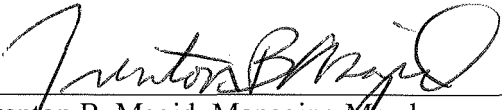
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June 2013 by Jerry M. Slusky, as Managing Member of West Maple, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.



  
Notary Public

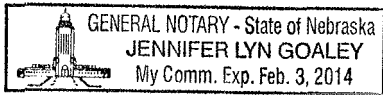
THE THOMSEN MILE SHOPPES, LLC, A  
Nebraska limited liability company

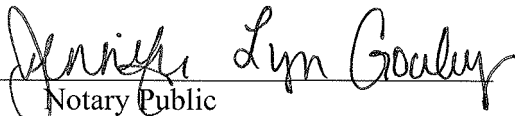
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limited liability company, a Member

By   
Trenton B. Magid, Managing Member

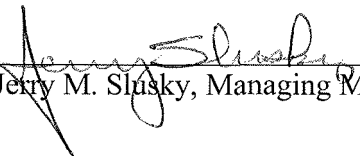
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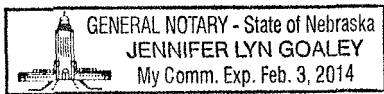
  
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