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2020-035846

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

Latest deed relative to

2020 Jun 12

10:40 AM

"Owner No. 1 Property" referenced

in this Agreement: Deed dated

4/30/2001 recorded on 7/27/2001

as document 2001 059395

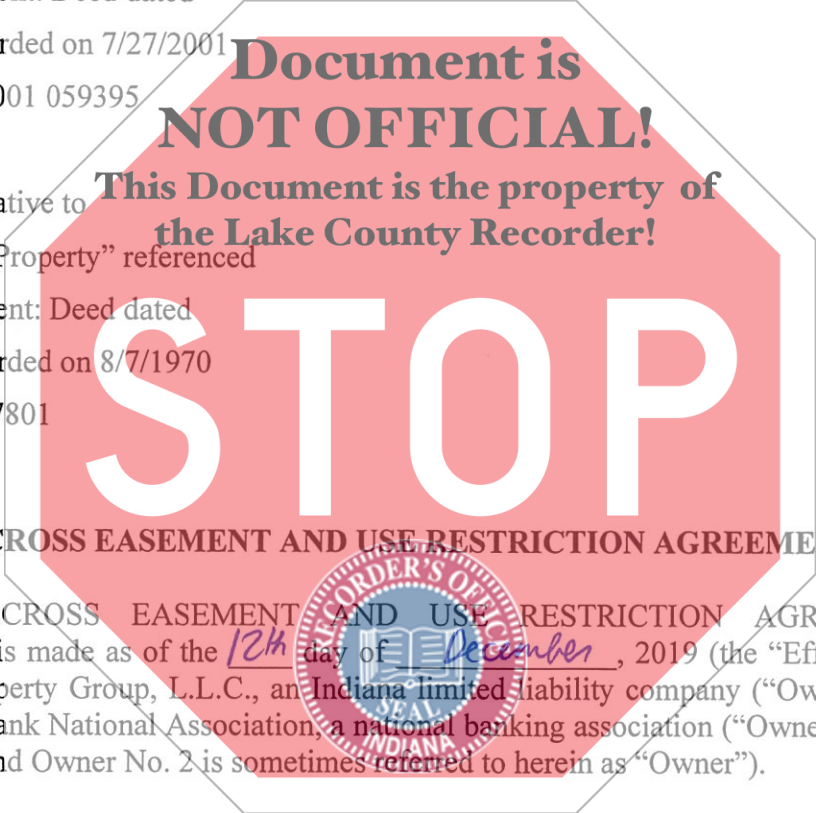
Latest deed relative to

"Owner No. 2 Property" referenced

in this Agreement: Deed dated

7/29/1970 recorded on 8/7/1970

as document 67801



CROSS EASEMENT AND USE RESTRICTION AGREEMENT

THIS CROSS EASEMENT AND USE RESTRICTION AGREEMENT (this "Agreement") is made as of the 12th day of December, 2019 (the "Effective Date") by University Property Group, L.L.C., an Indiana limited liability company ("Owner No. 1"), and BMO Harris Bank National Association, a national banking association ("Owner No. 2"; each of Owner No. 1 and Owner No. 2 is sometimes referred to herein as "Owner").

RECITALS:

A. Owner No. 1 is the contract purchaser of property located on 169th Street, Hammond, Indiana and more particularly described on Exhibit A attached hereto and made a part hereof (the "Owner No. 1 Property").

B. Owner No. 2 is the owner of property located to the west of and immediately adjacent to the Owner No. 1 Property, more particularly described on Exhibit B attached hereto and made a part hereof and commonly known as 3514 169th Street, Hammond, Indiana 46323 (the "Owner No. 2 Property"; the Owner No. 1 Property and the Owner No. 2 Property are sometimes referred to herein collectively as the "Property").

