



1158 302 MISC



01311 96 302-314

RECEIVED

FEB 8 9 12 AM '96

GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

01311

FEE	10550	H	35-37075
		R	FB
DEL.		C/O	COMP KP
LEGAL PG		SCAN	MV

EASEMENTS WITH COVENANTS AND RESTRICTIONS

AFFECTING LAND ("ECR")

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") ("AGREEMENT") is made and entered into on this 21st day of December, 1989 by and between Stockyards Plaza, a Nebraska Limited Partnership ("Landlord") and Hardee's Food Systems, Inc. a North Carolina Corporation, ("Tenant").

INITIAL
HERE

WHEREAS, Landlord is the Owner of the real property more particularly described on Exhibit ~~"A1"~~ attached hereto ("Landlords Property");

"A2"

WHEREAS, Tenant is leasing from Owner the real property more particularly described on Exhibit "A2" ("Leased Property");

WHEREAS, Landlord has constructed a shopping center on the Landlord's Property and Tenant proposes to construct a building on the Leased Property;

WHEREAS, the shopping center and building will be perceived by the general public as an integrated operation;

WHEREAS, due to such public perception, and due to the Landlord's large economic investment in the Landlord's Property, Landlord desires to impose certain restrictions upon the use of the leased Property, provisions relating to landscaping, trash removal, signage, and parking in order to present at all times the appearance of a clean, well managed, attractive, coordinated and unified operation and to make provisions relating to ~~mutual~~ parking and ingress and egress over ~~the respective properties~~.

INITIAL
HERE

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants and conditions contained herein, the parties grant and agree as follows:

1. LANDLORDS EASEMENTS.

its successors and assigns

Owner hereby grants to Tenant /and/ Tenant's employees, agents, invitees, patrons, customers, concessionaires, and licensees the nonexclusive and nonrevocable easement and right, in common with Landlord and other tenants of the shopping center, to use the parking and common areas of the shopping center as shown on the attached plot plan (Exhibit "A2") including without limitation all parking areas, loading areas,

INITIAL
HERE

"A2"

* Tenant shall have the right to examine the books and records of the Landlord within ninety (90) days after receiving Landlord's statement. In the event there is a discrepancy of more than five percent (5%) in the maintenance costs set forth in Landlord's statement, Tenant shall have the right to adjust its proportionate share accordingly and pay the lesser amount, and Landlord shall reimburse Tenant for the cost of the audit.

INITIAL
HERE

driveways,

truckways, walks, sidewalks, ramps, tunnels, ingress, egress, malls, recreation areas, facilities, and restrooms. Landlord hereby agrees that the parking areas shall be lighted until 11:30 p.m. each day. Landlord shall have the right, with respect to the parking and common areas, to establish, modify or enforce reasonable rules and regulations with respect to the use of said area and Tenant agrees that it shall comply with such rules and regulations upon notice thereof.

Landlord shall maintain or keep in good order, repair and condition, the parking areas and common areas (including but not limited to, lighting, painting, policing, inspecting, landscaping, cleaning, paving, striping and drainage), Tenant agrees to pay to Landlord the sum of One Thousand Dollars (\$1,000.00) annually. Landlord agrees to provide cleanup, policing and lighting to those areas of ingress and egress adjacent to the leased premises and further keep same reasonably free from snow, ice, refuse and rubbish. The one thousand dollar fee shall be adjusted upward annually in the same percentage that Landlord's cost of such cleanup, policing and lighting has increased over this initial year of the lease. Payment of this fee shall be made in the same manner as percentage rent. In the event that Landlord shall fail to properly maintain and repair such facilities, Tenant may so do and deduct the cost thereof from subsequent installments of rent.*

Landlord hereby agrees that it shall not erect any barrier or fence not shown on the site plan which would impede the flow of vehicular or pedestrian traffic from the premises to the remainder of the shopping center. However, this covenant shall not prevent Landlord from the installation of appropriate traffic directional signals for the purpose of regulating the flow of vehicular traffic across the remainder of the shopping center.

