

7A-53411

A

Recording Requested By
And When Recorded Mail To:

Kendra J. Ringenberg
Koley Jessen, P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079

DECLARATION OF USE RESTRICTION

12 THIS DECLARATION OF USE RESTRICTION (the "**Declaration**") is made as of the day of July, 2007, by John L. Hoich ("**Hoich**") and Joe McDermott Associates, Inc., a Nebraska corporation ("**McDermott**") (Hoich and McDermott are sometimes collectively referred to hereinafter as "**Developer**") and Security National Bank of Omaha ("**Security National Bank**").

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property located in the City of La Vista, Sarpy County, Nebraska, legally described on **Exhibit A** attached hereto (the "**Developer Property**");

WHEREAS, immediately prior to execution of this Declaration, Security National purchased from Developer that certain real property in the City of La Vista, Sarpy County, Nebraska, legally described on **Exhibit B** attached hereto (the "**Security National Bank Property**");

WHEREAS, Developer and Security National Bank have agreed on the terms pursuant to which Developer will impose certain restrictions, as set forth herein, on the Developer Property for the benefit of the Security National Bank Property.

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NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Security National Bank do hereby agree as follows:

1. Definitions.

1.1. **"City"** shall mean the City of La Vista, Nebraska.

1.2. **"Developer"** shall mean John L. Hoich and Joe McDermott Associates, Inc., a Nebraska corporation, and their respective successors and assigns.

1.3. **"Lot(s)"** shall mean the Lots created on the Developer Property.

1.4. **"Party"** and **"Parties"** or **"party"** and **"parties"** as used in this Declaration shall mean Developer and Security National Bank and their respective successors and assigns.

2. Developer Property Use Restriction. Developer hereby covenants and agrees that so long as Security National Bank has opened for business on the Security National Bank Property as a full service banking institution on or before July 1, 2009 (the "Opening Requirement"), no business located on the Developer Property shall be operated as a federally or state chartered bank, savings and loan, credit union, or industrial loan company. Such restriction shall include, but not be limited to, operating an outside or free-standing automated teller machine ("ATM"); provided, however, this restriction against outside or free-standing ATM machines shall not apply to non-banking businesses that have ATM machines located within their buildings on the Developer Property. Developer agrees that Security National Bank may, at its option, record an Opening Date Acknowledgment against the Developer Property in the form attached hereto as **Exhibit C** to confirm that it has satisfied the Opening Requirement, provided that the recording of an Opening Date Acknowledgment shall not be deemed a condition precedent to the effectiveness of this Declaration. For purposes of this Declaration, a "bank" or "banking business" shall mean a federally or state chartered bank, savings and loan, credit union, or industrial loan company.

3. Release From Liability. Any person or entity acquiring fee or leasehold title to the Developer Property, or any portion thereof, shall be bound by this Declaration. In addition, except to the extent expressly stated in this Declaration to the contrary, such person or entity and Developer shall be bound by this Declaration only during the period such person or entity or Developer is the fee or leasehold owner, except as to obligations, liabilities, or responsibilities that accrue during said period of ownership. Although persons may be released under this paragraph, the restriction in this Declaration shall continue to be a benefit to the Security National Bank Property and a burden and restriction upon the Developer Property.

4. Binding on Successors and Assigns; Amendment; Expiration. The covenants and restrictions contained herein are intended to touch and concern the land and shall run with the land, and be binding upon, and inure to the benefit of, the current and future owners of any portion of the Developer Property and the Security National Bank Property, respectively, their successors and assigns, and shall not be amended or modified unless by an instrument in writing executed by all of the owners and encumbrancers, at the time of the amendment or modification, of the Security National Bank Property and that portion of the Developer Property affected by said amendment or modification. Notwithstanding the foregoing, the restriction created on the Developer Property pursuant to Section 3 above shall

C

expire and be of no further force or effect in the event that the Security National Bank Property ceases to be used for a retail banking facility, thrift, savings and loan association or credit union for a period of nine (9) consecutive months, exclusive of initial construction and subsequent periods not to exceed nine (9) months during which the facility is closed due to fire or other casualty or for renovation, reconstruction, maintenance or repairs.

