

RETURN RECORDED DOCUMENT TO:

Beth Sprecher Brooks, Esq.
IRC Retail Centers
814 Commerce Dr, Suite 300
Oak Brook, Illinois 60523

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (the "Declaration") is made and entered into this ____ day of _____, 201____, by TMK/INLAND AURORA VENTURE, LLC, an Illinois limited liability company (the "Declarant").

WITNESSETH

WHEREAS, Declarant is the fee owner of the real property located in the City of Aurora, County of Kane, State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("Land");

WHEREAS, Declarant desires to sell a portion of the Land legally described on Exhibit B attached hereto and made a part hereof ("Benefitted Property");

WHEREAS, Declarant desires to impose upon and subject the portion of the Land legally described on Exhibit C attached hereto and made a part hereof ("Burdened Property") to a certain restriction for the benefit of the Benefitted Property.

NOW THEREFORE, Declarant hereby declares, imposes upon and makes the Burdened Property subject to the following restrictive covenant ("Covenant"), which shall operate as a restriction running with the land and passing with the conveyance of the Burdened Property and shall benefit and burden each and every successor to Declarant as owner of any portion of the Land:

AGREEMENTS

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean, initially, the Declarant as owner of the Land and, thereafter, any and all successors or assigns of such person as the owner or owners of fee simple title to all or any portion of the Land, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Parcel" or "Parcels" shall mean each separately subdivided parcel of real property now constituting a part of the real property subject to this Declaration as described on Exhibit A, and any future subdivisions thereof.

(c) The term "Occupant" shall mean any person or entity that, from time to time, is entitled to use and occupy the Parcels through either ownership of said Parcel or a lease.

(d) The term “Permittees” shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(e) The term “Lot 4 Owner” shall mean the fee Owner or Owners, from time to time, of Lot 4 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois, or any part thereof.

(f) The term “Lot 10 Owner” shall mean the fee Owner or Owners, from time to time, of the Benefitted Property or any part thereof.

(g) The term “Lot 11 Owner” shall mean the fee Owner or Owners, from time to time, of Lot 11 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois, or any part thereof.

2. Use. For as long as any part of the Benefitted Property is occupied by a business engaging in the Exclusive Use (as hereinafter defined), no part of the Burdened Property shall be used for the operation of a restaurant, the primary business of which is the sale of fried chicken products as its primary menu item (“Exclusive Use”).

3. Remedies and Enforcement.

3.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner, Occupant or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. The remedies specified herein shall be cumulative, and the exercise of any one shall not preclude the exercise of any other, until such time as full and adequate relief has been granted.

3.2 No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee’s sale, or otherwise.

4. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Kane County recorder of deeds and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Land in accordance with paragraph 5.2 hereof.

5. Miscellaneous.

5.1 Attorneys’ Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final

adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

5.2 Amendment. Unless expressly provided herein, the parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Burdened Property and the Benefitted Property, or all Owners of any future subdivisions thereof, as evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the county recorder of Kane County, Illinois.

5.3 Notices. Any notice, demand, request, consent, approval or communication under or with respect to this Declaration shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time its respective address for notice hereunder by like notice to the other parties. The notice addresses of the Owners are as follows:

Lot 4 Owner: TMK/Inland Aurora Venture, LLC
c/o IRC Retail Centers LLC
814 Commerce Drive, Suite 300
Oak Brook, Illinois 60523
Attn: General Counsel

Lot 10 Owner: TMK/Inland Aurora Venture, LLC
c/o IRC Retail Centers LLC
814 Commerce Drive, Suite 300
Oak Brook, Illinois 60523
Attn: General Counsel

Lot 11 Owner: TMK/Inland Aurora Venture, LLC
c/o IRC Retail Centers LLC
814 Commerce Drive, Suite 300
Oak Brook, Illinois 60523
Attn: General Counsel

5.4 Consents. Wherever in this Declaration the consent or approval of an Owner or Occupant is expressly required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Occupant under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

5.5 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

5.6 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

5.7 Covenants to Run with Land. Each of the covenants, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

5.8 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the covenants, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

5.9 Severability. Each provision of this Declaration and the application thereof to the Land are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

5.10 Time of Essence. Time is of the essence of this Declaration.

5.11 Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Declaration.

5.12 Estoppel Certificates. Each Owner, within fifteen (15) days of its receipt of a written request from the other Owner(s) shall from time to time provide the requesting Owner a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to this Declaration as of the date of such certificate.

5.13 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO DECLARATION OF RESTRICTIVE COVENANT]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed by its duly authorized representative, effective as of _____, 20__ (the “Effective Date”).

TMK/INLAND AURORA VENTURE, LLC,
an Illinois limited liability company

By: _____
D. Scott Carr, Manager

By: _____
Donna C. King, Manager

[NOTARY PAGE FOLLOWS]

[NOTARY PAGE TO DECLARATION OF RESTRICTIVE COVENANT]

State of _____)
) ss
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

Notary Public
[NOTARY SEAL]

My Commission expires:

State of _____)
) ss
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

Notary Public
[NOTARY SEAL]

My Commission expires:

EXHIBIT A

Legal Description of Land

Lots 4, 10 and 11 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois.

EXHIBIT B

Legal Description of Benefitted Property

Lot 10 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois.

EXHIBIT C

Legal Description of Burdened Property

Lots 4 and 11 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois.