


PATRICK F GILL, AUDITOR AND RECORDER
WOODBURY COUNTY IOWA 

Type of Document:

Declaration of Use Restriction

Return Document to:

Barbara Thompson
GMRI, Inc.
5900 Lake Ellenor Drive
Orlando, Florida 32809

Preparer Information:

Ellen Parker, Esq.
GMRI, Inc.
5900 Lake Ellenor Drive
Orlando, Florida 32809
(407) 245-4000

Seller:

Lakeport Commons, L.L.C.
16820 Frances Street, Suite 102
Omaha, NE 68130

Buyer:

GMRI, Inc.
5900 Lake Ellenor Drive
Orlando, Florida 32809

Legal Description:

Lots 1, 3, 4, 5 and 6, TOGETHER WITH Outlots 1, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Final Plat of Lakeport Commons – an addition to the City of Sioux City, Woodbury County, Iowa,

Except that portion of Lot 1 conveyed to the City of Sioux City, Iowa, described as follows:

Commencing at the northeast corner of said Lot 1; thence South 88°08'44" West along the north line of said Lot 1 for a distance of 461.52 feet to the east line of Old Lakeport Roan and the Point of Beginning; thence South 03°45'37" East for a distance of 25.37 feet; thence South 86°14'23" West for a distance of 126.17 feet; thence North 03°45'37" West for a distance of 33.08 feet to the perimeter of said Lot 1; thence North 27°20'00" East for a distance of 116.04 feet to the west line of Old Lakeport Road; thence N 88°20'07" East for a distance of 33.00 feet to the center line of Old Lakeport Road; thence South 03°45'37" East along said centerline for a distance of 104.76 feet; thence North 88°08'44" East for a distance of 33.28 feet to the Point of Beginning.

DECLARATION OF USE RESTRICTION

THIS DECLARATION OF USE RESTRICTION (the "**Declaration**") is made as of the 30 day of July, 2006, by Lakeport Commons, L.L.C., an Iowa limited liability company ("**Developer**") and GMRI, Inc., Florida corporation ("**GMRI**").

WITNESSETH:

WHEREAS, Developer owns certain real property located in City of Sioux City, Woodbury County, Iowa, legally described on **Exhibit A** attached hereto (the "**Developer Property**");

WHEREAS, immediately prior to the execution of this Declaration, Developer conveyed to GMRI that certain real property in the City of Sioux City, Woodbury County, Iowa, legally described on **Exhibit B** attached hereto (the "**GMRI Property**");

WHEREAS, in connection with and as a condition to the purchase by GMRI of the GMRI Property from Developer, Developer has agreed to impose certain restrictions, as set forth herein, on the Developer Property, or portions thereof, for the benefit of the GMRI Property; and

NOW, THEREFORE, in consideration of the foregoing premises, the sufficiency of which is hereby acknowledged, Developer and GMRI do hereby agree as follows:

1. **Developer Property Use Restriction.** Developer hereby covenants and agrees that so long as GMRI is open for business and operating an "*Olive Garden*" restaurant featuring Italian food on the GMRI Property, no portion of the Developer Property shall be used as a restaurant featuring Italian food. For purposes of this restriction, "features" means that Italian food items comprise more than 25% of the menu offerings of such restaurant. For the purpose of this provision, a restaurant will still be considered to be "operating" even if temporarily closed due to casualty, condemnation, remodeling, reconstruction or force majeure. The foregoing exclusive shall not apply to (a) any tenant or occupant of any portion of the Developer Property occupying space pursuant to a lease entered into prior to February 21, 2006 which permits the tenant or occupant to operate, or to change its present use to operate, the premises occupied by such tenant or occupant as an Italian restaurant, without consent of Developer. By way of example, and not as a limitation, if a prior lease allows the tenant or occupant, without Developer's consent, to use its leased premises for "any lawful retail use", then that lease will not be subject to the foregoing Italian restriction, (b) restaurants, such as so called "quick casual" restaurants, where the food orders are taken and delivered at a counter, as opposed to having table service with waiters/servers, nor (c) restaurants specializing in the sale of pizza where no more than 20% of the food menu items (other than pizza) are Italian food. By way of example, and not as a limitation, examples of Italian restaurants that are prohibited by the foregoing restriction are Macaroni Grill, Johnny Carrino's, Brio, Buca di Beppo and Fazoli's.

2. **OEA Matters.** In connection with the Operation and Easement Agreement, dated March 11, 2005, recorded May 24, 2005, Roll 675, Image 2002, Woodbury County, Iowa, by and between Kohl's Department Stores, Inc. and Lakeport Commons, L.L.C. ("OEA"):

(A) Developer, as "Developer" and owner of the Outlot Tracts (as defined in the OEA), agrees that any installation, maintenance, connection repair, relocation or removal of any utility lines located on the GMRI Property shall be performed in accordance with the following:

(i) all such work shall be performed in a manner that causes the least amount of interference with the business being operated on the GMRI Property, as is reasonably possible, including, without limitation, assuring that access and parking on the GMRI Property is not hampered;

(ii) all such work shall be diligently pursued to completion, and the affected area shall be restored promptly after completion to a condition as good as or better to the condition in which it existed immediately prior to such work;

(iii) the party performing the work will (i) indemnify defend and hold the owner of the GMRI Property harmless from and against any and all liability, loss, damage, costs or expense, including, without limitation, reasonable attorneys' fees and claims of lien of laborers or materialmen, or others, for work performed on the GMRI Property; and

(iv) The provisions of Section 2.2(d) of the OEA shall also apply to any Utility Line to be relocated.

(B) Developer, as Approving Party, shall not consent to any changes to the prohibited uses set forth in Section 7.1 of the OEA to the extent such changes apply to the Outlot Tracts, without the prior written consent of GMRI. GMRI has no objection to the operation of a Sylvan Learning Center in the Center, notwithstanding Section 7.1(a)(xviii) of the OEA.

(C) Developer, as Approving Party, shall not consent to a change to the time for lighting requirements on the Outlot Tracts set forth in Section 8.1 without the prior written consent of GMRI.

(D) Developer hereby confirms that the installation of a monument sign being constructed on the GMRI Property in the location shown on **Exhibit "C"** does not prohibit installation of Pylon Sign 1 and/or Pylon Sign 2.

3. **ECR Matters.** In connection with that certain Declaration of Easements, Covenants and Restrictions, dated July 7, 2005, recorded July 19, 2005, Roll 677, Image 1401, Woodbury County, Iowa, by Lakeport Commons, L.L.C. ("ECR"), Developer, as Developer, under the ECR, hereby approves the curb-cut onto Sergeant Road located on the GMRI Property as shown on **Exhibit C**, as a "Permissible Curb Cut".

4. **Release From Liability.** Any person or entity acquiring fee or leasehold title to the Developer Property, or any portion thereof, after the date of this Declaration, shall be bound by this Declaration.

5. **Binding on Successors and Assigns; Amendment; Expiration.** The provisions 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 GMRI Property, respectively, their successors and assigns, provided however, the restriction in Section 1 shall terminate as set forth therein. This Agreement shall not be amended or modified unless by an instrument in writing executed by all of the owners, at the time of the amendment or modification, of the GMRI Property and that portion of the Developer Property affected by said amendment or modification.

6. **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 or refusal.

Notices to Developer:

Lakeport Commons, L.L.C.
Attention: Jeff Johnson
16820 Frances Street, Suite 102
Omaha, Nebraska 68130
Facsimile: (402) 691-6001

With a copy to:

Koley Jessen P.C.
Attention: Max J. Burbach
1125 South 103 Street, Suite 800
Omaha, Nebraska 68124
Facsimile: (402) 390-9005

Notices to GMRI

GMRI, Inc.
Attention: General Counsel
5900 Lake Ellenor Drive
Orlando, FL 32809

Such addresses may be changed from time to time by either party hereto by serving notice as herein provided.

7. **Miscellaneous**

7.1. **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.

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

7.3. **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.

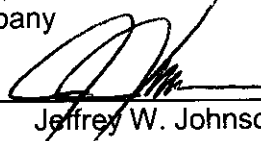
7.4. **Non-Waiver.** No delay or omission of the owner of any property subject to this Declaration in the exercise of any right accruing upon any default of an owner of any other property subject to this Declaration shall impair such right or be construed to be a waiver thereof with respect to the defaulting owner, and every such right may be exercised at any time during the continuance of such 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.

[Signature pages to follow.]

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

DEVELOPER:

Lakeport Commons, L.L.C., an Iowa limited liability company

By:  _____
Jeffrey W. Johnson, Manager

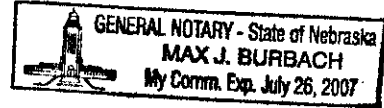
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Now on this 3 day of July, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Jeffrey W. Johnson, Manager of Lakeport Commons, L.L.C., an Iowa limited liability company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said company, and who duly acknowledged the execution of the same to be the act and deed 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: 7-26-2007



GMRI:

GMRI, Inc., a Florida corporation

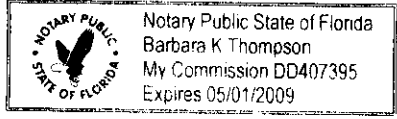
By: *Suk Singh*
24P Name: *Suk Singh*
Title: *Sr. Vice President*

STATE OF FLORIDA)
) ss.
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 6th day of July, 2006, by *Suk Singh* as the *Sr. Vice President* of GMRI, INC., a Florida corporation, on behalf of said corporation. Said person is personally known.

