

FILED SARPY CO. NE.

INSTRUMENT NUMBER

99-031390

99 OCT -8 AM 10:58

Sharon J. Dowling

REGISTER OF DEEDS

99-31390

Counter DA

Verify m

D.E. a

Proof AK

Fee \$ 16.50

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**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made this 7<sup>th</sup> day of October 1999, by R.S. Land, Inc., a Nebraska corporation (referred to herein as "Declarant").

**RECITALS**

WHEREAS, Declarant is the owner of the real property generally located at the northeast corner of 96th and Giles Road in LaVista, Sarpy County, Nebraska and legally described as follows:

Lots 116, 117 and 118, Mayfair 2<sup>nd</sup> Addition, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (hereinafter referred to as the "Restricted Property"); and

WHEREAS, R.S. Land, Inc. and Fantasy's, Inc., a Nebraska corporation, have entered into a Purchase Agreement dated February 9, 1999, as amended (the "Purchase Agreement"), whereunder R.S. Land, Inc. agreed to sell and Fantasy's, Inc. agreed to purchase the following legally described real estate, to-wit:

Lots 104, Mayfair, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; 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; and

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:

1. Restricted Property. No portion of the Restricted Property shall be used for (i) the operation of a convenience store, motor fuel sales station or car wash; 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,

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or delicatessen products or any other business operation that is not reasonably classified as a convenience store, motor fuel sales station or car wash.

2. 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.

3. Governing Law. This Declaration is declared to have been made under the laws of the State of Nebraska.

4. 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 Lot 104, Mayfair, 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.

5. Remedies and Enforcement.

5.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by the owner of any portion 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 other party 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.

5.2 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.

6. Termination. If any owner or occupant of Lot 104, Mayfair, ceases to operate the premises as convenience store, motor fuel sales station or a car wash for 360 days or more, then this Declaration shall be deemed terminated and of no further force or effect.

7. 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.

8. 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

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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:

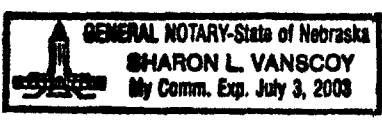
R.S. LAND, INC., a Nebraska corporation,

By: Ronald E. Smith  
Ronald E. Smith, President

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 7<sup>th</sup> day of October, 1999, by Mr. Ronald E. Smith, President of R.S. Land, Inc., a Nebraska corporation, on behalf of the corporation.

Sharon L. Van Scoy  
Notary Public



ATTN: \_\_\_\_\_  
OMAHA, NEBRASKA 68144-4485  
11440 WEST CENTER ROAD  
WALSH, FULLERKAMP & DOYLE  
RETURN TO: