



MISC 2014014719



FEB 27 2014 11:34 P 12

Fee amount: 76.00
FB: MC-42922
COMP: BW

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
02/27/2014 11:34:45.00



2014014719

DECLARATION OF RESTRICTIONS

Village Development - Maple Street, L.L.C., a Nebraska limited liability company

0258096

Please Return recorded document to:
Nebraska Title Company
14680 West Dodge Road, Suite 1
Omaha, NE 68154

RETURN RECORDED DOCUMENT TO:
WALGREEN CO.
Community & Real Estate Law Dept.
104 Wilmot Road, 2nd Floor
MS #1420
Deerfield, Illinois 60015
Attn: Mary Ellen Hanrahan

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is executed as of the 20th day of February, 2014 (the "Effective Date") by and between BUCK'S, INC. ("Buck's"), a Nebraska corporation, VILLAGE DEVELOPMENT – MAPLE STREET, L.L.C. ("Village Development"), a Nebraska limited liability company, and WALGREEN CO. ("Walgreens"), an Illinois corporation, on the terms and conditions described herein. Buck's and Village Development are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Buck's is the owner of a certain parcel of land located in Omaha, Douglas County, Nebraska legally described as follows:

Lot 6, West Point Replat 1, a subdivision, an Addition to, and as surveyed, platted and recorded in the City of Omaha, Douglas County, Nebraska ("Buck's Parcel 1");

WHEREAS, Buck's is negotiating a Purchase and Sale Agreement for a certain parcel of land located in Omaha, Douglas County, Nebraska legally described as follows:

Lot 5, West Point Replat 1, a subdivision, an Addition to, and as surveyed, platted and recorded in the City of Omaha, Douglas County, Nebraska ("Parcel 2");

WHEREAS, Buck's Parcel 1 is hereinafter also referred to as the "Buck's Parcel"; and

WHEREAS, Village Development is the owner of a certain parcel of land located in Omaha, Douglas County, Nebraska legally described as follows:

Lot 11, West Point Replat 1, a subdivision, an Addition to, and as surveyed, platted and recorded in Douglas County, Nebraska ("Village Parcel"), which is also defined as the "Benefited Property" in the Declaration (defined below);

WHEREAS, Village Development leases the Village Parcel to Walgreens pursuant to a lease dated October 15, 2002 ("Walgreens' Lease");

DBP

WHEREAS, the Buck's Parcel is subject to the Declaration of Restrictions ("Existing Declaration") recorded on October 15, 2002 in the Office of the Register of Deeds of Douglas County, Nebraska at Book 1467, Page 341-347; and

WHEREAS, Walgreens is a third party beneficiary to this Declaration.

NOW, THEREFORE, for and in consideration of the specific monetary consideration to Walgreens payable by Buck's in one-lump sum upon the date of this Agreement in accordance with Section 6(j) hereinbelow, as well as those recitals set forth above and the mutual representations, warranties, and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Use Restrictions. So as to allow Buck's Parcel to be used for the operation of a gasoline station/convenience store subject to provisions of this Section 1 and to Sections 2(a) and 2(b) below, it is hereby agreed as follows:

(a) As between the parties hereto, and notwithstanding the provisions of Section 2(a) of the Existing Declaration, it is hereby agreed that no portion of Buck's Parcel shall be used for (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed in conjunction with medical, dental, veterinarian or other services; (ii) the sale of so-called health and/or beauty aids and/or drug sundries, except as may be incidentally sold or distributed in conjunction with the delivery of certain services such as a tanning salon, beauty salon, barber shop or other personal services; (iii) the operation of a business in which photo finishing services and/or photographic film are offered for sale, except as may be incidental to any merchant whose primary business is printing, photocopying or the sale of business machines or supplies; (iv) the operation of a business which sells or offers greeting cards and/or gift wrap; and/or (v) the operation of a business in which food items are sold for consumption off-premises (other than a take-out or fast food restaurant, which are permitted); provided, however, that the exclusive use restrictions contained in subparagraphs (ii) and (iv) above shall not prohibit such uses to the extent that the sales floor area devoted to such use does not exceed one hundred fifty (150) square feet; and, provided further, that none of the exclusive use restrictions contained hereinabove shall apply to one (1) user occupying at least 20,000 square feet of floor area on the Buck's Parcel, or any portion thereof, so long as the primary purpose of any such user is not a drug store or prescription pharmacy. It is understood and agreed that such foregoing exceptions for any such greater-than-20,000-square-foot-user shall apply not only to such a user, but also to any tenant or subtenant of such user.

