

FILED SARPY CO. NE.
INSTRUMENT NUMBER
98-025172

98 SEP -8 AM 8:13

Steven D. Johnson
REGISTER OF DEEDS

98-25172
Counter nk nk
Verify Dyd
D.E. Dyd
Proof [Signature]
Fee \$ 53.50
Ck Cash Chg

Return recorded documents to: Steven D. Johnson, Stinson, Mag & Fizzell,
1299 Farnam Street, Omaha, NE 68102; (402) 342-1700

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made as of this 31st day of August, 1998, by **Twin Creek L.P.**, a Nebraska limited partnership ("Twin Creek").

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, 15, 16 and 24
TWINCREEK Plaza, a Subdivision, and Lots 1, 2,
3, 4 and 5 TWINCREEK PLAZA, Replat I, all as
surveyed, platted, and recorded in Sarpy
County, Nebraska;

WHEREAS, The Twin Creek Lots, together with all other lots in TWINCREEK PLAZA, a Subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska shall be collectively referred to herein as the Shopping Center ("Shopping Center");

WHEREAS, Twin Creek has established a general plan for the harmonious and attractive development of the Twin Creek Lots and the Shopping Center.

AGREEMENTS:

NOW, THEREFORE, Twin Creek does hereby establish and declare the following covenants, conditions, reservations and restrictions which shall apply to the Twin Creek Lots:

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1. General Provisions:

a. No part of the Twin Creek Lots will be occupied or used without provision of adequate and reasonable off street vehicular parking spaces and in any event there shall be a minimum of four (4) parking stalls per 1,000 square feet of gross floor space in the any building on the Twin Creek Lots.

b. After commencement thereof, construction of any improvements will be diligently prosecuted to completion, and no construction will be maintained in an uncompleted or unfinished condition for more than twelve months.

c. No access street, driveway, road, or sidewalk and no structural element of any construction or exterior part thereof will be maintained in damaged, deteriorated, hazardous, or otherwise unfit, unsafe, or unsightly condition.

d. No grass, weeds, or other vegetation will be grown or otherwise permitted to commence or continue and no dangerous, diseased, or otherwise objectionable shrubs or trees will be maintained so as to constitute an actual or potential public nuisance, create a hazard of undesirable contagion or proliferation, or detract from a neat and trim appearance.

e. No garden implements, lawn mower, or other maintenance equipment not in actual use will be kept or otherwise maintained other than in a location out of public view.

f. No excess or unused building material or materials will be kept, stored, or otherwise maintained in a location within public view, other than for use or uses connected and coterminous with construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored or otherwise maintained on Twin Creek Lots.

g. No truck, boat, camper, trailer, or similar chattel not in actual use will be stored or maintained other than in an enclosed structure.

h. No public annoyance or nuisance and no noxious or offensive activity will be carried on, conducted, or otherwise permitted to commence or continue on the Twin Creek Lots.

i. If buildings and improvements are not under construction on a lot, that lot shall be planted with grass or other suitable plant material to act as a dust cap and kept weed-free, clean, mowed and maintained until such time as buildings and improvements are constructed thereon.

j. No exterior trash compactor or other receptacle for garbage, trash, or other refuse will be maintained above ground level other than in a location out of public view and attractively screened from view from the parking areas, public streets and the Shopping Center, using brick or decorative block materials.

k. No barn, shack, tent, trailer, or other movable or temporary structure will be maintained other than for temporary use or uses appropriate, convenient, or necessary for use or uses connected and coterminous with approved or permitted construction.

l. The exterior of any building or other improvement shall be maintained in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center.

m. Air conditioning equipment, antenna, mechanical fixtures and equipment, loading docks, bottle storage areas, exterior coolers, electrical and refrigeration facilities and other similar service facilities shall not be maintained above ground level other than in a location out of public view and attractively screened from view from the parking areas, public streets and the Shopping Center, using brick or decorative block materials.

n. In the event all or any portion of any building is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, then such building or remaining portion of such building shall be promptly restored or, in lieu thereof, the damaged portion of such building together with all rubble and debris related thereto shall be removed. All portions of the lot on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap and shall

be kept weed free and clean until buildings are reconstructed thereon.

o. The owner of any particular Twin Creek Lot, shall seed, fertilize, mow and maintain, in the same condition as the grass areas within the lot, that part of any area of public right-of-way abutting the lot and extending to the edge of the paved street or highway, including but not limited to 36th Street, Highway 370, Edgerton Drive, Twin Creek Drive, and Summit Plaza Drive.

2. Architectural Control Committee: The Architectural Control Committee shall be composed of the general partner(s) of Twin Creek L.P., a Nebraska limited partnership, or such successor as may be appointed by Twin Creek L.P. The Committee, may designate and appoint a representative to act for it.

a. Each building, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. No building or related improvements will be built, constructed, erected, installed, maintained, undertaken, planted, or the exterior altered in any way, without the express written approval of the Architectural Control Committee (hereinafter referred to as the "Committee"), as to: (i) exterior elevations (including without limitation, signs, exterior colors, composition, exterior building materials (it being intended that the Architectural Control Committee may require brick to be used as the exterior building material), and quality of construction) and harmony and compatibility of external elevations with other improvements in the Shopping Center; (ii) location of improvements within lot boundary lines (including but not limited to side yard set backs and building orientation on the lot); (iii) site landscaping; (iv) parking facilities; (v) public sidewalks; and, (vi) compliance with this Declaration;

b. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent to the Architectural Control Committee to enable the Architectural Control Committee to make a reasonable determination as to the architectural and aesthetic compatibility of said building or

