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Register of Deeds, Douglas County, NE
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2009138460

EASEMENTS, COVENANTS AND RESTRICTIONS ("ECR")

THIS AGREEMENT is made as of the 30 day of December, 2009, by and between Grand 72, LLC, a Nebraska limited liability company, (hereinafter referred to as "Grand 72"), and Goodwill Industries, Inc, a Nebraska nonprofit corporation, (hereinafter referred to as "Goodwill").

WITNESSETH:

WHEREAS, Grand 72 is the owner of **Lots 1 and 2, Benson Park Plaza Replat 3, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska ("Lots 1 and 2")**;

WHEREAS, Goodwill is the owner of **Lot 3, Benson Park Plaza Replat 3, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska ("Lot 3")**; and

WHEREAS, Grand 72 and Goodwill desire that Lot 3 be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

NOW THEREFORE, for and in consideration of the premises, easements, covenants, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Grand 72 and Goodwill do hereby agree as follows:

1. **Common Areas.** Goodwill, Grand 72, and their successors in interest agree to provide or cause the provision of, when constructed, a common area on Lots 2 and 3 as shown on Exhibit A attached hereto which shall include, but not be limited to, pedestrian sidewalks, shopping cart ramps, landscaped areas, parking areas and areas for vehicular circulation, which shall be paved, marked and adequately lighted and ready for use by Grand 72 and its successor in interest and their tenants, contractors, suppliers, agents, employees, customers and invitees. Goodwill and its successors in interest shall maintain or shall cause the maintenance of the common area (including lighting) in good condition and repair in a professional manner and keep it free of ice and snow. No changes shall be made without the prior written approval of Grand 72 in the portion of such common area identified as "Protected Area" on Exhibit A attached hereto which would materially and adversely affect the number of parking spaces available therein, the ingress to and egress from such common area or the buildings on Lots 1 and 2, the pattern of traffic flow within such common area and/or the visibility of the buildings on Lots 1 and 2 from adjoining thoroughfares. The parties hereto, their tenants, contractors, suppliers, agents, employees, customers and invitees shall have nonexclusive easements over all of such common area for free parking and for ingress to and egress from the buildings on their respective lots as set forth

RETURN TO:
SPENCE TITLE SERVICES
BOX 16 -

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herein, all subject to and, if applicable, as provided in, the Reciprocal Easement and Operation Agreement recorded in Book 1341 at Page 366 as amended by Amendment Number One recorded in Book 1365 at Page 2, Amendment Number Two in Book 1375 at Page 205, Amendment Number Three in Book 1481 at Page 185 and Amendment Number Four as Instrument Number 2006022459, all of the Miscellaneous Records of Douglas County, Nebraska (collectively "REA")

2. **Limitation of Use.** For so long as Hancock Fabrics, Inc., its successors or assigns, is a tenant on Lot 1, no part of Lots 2 and 3 shall be occupied by any office building (not including reasonable office space incidental to a non-office use), entertainment facility, recreational facility, training facility or educational facility, or occupied or used for the sale or offering for sale of pornographic or "adult" items, materials or products. As used herein, "entertainment facility" or "recreational facility" includes, but is not limited to, a bowling alley, skating rink, theatre, billiard room, health spa, health studio, gymnasium, massage parlor, bar, tavern, amusement arcade or other place of amusement; and "training facility" or "educational facility" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction, or any other operation catering primarily to students or trainees rather than to customers. Notwithstanding anything to the contrary, Grand 72, and its successors in interest, agrees for Goodwill only, as long as Goodwill holds title to Lot 3, Goodwill shall be allowed to use Lot 3 for office uses provided it is in conjunction with non-office uses and for training facilities or educational facilities or provided it is in conjunction with non-training or non-educational facilities. It is understood by the parties that a portion of the building on Lot 3 will be used by Goodwill for second-hand and surplus retail sales.

