



MISC 2010032846



APR 19 2010 11:16 P 3

Fee amount: 16.00  
FB: see document  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
04/19/2010 11:16:59.00



2010032846

(43-03446:R1)

(43-03449:R3)

Please return to:  
Seldin Investments, LLC  
% Seldin Company  
13057 West Center Road  
Omaha, NE 68144  
ATTN: Marilyn Wynne Watson

RECORDER'S SPACE

### DECLARATION OF RESTRICTIVE COVENANTS

This covenant made this 17<sup>th</sup> day of April, 2010 by Metro Health Services Federal Credit Union, a federal credit union (hereinafter "Metro").

Whereas, on even date herewith, Seldin Investments, LLC, a Nebraska limited liability company (hereinafter "Seldin") has conveyed to Metro, fee simple title to certain property more specifically described as: **Lot 2, Benson Park Plaza Replat 1, an Addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska** (hereafter "Subject Property").

Whereas a condition of the sale of the Subject Property to Metro is that Metro execute and deliver this Declaration and that this Declaration be recorded against the Subject Property.

Now, therefore, in consideration of the foregoing recitals, which are hereby incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Metro does hereby declare as follows:

1. Building Restrictions. All persons and entities having an interest in the Subject Property of any kind or nature, whether legal, equitable or otherwise, and including without limitation all lessees, occupants, and secured parties, by their acceptance or assertion of an interest in the Subject Property, or by their occupancy of the Subject Property, covenant and agree that the ownership, use, occupancy, operation, alienation and conveyance of and their interests in the Subject Property shall be subject to the following restrictions:

A building with a minimum square footage of 5,000 square feet shall be constructed on the Subject Property, shall be commenced as soon as reasonably possible and shall be 50% complete by December 31, 2010, as certified by Buyer's architect, and furthermore be 100% complete by December 31, 2011, as evidenced by a certificate of occupancy, time being of the essence.

2. Limitation of Use. For so long as Hancock Fabrics, Inc., its successors or assigns ("Hancock"), is a tenant on Lot 1, Benson Park Plaza Replat 3, as surveyed platted and

recorded in Douglas County, Nebraska ("Lot 1, Replat 3"); A) no part of Subject Property 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; and B) No part of Subject Property shall be used for purposes of a Fabric Use (as hereinafter defined) (or a substantial part of such Fabric Use), or for the sale, or offer for sale, other than as an incidental part of the business conducted on the Subject Property any of the items or services which are both (i) included within a Fabric Use and (ii) sold or offered for sale by Hancock in its store on Lot 1, Replat 3 on the first day such store is open for business. For the purposes of this section, the terms "accessories," "draperies," "upholstery," "upholstered products" and "crafts" shall relate only to those items as sold or offered for sale by a fabric store as operated by Hancock on the first day store opened for business on Lot 1, Replat 3. The provisions of this section shall not be applicable at any time following Hancock's discontinuance of operations in at least eighty-five percent (85%) of the Hancock leased premises on Lot 1, Replat 3 for more than ninety (90) consecutive days (other than for the purpose of remodeling thereof or alterations thereto, or as a result of damage thereto, destruction thereof, or in connection with a changeover resulting from an assignment or subletting or due to Force Majeure as defined below.

"Fabric Use" shall be defined as conducting a fabrics, materials, piece goods and accessories store selling any and all types of fabrics, draperies, upholstery, upholstered products (as an incidental part of the business), piece goods, yarns, threads, needles, sewing notions, sewing machines (including parts and service) and crafts.

"Force Majeure" shall be defined as governmental laws or regulations, riot, insurrection, the act, failure to act or default of the other party, inclement weather, unreasonable delays by governmental offices in the issuance of permits or certificates, the inability to obtain building materials, acts of God, strikes, war or other reason beyond its control, the performance of such act shall be excused for the period of the delay and the period of the performance of such act shall be extended for a period equivalent to the period of such delay. Lack of funding or credit facilities shall not be a cause beyond the control of Buyer.

3. Agreement to Cooperate. In the event that Seldin, its successors or assigns, from time to time, decide to amend the Reciprocal Easement and Operating Agreement recorded in Book 1341 at Page 366 of the Miscellaneous Records of Douglas County, Nebraska, as amended, as it pertains to the site development restrictions for 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, and provided that Metro's use and enjoyment of Subject Property would not be substantially impaired by such amendment, Metro agrees to cooperate in effectuating such amendment, including without limitation executing documentation applicable thereto, at no cost to Metro, within (15) days of Seldin's request; provided, however, no such amendment shall restrict any use that is permitted on Subject Property prior to the date hereof or otherwise impair the fair market value of Subject Property or Metro's use or operation of Subject Property.

4. Binding Effect. This Declaration shall run with the Subject Property and be a servitude thereon, shall be binding upon Metro and all persons claiming by or through it, as to all or any

part of the Subject Property, and their heirs, assigns and successors-in-interest. This Declaration shall remain in full force and effect for a period commencing on the date hereof and running perpetually.

5. Enforcement. Seldin, Seldin's lender, Union Bank & Trust Company, or any future lender of Seldin and their heirs, successors and assigns, shall have the right to enforce the restrictions imposed by this Declaration. Enforcement of this Declaration shall be by proceedings in law or in equity against any person or entity violating or attempting to violate any covenant, restriction or provisions set forth herein, either to restrain such violation or to recover damages. Without limiting the foregoing remedies, if paragraph 1 of this Declaration is violated, Metro, or its successor in interest, shall immediately pay to Seldin \$10,000 if the building is not 50% complete by December 31, 2010, as certified by Buyer's architect, and \$20,000.00 if the building is not 100% complete by December 31, 2011, as evidenced by a certificate of occupancy, and continue to pay \$20,000.00 per year for every year thereafter in which construction is not complete until the earlier of: a) December 31, 2020 or b) the TIF notes from the City of Omaha dated June 14, 2000, March 15, 2002 and May 4, 2006 are paid in full. With respect to any measures or action, legal, administrative, or otherwise, taken to enforce the provisions of this Declaration, whether or not finally determined by a court or arbitrator, the party violating this Declaration, shall pay to the party seeking enforcement of this Declaration any and all reasonable expenses incurred in connection with such enforcement, including without limitation reasonable attorneys' fees.

6. Governing Law and Venue. This Declaration shall be governed and construed under the law of and enforced within the State of Nebraska.

Metro Health Services Federal Credit Union,  
a federal credit union

By: [Signature]

Print Name: Michael P. McDermott

Title: President / CEO

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of APRIL, 20 10 by Michael P. McDermott of Metro Health Services Federal Credit Union, a federal credit union, on behalf of the such federal credit union.

My Commission Expires: August 26, 2012  
[Signature]  
Notary Public