(b) Notwithstanding any provision to the contrary contained in this Declaration, in no event may a gas station (including any convenience store part of a gas station) within the Buck's Parcel, regardless of its size or the size of departments therein, sell prepackaged foods or groceries for consumption off-premises (but any gas station

(including any convenience store part of a gas station) within the Buck's Parcel may in any event sell prepared foods such as fresh hot dogs, fresh hamburgers, fountain drinks, brewed coffee, fresh donuts and hot pretzels without restriction); provided, however, that the foregoing restrictions against the sale of prepackaged food or groceries contained in this Section 1(b) above shall not be deemed to prohibit or prevent a gasoline station/convenience store of any size within the Buck's Parcel operated as part of a "Buck's" or "Bucky's" or such other service gas station hereinafter operated by Buck's (or any subsidiary, affiliate or parent thereof) from selling (I) prepackaged foods and/or groceries for consumption off-premises including, without limitation, candy, chips, nuts, crackers, and other snack items; (II) prepackaged soda, juice, water or other drinks, beer, wine, spirits or other liquor; (III) prepackaged coffee; and (IV) prepackaged donuts, muffins or other pastries.

2. Additional Buck's Parcel Restrictions.

(a) No part of the Buck's Parcel shall be used for the operation of an automobile service station, petroleum station, gasoline station, automobile repair shop, convenience store or for the purpose of conducting or carrying on the business of selling, offering for sale, storage, handling, distributing or dealing in petroleum, gasoline, motor vehicle fuel, diesel fuel, kerosene, benzol, naphtha, greases, lubricating oils, any fuel used for internal combustion engines, lubricants in any form, automobile parts or accessories, tires, batteries, or other petroleum or petroleum-related products or convenience store items, except for the personal use or consumption of such products by Buck's or its lessees of the Property, unless any such use is in connection with the operation of a "Buck's" or "Bucky's" or such other service gas station hereinafter operated by Buck's (or any subsidiary, affiliate or parent thereof).

(b) Notwithstanding the provisions of Section 1(b) above, the sales floor area dedicated by Buck's to the sale and display of prepackaged food items in any "Buck's" or "Bucky's" or such other service station hereinafter operated by Buck's (or any subsidiary, affiliate or parent thereof) located on the Buck's Parcel shall not, in any event, exceed five hundred twenty (520) square feet (such calculation to include ½ of adjacent aisle).

3. Conflict. In the event of a conflict between the terms and conditions contained in this Declaration and those contained in the Existing Declaration, the terms and conditions provided herein shall control and prevail.

4. Covenants to Run with the Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations 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. The covenants, conditions, and restrictions hereof shall be binding upon and effective against any owner of any portion of any parcel burdened hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

5. Enforcement.

(a) 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 Buck's Parcel made in good faith for value.

(b) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Party (or Walgreens, during the continuance of the Walgreens' Lease), 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(s) (and Walgreen, during the continuance of the Walgreens' Lease) 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. During the continuance of the Walgreens' Lease, Walgreen shall have the right, but not the obligation, to enforce this Declaration on behalf of Village Development, and/or to cure a breach or default hereunder by Village Development, which enforcement or cure shall be accepted by the other Party(s) as if effected by Village Development. Buck's 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. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

(c) Default. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Party (or Walgreens, during the continuance of the Walgreens' Lease) to cure a breach of this Declaration within thirty (30) days following written notice thereof by another Party or Walgreen, during the continuance of the Walgreens' Lease (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Party commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Party (and Walgreens, during the continuance of the Walgreens' Lease) shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Chase Bank (or its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law).

(d) In the event of a violation or threat thereof of any of the provisions of Sections 1 and/or 2 of this Declaration, each Party, and Walgreens. agrees that such violation or threat thereof shall cause the non-faulting Party and/or its employees, agents, contractors, customers, invitees, or licensees to suffer irreparable harm and such non-defaulting Party and its employees, agents, contractors, customers, invitees, or licensees shall have no adequate remedy at law. As a result, in the event of a violation or threat

thereof of any of the provisions of Sections 1 and/or 2 of this Declaration, the non-defaulting Party (and Walgreens, during the continuance of the Walgreens' Lease), in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections 1 and/or 2 of this Declaration.

(e) Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Party (or to Walgreen in connection with the exercise of its rights set forth in this Article 5) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Party in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Party until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Douglas County, Nebraska; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the County Recorder of Douglas County, Nebraska prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Party of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

(f) In the event a Party (and/or Walgreens, during the continuance of the Walgreens' Lease) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

6. Additional Provisions.

(a) Term and Governing Law. This Declaration is declared to have been made under the laws of the State of Nebraska. The covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Recorder of Douglas County, Nebraska and shall remain in full force and effect thereafter, unless modified, amended, canceled or terminated in accordance herewith. This Declaration shall be governed by and construed under the laws of the State of Nebraska without regard to choice of law rules.

(b) Amendment to this Declaration.

(i) The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the Parties, evidenced by a document that has been properly and fully executed and acknowledged by such Parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

DBP

(ii) Notwithstanding Subparagraph 6(b)(i) above to the contrary, no termination of this Declaration and no modification or amendment of this Declaration shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreen (during the continuance of the Walgreens' Lease).