JUN 12 2020

001860

JOHN E. PETALAS
LAKE COUNTY AUDITOR

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1820801742

\$25.00

JBZ

C. Owner No. 1 and Owner No. 2 desire to grant cross access easements over certain portions of their respective properties and to impose certain use restrictions, on the terms described in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner No. 1 and Owner No. 2 hereby agree as follows, all subject to the terms of Section 14 below:

1. Grant of Easements.

(i) Owner No. 1 hereby grants to Owner No. 2, as an easement appurtenant to the Owner No. 2 Property and for the use and benefit of Owner No. 2, its successors, assigns, tenants, customers, employees, agents, invitees and any other persons claiming under or through said parties (collectively, the "Owner No. 2 Users"), a nonexclusive, perpetual easement for vehicular and pedestrian passage, ingress and egress over, across and upon that part of the Owner No. 1 Property depicted as the "Owner No. 1 Easement Area" on the site plan attached hereto and made a part hereof as Exhibit C (the "Owner No. 1 Easement Area"; the Owner No. 1 Easement Area, together with the "Owner No. 2 Easement Area" and the "Additional Owner No. 1 Easement Area" described in subsections (ii) and (iii) below, is herein referred to as the "Easement Area"; such site plan is herein referred to as the "Site Plan").

(ii) Owner No. 2 hereby grants to Owner No. 1, as an easement appurtenant to the Owner No. 1 Property and for the use and benefit of Owner No. 1 and its successors, assigns, tenants, customers, employees, agents, invitees and any other persons claiming under or through said parties (collectively, the "Owner No. 1 Users"), a nonexclusive, perpetual easement for vehicular and pedestrian passage, ingress and egress over, across and upon that part of the Owner No. 2 Property that is, from time to time and in the sole discretion of Owner No. 2, maintained for or devoted to use as a driveway usable by the Owner No. 2 Users (the "Owner No. 2 Easement Area").

(iii) Owner No. 1 hereby grants to Owner No. 2, as an easement appurtenant to the Owner No. 2 Property and for the use and benefit of the Owner No. 2 Users, a nonexclusive, perpetual easement for vehicular and pedestrian passage, ingress and egress over, across and upon that part of the Owner No. 1 Property that is, from time to time and in the sole discretion of Owner No. 1, maintained for or devoted to use as a driveway usable by the Owner No. 1 Users (the "Additional Owner No. 1 Easement Area").

(iv) Owner No. 2 hereby acknowledges and agrees that (a) Owner No. 1 may in its sole discretion, but shall not be obligated to, at its cost and expense, construct and maintain a curb anywhere along (1) the eastern boundary of the Owner No. 1 Easement Area and/or (2) the western boundary of the Owner No. 1 Property (except any part of such western boundary that is included in the Owner No. 1 Easement Area), and (b) Owner No. 2 shall not install a curb anywhere along, or in the areas adjacent to, the eastern boundary of the Owner No. 2 Property.

(v) If Owner No. 1 proceeds to construct, install and maintain such curb, or otherwise undertakes any other construction of improvements on the Owner No. 1 Property: (a) the Owner No. 1 Easement Area shall remain open and available for use as an ATM drive-lane without any material hindrance or obstruction; (b) there shall be adequate space for a left hand turn into the Owner No. 2 Property from the portion of the Owner No. 1 Easement Area which is located north of the currently existing concrete ATM pad; (c) Owner No. 1 shall repair and restore to good condition any damage to the striping, pavement, concrete ATM pad or any other improvements within the Owner No. 1 Easement Area that is caused by any such work by Owner No. 1; (d) Owner No. 1 shall allow Owner No. 2, at its expense, to add to the Owner No. 1 Easement Area any directional striping that Owner No. 1 deems necessary or desirable and that complies with law; and (e) Owner No. 1 shall have obtained all municipal and other permits and approvals required in order to construct and install such curb.

(vi) On no less than sixty (60) days advance notice to Owner No. 1, Owner No. 2 may release and relinquish to Owner No. 1 the Owner No. 1 Easement Area, in which case Owner No. 2 shall have no further rights or obligations with respect to the Owner No. 1 Easement Area.

2. Maintenance, Repair and Replacement.

(i) Subject to Section 1(v) above, Owner No. 2 shall, at its expense, maintain or cause to be maintained in good order, condition and repair the Owner No. 1 Easement Area.

(ii) For purposes of this Section 2, maintenance of the Owner No. 1 Easement Area shall mean keeping the Owner No. 1 Easement Area in a clean, safe and orderly condition.

