

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2007-10541

2007 APR 10 P 3:17 PM

*Glenn J. Lawburg*  
REGISTER OF DEEDS

COUNTER 9 G.E. LM  
VERIFY TA D.E. OH  
PROOF \_\_\_\_\_  
FEES \$ 18.50  
CHECK # \_\_\_\_\_  
CHG ST3-18.50 CASH \_\_\_\_\_  
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**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made this 4<sup>th</sup> day of April, 2007, by Giles Road #2, LLC, a Nebraska limited liability company (referred to hereinafter as "Declarant").

RECITALS:

WHEREAS, Declarant is the owner of the real property generally located at the southeast corner of Giles Road and 108th Streets in Papillion, Sarpy County, Nebraska and legally described as follows:

Lots 2, 3, 4, 5, 6, and 7, in PORTAL PLAZA, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (the "Restricted Property"); and

WHEREAS, Giles Road #2, LLC, a Nebraska limited liability company, and Krause Holdings, Inc., an Iowa corporation, d/b/a Kum & Go, have entered into a Purchase Agreement dated December 6, 2005 (the "Purchase Agreement"), later assigned by Krause Holdings, Inc. to Kum & Go, L.C., where under Giles Road #2, LLC agreed to sell and Kum & Go, L.C. agreed to purchase the following legally described real estate, to-wit:

Lot 1, in PORTAL PLAZA, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (the "Benefited Property"); and

WHEREAS, pursuant to the terms of the Purchase Agreement, Declarant has granted certain permanent use restrictions with respect to the Restricted Property, as covenants running with the land.

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:

\_\_\_\_\_  
FEE \_\_\_\_\_ FB \_\_\_\_\_  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP \_\_\_\_\_  
DFL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

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*ST3*

*TA-51380<sup>10</sup>*

1. Restricted Property. No portion of the Restricted Property shall be used for the operation of a gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways; or a convenience store; provided, however, this restrictive covenant shall not prohibit a supermarket or other store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats, or delicatessen products or any other business operation that is not reasonably classified as a gasoline station or a convenience store.

2. Term. Unless sooner terminated by the owner or owners, from time-to-time, of the Benefited Property as provided herein, the use restrictions imposed against the Restricted Property shall remain in full force and effect for a period of twenty (20) years, commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Sarpy County, Nebraska; provided, however, this Declaration shall be automatically extended for successive periods of ten (10) years each.

3. 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.

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 the 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 Sarpy 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 of 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 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.

7. Termination. If any owner or occupant of the Benefited Property ceases to operate the premises as convenience store or motor fuel sales station for 365 consecutive days, unless, during the period of nonuse, notices are given by Licensee to City of its intention to resume use of the Property within 365 consecutive days following the date on which nonuse commences and such resumption occurs

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within such period, this Declaration shall be deemed terminated and of no further force or effect.

8. 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.

9. 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.

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

DECLARANT:

GILES ROAD #2, LLC, a Nebraska limited liability company,

By: KVT #2, LIMITED PARTNERSHIP, a Nebraska limited partnership, Member

By: George W. Venteicher  
George W. Venteicher, General Partner

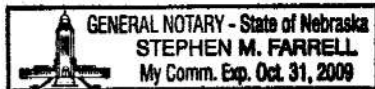
By: Seechol Properties, a Nebraska general partnership, Member

By: Tom Nichols  
Tom Nichols

Its: Partner

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 4<sup>th</sup> day of April, 2007, by George Venteicher, Member of Giles Road #2, LLC, a Nebraska limited liability company, and Tom Nichols, a representative of Seechol Properties, a Nebraska general partnership, Member, on behalf of said company.



Stephen M. Farrell  
Notary Public