

COUNTER LM C.E. LM  
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PROOF \_\_\_\_\_  
FEES \$ 21.50  
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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2010-35585

12/10/2010 2:03:29 PM

*Clay J. Douling*

REGISTER OF DEEDS



Return to:  
Martin P. Pelster  
Croker, Huck, Kasher, DeWitt,  
Anderson & Gonderinger, LLC  
2120 South 72<sup>nd</sup> Street, Suite 1200  
Omaha, Nebraska 68124

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### DECLARATION OF RESTRICTIVE COVENANT

KNOW ALL PERSONS BY THESE PRESENTS:

That Empire Group, L.L.C., a Nebraska limited liability company ("Declarant"), being the present owner of certain real estate in the County of Douglas, State of Nebraska, legally described on the attached Exhibit A (the "Real Estate"), hereby declares that all of the Real Estate shall be subject to the restrictive covenant set forth herein.

The restrictive covenant set forth herein is for the benefit of the Declarant and its successors and assigns, and also for the benefit of RM9 Holdings, LLC, a New York limited liability company, and its successors and assigns (hereinafter the "Beneficiary"), as the owner of the property legally described on the attached Exhibit B (hereinafter the "Benefitted Property") and is being executed and recorded as a part of the transfer of the Benefitted Property by Declarant.

The restrictive covenant set forth herein shall pass with the Real Estate, or any parcel, lot or site thereof, and shall bind each and every owner thereof or of any interest therein, including Declarant, and the respective assigns and successors in interest of such owners and any lessees, tenants and other occupants of any building thereon. The restrictive covenant contained herein is imposed upon the Real Estate and is to be construed as a restrictive covenant running with the land and with each and every part thereof:

A

1. PROHIBITED USE. No portion of the Real Estate shall be used or occupied for Multifamily Dwelling Rental Purposes. The term "Multifamily Dwelling Rental Purposes" shall mean one or more buildings consisting of four (4) or more units each held by the owner(s) thereof primarily for purposes of leasing such units to third parties.

The foregoing restriction can be waived if such waiver is approved in advance in writing by Beneficiary, which such approval may be withheld in Beneficiary's sole discretion, or may be conditioned upon such terms as Beneficiary may determine.

2. REMEDIES FOR VIOLATIONS.

Upon a violation or breach of the restrictive covenant set forth herein, any Beneficiary or any of their respective successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of it.

3. AMENDMENT.

This Declaration of Restrictive Covenant may only be modified or amended by a written amendment signed by all owners of the Real Estate and by Beneficiary.

4. DECLARATION SHALL CONTINUE NOTWITHSTANDING BREACH.

It is expressly agreed that no breach of this Declaration of Restrictive Covenant shall (i) entitle any party to cancel, rescind or, otherwise terminate this Declaration of Restrictive Covenant, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. 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.

5. RULE AGAINST PERPETUITIES.

In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective being contrary to applicable law or prohibited by the "rule against perpetuities" or any similar law, then in that event only the term hereof shall be reduced to the maximum period of time which does not violate such law or the rule against perpetuities as set forth in the laws of the State of Nebraska.

6. WAIVER.

No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the restrictive covenant herein contained, shall be construed as a waiver thereof or acquiescence therein.

B

IN WITNESS THEREOF, the Declarant has caused these presents to be executed at Omaha, Douglas County, Nebraska, this 1<sup>st</sup> day of December, 2010.

EMPIRE GROUP, L.L.C., a Nebraska limited liability company

By: First Management, Inc., a Nebraska corporation, Its Manager

By: Randall Wieseler  
Randall Wieseler, President

STATE OF NEBRASKA     )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of December 2010, by Randall Wieseler, the President of First Management, Inc., a Nebraska corporation, Manager of Empire Group, L.L.C.



[Signature]  
Notary Public  
My Commission expires: 6/10/14

2010-35585, C

**EXHIBIT A**

Lots one (1), two (2) and three (3), Harrison Heights, as surveyed, platted and recorded, Sarpy County, Nebraska.