2. PLAN OF SHOPPING CENTER.

Landlord has attached to this Lease Agreement as Exhibit "A" a plan of the shopping center. The Hardee's Restaurant premises is identified as such on this Exhibit and is ~~outlined in red. Landlord shall, within thirty (30) days from date hereof, provide to Tenant~~ ^{crosshatched} A current survey containing the legal description of the entire shopping center property is attached hereto and made a part hereof.

INITIAL
"A2"
HERE

3. UTILITIES.

Landlord hereby grants to Tenant, its successors and assigns,

non-exclusive easements appurtenant to the Tenant's leased premises for the purpose of installing, operating, maintaining, repairing, replacing and renewing any and all utility lines and related facilities over, above, along, under and in the shopping center, wherever said utility lines may be located. For such utilities now installed, Landlord hereby grants to Tenant, its successors and assigns, the right and easement to tie in and use such existing utilities. Landlord covenants that in the event specific easements are necessary, it will execute any easements to utility companies in order to serve the Tenant's leased premises.

The legal description of the shopping center shall be used for the easement description and the non-exclusive easements shall be for the period of time during the entire term of this Lease Agreement and any extension thereof and the non-exclusive easement for ingress and egress and parking shall be for the benefit of the Tenant, its employees, customers and its legal representatives, successors and assigns, and other invitees in common with all the other tenants of the shopping center.

In the event Tenant acquires fee title to the premises pursuant to the terms of this Lease, the easements as more particularly described herein and the rights granted by same shall be perpetual.

4. CONSTRUCTION OF SHOPPING CENTER.

Landlord agrees that no building or obstruction will be built that will interfere with or limit internal or external access between the proposed Tenant's premises and the parking area and all other buildings, parking areas and driveways in the entire shopping center. Landlord shall not allow more than one additional outlot and such outlot will not be located in whole or in part, west of Thirty First Street. If, in the event at the time of the commencement of Lessee's Lease Agreement herein, Landlord shall not have completed the parking, driveways and other common areas as shown on Exhibit "A" attached hereto, Tenant may, at its option but have no obligation to do so, cause to have constructed such parking and driveways immediately adjacent to its demised premises as per Landlord's plans and specifications to such extent as determined by Tenant in its sole discretion, to be necessary for Tenant to conduct its business. Landlord shall reimburse Tenant for such costs and until such reimbursement for the cost of construction and maintenance shall be made to Tenant, Tenant shall have the right to deduct such costs from its rental obligation subsequently accruing.

5. RESTRICTIONS RELATING TO LEASED PROPERTY.

~~Due to the public perception that Owner's shopping center and Tenant's building will be an integrated operation, and, so long as Landlord's shopping center ("Shopping Center") on Landlord's property adjacent to the leased property is operated and maintained in a first-class manner and to a standard consistent with the standards of the operation of this shopping center, Tenant, agrees that it is necessary to insure that the Leased Property will be operated and maintained in such a manner so as to present, at all times the appearance of a clean, well managed, attractive, coordinated and unified operation with the shopping center, Tenant agrees that all or any portion of Tenant's property shall hereafter be held, sold, occupied, conveyed and used subject to the following restrictions, covenants and conditions which shall run with the land and which shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in and to Owner's Property or any portion thereof:~~



(a) **GRADING PLAN.**

Tenant shall not modify, alter or otherwise change the grade of Tenant's property by more than three (3) feet. Tenant acknowledged that a change in grade will require a five (5) foot buffer area which shall be located entirely within the demised premises.

In the event that Tenant does change the grade of Tenant's property, Owner shall allow Tenant to use fill dirt from Owner's property subject to the prior use or sale of such dirt by Owner or its assigns.

(b) **SIGNS.**

Tenant shall, at all times, conform to governmental sign codes and requirements and shall not alter signage without proper governmental approvals and permits. In no event shall Tenant's sign exceed dimensions of eight (8) feet in width, sixteen (16) feet in length and a height of thirtyfive (35) feet above grade level existing at the date this agreement is executed.

