

Document No.

DECLARATION OF PROTECTIVE COVENANTS

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Parcel Number

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made this 29 day of February, 2008 by CITY OF SUN PRAIRIE ("Declarant").

RECITALS:

A. Declarant now owns certain lands in the City of Sun Prairie, Dane County, Wisconsin (the "City") which are legally described as Lots One (1) through Four (4) and Outlot One (1) inclusive, O'Keeffe Center Plat, in the City of Sun Prairie, Dane County, Wisconsin (the "Development"). A copy of the O'Keeffe Center Plat is attached hereto and incorporated herein as Exhibit A.

B. Declarant desires to subject the Development to the conditions, restrictions, covenants and reservations set forth below, which shall encumber the Development, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

NOW, THEREFORE, Declarant declares that the Development and each Parcel thereof shall be used, held, sold and conveyed subject to the conditions, restrictions, covenants and reservations set forth below, which shall inure to the benefit of and encumber the Development, and run with the land, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

ARTICLE I

STATEMENT OF PURPOSE

1.01 General Purpose. The general purpose of this Declaration is to help assure that the Development will become and remain an attractive community; to insure the highest and best development of the Development; to protect the economic interests of the Owners and to encourage and secure the construction of attractive structures thereon.

1.02 Owner's Acknowledgement.

(a) All Owners are subject to the conditions, restrictions, covenants and reservations contained in this Declaration.

(b) Each Owner, by acceptance of a deed for any Parcel, acknowledges and agrees that the use and enjoyment and marketability of its Parcel can be affected by the conditions, restrictions, covenants and reservations in this Declaration.

ARTICLE II

DEFINITIONS

The following definitions shall be applicable to this Declaration:

2.01 City. The City of Sun Prairie, a municipal corporation.

2.02 Committee. The Architectural Control Committee described in Section 3.01(a).

2.03 Declaration. This Declaration of Protective Covenants.

2.04 Owner. The person or persons, including any business organization, having the power to convey the fee simple title to a Parcel, but excluding the owner of Outlot One (1)). In the case of a land contract, the purchaser rather than the vendor shall be the Owner.

2.05 Parcel. Any of Lots One (1) through Four (4) and Outlot One (1), O'Keeffe Center Plat, in the City of Sun Prairie, Dane County, Wisconsin, or, if any of such parcels is further subdivided, any lots resulting from the subdivision.

2.06 Register of Deeds. Office of Register of Deeds for Dane County, Wisconsin.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.01 Establishment, Duties, Membership.

(a) There shall be an Architectural Control Committee, which shall have the rights and obligations set forth in this Declaration for the Committee and any powers necessary to exercise those rights. No building or other improvement shall be erected, placed or altered on any Parcel until its construction plans and specifications have been approved in writing by the Committee.

(b) The Committee shall initially consist of seven (7) members, with the Owner of Lot One (1) having the right to elect at least four (4) members, but no less than one member for each Parcel comprising Lot One (1); and each other Owner (other than the owner of Outlot One (1), which shall have no authority to elect a member) having the right to elect one (1) member for each Parcel owned. SSM Health Care of Wisconsin, Inc. ("SSM") or its assigns shall have the right, so long as SSM owns any portion of Lot One (1), to determine how the election rights pertaining to Lot One (1) are allocated among any additional Parcel comprising Lot One(1). By way of example, if SSM further subdivides Lot One (1) into three Parcels, then SSM (or any Owner of a Parcel comprising Lot One (1), as determined in SSM's

sole discretion) would have the right to elect four (4) members, and the Owner of Lots Two (2), Three (3) and Four (4) would have the right to elect one member each.

3.02 Procedure.

(a) An Owner desiring to construct a building or otherwise improve a Parcel shall submit to the Committee, for its written approval, construction plans and specifications for all improvements, and a plot plan showing the location of all contemplated improvements. The items submitted to the Committee shall include all of the information listed on Exhibit B at a minimum scale of 1":30'.

(b) All structures shall be designed by any of the following: a registered architect, a professional engineer experienced in design, or comparable qualified individual or firm. A submission shall not be deemed complete and the thirty (30)-day approval time set forth below shall not commence until all documents required by this Section 3.02 and Exhibit B have been submitted. All such submissions shall be to the Committee at such address that the Committee may designate, together with any applicable fee required under Section 3.05. The Committee shall then call a meeting, by delivering at least five (5) days' prior written notice to the committee members, to consider such plans and specifications. Action of the Committee shall be by majority vote of the Committee members present at such meeting, provided, however, that at least one member elected by SSM and at least one member elected by the Owner of any of Lots Two (2), (3) or (4), must be present at such meeting for action to be taken. A tie vote on an issue shall be deemed equivalent to rejection. The Committee, with the written consent of a majority of its members and the delivery of at least five (5) days' prior written notice to all members of the Committee, may take action without a meeting. The Committee may approve, disapprove or approve subject to stated conditions the preliminary and final development plans. If the Committee conditionally approves either the preliminary or final development plans, then the applicant shall be entitled to resubmit such plans. The decision of the Committee shall be in writing, and the Committee shall record minutes of all meetings. If the Committee fails to render its decision on the preliminary or final development plans within thirty (30) days of their submission, or upon any resubmitted preliminary or final development plans within fifteen (15) days after their resubmission,

