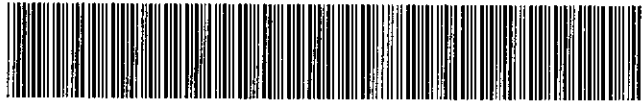




MISC 2004062137



MAY 14 2004 10:16 P 6

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

168TH and Dodge, L.P.
c/o RED Development
Attn: Dan Lowe
4717 Central
Kansas City, MO 64112

mlm 3100 *OC-40344*
6/2
DEL _____ SCAN _____ FV _____

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
5/14/2004 10:16:54.46



2004062137

Filed: AS RECEIVED

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, under the Agreement of Sale dated March 24, 2004 (the "Agreement"), 168th AND DODGE, L.P., a Nebraska limited partnership ("Developer") agreed to sell to SWH CORPORATION, a California corporation, d/b/a Mimis Cafe, ("SWH") the premises described in the Agreement (which premises are legally described on Exhibit A attached hereto) (hereafter, the "Property") and located at Village Pointe Shopping Center in Douglas County, Nebraska.

WHEREAS, the Agreement was assigned by SWH to REALTY TRUST GROUP, INC., a Delaware corporation, as Trustee pursuant to that certain Realty Trust Agreement dated May 12, 2000, (hereafter "Owner").

WHEREAS, the Property is subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions Agreement by and between Developer and Scheel's All Sports, Inc., dated June 23, 2003 and recorded on July 2, 2003 as Document No. 2003128568, as amended from time to time, (the "ECR"); and

WHEREAS, the Agreement provides that the use of the Property shall be restricted to certain specific uses; and

WHEREAS, the Agreement further provides that Developer shall restrict the permitted uses of certain real property owned by Developer (the "Restricted Property"), which Restricted Property is legally described on Exhibit "B" hereof.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner covenant and agree as follows:

1. Permitted Use. Owner agrees that the Property shall be used only for the purposes described as follows:

1.1. The Property shall be used, if at all, and without any express or implied obligation that such use be continuous for any period of time other than as set forth in the Buy-Back Agreement (as hereafter defined), only for the development, construction and operation of a casual/family style, full service, sit down, restaurant serving breakfast, lunch and dinner together with the incidental sale of beer and wine (the "Permitted Use") and for no other use without the consent of Developer, which consent shall not be unreasonably withheld, conditioned or delayed if the requested change of use remains a restaurant, and which shall initially be constructed and operated under the trade name "Mimis Cafe". For the

Return to:
The Katz Law Firm
Melissa
6299 Nall Ave., #210
Shawnee Mission, KS 66202

T-0478621

-4-

purposes hereof, the "Buy-Back Agreement" shall mean that certain Developer Acquisition Rights Agreement entered into between the parties of even date herewith.

2. Exclusive Use. Subject to the terms and conditions hereof, Developer agrees that:

2.1. Subject to temporary closures arising from casualty, condemnation or periods not exceeding sixty (60) days for remodeling ("Permitted Closures"), so long as the Property shall be fully and continuously occupied as a fully staffed and operating "Mimis Cafe", Developer, will not lease, sublease or otherwise operate or contract, by conveyance or otherwise, the real property legally described on Exhibit B attached hereto (the "Restricted Property") as and for a restaurant of more than 3,500 square feet in size which serves breakfast (hereinafter "Owner's Exclusive Use"), or for operation under any of the following trade names: Houlihan's, Friday's, Ruby Tuesday, Max & Erma's, Applebee's, BJ's or Red Robin.

2.2. Termination. Owner's Exclusive Use shall automatically terminate the earlier of:

2.2.1. In the event following the initial opening for business of a Mimis Cafe within the Property, the Property fails to be continually occupied and operated for the Owner's Exclusive Use so granted (other than in connection with the Permitted Closures), or

2.2.2. In the event of an uncured default after any applicable notice and/or cure period(s) by Owner under any term of the ECR.

3. These restrictions are for the benefit of Owner and run with the Restricted Property, and are for the benefit of and binding upon all successive owners and occupants of the Property and the Restricted Property.

4. Counterparts. This Declaration of Restrictive Covenant may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration of Restrictive Covenant to be executed effective as of the day and year above referenced.

"OWNER"

Realty Trust Group, Inc., a Delaware corporation, as Trustee pursuant to that certain Realty Trust Agreement Dated May 12, 2000

By: [Signature]
Name: _____
Title: President
Date of Execution: 5-10-04

STATE OF Nebraska)
COUNTY OF Lancaster) ss.

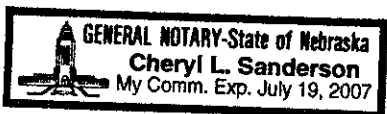
** FILED: AS IS

Now on this 10 day of May, 2004, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Robert Weyer, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

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

[Signature]
Notary Public

My Commission Expires: 7-19-07



"DEVELOPER"

168TH AND DODGE, L.P.,
A NEBRASKA LIMITED PARTNERSHIP

BY: RED DEVELOPMENT OF WEST
DODGE, L.L.C, A MISSOURI LIMITED
LIABILITY COMPANY, ITS GENERAL
PARTNER

By: E&R Holdings, LLC,
an Arizona limited liability company,
Manager

By: *Michael L. Ebert*
Michael L. Ebert, Manager

Date of Execution: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

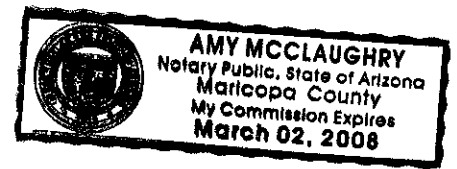
** FILED: AS IS

Now on this 15th day of May, 2004, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

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

Amy McLaughry
Notary Public

My Commission Expires: 3/2/08



Prepared by: The Katz Law Firm, 6299 Nall, Mission, KS 66202

EXHIBIT A
to Declaration of Restrictive Covenants

THE PROPERTY

Lot 1, Village Pointe Replat Two, a subdivision in Douglas County, Nebraska, according to the recorded plat thereof.

EXHIBIT B
to Declaration of Restrictive Covenants

THE RESTRICTED PROPERTY

Lot 2, Village Pointe Replat Two, a subdivision in Douglas County, Nebraska, according to the recorded plat thereof.