



MISC 2015002222



JAN 12 2015 10:09 P 4

misc
 4 FEE 28.00 FB 13-42483
 6 BKP _____ C/O _____ COMP *PJ*
 C DEI _____ SCAN _____ FV _____

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 1/12/2015 10:09:40.61

 2015002222

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "Declaration") is made the 7th day of January, 2015, by Royce Grayhawk, LLC, a Nebraska limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of certain real estate in Douglas County, Nebraska, legally described as follows (individually an "Outlot", and collectively the "Outlots"):

Lots 3 through 6, inclusive, West Grayhawk Replat 3, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarant is the present owner of certain real estate in Douglas County, Nebraska legally described as follows (collectively, the "Shopping Center Lots"):

Lots 1 and 2, West Grayhawk Replat 3, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Developer is constructing a multi-tenant shopping center on the Shopping Center Lots which will be leased to tenants primarily for the retail sale of goods and services.

WHEREAS, Declarant has entered into a lease for a portion of the Shopping Center Lots with Lakes Venture, LLC d/b/a Fresh Thyme Farmers Market (the "Fresh Thyme Lease").

WHEREAS, pursuant to the Fresh Thyme Lease Declarant has agreed to encumber the Outlots with certain use restrictions, which use restrictions are set forth in this Declaration.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, Declarant does hereby declare and covenant as follows:

1. Exclusive Use Restriction. At no time prior to the termination or expiration of the term of the Fresh Thyme Lease, as such Fresh Thyme Lease may be amended, modified or extended from time to time, and provided that Lakes Venture, LLC d/b/a Fresh Thyme Farmers Market ("Fresh Thyme") or its successors to the Fresh Thyme Lease is open and operating a

Return to:
 James D. Buscr
 Pansing Hogan Ernst & Bachman, LLP
 10250 Regency Circle, Suite 300
 Omaha, Nebraska 68114

402-397-5500

PANSI

✓007103

grocery store from such premises (excepting temporary closures) shall any portion of the Outlots be used for (a) a grocery store, meat or seafood market, produce market or natural or health food store, (b) a store selling vitamins or supplements, (c) a store selling natural cosmetics or natural health and beauty products, (d) a store selling packaged wine and beer for off premises consumption, or (e) a full service bakery and/or delicatessen (the "Fresh Thyme Exclusive Use"). Notwithstanding the foregoing, Fresh Thyme's Exclusive Use will not prohibit: (A) restaurants of any type; (B) a pharmacy (for example only and not for limitation purposes, a Walgreen's or CVS), a beauty store (for example only and not for limitation purposes, ULTA or Sephora), or bakeries or sandwich shops (for example only and not for limitation purposes, Panera Bread and McCallister's Deli); or (C) the incidental sale of any of the above identified merchandise by any occupant or tenant so long as the retail display space in such occupant or tenants premises that is used for the display of such merchandise (including shelf space and allocable aisle space) is of a size not greater than the lessor of 1,000 square feet of gross square area or 10% of such occupant or tenant's total gross leasable area.

2. Building Size Restrictions. No owner, tenant or occupant of an Outlot may construct any building on an Outlot that exceeds one story in height (exclusive of architectural features) or that is larger in square footage than as follows:

| <u>Outlot Number</u> | <u>Maximum Square Footage</u> |
|----------------------|---|
| 3 | 6,000 S.F. (provided an additional 6,000 S.F. pump canopy is permitted) |
| 4 | 10,000 S.F. |
| 5 | 8,000 S.F. |
| 6 | 5,000 S.F. |

3. Cross Parking Restriction. Owners, tenants and occupants of the Outlots and their respective permittees shall not be permitted to use the Shopping Center Lots for parking. Owners, tenants and occupants of the Shopping Center Lots and their respective permittees shall not be permitted to use the Outlots for parking. It is specifically stated and understood that the restrictions in this Section 3 of this Declaration shall not apply to any on street parking that may be constructed within the boundaries of Outlot "A", West Grayhawk Replat 3.

4. Term of Restrictions. The restrictions in Section 1 of this Declaration shall run with the land and continue until the earlier to occur of the following: (i) the termination or expiration of the term of the Fresh Thyme Lease; or (ii) there is no longer operated in the premise leased under the Fresh Thyme Lease, a grocery store, provided, however, temporary closures will not be the basis for termination of such restriction. The restrictions set forth in Section 2 and 3 of this Declaration shall be perpetual in duration and shall run with the land unless terminated or modified as permitted by this Declaration.

5. Amendment, Modification or Termination. This Declaration may only be amended, modified or terminated by a written agreement executed and acknowledged by the then

owners of all of the Outlots and Shopping Center Lots and duly recorded with the Register of Deeds for Douglas County, Nebraska.

6. Remedies for Violations.

(a) Upon a violation or breach of any of the restrictive covenants set forth herein, the then current owner of the Outlots or Shopping Center Lots or any then current tenant thereof shall have the right to proceed at law or in equity, including without limitation obtaining an injunction, to compel compliance with the terms hereof or to prevent the violation or breach of any of them, and to recover damages resulting from any violation thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

(b) No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the restrictive covenants herein contained, shall be construed as a waiver thereof or acquiescence therein.

7. Miscellaneous. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Nebraska, without reference to principles of conflicts of law. In the event any one or more of the foregoing covenants, conditions and restrictions are declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions and restrictions not specifically declared to be void or unenforceable, but all of the remaining covenants, conditions and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect. Time is of the essence for purposes of this Declaration.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

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

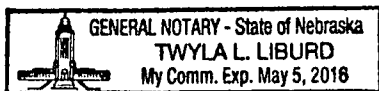
DECLARANT:

ROYCE GRAYHAWK, LLC, a Nebraska limited liability company

By: L.R. James II
Lawrence R. James, II, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 4th day of January, 2015, by Lawrence R. James, II, Manager of Royce Grayhawk, LLC, a Nebraska limited liability company, on behalf of the company.



Twyla L. Liburd
Notary Public