5. **Notices.** All notices, approvals, consents, or requests given or made pursuant to this Declaration shall be in writing and either (i) sent by a nationally recognized overnight courier, (ii) personally delivered, or (iii) sent by registered or certified mail with the postage prepaid. Notices personally delivered shall be deemed delivered on the date of delivery. Notices via overnight courier shall be deemed delivered on the date following deposit with such courier and certified or registered mail shall be deemed delivered three (3) business days after deposit with the U.S. Mail, as applicable.

Notices to Developer:

John L. Hoich
4418 S. 180th Street
Omaha, Nebraska 68135

Joe McDermott Associates, Inc.
9816 F Street
Omaha, Nebraska 68127

Notices to Security National Bank:

Security National Bank of Omaha
1120 South 101 Street
Omaha, Nebraska 68124
Attention: James Landen, President

With a copy to:

Koley Jessen P.C.
1125 South 103 Street, Suite 800
Omaha, Nebraska 68124
Attention: Max J. Burbach

Such addresses may be changed from time to time by either party hereto by serving notice as herein provided. Notwithstanding anything to the contrary herein, any party may give another party notice of the exercise of any option herein granted or for the need for emergency repairs via facsimile with confirmation of receipt and deposit of the original notice in the U.S. Mail. If, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any party hereto in its respective property shall be encumbered by a first mortgage and the other party hereto has been notified in writing thereof and of the name and address of the mortgagee a copy of said notice shall also be sent to such mortgagee by registered or certified mail at the address so given.

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6. Miscellaneous

6.1. **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.

6.2. **Modification.** This Declaration may not be amended, restated, modified or supplemented in any respect except in a writing executed by Developer and Security National Bank.

6.3. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska.

6.4. **Severability.** If any provision of this Declaration or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Declaration, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision of these covenants and restrictions shall be valid and enforceable to the fullest extent permitted by law.

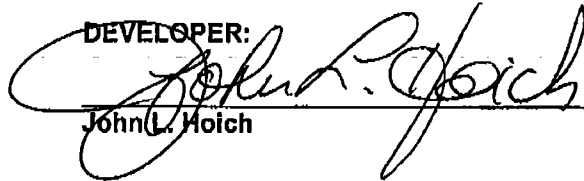
6.5. **Non-Waiver.** No delay or omission of the owner of any property subject to this Declaration in the exercise of any right accruing upon any violation or default by an owner of any other property subject to this Declaration shall impair such right or be construed to be a waiver thereof with respect to the violating or defaulting owner, and every such right may be exercised at any time during the continuance of such violation or default. A waiver of a breach of, or a default in, any of the terms and conditions of this Declaration shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Declaration.

**[Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]**

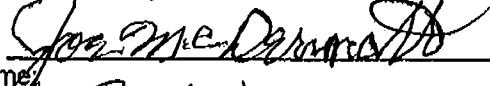
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IN WITNESS WHEREOF, the undersigned has executed this Declaration effective as of the day and year first written above.

DEVELOPER:


John L. Hoich

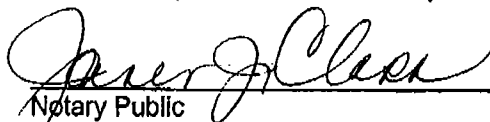
Joe McDermott Associates, Inc.,
a Nebraska corporation

By: 
Name: _____
Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Instrument was acknowledged before me on this 12 day of July, 2007, by John L. Hoich.

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


Notary Public


My Commission Expires: 8-21-2008



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Instrument was acknowledged before me on this 12th day of July, 2007, by Joe McDermott, president of Joe McDermott Associates, Inc., a Nebraska corporation, on behalf of said company.

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


Notary Public

My Commission Expires: _____



F

SECURITY NATIONAL BANK OF OMAHA

By: _____

Name: James E. Landen

Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 11 day of July, 2007, by James E. Landen, President of Security National Bank of Omaha, on behalf of said corporation.