approval will be deemed to have been obtained and the applicable covenants, conditions and restrictions in this Declaration shall be deemed to have been complied with. Once the plans are unconditionally approved, then, upon obtaining proper zoning approval from the City, the Owner of the Parcel shall construct the improvements in accordance with the submitted documents. All material changes to such plans must be resubmitted to, and approved by, the Committee. Any changes to such plans that would lessen the quality or expense of the construction as previously approved shall be deemed to be material changes.

3.03 Standards. The Committee shall have the right to reject any plans and specifications or plot plans which, in the judgment of the Committee:

- (a) are not in conformity with any of the restrictions set forth in this Declaration; or
- (b) are not desirable for aesthetic reasons; or
- (c) are not in harmony with buildings located on the surrounding Parcels; or
- (d) have exterior lighting, exterior television antennae, fencing or landscaping which are not desirable for aesthetic reasons; or
- (e) are not in conformity with the general purposes of this Declaration.

Notwithstanding any terms or conditions set forth in this Declaration to the contrary, the Committee shall not unreasonably withhold or condition approval of the initial or any subsequent design or materials for the building(s) to be constructed on Lot 4, or the building to be occupied by Kwik Trip on Lot 3 within the Development, provided that construction of the initial buildings commences on or before the date that is two years from the date of this Declaration and provided that the design and materials for such building are consistent with the design and materials of other Class A buildings of a similar size. The design and materials for the initial building to be occupied by Kwik Trip shall substantially conform to the upscale design and materials depicted on Exhibit C and shall include a limit on all signage to 14 or fewer feet in height. Only immaterial changes which do not lessen the quality or appearance of such buildings shall be permitted. In the event of a dispute regarding

the terms "unreasonably," "substantial," "immaterial" or "Class A," as such terms are used herein, any party shall have the right, at its discretion, to submit the disputed item (the "Claim") to an independent panel of three arbitrators chosen in the manner set forth below ("Arbitrators"). The parties to such dispute (the "Parties") shall, within thirty (30) days after submission of the dispute to arbitration, each appoint one arbitrator. Such arbitrators shall, within twenty one (21) days after their appointment, appoint a third arbitrator, who shall act as chairman of the arbitral panel. If the two arbitrators chosen by the Parties fail to reach agreement on a third arbitrator within the 21-day period, the International Institute for Conflict Prevention and Resolution ("IICPR") shall select and appoint the third Arbitrator. The Arbitrators shall be instructed to comply with the procedures and guidelines established by the IICPR but not to file the Claim with the IICPR. To the extent permitted by said procedures and guidelines, each party shall have the right to implead any third party into such arbitration to the extent that such third party's participation is necessary or desirable for resolution of any issue within the scope of such arbitration. The Arbitrators shall only have the right to determine the meaning of the terms used in this Section 3.03. The decision of the Arbitrators shall be final and non-appealable. All costs of pursuing the Claim, including the fees of the Arbitrators and any other fees and costs incurred to resolve the Claim, together with any costs incurred in bonding or releasing liens arising because of a payment dispute, shall be paid by the party that submits the Claim.

3.04 Occupancy. No structure shall be occupied unless it has been approved (or if conditionally approved, then all conditions shall be satisfied) by the Committee pursuant to Section 3.02 hereof, constructed in material conformance with the plans as approved by the Committee and the City, and an occupancy permit has been issued therefor, if it is required by the City.

3.05 Fees. The Committee shall from time to time adopt a fee schedule designed to defray the Committee's reasonable out-of-pocket costs incurred in connection with its review of any preliminary or final development plan or of any resubmission of any such plans and such fee may be adjusted at any time by the Committee.

3.06 Approval of Contractors. For each building erected or placed on any Parcel subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Committee prior to commencement of any construction. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status or building reputation.

3.07 Liability of Committee. The Committee and its members shall not be liable under any circumstances for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans and specifications, whether or not defective;
- (b) The construction or performance of any work, whether or not pursuant to approved plans and specifications; or
- (c) The development of any property within the Development.

3.08 Conflicting Standards. To the extent that any provision set forth in this Declaration differs from any applicable zoning regulation or ordinance, the stricter standard shall control.