3. **Utility Easement.** Grand 72 and Goodwill do hereby convey a non-exclusive easement for utilities in, over, to, and across the areas of Lots 2 and 3, in those portions thereof where no buildings have been constructed, and in those portions which are outside the Building Limit Lines as provided by the REA for the benefit and use by the owner (and its contractors, invitees, licensees, tenants, and employees) of a.) Lot 1 on Lots 2 and 3, and b.) of Lot 2 on Lot 3, for the purpose of installation of sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires and other utility systems (collectively the "Utility Systems") beneath the ground surfaces. Subsequent to the initial installation, any construction, reconstruction, repair, replacement or maintenance of the Utility Systems may be undertaken by an owner provided that in all cases, in the performance of such work: (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the common area improvements, surface coverings and facilities shall be replaced or restored to as good or better condition in which they were prior to the performance of such work; (iii) the parties shall be indemnified and held harmless against claims, damages, and losses, including costs and attorneys' fees arising from the performance of such work or use of such easement; (iv) the affected party shall be notified in writing by the party for whose benefit such work is performed or such use if made not less than thirty (30) days prior to commencement of such work and shall have the right to request and review the plans therefore; (v) the affected party shall be consulted reasonably in advance on any proposed installation, maintenance or location changes which shall require prior written approval by the affected party, which shall not be unreasonably withheld, conditioned or delayed; and (vi) no such work, installation or modification shall impair or disrupt existing utilities or the use thereof except with the prior approval of the owner of the affected lot. In addition, each party shall be obligated to perform such other acts, and to execute, acknowledge, and/or deliver such instruments, documents

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and other materials as a party may request in order to document any such easement in a commercially reasonable manner. Notwithstanding the above, no owner may modify, alter, or change the Utility Systems of any other owner without the prior written consent of such other owner.

4. **Release from Liability.** Any person acquiring fee or leasehold title to Lot 2 or 3, or any portion thereof, shall be bound by this ECR only as to the portion of such lot acquired by such person. In addition, such person shall be bound by this ECR only during the period such person is the fee or leasehold owner of such lot or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this ECR shall continue to be benefits to Lots 1 and 2 and servitudes upon said Lots 2 and 3 running with the land.

5. **Breach/Default.** In the event of breach or threatened breach of this ECR, the record owners of a lot encumbered by this Agreement, jointly or severally, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

- (a) Each party shall be responsible for the default of its occupants or tenants.
- (b) With respect to any default under Section 1, any owner of a lot encumbered by this Agreement shall have the right, jointly and severally, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting lot owner, provided, however if an event that would become a default under Section 1 with the passage of time shall constitute an emergency condition, an owner, acting in good faith, shall have the right to cure such failure upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.
- (c) The defaulting owner shall reimburse all costs and expenses incurred in connection with such curative action, plus interest, within ten (10) days after receipt of demand therefore, together with reasonable documentation supporting the expenditures made.
- (d) To effectuate any cure, a non-defaulting owner, jointly and severally, shall have the right to enter upon the defaulting owner's lot to perform any necessary work or furnish any necessary materials or services to cure the default.
- (e) Costs and expenses accruing and/or assessed pursuant to this Section 3 shall be secured by and constitute a lien against the defaulting owner's lot. The lien shall attach and take effect only upon recordation of a claim of lien in the official real estate records of Douglas County, Nebraska. The claim of lien shall include the following:

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- (i) The name of the lien claimant;
 - (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant;
 - (iii) An identification of the defaulting owner or reputed defaulting owner or interest therein against which the lien is claimed;
 - (iv) A description of the defaulting owner's lot or portion thereof against which the lien is claimed;
 - (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
 - (vi) A statement that the lien is claimed pursuant to the provisions of this ECR, reciting the date of recordation and the recorded document number (or book and page) thereof for this ECR.
- (f) The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed. The lien so claimed may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage or construction lien under the applicable provisions of the law of the State of Nebraska. The lien shall be subject and subordinate to any mortgages or deeds of trust which are of record on or before the date on which the claim of lien is placed of record.

6. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

7. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by both Goodwill and Grand 72 there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This ECR (including exhibits) may be modified or canceled only by the mutual agreement of the then current owners of Lot 1, 2, and 3.

8. **Duration.** Unless otherwise canceled or terminated, or unless otherwise provided herein, this ECR and all the easements, covenants, rights, restrictions, and provisions in this ECR create an equitable servitude, constitute covenants running with the land, shall bind every person or entity having any fee, leasehold, or other interest in or encumbrance on any portion of either property at any time, and shall continue in full force and effect perpetually.

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9. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

10. **Notices.**

(a) All notices, demands, statements and requests (collectively, "notices") required or permitted to be given under this ECR must be in writing and shall be delivered by personal service, reputable overnight courier, or United States registered or certified mail, postage prepaid and return receipt requested. Notice sent as set forth above shall be deemed received upon delivery or refusal of acceptance.

