



This instrument should be returned to: TitleCore National, LLC, 9140 West Dodge Road, Suite 380, Omaha, NE 68114, Attn: Tom Low, (402) 934-4753

---

**RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT (this "Covenant") is made this **13** day of August, 2018, by East Campus Realty, LLC, a Nebraska limited liability company ("Declarant").

WHEREAS, Declarant is the owner and legal titleholder of that certain parcel of real estate in Omaha, Douglas County, Nebraska legally described on Exhibit A attached hereto ("Property");

WHEREAS, Declarant currently owns and operates a 132-suite "Element" flagged hotel on the Property and has contracted to sell the Property and the hotel to to MTC Hotel Associates, LLC, MTC Real Estate TIC, LLC, Portage Daniels, L.L.C., Portage Greenfield, L.L.C., Portage Baer, L.L.C., Portage Wolf, L.L.C., and Portage Kahan, L.L.C.;

WHEREAS, Declarant, for itself and its affiliate, United of Omaha Life Insurance Company ("U of O"), as fee title owner of Lots 1, 2, 3, 6 and 16 Mutual of Omaha Campus, a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska (the "Benefitted Property") has a vested interest in the future operation and maintenance of the hotel on the Property;

WHEREAS, Declarant desires to place certain restrictions on the Property and subsequent owners of the Property for the benefit U of O and all subsequent owners of the Benefitted Property (the "Benefitted Party"); and

WHEREAS, Declarant hereby encumbers the Property with this Covenant containing restrictive covenants.

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

1. **Recitals.** The recitals set forth hereinabove are fully incorporated herein by reference.

2. **Operation as a Hotel.** In addition to, and not in limitation of, any other restrictions with respect to the Property which may appear of record, during the period of time which U of O or any of its affiliates maintains its corporate headquarters or significant business operations at or on the Benefitted Property or any portion thereof, the Property shall; (a) be maintained and operated as a AAA rated three diamond or better hotel (or, in the event AAA no longer rates hotels on a diamond standard, a substantially similar national hotel rating); and (b) in compliance with the then affiliated flag brand standards (the "Operating Standards").

3. **Right to Purchase.**

(a) In the event that the Property has ceased to be operated as a hotel or the hotel on the Property has not been maintained and operated in a manner consistent with the Operating Standards, the Benefitted Party, or its nominee, shall have the right and option (but not the obligation) to purchase the Property for Fair Market Value (as herein defined) free and clear of all liens and encumbrances.

(b) The Benefitted Party shall exercise such option by delivering a written notice of election to purchase (an "Option Notice") to the then record owner of the Property (the "Owner") and such purchase shall close not more than one hundred eighty (180) days after delivery of the Option Notice. The Owner of the Property shall have ninety (90) days from receipt of the Option Notice to cure any default hereunder with respect to the operation of the hotel on the Property.

(c) For purposes of this Covenant, "Fair Market Value" shall mean the fair market value of the Property net of all accrued and unpaid liabilities as determined by the Benefitted Party and the Owner. If the Benefitted Party and the Owner are unable to agree on the a Fair Market Value, then they shall select a person who is not an affiliate and who is experienced in appraising property similar to the Property acceptable to both the Benefitted Party and the Owner (a "Qualified Appraiser") to determine the Fair Market Value. If the Benefitted Party and the Owner are unable to agree on a single Qualified Appraiser, each will appoint a Qualified Appraiser and the two Qualified Appraisers will agree on a third Qualified Appraiser. The Fair Market Value will be deemed to be equal to the average of the two appraisals with the least dollar variation between them; however, if one appraisal is the average of the other two appraisals, the Fair Market Value will be deemed to be the average of all three appraisals. Each Qualified Appraiser will be instructed to provide an appraisal report within thirty (30) days of his or her appointment, and all costs of appraisal will be borne equally by the Benefitted Party and the Owner.

4. **Run With Land.** All covenants, conditions, and restrictions contained in this Covenant shall run with the land and shall be binding upon all parties and persons owning any portion of the Property for the benefit of the Benefitted Property and the Benefitted Party.

5. **Effect on Liens.** Breach of any of the covenants or violation of any other provision of this Covenant 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 Covenant 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.

6. **Enforcement or Waiver.** Enforcement of the provisions of this Covenant shall be by any proceeding at law or in equity, brought by the Declarant or by any Benefitted Party, 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 or any Benefitted Party, to promptly enforce any covenant, restriction or other provision of this Covenant shall in no event be a bar to enforcement thereafter and shall not waive any rights of the Declarant or any Benefitted Party, to so enforce any covenant, restriction or other provision of this Covenant. For any violation of this Covenant, damages may be inadequate to remedy the unique injuries incurred as a result thereof and therefor Declarant and any Benefitted Party hereto shall be entitled to specific performance of any and all provisions of this Covenant.

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

8. **Rule Against Perpetuities.** If the rule against perpetuities or any other rule of law limits the time during which any provision of this Covenant 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 Covenant, and all of their children and grandchildren living on the date of execution of this Covenant.

9. **Intended Third Party Beneficiary.** The Benefitted Party is intended to be and shall always be an intended third party beneficiary of this Covenant. The Benefitted Party shall have authority to enforce the terms, conditions and provisions of this Covenant.

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

[SIGNATURE PAGE FOLLOWS.]



**EXHIBIT "A"**

**Unit 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.**