3. No Obstruction. Except as required by law, the respective Owners of the Owner No. 1 Property and the Owner No. 2 Property shall not do anything, or permit or suffer anything to be done, to unreasonably interfere with the use of the Easement Area by Owner No. 1 or Owner No. 2 or by their respective successors, assigns, tenants, customers, employees, agents, invitees and any other persons claiming under or through said parties. Notwithstanding the foregoing provisions, nothing contained in this Section 3 shall restrict the rights of Owner No. 1 under Section 1(iv) above relative to the maintenance of certain curbs, or modify the terms or requirements set forth in Section 1(v) above.

4. Insurance.

(i) Throughout the term of this Agreement, each Owner of a portion of the Property shall procure and maintain commercial general liability insurance against claims for personal injury, death, or property damage occurring upon such Owner's portion of the Property, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) (including umbrella coverage, if any). Any Owner may elect to carry insurance required hereunder under master or blanket policies of insurance, or a self-insurance program.

(ii) Owner No. 1 shall, upon request of Owner No. 2, provide Owner No. 2 with a certificate of insurance annually as evidence of the coverage required in subsection (i) above, and such certificate shall contain a clause requiring the insurer to endeavor to give Owner No. 2 at least thirty (30) days prior written notice of any material change or cancellation of coverage specified therein. The certificate of insurance shall name Owner No. 2 as an additional insured.

(iii) Owner No. 2 shall, upon request of Owner No. 1, provide Owner No. 1 with a certificate of insurance annually as evidence of the coverage required in subsection (i) above, and such certificate shall contain a clause requiring the insurer to endeavor to give Owner No. 1 at least thirty (30) days prior written notice of any material change or cancellation of coverage specified therein. The certificate of insurance shall name Owner No. 1 as an additional insured.

5. Use Restriction. For so long as BMO Harris Bank National Association or any successor or other financial institution is occupying and using the Owner No. 2 Property for any retail banking purposes, including any drive-through banking or ATM operations, Owner No. 1 agrees that the Owner No. 1 Property shall not be used for (i) the operation of a full service financial institution (either directly or through subsidiaries and affiliates); (ii) the operation of a mortgage lending business; (iii) the provision of drive-through banking, or drive-through or exterior walk-up ATM, services; or (iv) the operation of a savings and loan or credit union; provided, however, that, notwithstanding the foregoing or anything to the contrary set forth in this Agreement, nothing in this Section 5 or elsewhere in this Agreement shall restrict or prohibit the operation on the Owner No. 1 Property or any part thereof of a so-called "payday loan" business, a check cashing business, a currency exchange, an insurance agency, company or business, a business making unsecured loans or secured loans (other than mortgage loans) or a brokerage or stock brokerage business or the operation of an ATM(s) on the Owner No. 1 Property (so long as any such ATM is located in the interior of a business primarily devoted to purposes other than ATM operations).

6. Remedies and Enforcement

(i) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner of any of the terms, covenants, restrictions or conditions hereof, any other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including, without limitation, payment of any amounts due and/or specific performance.

(ii) Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by another Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and to be reimbursed by such defaulting Owner upon presentation of an invoice for the

reasonable costs thereof accompanied by reasonable supporting documentation (and such performing Owner shall further be entitled to receive from the defaulting Owner interest on such reasonable costs expended by it at a per annum rate equal to the prime rate of JPMorgan Chase Bank, N.A. (or its successors or assigns), plus six percent (6%) per annum (not to exceed the maximum rate of interest allowed by law)). Without limitation of the foregoing, in the case of any breach of this Agreement or threat thereof involving loss or material impairment (in the good faith determination of the non-defaulting Owner) of ingress or egress to or from the Easement Area or involving an emergency situation that if not corrected would or may result in damage to property or would or may materially impair the conduct of business in a reasonable manner on the portion of the Property owned by the non-defaulting Owner or involving unauthorized parking of vehicles on the portion of the Property owned by the non-defaulting Owner, the non-defaulting Owner shall not be obligated to wait for the expiration of the above referenced cure period before acting under this subsection (i) and may, but shall not be obligated to, act immediately under this subsection (ii).

