

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2014-08167

2014 Apr 24 09:08:58 AM

Lloyd J. Dowling

REGISTER OF DEEDS



COUNTER JS
VERIFY JS
FEES \$ 46.00
CHG_SFILE
SUBMITTED TITLECORE ESCROW - COMMERCIAL

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Declaration of Exclusive Use Restrictive Covenants

DATE OF DOCUMENT: April 23, 2014

GRANTOR(S) NAME: Papillion Development Settlers Creek, LLC
MAILING ADDRESS: Attn: Director of Legal/Leasing
One East Washington Street, #300
Phoenix, AZ 85004

GRANTEE(S) NAME: Metro Health Services Federal Credit Union
MAILING ADDRESS: Attn: Mike McDermott
14517 F Street
Omaha, Nebraska 68137

LEGAL DESCRIPTION: See Exhibits A and B

REFERENCE BOOK AND PAGE NUMBER: n/a

113494

DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANTS

THIS DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANTS (the "**Declaration**") is made and entered into this 23 day of April, 2014, by and between Papillion Development Settlers Creek, LLC, a Nebraska limited liability company, its successors and/or assigns (collectively, "**Developer**") and Metro Health Services Federal Credit Union, a federal credit union, its successors and/or assigns ("**Owner**").

WITNESSETH:

WHEREAS, under the Sale and Purchase Agreement dated July 3, 2013, as amended thereafter (collectively, the "**Agreement**"), Developer has agreed to sell to Owner the premises (hereafter, the "**Premises**") described in the Agreement, which premises are legally described on **Exhibit A** ("**Legal Description of the Premises**") attached hereto and located at the Settler's Creek Shopping Center in Papillion, Sarpy County, Nebraska, (the "**Shopping Center**"); and

WHEREAS, Developer has agreed to restrict the permitted uses of only those portions of the Shopping Center legally described on **Exhibit B** (the "**Restricted Property**").

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

1. Commencing on the date of this Declaration and so long as, following the date Owner opens for business to the public, the Premises are operated as a credit union, the Restricted Property shall not be operated as a credit union. This Declaration shall automatically terminate in the event Owner fails to open a business on the Premises as a credit union within thirty-six (36) months following the date hereof, or ceases to operate as a credit union for a period of twelve (12) or more consecutive months after its initial opening and the failure continues for thirty (30) days following written notice from Developer to Owner of the same unless, during the period of nonuse, notice is given by Owner of its intention to resume use of the Premises within eighteen (18) months following the date on which nonuse commences and such resumption occurs within such period.

2. Remedies and Enforcement.

2.1 Legal and Equitable Remedies Available. In the event of a breach or threatened breach by the owner of any portion the Restricted Property, or such owner's tenants or their employees, agents, contractors, customers, invitees, or licensees, of any of the terms, covenants, restrictions or conditions hereof, the other party 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 payment of any amounts due and/or specific performance. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

2.2 No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any portion of the Restricted Property made in good faith for value. The covenants, conditions and restrictions hereof shall be binding upon and effective

against any owner of any portion of the Restricted Property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

3. No waiver of any default of any obligation by any party shall be implied from any omission by the other party to take any action with respect to such default.

4. This Declaration constitutes a covenant running with the land which shall bind subsequent owners and users of the Premises and the Restricted Property.

5. This Declaration shall operate only to the extent Developer's covenants and agreements are not contrary to public policy or contrary to law. Each provision of this Declaration and the application thereof are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration.

6. If any party shall bring suit against the other to enforce the terms of this Declaration, the losing party shall pay to the prevailing party the prevailing party's costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in enforcing this Declaration.

7. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska.

8. This Declaration may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Balance of this page intentionally left blank.]

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration of Exclusive Use Restrictive Covenants to be executed effective as of the latest date executed, as shown below.

“OWNER”

METRO HEALTH SERVICES FEDERAL CREDIT UNION, a federal credit union

By: [Signature]
Name: MICHAEL P. McDERMOTT
Title: PRESIDENT / CEO

Date of Execution: April 23, 2014

STATE OF Nebraska)
COUNTY OF Douglas) ss.

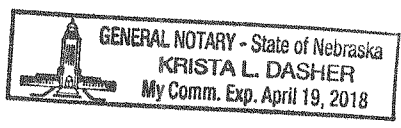
Now on this 23rd day of APRIL, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came MICHAEL P. McDERMOTT, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed. *president / CEO of metro Health Services Federal Credit Union

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: 4.19.2018



"DEVELOPER"

PAPILLION DEVELOPMENT SETTLERS CREEK, LLC, a Nebraska limited liability company

By: RED Papillion Settler's Creek, LLC, a Missouri limited liability company

By: RED Consolidated Holdings, LLC, a Delaware limited liability company, its Managing Member

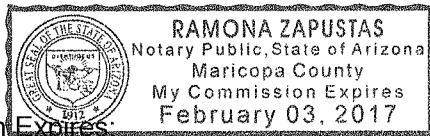
By: Michael L. Ebert
Michael L. Ebert, Vice President
Date of Execution: 4-21-14

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 21 day of April, 2014, 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.

** Vice President of Red Consolidated Holdings, LLC*
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Ramona Zapustas
Notary Public



My Commission Expires:

**EXHIBIT A
TO DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANTS**

LEGAL DESCRIPTION OF THE PREMISES

Lot 3, Settlers Creek, Replat 6, a subdivision as surveyed, platted and recorded in Sarpy County.

**EXHIBIT B
TO DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANTS**

RESTRICTED PROPERTY

Lots 4 and 5, each in Settlers Creek, Replat 6, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.