



MISC 2007072018



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Register of Deeds, Douglas County, NE
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2007072018

DECLARATION OF USE RESTRICTION

This Declaration of Use Restriction ("Declaration") is made effective the 31st day of July, 2006, by David F. Lanoha, Trustee of the David F. Lanoha Revocable Trust, or any duly qualified successor trustee, pursuant to a written Trust Agreement dated March 2, 2004 ("Declarant").

Preliminary Statement

Lanoha-Center, Inc., a Nebraska corporation, formerly known as Lanoha-Center Development, Inc. ("Lanoha") is the owner and developer of the Ridgeview Shopping Center situated south and west of the intersection of 180th Street and West Center Road, Douglas County, Nebraska. Lanoha has entered into a Ground Lease with Tranquility Realty, L.L.C., a Nebraska limited liability company ("Tranquility"), dated February 21, 2002 (the "Ground Lease"), pursuant to which Tranquility leases certain ground in the Ridgeview Shopping Center from which it operates a "Fantasy's" branded convenience store. Under the terms of the Ground Lease, Lanoha has agreed not to permit operation of a competing convenience store, gasoline provider, or car wash from certain of the property in the Ridgeview Shopping Center.

David F. Lanoha, the principal of Lanoha is the owner, either individually or through entities which he controls, of additional real estate situated west of the Ridgeview Shopping Center to 192nd Street and West Center Road. David F. Lanoha has agreed, pursuant to a First Amendment to Ground Lease executed concurrently herewith (the "First Amendment"), to restrict such additional real estate from the operation of a convenience store, gasoline provider, or car wash in exchange for Tranquility's agreement to pay increased rent under the Ground Lease. This Declaration of Use Restriction is being entered into for purposes of memorializing the restriction of the real estate legally described on Exhibit "A" attached hereto (the "Restricted Property") as required by the First Amendment.

Return to:
James D. Buser
Pansing Hogan Ernst & Bachman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114
Fantasy's Food n Fuel
15611 Harrison St.
Omaha, NE 68136

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In consideration thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares the following restrictions:

1. From the date of recording hereof, and continuing until such time as terminated under Section 2 below, Declarant, for itself and its successors and assigns, agrees that the Restricted Property shall not be leased, used, or occupied as a carwash (the "Carwash Restriction"), for the retail sale or dispensing of gasoline (the "Gasoline Restriction"), or a convenience store (the "C-Store Restriction"); provided, however, it shall not be a violation of this Section if other users of the Restricted Property sell products traditionally found in convenience stores as long as the sale of such products is not offered in a dedicated convenience store type setting as opposed to being ancillary to the retailers principal business (e.g. a retail pharmacy such as Walgreens or CVS that sell convenience store items in their stores).

2. The "Gasoline Restriction", "C-Store Restriction" and "Carwash Restriction" shall terminate upon the first to occur of the following:

a. The "Gasoline Restriction" shall terminate thirty (30) days following the date on which Tenant ceases to dispense gasoline at retail from the Demised Premises.

b. The "C-Store Restriction" shall terminate thirty (30) days following the date on which Tenant ceases to operate a convenience store from the Demised Premises.

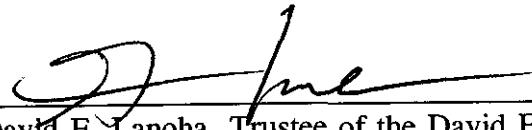
c. The "Carwash Restriction" shall terminate thirty (30) days following the date on which Tenant ceases to operate a carwash from the Demised Premises.

d. The "Gasoline Restriction", "C-Store Restriction" and "Carwash Restriction" shall all terminate upon the expiration or termination of the Ground Lease.

e. The "Gasoline Restriction", "C-Store Restriction" and "Carwash Restriction" shall terminate in the event of a transaction in which there is a change in control in the ownership of Tranquility Realty, L.L.C. such that John Spautstat or his "Immediate Family Members", as hereinafter defined, cease to own a controlling equity interest in the Tenant, whether such transaction is effected by way of the sale of stock, sale of assets, merger or otherwise (a "Change in Control Transaction"). For purposes of this Declaration, the term "Immediate Family Member" shall mean the wife, child, grandchild, father, mother, brother, sister-in-law, sister and brother-in-law of John Spaustat.

3. In the event of a termination of the restrictions provided herein, Declarant, or its successors and assigns, may file an Affidavit of Termination to memorialize such termination.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the date of recording with the Office of the Register of Deeds of Douglas County, Nebraska.



David F. Lanoha, Trustee of the David F. Lanoha Revocable Trust, or any duly qualified successor trustee, pursuant to a written Trust Agreement dated March 2, 2004

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21st day of June, 2007, by David F. Lanoha, Trustee of the David F. Lanoha Revocable Trust, or any duly qualified successor trustee, pursuant to a written Trust Agreement dated March 2, 2004, on behalf of the trust.

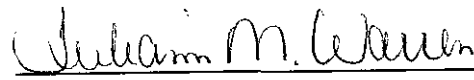
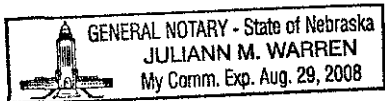

Notary Public

EXHIBIT "A"

Legal Description

That part of the West Half of the Northwest Quarter (W1/2 NW1/4) of Section 32, Township 15 North, Range 11 East of the 6th P.M., in Douglas County, Nebraska, more particularly described as follows:

Beginning at a point on the West line of said Section 32, 1,650.00 feet North of the West Quarter Corner; thence North, along the West line of said Section, for 885.40 feet; thence East, along the South line of West Center Road, for a distance of 261.50 feet; thence North, 12.5 feet; thence East for 35 feet; thence South, 12.5 feet; thence East, 96.5 feet; thence South, along a line 393.00 feet East of and parallel to the West line of said Section, for 886.45 feet; thence West, 393.00 feet, to the Point of Beginning;

EXCEPT that part thereof more particularly described as follow:

Commencing at the Northwest corner of the Northwest Quarter of said Section 32; thence South 00°00'00" West (assumed bearing), along the West line of said Northwest Quarter, 352.52 feet; thence South 90°00'00" East, 33.00 feet, to a point on the East right-of-way line of 192nd Street, being the Point of Beginning; thence continuing South 90°00'00" East, 12.00 feet; thence South 00°00'00" West, 605.00 feet; thence South 90°00'00" East, 30.00 feet; thence South 00°00'00" West, 36.50 feet; thence South 89°36'50" West, 42.00 feet, to a point on the East right-of-way line of 192nd Street; thence North 00°00'00" East, 641.78 feet, along said East right-of-way line, to the Point of Beginning.

And,

Parcel J; that part of the West 1/2 of the Northwest 1/4 of Section 32, Township 15 North, Range 11 more particularly described as follows:

Beginning at the point 1650.00 feet North of and 393.0 feet East of the West 1/4 corner of said Section 32, thence North along a line 393.0 feet East of and parallel to the West line of said Section for 886.45 feet, thence East along the South line of Center Street for a distance of 460.22 feet, thence South along a line 853.00 feet East of and parallel to the West line of said Section for 896.4 feet thence West 460.0 feet to the point of beginning.

And,

Parcel K; that part of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 15 North, Range 11 East of the 6th P.M., more particularly described as follows:

Beginning at a point 1650 feet North of and 853 feet East of the West $\frac{1}{4}$ corner of said Section, thence North parallel with the West line of said Section for a distance of 896.40 feet, thence East along the South line of Center Street 477.3 feet, thence South along the East line of said West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ for a distance of 908.2 feet, thence West 474.7 feet to the point of beginning.