

FILED SARPY CO. NE.
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Glenn J. Bowring

REGISTER OF DEEDS

COUNTER W C.E. W
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PROOF P
FEES \$ 22.50
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CHG. _____ CASH _____
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DECLARATION OF COVENANTS AND RESTRICTIONS

Lot 3 and 6, Hickory Hill Plaza Replat 2 and
Lots 1 and 2 Hickory Hill Plaza Replat 3
Papillion, Sarpy County, Nebraska

This **Declaration of Covenants and Restrictions** (this "Declaration") dated as of October 20, 2006, is made by **Hickory Hill Associates, L.L.C.**, a Nebraska Limited Liability Company, with a mailing address c/o The Lerner Company, 10855 W. Dodge Road, Suite 270, Omaha NE 68154 ("Declarant"), for the benefit of **MagCo, LLC**, a Nebraska Limited Liability Company ("Owner") with a mailing address of 13750 Millard Avenue, Suite 200, Omaha NE 68137.

PRELIMINARY STATEMENT

Declarant is the record owner of Lots 3 and 6, Hickory Hill Plaza Replat 2 and Lots 1 and 2 Hickory Hill Plaza Replat 3, a subdivision in Papillion, Sarpy County, Nebraska, as surveyed, platted and recorded (collectively the "Restricted Parcels").

Owner is the record owner of or is about to acquire Lot 2, Hickory Hill Plaza Replat 2, a subdivision in Papillion, Sarpy County, Nebraska, as surveyed, platted and recorded ("Owner's Parcel").

The Restricted Parcels, together with Owner's Parcel and certain other properties, constitute a portion of a shopping center known as Hickory Hill Plaza.

Declarant desires to hereby establish certain restrictions upon the Restricted Parcels for the benefit of Owner and its successors and assign as owners from time to time of Owner's Parcel.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby agrees as follows:

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1. (a) Declarant shall not lease, rent or occupy, whether by a tenant, subtenant, assignee, licensee or other occupant or itself, any premises in the Restricted Parcels for the operation of a retail facility whose primary business is the sale of coffee and coffee products such as "Starbucks" or "Caribou" (the "Restricted Use"). The term "primary business" as used in this Declaration shall mean that sales of coffee and coffee products generated from any such retail facility must equal fifty-one (51%) percent or more of the total gross sales generated from any such retail facility. Notwithstanding the foregoing, any such tenant, subtenant, assignee, licensee or other occupant or Declarant shall have the right to utilize its respective premises situated within the Restricted Parcels for the sale of coffee and coffee products, so long as such sales do not constitute its primary business as defined in this Section 1.(a).

(b) The restrictions set for in Section 1.(a) immediately above shall terminate and no longer be binding upon or restrict the Restricted Parcels upon the occurrence of the following: in the event the Owner's Parcel is not operated as a retail facility whose primary business is the sale of coffee and coffee products for a period of three (3) consecutive months (excluding periods of restoration due to casualty or reasonable periods of remodeling and after the earlier of (A) such retail facility's opening with the public, and (B) a construction period of eighteen (18) months following the date of the Owner's acquisition of Owner's Parcel, as evidenced by the recordation date of Owner's deed of conveyance.

Seller's recordation against the Restricted Parcels of an affidavit to the effect that the conditions precedent for the termination of such restrictions have occurred shall be deemed conclusive evidence of such termination and the effective date of such termination reflected in such affidavit.

2. The prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the other party the prevailing party's reasonable costs and expenses incurred in connection with such action including, without limitation, reasonable attorneys' fees and court costs (including any appeals).

3. No delay or omission of Owner in the exercise or enforcement of any right accruing upon any default by Declarant shall impair any such right to be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by Owner of a breach or a default of any of the terms and conditions of this Declaration shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration.

4. Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereunder shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

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Declarant: Hickory Hill Associates, L.L.C.
c/o The Lerner Company
10855 West Dodge Road, Suite 270
Omaha, NE 68154-2666

Owner: MagCo, LLC
13750 Millard Avenue #200
Omaha NE 68137

or to such other person or address as Declarant or Owner may direct from time to time by written notice forwarded to the other.

5. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Declaration, nor any portion hereof, shall be construed more strongly against any party who prepared it.

6. This Declaration shall not be modified or amended in any respect except by a writing executed, delivered and recorded in the records of Sarpy County, Nebraska and signed by each of Declarant and Owner.

7. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. The invalidity of any provision of this Agreement shall not in any way invalidate the remaining provisions of this Declaration.

8. This Declaration shall be binding against Declarant and its successors and assigns, as covenants running with the Restricted Parcels, and shall inure to the benefit of Owner and its successors and assigns, as appurtenant to their respective interests in Owner's Parcel.

HICKORY HILL ASSOCIATES, L.L.C.,
a Nebraska limited liability company,

By: [Signature]

Name: BRUCE ADAMS CARTA

Title: MEMBER

MAGCO, LLC,
a Nebraska limited liability company
By: Magnus Development Corp., Manager

By: [Signature]

Name: Joseph H Kutilek

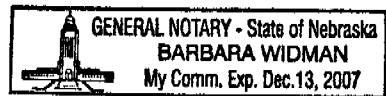
Title: Vice President

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STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 20th day of October, 2006 by SALVADORE CARTA, MEMBER of Hickory Hill Associates, L.L.C., a Nebraska limited liability company, on behalf of such limited liability company.

Barbara Widman
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 20th day of October, 2006 by Joseph H. Kutilek, Vice President of Development ^{Magnum Corp. manager} of MagCo, LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Kristine K. Moore
Notary Public

