

WAUKESHA COUNTY, WI
REGISTER OF DEEDS
James R Behrend

Recorded On: 05/08/2014 8:57:21 AM

Total Fee: \$30.00 Page(s): 6

Transfer Tax: \$0.00

DECLARATION OF USE RESTRICTION

Document Number

Document Name tjs 8-13

JELIVANN WAUKESHA LLC, a Wisconsin limited liability company ("JELIVANN"), owns the real estate commonly known as 1640-1660 E. Main Street, Waukesha, WI, legally described as Lots 6, 7 and 8 of Certified Survey Map No. 11104, being in the Northwest ¼ of the Southwest ¼ of section 36, all in Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin. ("**JELIVANN Property**").

BERES FOODS, LLC, a Wisconsin limited liability company ("Beres"), has a leasehold interest in the real estate described as Lot 7 of Certified Survey Map No. 11104, being in the Northwest ¼ of the Southwest ¼ of section 36, all in Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin ("**Beres Property**").

By this Declaration, JELIVANN and Beres intend to impose a use restriction on all parts of the JELIVANN Property except for the Beres Property (the "Restricted Parts"), each of the benefit of the other, on the terms and conditions that follow.

Recording Area

Name and Return Address
JELIVANN WAUKESHA
ATTN: BRET A. BACKUS
7818 BIG SKY DRIVE, SUITE 201
MADISON, WI 53719

Part of WAKC 1007047

Parcel Identification Number(s):
This is not homestead property.

1. **Exclusive Use Restriction.** JELIVANN hereby declares that neither JELIVANN nor any other owner or tenant of the Restricted Parts may use the Restricted Parts for a freestanding "burgers and fries" quick-service restaurant, including but not limited to McDonald's, Burger King and Five Guys (the "Restriction").

1.1 **Benefit.** The Restriction is solely for the benefit of the BERES Property. Neither JELIVANN nor BERES may amend this Declaration without the prior written consent of the other.

1.2 **No Duty to Enforce.** JELIVANN will have no obligation to enforce the Restriction, but JELIVANN will not sell or lease the Restricted Parts to a user who, to the actual knowledge of JELIVANN, intends to violate the Restriction. The owner or tenant of the Beres Property, from time to time, will have the sole responsibility of enforcing the Restriction at its sole expense.

1.3 **Injunctive Relief.** Any owner or tenant having the benefit of the Restriction will suffer irreparable harm if the Restriction is violated. Damages will not be an adequate remedy. Such an owner or tenant will have the right to injunctive relief to enforce the Restriction. In addition, the owner or tenant will have the right to damages and such other relief as is available under applicable law.

2. **RESTRICTIONS RUN WITH THE LAND.** This Declaration will run with the land and will be binding upon and inure to the benefit of the owners of the JELIVANN Property and the Beres Property, and their respective successors and assigns. Any owner or tenant of the Beres Property will have the power to enforce the terms of this Declaration.

3. **VENUE.** Any litigation that is the subject matter of this instrument will be venued in the circuit court for Waukesha County, Wisconsin, and each party hereto accepts the jurisdiction of such court.

4. **NO WAIVER.** Failure to enforce any provision of this Declaration will in no event be deemed a waiver of the right to do so for any subsequent violation or a waiver of the right to enforce any other provision of the Declaration.
5. **COVENANTS.** The benefits and obligations described in this Declaration will be construed as covenants and not as conditions, and will constitute equitable servitudes upon the two Properties. This Declaration will create privity of contract and estate with and among all owners and tenants of both Properties and their respective representatives, successors and assigns.
6. **DURATION & AMENDMENT.** THIS DECLARATION AND THE RESTRICTION CREATED BY IT WILL CEASE, AND BE OF NO FURTHER FORCE OR EFFECT, ON THE 20TH ANNIVERSARY OF THE DATE UPON WHICH IT IS RECORDED IN WAUKESHA COUNTY, WISCONSIN. NEITHER THE DOCTRINE OF MERGER OF TITLE NOR ANY OTHER DOCTRINE WILL OPERATE TO TERMINATE THIS DECLARATION EARLIER THAN THAT.
7. **Termination.** If Beres does not construct a building and open for business as a Culver's restaurant on the Beres Property on or before December 1, 2014, this Declaration and the Restriction will cease on that date. If that business is opened by that date, but subsequently the Beres Property ceases to operated as a Culver's restaurant for a period of twelve (12) consecutive months, this Declaration and the Restriction will cease at the expiration of such twelve months. If, however, that business ceases as the result of a casualty, and Beres diligently rebuilds the damaged building but is unable to complete the rebuilding in such twelve months as a result of an event of force majeure, such twelve months shall be extended by the duration of such event, but no more than by six months.
8. **NOTICES.** Any notice given in connection with this agreement will be in writing and may be given in any one of the following ways: by personal delivery or by delivery by an express mail service.

JELIVANN WAUKESHA LLC

By: _____
Bret Backus, Manager

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me on _____, ____
2013, Bret Backus, to me known to be the person who
executed the foregoing instrument and acknowledged
the same.