Barbara K. Thompson
Notary Public

My Commission Expires: _____



JOINDER

The undersigned, FIRST NATIONAL BANK OF OMAHA (the "Lender"), is the holder of a Mortgage, Security Agreement and Assignment of Rents and Leases, given by Lakeport Commons, L.L.C., dated June 9, 2005, recorded June 13, 2005, as Document No. 20083, records of Woodbury County, Iowa, which cover all or certain parts of the property described in the above and foregoing Declaration of Use Restriction. As such, Lender hereby consents to the above and foregoing Declaration of Use Restriction and agrees to recognize and be bound by the terms set forth therein.

FIRST NATIONAL BANK OF OMAHA

By: Eric W. Musgjerd
Name: Eric Musgjerd
Title: V.P.

STATE OF Nebraska)

) SS:

COUNTY OF Douglas)

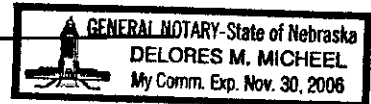
Now on this 28 day of June, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Eric W. Musgjerd, the Vice President of First National Bank of Omaha, a _____, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said company, and who duly acknowledged the execution of the same to be the act and deed of said company.

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

Delores M. Micheel

Notary Public

My Commission Expires: _____



Notary Seal

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lots 1, 3, 4, 5 and 6, TOGETHER WITH Outlots 1, 3, 4, 6, 7, 8, 9, 10, and 11 of the Final Plat of Lakeport Commons – an addition to the City of Sioux City, Woodbury County, Iowa,

Except that portion of Lot 1 conveyed to the City of Sioux City, Iowa, described as follows:

Commencing at the northeast corner of said Lot 1; thence South 88°08'44" West along the north line of said Lot 1 for a distance of 461.52 feet to the east line of Old Lakeport Roan and the Point of Beginning; thence South 03°45'37" East for a distance of 25.37 feet; thence South 86°14'23" West for a distance of 126.17 feet; thence North 03°45'37" West for a distance of 33.08 feet to the perimeter of said Lot 1; thence North 27°20'00" East for a distance of 116.04 feet to the west line of Old Lakeport Road; thence N 88°20'07" East for a distance of 33.00 feet to the center line of Old Lakeport Road; thence South 03°45'37" East along said centerline for a distance of 104.76 feet; thence North 88°08'44" East for a distance of 33.28 feet to the Point of Beginning.

And except that portion of Outlot 6, Lakeport Commons, an addition to Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southwest corner of said Outlot 6; thence North 05°41'41" West along the west line of said Outlot 6 for a distance of 167.55 feet; thence North 02°03'32" West along said west line for a distance of 41.00 feet to the northwest corner of said Outlot 6; thence easterly along the north line of said Outlot 6 and along a non-tangent curve to the left having a radius of 848.67 feet, for a distance along the arc of 87.85 feet, the chord of which bears North 84°58'33" East a distance of 87.81 feet; thence South 05°41'41" East for a distance of 207.43 feet to the south line of said Outlot 6; thence South 84°18'18" West along said south line for a distance of 90.40 feet to the Point of Beginning, containing 18,680 square feet or 0.43 acres.

EXHIBIT B

LEGAL DESCRIPTION OF GMRI PROPERTY

Outlot 5 of Lakeport Commons, an Addition to the City of Sioux City, Woodbury County, Iowa;

AND

That portion of Outlot 6, Lakeport Commons, an addition to Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southwest corner of said Outlot 6; thence North $05^{\circ}41'41''$ West along the west line of said Outlot 6 for a distance of 167.55 feet; thence North $02^{\circ}03'32''$ West along said west line for a distance of 41.00 feet to the northwest corner of said Outlot 6; thence easterly along the north line of said Outlot 6 and along a non-tangent curve to the left having a radius of 848.67 feet, for a distance along the arc of 87.85 feet, the chord of which bears North $84^{\circ}58'33''$ East a distance of 87.81 feet; thence South $05^{\circ}41'41''$ East for a distance of 207.43 feet to the south line of said Outlot 6; thence South $84^{\circ}18'18''$ West along said south line for a distance of 90.40 feet to the Point of Beginning, containing 18,680 square feet or 0.43 acres.

EXHIBIT "C"

