

BK 1444 PG 549-553



MISC 2002 13428

RICHARD H. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made this 24th day of May, 2002, by West Bay, Inc., a Nebraska corporation, and Walnut Grove Plaza I, LLC, a Nebraska limited liability company (sometimes referred to hereinafter collectively as "Declarant").

RECITALS

WHEREAS, West Bay, Inc. is the owner of the real property generally located at the northeast corner of 156th and "Q" Streets in Omaha, Douglas County, Nebraska and legally described as follows:

M1-40578
Lots 1, 2, and 8, Walnut Grove Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; Lots 2 and 5; Walnut Grove Plaza Replat *M1-40589*
M1-40593 Three, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; Lot 2, Walnut Grove Plaza Replat Five, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; Lots 1 through 3, inclusive, Walnut Grove Plaza Replat Six; and Lot 1, Walnut Grove Plaza Replat Seven *M1-40594* (hereinafter referred to as the "West Bay Property"); and

WHEREAS, Walnut Grove Plaza I, LLC is the owner of the real property generally located at the northeast corner of 156th and "Q" Streets in Omaha, Douglas County, Nebraska and legally described as follows:

M1-40589 Lot 1, Walnut Grove Plaza Replat Three, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and Lot 1, Walnut Grove Plaza Replat *M1-40593* Five, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Walnut Grove Property"); and

WHEREAS, West Bay, Inc. and SAC Federal Credit Union, a federally chartered Credit Union, have entered into a Purchase Agreement dated February 26, 2002, as amended (the "Purchase Agreement"), whereunder West Bay, Inc. agreed to sell and SAC Federal Credit Union agreed to purchase the following legally described real estate, to-wit:

MISC
5
12
FEE 31.00 FB see above
BKP _____ C/O _____ COMP ✓
DEL _____ SCAN CR FV _____

10 lots

Box 35
104702

Lot 2, Walnut Grove Plaza Replat Seven, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Benefited Property"); and

WHEREAS, pursuant to the terms of the Purchase Agreement, West Bay, Inc. agreed to grant certain use restrictions with respect to the West Bay Property, as covenants running with the land; and

WHEREAS, Walnut Grove Plaza I, LLC joined in that Purchase Agreement as an affiliate of West Bay, Inc. for the sole purpose of granting SAC Federal Credit Union an exclusive use restriction against the Walnut Grove Property as covenants running with the land (the West Bay Property and the Walnut Grove Property are hereinafter referred to as the "Restricted Property").

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Declarant agrees as follows:

1. Restricted Property. No portion of the Restricted Property shall be used for the operation of a bank, credit union, or other similar financial institution; provided, however, such restriction shall not prohibit the placement of not more than two (2) automated teller machines ("ATM's") anywhere on the Restricted Property; provided further that one such ATM shall be restricted to pedestrian use only and shall not be configured or accessible for drive-through access. Notwithstanding the foregoing, this exclusive use restriction shall not apply to any property owned by West Bay, Inc. or Walnut Grove Plaza I, LLC that is either not: (i) within the definition of Restricted Property, or (ii) subject to a lease or ground lease that has been executed prior to the date of this Agreement and any assignment or sublease of any such lease or any renewal, expansion or relocation of any space that is the subject of any such lease.
2. Covenants to Run with Land. It is intended that each of the restrictions set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein, and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives so long as the Benefited Property is being used as a bank, credit union or other similar financial institution.
3. Enforcement of Covenant. It shall be the right and responsibility of the owner of the Benefited Property to enforce this restrictive covenant and the owner of the Benefited Property shall pay all costs and expenses incurred with respect thereto. The Declarant shall insure that this restrictive covenant is properly recorded in the Register of Deeds Office for Douglas County, Nebraska, and shall not assume nor be responsible for the enforcement of this restrictive covenant or the payment of any costs and expenses incurred with respect thereto.
4. Governing Law. This Declaration is declared to have been made under the laws of the State of Nebraska.

5. Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the owner of Benefited Property, evidenced by a document that has been fully executed and acknowledged by such party and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

6. Remedies and Enforcement.

6.1 All 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 owner of the Benefited Property, or such owner's tenants 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.

6.2 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.

6. No Waiver. 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.

7. Severability. 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.

8. Miscellaneous. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Restricted Property and the Benefited Property. There are no oral agreements that change this Agreement, and no waiver of any of its terms will be effective unless in a writing executed by the parties.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year first above written.

DECLARANT:

WEST BAY, INC., a Nebraska corporation,

By: [Signature]
Thomas E. Smith, President

And

WALNUT GROVE PLAZA I, LLC, a
Nebraska limited liability company, by its
Sole Managing Member, WEST BAY SPE,
INC., a Nebraska corporation,

By: [Signature]
Thomas E. Smith, President

OWNER OF THE BENEFITED
PROPERTY:

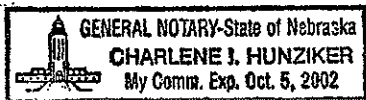
SAC FEDERAL CREDIT UNION, a
federally chartered credit union,

By: [Signature]
Its: President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 15th day of May, 2002, by Thomas E. Smith, President of West Bay, Inc., a Nebraska corporation, on behalf of the corporation.

[Signature]
Notary Public



STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

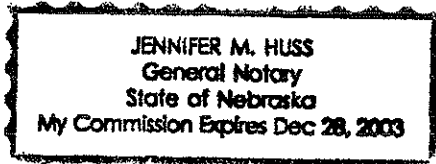
The foregoing instrument was acknowledged before me on this 15th day of May, 2002, by Thomas E. Smith, President of West Bay SPE, Inc., a Nebraska corporation, sole managing member of Walnut Grove Plaza I, LLC, on behalf of the limited liability company.



Charlene I. Hunziker
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Sarpy DOUGLAS)

The foregoing instrument was acknowledged before me on this 24th day of May, 2002, by James A. Guretzky, President of SAC Federal Credit Union, a federally chartered Credit Union, on behalf of the Credit Union.



Jennifer M. Huss
Notary Public