ARTICLE IV

ARCHITECTURAL RESTRICTIONS

The buildings constructed within the Development shall be designed so that the exterior elevations of each shall comply with City zoning and the design guidelines attached hereto as Exhibit D.

ARTICLE V

USE RESTRICTIONS

5.01 Prohibited Uses for All Parcels. No Parcel shall be used for the following purposes:

- (a) sales, leasing, storage or repair of vehicles, building materials, fertilizers, machinery and equipment;
- (b) taverns, provided that establishments that sell wine (and no other intoxicating liquor or fermented malt beverages), and establishments with sales of intoxicating liquor and fermented malt beverages amounting to

not more than 50% of annual gross receipts (on a calendar year basis) for all food and beverages sold, shall be permitted on all Parcels, subject to applicable laws and ordinances;

- (c) communication towers;
- (d) utility services, provided that offices for any utility service provider shall be permitted on all Parcels;
- (e) truck and bus terminals;
- (f) warehouses;
- (g) adult book stores and adult entertainment taverns;
- (h) gaming facilities;
- (i) tattoo and body art establishments;
- (j) clubs and lodges;
- (k) outdoor pet boarding;
- (l) community living arrangements;
- (m) motels;
- (n) taxidermists;
- (o) hostels and boarding houses;
- (p) abortion clinics;
- (q) Planned Parenthood offices and clinics;
- (r) arcades and pool halls;
- (s) institutional residential; and

- (t) payday loan businesses.

5.02 Prohibited Uses on Lots Two (2), Three (3), Four (4) and Outlot One (1). Lots Two (2), Three (3), Four (4) and Outlot One (1) shall not be used for any of the following purposes unless: (i) SSM fails to open for business a free-standing emergency center or urgent care center (or any other use described in (a)-(m) below) located on any portion of Lot One (1) within five (5) years after the date on which the last of the churches located on Lot 1 have vacated the buildings on Lot 1; or (ii) the free-standing emergency center or urgent care center (or any other use described in (a)-(m) below) ceases to operate on any portion of Lot One (1) for a continuous period of twelve (12) months after such five (5)-year period (unless the cessation of operation is due to casualty or reconstruction where such reconstruction has been commenced within such twelve (12)-month period and is being diligently pursued, in which case the twelve (12)-month time period shall be tolled during the period of such reconstruction):

- (a) physician offices;
- (b) chiropractic offices or clinic;
- (c) pharmacy;
- (d) hospital;
- (e) urgent care facility;
- (f) optical sales;
- (g) durable medical equipment sales;
- (h) ambulatory surgery and care center;
- (i) emergency room;
- (j) homeopathy or naturopathy services; or
- (k) physical therapy or rehabilitative services;

- (l) any other outpatient medical services (e.g. diagnostic medical imaging); or
- (m) hospice.

5.03 Prohibited Uses on Lots One (1), Two (2), Four (4) and Outlot One (1). Lots One (1), Two (2), Four (4) and Outlot One (1) shall not be used for any of the following purposes unless (i) Kwik Trip fails to open for business a gas station, carwash and convenience store located on Lot Three (3) within five (5) years after the date of this Declaration; or (ii) Lot Three (3) ceases to be used as a gas station, carwash and convenience store for a continuous period of twelve (12) months after such five (5)-year period (unless the cessation of operation is due to casualty or reconstruction where such reconstruction has been commenced within such twelve (12)-month period and is being diligently pursued, in which case the twelve (12)-month time period shall be tolled during the period of such reconstruction):

- (a) tobacco sales;
- (b) carwash establishments;
- (c) gasoline station; or
- (d) convenience store.

5.04 Subdivision. No Parcel shall be subdivided in a manner that would result in the creation of any Parcel consisting of less than two acres.

ARTICLE VI

MISCELLANEOUS

6.01 Term and Amendment. Unless amended as provided herein, this Declaration shall run with the land and shall be binding upon all persons claiming an interest in a Parcel. This Declaration may be amended by the recording of an instrument executed by all Owners.

6.02 Enforcement. Any Owner shall have the right to enforce the provisions hereof or any of its orders by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of the Declaration, either to restrain or cure the violation or to recover damages, or both. Nothing herein shall be deemed to limit the rights of the City to enforce any zoning codes, ordinances, regulations or other requirements which may be identical or similar to the requirements of this Declaration.

6.03 Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

6.04 Nonforfeiture. Any violation of these restrictions shall not result in a forfeiture or reversion of title to any Parcel.

6.05 Attorneys' Fees. If any suit or action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and attorneys' fees from the other party.

6.06 Waiver. Any Owner may waive, in writing, the benefits of any covenant intended to benefit that Owner's Parcel.

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