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modification with all other buildings in the Shopping Center, and as to compliance with the this Declaration. The Architectural Control Committee may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center and in compliance with this Declaration. The Architectural Control Committee must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if the Architectural Control Committee disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Architectural Control Committee rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, the Architectural Control Committee shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the Architectural Control Committee that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

c. All portions of the lot which are not used for buildings shall be developed and continuously maintained in accordance with a site plan approved by the Architectural Control Committee. The sizes and arrangements of the improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaping areas, together with necessary planting, may not be changed without the prior written approval of the Architectural Control Committee.

d. The Architectural Control Committee shall be authorized to make such exceptions to, or modifications to, this Declaration as unusual circumstances or special situations may warrant; provided, that such exceptions or modifications be in writing and that they not invalidate this Declaration in principle or general objective.

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3. Miscellaneous Provisions:

a. Covenants Run With the Land: The terms and provisions of this Declaration shall be in favor of and appurtenant to the Twin Creek Lots and shall run with such land, and shall be a burden on Twin Creek Lots and shall run with such land.

b. Successors and Assigns: This Declaration and the Restrictions created hereby shall be binding upon the owners of Twin Creek Lots, their heirs, personal representatives, successors and assigns, and upon any person acquiring such land, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

c. Duration: Except as otherwise provided herein, the term of this Declaration shall be for twenty-five (25) years from the date hereof, whereupon they shall automatically renew for an additional twenty-five (25) years unless terminated pursuant to paragraph 3(e) below.

d. Injunctive Relief: In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, any or all of the owners of the Twin Creek Lots shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

e. Modification and Termination: This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the owners of at least ninety percent (90%) of the Twin Creek Lots at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required owners and recorded in the office of the register of deeds of the county in which the Shopping Center is located. No modification or termination of this Declaration shall affect the rights of any lienholder unless the lienholder consents in writing to the modification or termination.

f. Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of Twin Creek Lots or the Twin Creek Lots to the general public or for the

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general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

g. Default: 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 perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) 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.

h. 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.

i. 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 or provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

j. Not a Partnership: The 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 among the owners of the Twin Creek Lots.

k. 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 an owner of a Twin Creek Lot unless otherwise expressly provided herein.

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1. 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 agreements contained herein.

m. Construction: In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

n. Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

o. Recordation: This Declaration shall be recorded in the office of the Register of Deeds, Sarpy County, Nebraska.

4. Use Restrictions: a. Except for Lot 2 TWINCREEK PLAZA Replat I, no part of the Twin Creek Lots shall be used for a restaurant with drive through service, whose primary menu item (meaning more than 25% of gross sales) is hamburgers, including but not limited to McDonalds, Wendy's, Hardees' and Runza, provided, however this provision shall not apply to or in any way limit the use of a Twin Creek Lot or any portion of a Twin Creek Lot for: (i) a restaurant without drive through service, (ii) a Dairy Queen or other similar restaurant, (iii) operations whose primary menu item (meaning more than 25% of gross sales) is not hamburgers, (iv) so-called family style restaurants with waitress service, including but not limited to Village Inn, Baker's Square, Denny's, Shoney's, Big Boy, Perkins, Sizzler, Bonanza, or any so-called steak house, provided it has waitress service, (v) so-called fast food roast beef restaurants, including but not limited to Arby's, Rax, and Barnards, (vi) so-called chicken restaurants, including but not limited to KFC, Popeye's, Church's, and Boston Market, and (vii) any so-called fish restaurants, including but not limited to Long John Silver's. For a period of five (5) years after September 1, 1998, Lot 2 TWINCREEK PLAZA, Replat I shall be used only for a restaurant with drive through service, whose primary menu item (meaning more than 25% of gross sales) is hamburgers. No part of Lot 2, TWINCREEK PLAZA, Replat I shall be used as a gas station, car wash or convenience store.

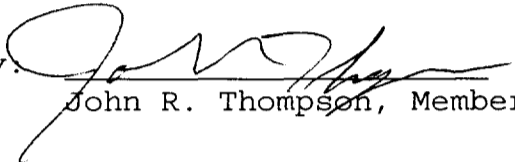
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b. The restrictions contained in this paragraph 4 may be modified or released by the joint consent of: (i) the owner of Lot 2 TWINCREEK PLAZA, Replat I; and, Twin Creek (or such successor as may be designated by Twin Creek).

EXECUTED as of the day and year first above written.

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

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

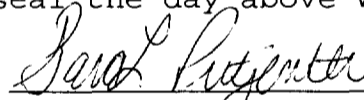
By: 
John R. Thompson, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

On this 31st day of August, 1998, before me, a Notary Public in and for said county and state, personally came John R. Thompson, known to me to be the identical personal whose signature is affixed to the foregoing instrument, as member of Twin Creek Development Company, L.L.C., a Nebraska limited liability company as, general partner of Twin Creek L.P., a Nebraska limited partnership, and he acknowledged the execution thereof to be his voluntary act and deed.

WITNESS by hand and notarial seal the day above written.

(SEAL)



Notary Public for Nebraska
My Commission expires: 4-28-2000