(b) The initial addresses of the parties shall be:

| | | |
|-----------|-----------------------------------|----------------------------|
| Goodwill: | <u>On or before July 31, 2010</u> | <u>After July 31, 2010</u> |
| | 1111 S. 41st Street | 4805 N. 72nd Street |
| | Omaha, NE 68105 | Omaha, NE 68134 |
| | Attn: Frank McGree | Attn: Frank McGree |

Grand 72: c/o Seldin Company
Attention: Randall Lenhoff
13057 West Center Road – Suite 1
Omaha, NE 68144

(c) Each person shall have the right from time to time to change its address for notice purposes to any other address within the United States of America upon at least ten (10) days prior written notice to the other party in accordance with the provisions of this Section 9. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice hereunder.

11. **Estoppel Certificate.**

(a) Each party shall, upon the written request (which shall not be more frequent than three (3) times during any calendar year) of the other party, issue to such person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(i) whether it knows of any default under this ECR by the requesting person, and if there are known defaults, specifying the nature thereof;

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- (ii) whether this ECR has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and
- (iii) whether this ECR is in full force and effect.

12. **Non-Merger.** Even though the underlying fee of Lots 1 and 2 is owned by one person or entity, this ECR shall not be subject to the doctrine of merger.

13. **Entire Agreement.** This ECR constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

GRAND 72, LLC
A Nebraska limited liability company
BY: Northwood Properties, Inc., Manager

By: *Randall Lerkhoff*
Name: Randall Lerkhoff
Title: President

GOODWILL INDUSTRIES, INC.
A Nebraska nonprofit corporation

By: *Frank McGree*
Name: Frank McGree
Title: President

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STATE OF NEBRASKA)
) ss.
DOUGLAS COUNTY)

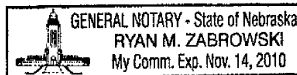
On this 2nd day of December, 2009, before me, the undersigned, a Notary Public in and for the state of Nebraska, personally appeared Randall Lernoff, to me personally known, who being by me duly sworn did say that he is the President of Northwood Properties, Inc., which is the Manager of Grand 72, LLC, a Nebraska limited liability company and that said instrument was signed on behalf of said limited liability company



Cindy M. Wiese

Notary Public in and for the
State of Nebraska

STATE OF NEBRASKA)
) ss.
DOUGLAS COUNTY)



On this 21st day of DECEMBER, 2009, before me, the undersigned, a Notary Public in and for the state of Nebraska, personally appeared FRANK MCGREE, to me personally known, who being by me duly sworn did say that he is the PRESIDENT & CEO of Goodwill Industries, Inc., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors.

Ryan M. Zabrowski

Notary Public in and for the
State of Nebraska

LIENHOLDER'S CONSENT AND SUBORDINATION

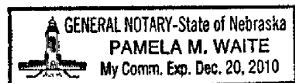
The undersigned, FIRST NATIONAL BANK OF OMAHA, a national banking association, as holder of a Deed of Trust, Security Agreement and Assignment of Rents ("Deed of Trust") executed and delivered by Goodwill Industries, Inc., a Nebraska nonprofit corporation, against all or a part of the real estate described in the Easements, Covenants and Restrictions ("ECR") to which this consent and subordination is attached and for and in consideration of the benefits to it and its security contained in said ECR, hereby agrees with and consents to the creation of this ECR and specifically subordinates any interest it may have in and to any part of said real estate to said ECR, including (without limitation) the lien of its Deed of Turst dated December 30th, 2009, and filed of record December 31, 2009, as Instrument No. 2009138458 in the offices of the Recorder, Douglas County, Nebraska.

FIRST NATIONAL BANK OF OMAHA

By: Keith A. Swanson
Name: Keith A. Swanson
Title: Vice President

STATE OF NEBRASKA)
) ss.
DOUGLAS COUNTY)

On this 23RD day of December, 2009, before me, the undersigned, a Notary Public in and for the state of Nebraska, personally appeared Keith A. Swanson, to me personally known, who being by me duly sworn did say that he is the VICE PRESIDENT, of the FIRST NATIONAL BANK OF OMAHA; that said instrument was signed on behalf of said corporation by authority of its Board of Directors.



Pamela M. Waite
Notary Public in and for the
State of Nebraska