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



Notary Public

My Commission Expires: 12/2/08

G

CONSENT AND SUBORDINATION BY DEVELOPER'S LENDER

THE UNDERSIGNED, Great Western Bank ("Lender"), is the owner and holder of that certain (i) Deed of Trust, dated December 20, 2000, recorded December 29, 2000, as Instrument No. 2000-34578; (ii) Deed of Trust dated May 24, 2002, recorded May 28, 2002, as Instrument No. 2002-19712; (iii) Deed of Trust, dated April 27, 2005 and recorded May 20, 2005, as Instrument No. 2005-16483, and (iv) Deed of Trust, dated November 4, 2005 and recorded November 29, 2005, as Instrument No. 2005-43912, each recorded in the Official Records of Sarpy County, Nebraska (collectively, the "Mortgages") encumbering the Developer Property. Lender hereby consents to the within and foregoing Declaration of Use Restriction and hereby subordinates the lien of the Mortgages thereto, and agrees that in the event of a foreclosure of the Mortgages or a transfer of all or any part of the Developer Property pursuant to a power of sale under the Mortgages or any deed in lieu of foreclosure, the purchaser at any such foreclosure or sale or the transferee under any such deed in lieu of foreclosure will take title to the property so conveyed subject to the terms and provisions of said Declaration of Use Restriction.

IN WITNESS WHEREOF, Lender has executed this instrument as of the 9 day of July, 2007.

Great Western Bank

By [Signature]
Name: Paul T. Friesen
Title: SVP

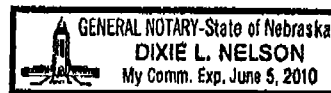
STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me on this 7th day of July, 2007, by Paul T. Friesen SVP, President of Great Western Bank, for and on behalf of said bank.

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: 6-5-10



M

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lots 4, 5 and 10, Southport East Replat Six, a subdivision in the City of La Vista, Sarpy County, Nebraska.

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EXHIBIT B

LEGAL DESCRIPTION OF SECURITY NATIONAL BANK PROPERTY

Lot 9, Southport East Replat Six, a subdivision in the City of La Vista, as surveyed, platted and recorded, in Sarpy County, Nebraska.

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EXHIBIT C

OPENING DATE ACKNOWLEDGMENT

This Opening Date Acknowledgement ("Acknowledgment") is made as of the ____ day of _____, 20__, by Security National Bank of Omaha ("**Security National Bank**").

1. John L. Hoich ("**Hoich**") and Joe McDermott Associates, Inc., a Nebraska corporation ("**McDermott**") (Hoich and McDermott are collectively referred to hereinafter as "**Developer**") and Security National Bank entered into that certain Declaration of Use Restriction, dated _____, 2007 and recorded _____, 2007 as Instrument No. _____ in the office of the Sarpy County Recorder of Deeds ("Declaration"), which places certain use restrictions ("Use Restrictions") on that certain real property in the City of La Vista, Sarpy County, Nebraska, legally described on **Exhibit A** attached hereto (the "Developer Property").

2. The Use Restrictions do not become effective unless Security National Bank opens for business on that certain real property in the City of La Vista, Sarpy County, Nebraska, legally described on **Exhibit B** attached hereto (the "Security National Bank Property"), as a full service banking institution on or before July 1, 2009 (the "Opening Date").

3. Security National Bank has so opened for business and, as contemplated by the Declaration, hereby confirms that Security National Bank opened for business on the Security National Bank Property as a full service banking institution on or prior to the Opening Date. Accordingly, the use restrictions set forth in the Declaration are effective under the terms and conditions of the Declaration.

4. The information set forth in this Acknowledgment is true and correct as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Acknowledgment effective as of the day and year first written above.

K

SECURITY NATIONAL BANK OF OMAHA

By: _____
Name: James E. Landen
Title: President

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by James E. Landen, President of Security National Bank of Omaha, on behalf of said corporation.

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

Notary Public

My Commission Expires: _____

L

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lots 4, 5 and 10, Southport East Replat Six, a subdivision in the City of La Vista, as surveyed, platted and recorded, in Sarpy County, Nebraska.

Exhibit C

2007-21172M

EXHIBIT B

LEGAL DESCRIPTION OF SECURITY NATIONAL BANK PROPERTY

Lot 9, Southport East Replat Six, a subdivision in the City of La Vista, as surveyed, platted and recorded, in Sarpy County, Nebraska.