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JUL 15 2016 10:50 P 10

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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
7/15/2016 10:50:16.53



2016056009

Upon Recording Return to:
Mark B. Johnson
Fullenkamp, Doyle & Jobeun
11440 West Center Road, Suite C
Omaha, NE 68144

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made and executed as of the 15th day of JULY, 2016, by The Capitol District, LLC, a Nebraska limited liability company ("Capitol District") and Capitol Place, LLC, a Nebraska limited liability company ("Capitol Place").

(C)

WHEREAS, Capitol District conveyed to Capitol Place certain rights of Capitol District to acquire (and Capitol Place is the now current owner of) that certain real property legally described as Lot 1 and Outlot A, Cityview, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (collectively, the "Capitol Place Property");

WHEREAS, in connection with Capitol District's investment interest in that certain development immediately to the northwest of the Capitol Place Property, commonly known as "The Capitol District", a substantial portion of which is being developed as a full-service hotel, and as part of the sale transaction relating to the Capitol Place Property between Capitol District, as seller, and Capitol Place, as buyer, the parties agreed that a mutually agreed upon set of restrictive covenants, conditions, and restrictions would be placed on the Capitol Place Property; and

WHEREAS, consistent with the immediately preceding recitals, the parties desire to establish certain covenants, conditions, and restrictions upon the Capitol Place Property for the benefit of Capitol District.

NOW, THEREFORE, Capitol Place for itself, its successors and assigns and for the benefit of Capitol District, does hereby declare that the Capitol Place Property shall be subject to and shall be used in conformance with the following covenants, restrictions and agreements:

1. The ownership, development and use of the Capitol Place Property and any and all buildings, structures or other improvements located thereon (each an "Improvement" and collectively, the "Improvements") shall be restricted and burdened such that all of the following

uses or operations shall be expressly prohibited on or with respect to all or any part of the Capitol Place Property:

- (a) Any hotel, motel or inn operation;
- (b) Any use that creates obnoxious odor;
- (c) Any use that creates noxious, toxic, caustic, or corrosive fuel or gas;
- (d) Any use that creates dust, dirt, or fly ash in excessive quantities (except as may reasonably occur even with taking commercially reasonable precautions during periods of construction);
- (e) Any use that creates any unusual fire, explosion, or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks. Notwithstanding the foregoing, fires contained in commercially sold gas heaters shall not be prohibited;
- (f) Any warehouse (not including storage which is incidental to a permitted use), assembly, manufacturing, distillation, refining, smelting, or mining operations;
- (g) Any permanent flea market, "second hand" store, Army, Navy, or "surplus" store;
- (h) Any animal raising, boarding or grooming; provided, however, that this restriction shall not prohibit domestic pets allowable by law or ordinance;
- (i) Any dumping, disposal, incineration, reduction of garbage or refuse other than as incidental to an otherwise ordinary and permitted use;
- (j) Any fire or bankruptcy sale or auction house operation,
- (k) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to the following i)) a typical dry cleaning retail "store-front" operation including pressing of cleaning and on-site pickup and delivery by the ultimate consumer, including nominal supporting facilities, or (ii) personal, domestic laundry use in any residential portion of the Capitol Place Property;
- (l) Any automobile service and/or repair facilities, including body repair facilities;
- (m) Any shooting gallery or carnival;
- (n) Any veterinary hospital, clinic or pet store;
- (o) Any mortuary or funeral parlor;
- (p) Any adult bookstore, or other facility selling pornographic items or material;

- (q) Any trailer or truck rental;
- (r) Any unlawful use;
- (s) Automobile or appliance repair or service center;
- (t) Bingo, lotto, off-track betting hall, poker, blackjack hall, slot machines, video poker/blackjack machines or similar devices, or other gambling establishment except state lottery tickets lawfully sold;
- (u) Commercial car wash open to the public;
- (v) Check cashing facility or pawn shop;
- (w) Adult theater or strip-tease establishment or other display of male or female dancers;
- (x) Any abortion clinic or blood bank facility; and
- (y) Satellite dishes shall be prohibited from being hung on the exterior of any building.

Buyer represents and warrants, and Seller acknowledges, that Buyer will use the Optioned Property to construct a mixed use development that shall consist of multi-family residential units above structure parking and at-grade commercial space. Contemporaneously with the execution hereof, Buyer shall submit to Seller a preliminary site plan for the improvements to be built on the Optioned Property for Seller's review and approval. The approval of such preliminary site plan by Seller shall be a condition to Closing and shall occur prior to the Contingency Date. Buyer agrees that Seller may grant or withhold its approval of such preliminary site plan in its reasonable discretion. Buyer covenants to construct the building in general compliance with the approved preliminary site plan; provided that, any material change in use or heights of buildings will require the re-submission of a preliminary site plan to Seller for its approval, which requirement shall survive Closing and which approval shall not be unreasonably conditioned, withheld or delayed. If Seller does not reject in writing the building preliminary site plan prior to the Contingency Date, then such preliminary site plan shall be deemed accepted by Seller. In the event Seller provides a written rejection to Buyer of the preliminary site plan, then the Contract may be terminated by Buyer or Seller thereafter upon delivery of written notice to the other party.