(iii) Lien Rights. Any claim for reimbursement, including, without limitation, interest as aforesaid, and all costs and expenses (including, without limitation, reasonable attorneys' fees) awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (an "Assessment Lien") against the portion of the Property owned by the defaulting Owner until paid, effective upon the recording of a notice of lien priority with respect thereto in the Office of the County Recorder of Lake County, Indiana; provided, however, that any such Assessment Lien shall be subject and subordinate to (a) liens for taxes and other public charges that by applicable law are expressly made superior, (b) all liens recorded in the Office of the County Recorder of Lake County, Indiana prior to the date of recordation of said notice of lien priority, (c) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien priority, and (d) the lien of a first mortgage or deed of trust made in good faith for value to an institutional mortgagee or trustee (such as, by way of example and not limitation, a bank, pension fund, savings and loan association, insurance company or like institution). All liens recorded subsequent to the recordation of the notice of lien priority described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien priority was recorded, the party recording same shall record an appropriate release of such notice of lien priority and Assessment Lien.

(iv) Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

(v) No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any portion of the Property made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such portion of the Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

7. Duration. Except as otherwise provided in Section 1(vi) above, the easements granted in this Agreement shall be perpetual.

8. Binding Effect. All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

9. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Indiana.

10. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

12. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including, without limitation, reasonable attorneys' fees, from the non-prevailing party.

13. Notices. All notices under this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party or parties at its or their last known address. If a party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Any party may change its address for notice by providing written notice to the other party.

14. Condition to Effectiveness. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement shall not be effective or enforceable until, and shall be recorded and become a record matter of title only at, such time as University Property Group, L.L.C., or any entity controlled, directly or indirectly, by any person(s), or any family member(s) of any person(s), that is a member of University Property Group, L.L.C., acquires title to the Owner No. 1 Property pursuant to a deed recorded in his, her, its or their favor with respect to the Owner No. 1 Property, which acquisition must be within one (1) year after the date of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, Owner No. 1 and Owner No. 2 have executed this Agreement as of the date first written above.

OWNER NO. 1:

University Property Group, L.L.C.

By: [Signature]
Name: Jonathan M. Harris
Its: President

STATE OF ILLINOIS

COUNTY OF Cook

Document is NOT OFFICIAL!

This Document is the property of the Lake County Recorder!

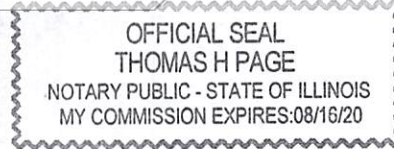
Personally came before me this 16th day of December, 2019, the above named Jonathan M. Harris, the President of University Property Group, L.L.C., an Indiana limited liability company, to me known to be the person who executed the foregoing Agreement, and acknowledged the same in his/her capacity as President of such company and on behalf of such company.

Thomas H Page



Notary Public, State of Illinois

My Commission Expires: 8/16/20
County of Residence: Cook County, IL



OWNER NO. 2:

BMO Harris Bank National Association

By: [Signature]
Name: Daniel A. Cooke
Its: Vice President
Corporate Real Estate

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Personally came before me this 1st day of December, 2019, the above named DANIEL A. COOKE, the VICE PRESIDENT of BMO Harris Bank National Association, a national banking association, to me known to be the person who executed the foregoing Agreement, and acknowledged the same in his/her capacity as V.P. of such association and on behalf of such association.



[Signature]
Notary Public, State of ILLINOIS
My Commission Expires: 5/10/21
County of Residence: DUPAGE

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Thomas H. Page*

This document prepared by and after recording return to: Thomas H. Page, Barack Ferrazzano Kirschbaum & Nagelberg LLP, 200 West Madison Street, Suite 3900, Chicago, Illinois 60606, with the advice and counsel of Greg A. Bouwer, Koransky, Bouwer & Poracky, P.C., 425 Joliet Street, Suite 425, Dyer, Indiana 46311

EXHIBIT A

Owner No. 1 Property

For APN/Parcel ID(s): Part of 45-07-10-326-002.000-023

PART OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 13 MINUTES 15 SECONDS EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, 2199.03 FEET; THENCE SOUTH 00 DEGREES 46 MINUTES 45 SECONDS WEST, 42.68 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 46 MINUTES 45 SECONDS WEST, 190.31 FEET; THENCE SOUTH 89 DEGREES 13 MINUTES 37 SECONDS EAST, 224.37 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 53 SECONDS WEST, 190.30 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 11 SECONDS WEST PARALLEL TO THE NORTH LINE OF SAID QUARTER SECTION, 221.46 FEET TO THE POINT OF BEGINNING.