By: _____
Notary Public, State of Wisconsin
My Commission expires: _____

BERES FOODS, LLC

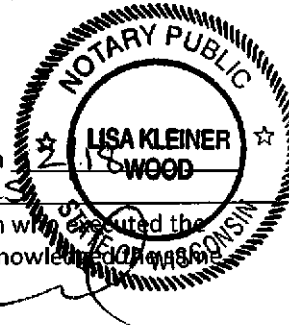
By: [Signature]
Name: Greg J. Beres
Title: President

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

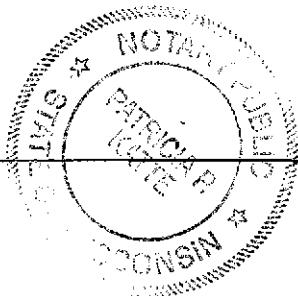
Personally came before me on 2/18/2013, Greg Beres
to me known to be the person who executed the
foregoing instrument and acknowledged the same.

By: Lisa Wood
Notary Public, State of Wisconsin
My Commission expires: is permanent



JELIVANN WAUKESHA LLC

By: [Signature]
Bret Backus, Manager



BERES FOODS, LLC

By: [Signature]
Name: Gary J. Beres
Title: President

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me on 12/19/2013
2013, Bret Backus, to me known to be the person who
executed the foregoing instrument and acknowledged
the same.

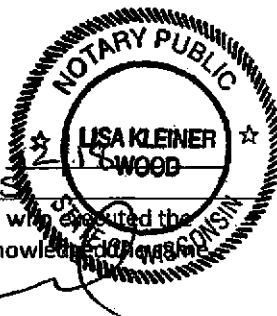
By: [Signature]
By: PATRICIA P. KAITER
Notary Public, State of Wisconsin
My Commission expires: 09/08/2017

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)



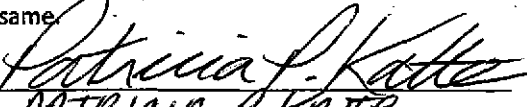
Personally came before me on 12/19/2013
2013, Gary Beres, to me known to be the person who
executed the foregoing instrument and acknowledged the same.

By: [Signature]
By: Lisa Wood
Notary Public, State of Wisconsin
My Commission expires: is permanent




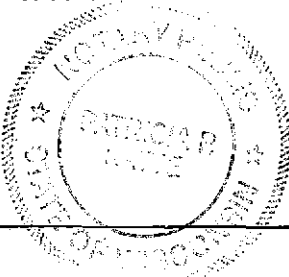
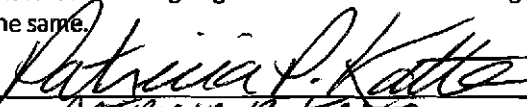
CONSENT OF MORTGAGEE

Undersigned Woodman's Food Market, Inc., the mortgagee of Lot 8 of Certified Survey Map No. 11104 which is a part of the JELIVANN Property, hereby consents to this Declaration.

<p>WOODMAN'S FOOD MARKET, INC.</p> <p>By: </p> <p>Bret Backus, Vice President-Real Estate</p> <p></p>	<p>ACKNOWLEDGEMENT</p> <p>STATE OF WISCONSIN))ss. COUNTY OF DANE)</p> <p>Personally came before me on <u>12/19/2013</u> 2013, Bret Backus, to me known to be the person who executed the foregoing instrument and acknowledged the same.</p> <p> By: <u>PATRICIA P. KATTER</u> Notary Public, State of Wisconsin My Commission expires: <u>09/08/2017</u></p>
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CONSENT OF MORTGAGEE

Undersigned Dealar Properties, Inc., the mortgagee of the Beres Property, and Lot 6 of Certified Survey Map No. 11104 which is a part of the JELIVANN Property, hereby consents to this Declaration.

<p>DEALAR PROPERTIES, INC.</p> <p>By: </p> <p>Bret Backus, Vice President</p> <p></p>	<p>ACKNOWLEDGEMENT</p> <p>STATE OF WISCONSIN))ss. COUNTY OF DANE)</p> <p>Personally came before me on <u>12/19/2013</u> 2013, Bret Backus, to me known to be the person who executed the foregoing instrument and acknowledged the same.</p> <p> By: <u>PATRICIA P. KATTER</u> Notary Public, State of Wisconsin My Commission expires: <u>09/08/2017</u></p>
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CONSENT OF LAND LESSEE

Undersigned Waukesha State Bank, has a leasehold interest in Lot 6 of Certified Survey Map No. 11104 which is a part of the JELIVANN Property, hereby consents to this Declaration.

WAUKESHA STATE BANK By: <u>Tina Neis</u> Name: <u>Tina Neis</u> Title: <u>Vice President</u>	ACKNOWLEDGEMENT STATE OF WISCONSIN))ss. COUNTY OF WAUKESHA) Personally came before me on <u>January</u> , <u>24</u> , 2013, <u>Tina Neis</u> to me known to be the person who executed the foregoing instrument and acknowledged the same. <u>Evan File</u> By: <u>Evan File</u> Notary Public, State of Wisconsin My Commission expires: <u>1-7-18</u>
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Drafted by Bret A. Backus and T. J. Sobota