(iii) Wherever in this Declaration the consent or approval of Party (or Walgreens) is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of a Party or Walgreen under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the Walgreen Lease, any consent by Village Development, to be effective, shall also require the consent of Walgreen.

(c) Notice. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any Party hereunder to be effective shall also simultaneously be delivered to Walgreen (during the continuance of the Walgreens' Lease). The notice addresses of the Parties and Walgreen are as follows:

BUCK'S: BUCK'S, INC.
 Attn: Matthew J. Manning
 4973 Dodge Street
 Omaha, NE 68132

VILLAGE
DEVELOPMENT: VILLAGE DEVELOPMENT – MAPLE STREET, L.L.C.
 1045 Lincoln Mall, Suite 300, Lincoln, NE 68508

with a copy to:

Mr. Nathan Gurnsey
Woods & Aitken LLP
301 South 13th Street
Suite 500
Lincoln, NE 68508

WALGREENS: WALGREEN CO.
Real Estate & Community Law Dept.
104 Wilmot Road, 2nd Floor
MS #1420
Deerfield, Illinois 60015
Re: Store #6802

(d) Counterparts. This Declaration may be executed in any number of counterparts with the same effect as if the Parties (and Walgreens) had signed the same document. All such counterparts shall be construed together and shall constitute one instrument

(e) Partial Invalidity. Invalidation of any of the provisions set forth herein shall in no way affect any of the remaining provisions which shall remain in full force and effect.

(f) No Waiver. No waiver of any default of any obligation by any Party (or Walgreens) shall be implied from any omission by the other party to take any action with respect to such default.

(g) 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 the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration

(h) Bankruptcy. In the event of any bankruptcy affecting any owner or occupant of any Parcel, the parties agree that this Amendment shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

(i) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of any Parcel shall at all times be expressly made subject and subordinate to the terms of this Amendment, whether by a supplemental consent appended to this Amendment or else by separate agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee sale, shall acquire title subject to all the terms and conditions of this Amendment.

(j) Additional Consideration to Walgreens: As additional consideration to Walgreens for its consent to the terms set forth herein, Buck's shall pay solely to the order of Walgreens the sum of \$25,000.00 cash, payable by Buck's in one-lump sum upon the date of this Agreement.

(k) Miscellaneous. The paragraph headings or captions appearing in this Declaration are for convenience only, are not a part of this Declaration, and are not to be considered in interpreting this Declaration. There are no oral agreements that change this Declaration, and no waiver of any of its terms will be effective unless in a writing executed by the parties.

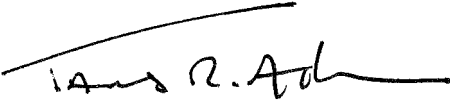
7. So long as Buck's does not own Buck's Parcel 2, this Declaration shall be recorded and encumber solely Buck's Parcel 1. If hereafter Buck's, or an affiliate or subsidiary thereof should hereafter directly or indirectly own Parcel 2, then it is hereby agreed that the parties hereto shall execute and record against Buck's Parcel and Parcel 2 Parcel an amendment expanding the definition of Buck's Parcel to include Parcel 2 and ratifying and restating this Declaration as to such Parcel 2.

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

[SIGNATURE AND NOTARY PAGES FOLLOW]




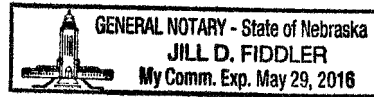
VILLAGE DEVELOPMENT-MAPLE STREET, L.L.C.,
a Nebraska limited liability company,

By: 
Tamas R. Allan, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me on this 20th day of February, 2014, by Tamas R. Allan, Manager of Village Development-Maple Street, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.


Notary Public



DBP

BUCK'S, INC.,
a Nebraska corporation

By: [Signature]

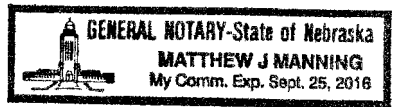
Print Name: Steve Buchanan

Title: President

STATE OF NEBRASKA)
 Douglas)ss.
COUNTY OF ~~LANCASTER~~)

The foregoing instrument was acknowledged before me on this 15 day of August, 2013, by Steve Buchanan, as President of BUCK'S, INC., a Nebraska corporation, behalf of said corporation.

[Signature]
Notary Public



DBP

CONSENTED TO:

WALGREEN CO.,
An Illinois corporation,

DBP
By: _____

Print Name: Robert M. Silverman

Title: Divisional Vice President

STATE OF ILLINOIS)
)ss.
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me on this 2nd day of August, 2013, by Robert M. Silverman, as Divisional Vice President of WALGREEN CO, an Illinois corporation, behalf of said corporation.

Janet Rubenstein
Notary Public