[NOTE: THE ABOVE PROPERTY IS IN THE PROCESS OF BEING SUBDIVIDED TO BE A SEPARATE PLATTED LOT.]

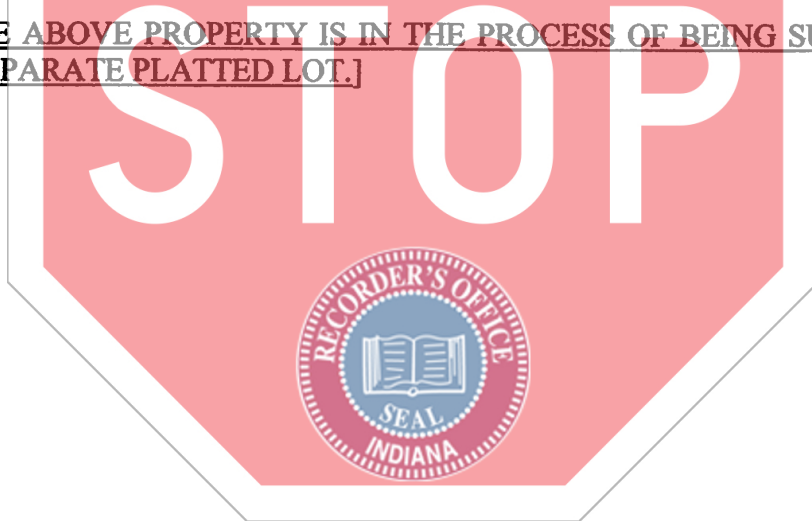


EXHIBIT B

Owner No. 2 Property

APN/Parcel ID: 45-07-10-326-003.000-023

A parcel of land lying in the Southwest Quarter of Section 10, Township 36 North, Range 9 West of the Second Principal Meridian, being more particularly described as beginning at the Northwest corner of the Southwest Quarter of said Section 10, thence South 89 degrees 13 minutes 15 seconds East along the North line of the Southwest Quarter of Section 10 (said North line also being the center line of 169th Street), a distance of 2039.14 feet to the POINT OF BEGINNING; thence South 0 degrees 46 minutes 45 seconds West a distance of 233.0 feet; thence South 89 degrees 13 minutes 15 seconds East a distance of 160 feet; thence North 0 degrees 46 minutes 45 seconds East a distance of 233.0 feet to the North line of the Southwest Quarter of said Section 10; thence North 89 degrees 13 minutes 15 seconds West, a distance of 160.0 feet to the POINT OF BEGINNING,

EXCEPTING the North 33 feet thereof taken for 169th Street.

AND EXCEPT that part deeded by Mercantile National Bank of Indiana, a National Banking Association, to the City of Hammond, a Municipal Corporation, in the Warranty Deed dated March 6, 2001, and recorded June 11, 2001 as Document No. 2001 044621, more particularly described as follows:

A part of the Southwest Quarter of Section 10, Township 36 North, Range 9 West, Lake County, Indiana, described as follows: Commencing at the Northwest corner of said Quarter Section; thence South 89 degrees 00 minutes 32 seconds East (assumed bearing) 621.530 meters (2039.14 feet) along the North line of said Quarter Section to a prolonged West line of the grantor's land; thence South 0 degrees 59 minutes 28 seconds West 10.058 meters (33.00 feet) along said prolonged West line to the POINT OF BEGINNING of this description, which point is at the intersection of the West line of grantor's land and the South boundary of 169th Street; thence South 89 degrees 00 minutes 32 seconds East 48.768 meters (160.00 feet) along said South boundary to the East line of the grantor's land; thence South 0 degrees 59 minutes 28 seconds West 2.955 meters (9.69 feet) along said East line; thence North 89 degrees 00 minutes 28 seconds West 48.768 meters (160.00 feet) to said West line; thence North 0 degrees 59 minutes 28 seconds East 2.954 meters (9.69 feet) along said West line to the POINT OF BEGINNING.

