

STS (4)

97-14509

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
97-014509  
97 JUL 11 AM 11:42  
*Glenn J. Buchanan*  
REGISTER OF DEEDS

Counter 80  
Verify: [initials]  
D.E.: [initials]  
Proof: [initials]  
Fee: 36.00  
Ck [initials] 30.50  
Cash [initials]  
Charge X 5.50 STS

Return to  
Spence Title Services  
1405 HARNEY ST. #210  
Omaha, Nebraska 68102

**SECOND DECLARATION OF RESTRICTIONS - ADJACENT PROPERTY**

This Second Declaration of Restrictions - Adjacent Property ("Declaration") is made as of this 9th day of July, 1997, by and between **Twin Creek L.P.**, a Nebraska limited partnership ("Twin Creek"), and **Steven J. Buchanan** ("Buchanan").

**RECITALS:**

WHEREAS, Twin Creek is the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (hereinafter collectively referred to as the "Twin Creek Lots"):

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 23 Twin Creek Plaza, a Subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska;

WHEREAS, Twin Creek is also the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (hereinafter referred to as "Summit Lot 5"):

Lot 5 Summit Plaza, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska;

WHEREAS, Contemporaneously with the execution and filing of this Declaration, Twin Creek is conveying Summit Lot 5 to Buchanan;

WHEREAS, Twin Creek and Buchanan have entered into certain agreements pursuant to which Buchanan has covenanted, warranted and represented that he will cause a gas station (with at least 5 pumps), a car wash, and convenience store (with at least 4,000 and not more than 4,750 square feet of floor space) to be constructed, landscaped, fully stocked and open for business before December 5, 1997 ("Covenant to Develop").

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WHEREAS, In exchange for the Covenant to Develop, Twin creek has agreed to place certain restrictions on the use of the Twin Creek Lots, all as more specifically set forth below.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the Covenant to Develop, Twin Creek does hereby establish and declare the following covenants, conditions, reservations and restrictions:

1. **Restrictions:** So long as Buchanan fulfills all provisions of the Covenant to Develop on or before December 5, 1997, no part of the Twin Creek Lots shall be used as a: (i) convenience store (which shall be defined as a store containing at not more than 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food items for off-premises consumption); (ii) gasoline/diesel station; and, (iii) car wash (hereinafter collectively referred to as "Restrictions"). Floor area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

2. **Duration, Modification and Termination:** The term of this Declaration shall be for twenty-five (25) years from and after the date hereof, and at the expiration of such term, this Declaration shall terminate automatically without the necessity of any further documentation. In the event Buchanan fulfills all provisions of the Covenant to Develop on or before December 5, 1997, the Restrictions set forth in Paragraph (1), above shall not be modified or terminated prior to their natural expiration without the prior written consent of the owner of Summit Lot 5 and Twin Creek. In the event Buchanan fails to fulfill all provisions of the Covenant to Develop on or before December 5, 1997, then Twin Creek shall thereafter have the sole and exclusive right, at its election, at any time, to modify or terminate the Restrictions on all or any portion of the Twin Creek Lots.

3. **Covenants Run With the Land:** The benefit of the Restrictions shall run with: (i) the Twin Creek Lots, but only as long as they are owned by Twin Creek; and, (ii) Summit Lot 5. The burden of the Restrictions shall run with the Twin Creek Lots. This Declaration shall be binding on and inure to the benefit of Buchanan, and his heirs, personal representatives, successors and assigns.

4. **Default:** Except as to the Covenant to Develop, a person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice specifying the particulars in which such person has failed to

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perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

5. **Remedies:** Twin Creek, as long as it is an owner of all or part of the Twin Creek Lots, and the owner of Summit Lot 5 shall have the right, in addition to all other rights and remedies provided by law or equity, to enjoin any violations or threatened violations of the Restrictions in a court of competent jurisdiction.

6. **Waiver:** The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

7. **Severability:** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8. **Not a Partnership:** This provisions of this Declaration are not intended to create nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9. **Third Party Beneficiary Rights:** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

10. **Captions and Headings:** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreement contained herein.

11. **Not a Public Dedication:** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Twin Creek Lots to the general public or for the general public or for any public purpose whatsoever, it being the intention of the

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parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

12. **Recordation:** This Declaration shall be recorded in the records of the Register of Deeds, Sarpy County, Nebraska.


13. **Time of Essence:** Time shall be of the essence with regard to the Covenant to Develop.

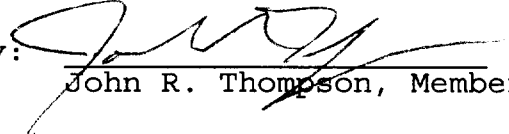
IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first above written.

**TWIN CREEK:**  
Twin Creek L.P., a Nebraska  
limited partnership, Seller

**Buchanan:**  
Steven J. Buchanan

By: Twin Creek Development  
Company, L.L.C., Nebraska  
limited liability company,  
Its General Partner

By:   
Steven J. Buchanan

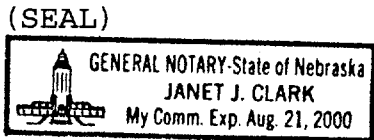
By:   
John R. Thompson, Member

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

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On this 9th day of July, 1997, before me, a Notary Public in and for said county and state, personally came BRIAN R. THOMPSON, known to me to be the identical personal whose signature is affixed to the foregoing instrument, as member Twin Creek Development Company, LLC, <sup>general partner of</sup> Twin Creek L.P., a Nebraska limited partnership, and he acknowledged the execution thereof to be his voluntary act and deed, on behalf of the company and partnership.

WITNESS by hand and notarial seal the day above written.

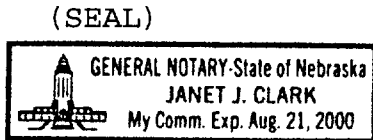


Janet J. Clark  
Notary Public for Nebraska  
My Commission expires: 8-21-2000

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

On this 9th day of July, 1997, before me, a Notary Public in and for said county and state, personally came Steven J. Buchanan, known to me to be the identical personal whose signature is affixed to the foregoing instrument, and he acknowledged the execution thereof to be his voluntary act and deed.

WITNESS by hand and notarial seal the day above written.



Janet J. Clark  
Notary Public for Nebraska  
My Commission expires: 8-21-2000

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