2. Unless otherwise approved in writing by Capitol District pursuant to the terms set forth herein, the improvements to be constructed on the Capitol Place Property shall be in general compliance with the preliminary site plan previously approved by Capitol District and Capitol Place, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; provided that, any material change in use or heights of buildings will require the re-submission of a site plan to Capitol District for its approval, which approval shall not be unreasonably conditioned, withheld or delayed. Unless extended as provided herein, Capitol District shall act upon any revised site plan submitted to it within ten (10) business days after submission thereof. Capitol District's failure to respond within the time-frame set forth

herein shall be deemed to be an approval of the consent request submitted by Capitol Place. No approval of any plans under this Section 2 shall constitute an assumption of responsibility by Capitol District for the accuracy, sufficiency or propriety of the plans or a representation or warranty that the plans call for construction of improvements that comply with applicable laws, ordinances or regulations.

3. Capitol Place shall be prohibited from opening the property to be constructed on the Capitol Place Property for business prior to September 1, 2017 without the express written consent of Capitol District, which consent may be granted or withheld in the sole unfettered discretion of Capitol District.

4. This Declaration may be amended, modified, released, waived or terminated by, and only by a written agreement signed by Capitol District and the then-current owner(s) of the Capitol Place Property and shall be effective only when recorded in the official real property records of Douglas County, Nebraska; provided, however, the restrictions set forth in Section 1 hereof may be waived by the prior written agreement and consent of Capitol District and the then-current owner(s) of the Capitol Place Property and such waiver shall be effective without recordation. Failure of the Capitol District to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which Capitol District may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

5. The restrictions and obligations created pursuant to the terms of this Declaration shall be appurtenant to the Capitol Place Property and run with and be binding upon the Capitol Place Property, including future subdivisions and/or reconfigurations of the Capitol Place Property, shall be binding on all entities having or acquiring any right, title or interest in the Capitol Place Property, and shall inure to the benefit of Capitol District and its successors and assigns.

6. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Capitol Place Property to the general public, or for any public use, or public purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Declaration.

7. In the event of a breach or threatened breach of any term of this Declaration, Capitol District shall have the right to exercise any and all remedies afforded under law and at equity, including, without limitation the right to obtain injunctive relief.

8. This Declaration is made in and shall be construed pursuant to the laws of the State of Nebraska.

[Remainder of Page Left Intentionally Blank; Execution Pages Follow]

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.

CAPITOL PLACE, LLC
a Nebraska limited liability company

BY: MTM SUPPLEMENTAL SITE, LLC, a
Nebraska limited liability company,
Member

By: [Signature]
Name: Michael T. Moylan, its Sole Member

BY: AMERISPHERE PROPERTIES, LLC, a
Nebraska limited liability company,
Member

By: **AMERISPHERE COMPANIES, LLC**, a Nebraska limited liability company, Member
By: [Signature]
Name: Rodrigo Lopez, Chairman

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

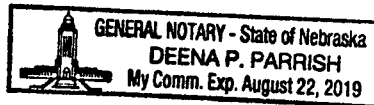
On this 15th day of July, 2016, before me, appeared Michael T. Moylan, the Member of MTM Supplemental Site, LLC, a member of Capitol Place, LLC, a Nebraska limited liability company known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be its voluntary act and deed on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

[Signature]
Notary Public in and for said County and State

Print Notary's Name: DEENA P. PARRISH

My Commission Expires:
August 22, 2019



STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 15th day of July, 2016, before me, appeared Rodrigo López, Chairman of AmeriSphere Companies, LLC, the sole member of AmeriSphere Properties, LLC, a member of Capitol Place, LLC, a Nebraska limited liability company known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be its voluntary act and deed on behalf of said limited liability company.

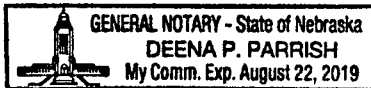
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Deena P. Parrish
Notary Public in and for said County and State

Print Notary's Name: DEENA P. PARRISH

My Commission Expires:

August 22, 2019



IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.

CAPITOL DISTRICT:

THE CAPITOL DISTRICT, LLC
a Nebraska limited liability company

BY: MTM CAPITOL DISTRICT, LLC, a
Nebraska limited liability company,
Member of The Capitol District, LLC

By: [Signature]
Name: Michael T. Moylan, its Sole Member

BY: SMITH CAPITOL DISTRICT
HOLDINGS, LLC, a Nebraska limited
liability company, Member of The Capitol
District, LLC

By: **BLACK DOG MANAGEMENT,**
LLC, a Nebraska limited liability
company, Manager of Smith Capitol
District Holdings, LLC

By: [Signature]
Name: Paul Smith, its Sole Member

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

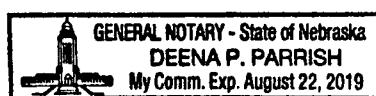
On this 15th day of July, 2016, before me, appeared Michael T. Moylan, the Member of MTM Supplemental Site, LLC, a member of The Capitol District, LLC, a Nebraska limited liability company known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be its voluntary act and deed on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

[Signature]
Notary Public in and for said County and State

Print Notary's Name: DEENA P. PARRISH

My Commission Expires:
August 22, 2019



STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 15th day of July, 2016, before me, appeared Paul Smith, the sole member of Black Dog Management, LLC, the manager of Smith Capitol District Holdings, LLC, a member of The Capitol District, LLC, a Nebraska limited liability company known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be its voluntary act and deed on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Deena P. Parrish
Notary Public in and for said County and State

Print Notary's Name: DEENA P. PARRISH

My Commission Expires:

August 22, 2019



Exhibit "A"

Site Plan

1 SITE PLAN
 scale: 1/32" = 1'-0"

