

RECEIVED JUN 24 2004

154414

OFFICE OF COUNTY RECORDER  
LYON COUNTY MINNESOTA

MINNESOTA - Marshall  
Store #1722-02

CERTIFIED, FILED, AND/OR  
RECORDED ON  
06/16/2004 01:20PM

JEANINE M. BARKER  
COUNTY RECORDER

BY Mona Hammer  
DEPUTY

**DECLARATION OF RESTRICTIONS**

This Declaration of Restrictions (this "Declaration") is made and entered into as of the 2<sup>nd</sup> day of JUNE 2004, by CLARICE E. BOYER, as Trustee for the CLARICE E. BOYER LIVING TRUST dated August 28, 1990, hereafter referred to as Declarant.

**WHEREAS**, Declarant is the owner of that property more particularly described in Exhibit "A" attached hereto and incorporated by reference herein, which property is located in Marshall, Lyon County, Minnesota, such described property being hereafter referred to as Tract 2; and

**WHEREAS**, Declarant desires to establish certain restrictions upon Tract 2 for the benefit of the parcel legally defined on Exhibit "B" attached hereto and incorporated by reference herein, which property is also located in Marshall, Lyon County, Minnesota, such described property being hereafter referred to as Tract 1;

**NOW, THEREFORE**, Declarant for herself, her successors and assigns, does hereby agree that Tract 2 shall be subject to and shall be used in conformance with the following covenants and agreements:

1. No building or structure shall be constructed or maintained on Tract 2 unless such building or structure shall conform to the following covenants and requirements:

- a. In developing and using Tract 2, the owner of Tract 2 shall continuously provide and maintain a parking ratio equal to one of the following: (i) one (1) space for every seventy-five (75) gross square feet of building space for any restaurant (the same ratio shall be provided for a McDonald's Restaurant); or (ii) one (1) space per two hundred (200) square feet of building space for any other use.
- b. Subject to the prior written consent of Declarant, any building, structure or improvement on Tract 2 shall be used for commercial or retail purposes only; however, no building, structure or improvement on Tract 2 may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages or as a discount department store, a grocery store greater than twenty thousand (20,000) gross square feet, a pharmacy, a gas or gas/convenience store, a wholesale club similar to Sam's Club, or a variety, general or "dollar" store.
- c. If any improvement is built on Tract 2, the owner(s) of Tract 2 shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on Tract 2, their buildings, appurtenances and other improvements located thereon. Such insurance shall: (i) be carried with reputable companies licensed to do business in the state in which Tract 2 is located; (ii) have liability limits of at least \$1,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder; and (iv) not be subject to change, cancellation or termination without at least thirty (30) days' prior written notice to Declarant.

2. Any of the foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time by Declarant; provided, that Declarant shall not waive, amend, modify, release or terminate this Declaration without the prior written consent of Wal-Mart Stores, Inc., during such time that such entity or an affiliate thereof owns any interest in Tract 1.

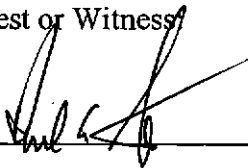
3. The foregoing restrictions and agreements are imposed on Tract 2 for the benefit of Tract 1. Accordingly, all references herein to "Declarant" shall mean the Declarant herein and any successor in title who may become the owner of Tract 1. In the event that another entity shall become the owner of Tract 1, then such entity shall be considered the Declarant for all purposes of this Declaration.

4. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon Tract 2 and any person who may from time to time own, lease or otherwise have an interest in Tract 2.

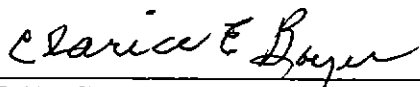
5. This Declaration is made in and shall be construed pursuant to the laws of the State of Minnesota.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration as of the day and year above set forth.

Attest or Witness

  
\_\_\_\_\_

DECLARANT:

  
\_\_\_\_\_  
CLARICE E. BOYER, as Trustee of the  
CLARICE E. BOYER LIVING TRUST dated  
August 28, 1990

List of Exhibits:

Exhibit "A" – Description of Restricted Tract 2

Exhibit "B" – Description of Benefitted Tract 1

This Instrument Was Drafted By:

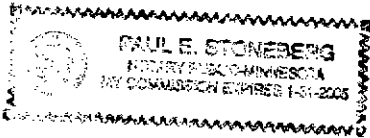
Mayer, Brown, Rowe & Maw LLP  
700 Louisiana Street, Suite 3600  
Houston, Texas 77002-2730  
Attention: Robert L. Morgan

ACKNOWLEDGMENT

STATE OF MINNESOTA           §  
  § SS  
COUNTY OF LYON             §

Be it remembered that on this 24<sup>th</sup> day of MAY, 2004, before me a notary public in and for the county and state aforesaid, came CLARICE E. BOYER, as Trustee of the CLARICE E. BOYER LIVING TRUST dated August 28, 1990, who is personally known to me to be the person who executed the within document on behalf of such living trust, and such persons duly acknowledged the execution of the same to be the act and deed of said living trust.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.



[Signature]  
Notary Public

(SEAL)

My commission expires 1-31, 2005

EXHIBIT "A"  
TO  
DECLARATION OF RESTRICTIONS

Description of Restricted Tract 2:

All of Outlot A and Outlot B of the J-C BOYER ADDITION, a subdivision in Marshall, Minnesota, according to the plat thereof filed for record in the Office of the County Recorder of Lyon County, Minnesota.

EXHIBIT "B"  
TO  
DECLARATION OF RESTRICTIONS

Description of Benefitted Tract 1:

All of Lots One (1) and Two (2), in Block One (1), and Outlots C, D and E, of the J-C BOYER ADDITION, a subdivision in Marshall, Minnesota, according to the plat thereof filed for record in the Office of the County Recorder of Lyon County, Minnesota.

TRANSACTION #: 11451

06/16/2004 01:20PM

154414

COUNTER CUSTOMER  
DECLARATIONS/RESTRICTIONS

RECORDED DOCUMENTS F: \$30.00

TOTAL: \$30.00

CHECK: \$30.00 9100617

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DELIVER TO:

CITY OF MARSHALL  
344 W. MAIN ST.  
MARSHALL, MN 56258

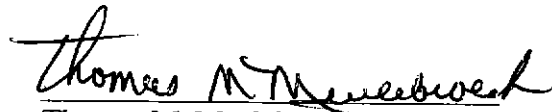
THANK YOU  
JEANINE M. BARKER  
LYON COUNTY RECORDER  
507-537-6722

STATE OF MINNESOTA)

:SS

COUNTY OF LYON )

The undersigned, being the duly qualified City Clerk of the City of Marshall, Minnesota, and as such the custodian of the books and records of said City, hereby certifies and attests that the attached copy of Declaration of Restrictions is a true and correct copy of the original of said Declaration which is on file and of record in my office.



Thomas M. Meulebroeck, CMC  
Financial Director/City Clerk  
City of Marshall



(SEAL)