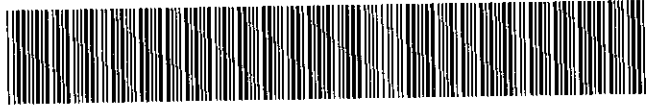




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65 Misc 67-30406-Rep3
 FEE 30.00 FB 67-30407
 BKPR: _____ CO _____ COMP OK
 10 DEL DEL _____ SCAN _____ FV _____

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 9/6/2007 13:35:12.10

 2007102292

After recording return to:
 Kennedy Covington
 P. O. Box 17047
 Raleigh, North Carolina 27619
 Attention: David E. Wagner, Esq.

STATE OF NEBRASKA
 COUNTY OF DOUGLAS

DECLARATION OF RESTRICTED USES

THIS DECLARATION OF RESTRICTED USES (this "Declaration") is made as of the 30 day of August, 2007 (the "Effective Date"), by **KDI Omaha, L.P.**, a Nebraska limited partnership ("Declarant");

WITNESSETH:

Declarant is the owner of fee simple title to property defined on Exhibit A and agrees to restrict such property and any other property it may own within one (1) mile of the Benefited Property, as defined below, as stated in this Declaration (the "Restricted Property"). **Simmonds Properties Ltd.** ("Simmonds") will in the future be the owner of property adjoining the Restricted Property as defined on Exhibit B (the "Benefited Property"). Simmonds shall operate typical Burger King and Jimmy John's restaurants on the Benefited Property. Declarant wishes to restrict the use of the Restricted Property for the benefit of the Benefited Property as set forth herein.

NOW THEREFORE, for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant does hereby acknowledge and agree as follows:

1. Incorporation. The recitals are incorporated herein by this reference.
2. Restricted Uses. Declarant covenants and agrees that from and after the Effective Date Declarant shall not sell or lease any property in the Restricted Property to any party for use as a fast food hamburger restaurant which includes a drive-thru window (including for example Sonic, McDonald's, Wendy's, Runza); to a restaurant which includes a drive-up window whose primary product (over 50% of sales) is sub-type sandwiches; or for use as a Subway, Quiznos, Blimpies, Potbelly, Planet Sub, D'Angelo, or Charley's restaurant, but such restriction shall not apply to existing tenants, their successors, assigns or similar replacements or to prior sales of any portion of the Restricted Property.

RECORDER NOTES:
 "Sorensen Park Plaza Rep 3"

4849-1179-8273.02

-4/- 24630

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3. Expiration. This Declaration shall expire on the the date the Benefited Property is no longer operated as either a Burger King or a Jimmy John's restaurant, or similar replacement restaurants, for more than sixty (60) consecutive days. If this Exclusive expires under this Paragraph 3 Simmonds shall execute a recordable termination agreement acknowledging this expiration.

4. Breach of Declaration. In the event Declarant shall breach the terms of this Declaration, Simmonds shall notify Declarant and Declarant shall have sixty (60) days to cure such violation before it shall constitute a default under this Declaration. If the violating user is a rogue tenant or other rogue party, then Declarant shall not be in default so long as it is diligently pursuing means to halt such unauthorized use.


5. Mortgagees' Protection; Subordination of Liens. Violation of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any portion of the Restricted Property. Any lien created hereunder shall be junior and subordinate to any such mortgage or deed of trust unless a suit to enforce the same shall have been filed in a court of competent jurisdiction prior to the recordation of such mortgage or deed of trust; provided, however, any mortgagee or beneficiary in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other owner of the Restricted Property effective upon the date of acquisition.

[signature page to follow]

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

KDI Omaha, L.P.,
a Nebraska limited partnership

By: KD Omaha 1103, Inc.,
a Nebraska corporation
Its: General Partner

By: 
Name: DANIEL C. SLATTERY
Title: Executive Vice President
Date: 8/29/07


STATE OF ILLINOIS)
) s.s.
COUNTY OF DUPAGE)

The foregoing instrument was acknowledged before me on August 29, 2007 by Daniel C. Slattery, the Exec. V.P. President of KD Omaha 1103, Inc., the general partner of a KDI Omaha, L.P., on behalf of the corporation. Daniel C. Slattery personally appeared before me, a General Notary Public for the State of ILLINOIS, and is either personally known to me or was identified by me through satisfactory evidence.

Witness my hand this 29th day of August, 2007.

My Commission Expires:

12/4/2010


Notary Public

[notarial seal]



EXHIBIT A

The "Restricted Property"

Lots 2, 4, 5, 9, 11, 12, 13, and 14 Sorensen Park Plaza, an Addition to the City of Omaha, and a platted and recorded subdivision in Douglas County, Nebraska as shown on that plat recorded at Douglas County Register of Deeds at Instrument No. 2005035546 on March 31, 2005.

AND

Lot 2, Sorenson Park Plaza Replat 3, Addition to the City of Omaha, Douglas County, Nebraska, containing approximately 1.239 acres, as shown on that plat recorded at Douglas County Register of Deeds at Instrument No. 2007099342 on August 29, 2007.

EXHIBIT B

The "Benefited Property"

Lot 1, Sorenson Park Plaza Replat 3, Addition to the City of Omaha, Douglas County, Nebraska, containing approximately 0.968 acres, as shown on that plat recorded at Douglas County Register of Deeds at Instrument No. 2007099342 on August 29, 2007.