(c) **PARKING RATIO.**

Tenant shall, at all times maintain at least seven (7) parking spaces per one thousand square feet of gross building area.

(d) MAINTENANCE OF LEASED PROPERTY.

INITIAL


Tenant agrees to properly maintain and repair Tenant's Property in order to maintain the public's perception that the Leased Property and Landlord's Property ~~is a clean, well managed, attractive, coordinated and unified operation.~~ Such Maintenance shall include but not be limited to keeping Tenant's Property free of debris, trash, snow and ice maintaining in good condition all paved surfaces and curbs in a smooth and evenly covered condition which maintenance shall include without limitation, restriping, repairing, resealing and resurfacing. The minimum standards of maintenance shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Omaha, Nebraska area and in any event in compliance with all applicable governmental laws, rules, regulations, orders and ordinances. All repairs and/or replacements shall be made with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of Leased Property and Landlord's Property, as a whole. In the event Tenant fails to properly maintain Tenant's Property, Landlord shall have the right but not the obligation, after notifying Tenant in writing thirty (30) days prior to taking any such action, to cause such maintenance to be performed on Tenant's behalf in the event Tenant has not commenced action to maintain Tenant's Property within said thirty (30) day period. Landlord shall obtain reimbursement from Tenant in an amount equal to Landlord's actual, reasonable costs and expenses incurred for any such maintenance, plus an administrative fee of fifteen percent (15%). Tenant shall have a period of thirty (30) days following receipt of said statement to reimburse Landlord for said costs. In the event Tenant fails to make payment within said thirty (30) day period, Landlord shall have the remedies and protections afforded the provider of labor or materials under the laws of the state ~~in which Tenant's Property is located.~~ of Nebraska.

are a part of a first class retail development

INITIAL

HERE

(e) RESTRICTION AGAINST OFFENSIVE USE.

Tenant shall not use any building now existing or hereinafter constructed on Tenant's Property in which there shall be carried on any business which shall be considered unlawful, illegal or hazardous, or is, in any way, in violation of any applicable governmental laws, ordinances, codes, requirements, orders, directions, rules or regulations.

~~(f) TENANTS EASEMENTS.~~



~~Tenant hereby grants to Landlord and to its respective tenants, subtenants, employees, agents and for the benefit of Owner's Property, and for the purpose of maintenance of Tenant's property pursuant to Section 5 (B) above, the non-exclusive right, privilege and easement to use those portions of the Buyer's Property for ingress and egress and as generally depicted on Exhibit "A2".~~

6. INDEMNIFICATION/INSURANCE.

Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage occurring on or from the easement areas located on each party's respective property, except if caused by the act of neglect of the other party hereto.

7. TERM.

The easements, restrictions, covenants and conditions contained herein shall be perpetual.

8. COVENANTS RUNNING WITH THE LAND.

The easements hereby granted, the restrictions hereby imposed and the agreements herein contained shall be easements, restrictions and covenants running with the land and shall inure to the benefit and be binding upon, the parties hereto their respective heirs, successors and assigns, including, but without limitation, all subsequent owners of any part of the Landlord's Property or Leased Property and all persons claiming under them.

9. ENFORCEMENT.

Enforcement of these easements, restrictions, covenants and conditions shall be made by any proceeding at law or in equity against any persons violating or attempting to violate any provision, either to restrain violation, mandate compliance, or recover damages, and the failure of any party to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10. CONSTRUCTION.

The rule of strict construction does not apply to this agreement. This agreement shall be given a reasonable construction so that the intention of the parties is carried out.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 21 day of December, 19 89.

IMPRINTED SEAL REGISTER OF DEEDS

Attest:

Elvan M. Pown
Assistant Secretary

TENANT:

HARDEE'S FOOD SYSTEMS, INC.
BY: Maurice Robinson
Vice President

ATTEST:

[Signature]

LANDLORD:

Stockyards Plaza, Nebraska (SEAL)
Limited Partnership
by Stockyards Plaza, Inc. (SEAL)
by [Signature] (SEAL)
President (SEAL)

APPROVED
LEGAL DEPARTMENT
BY: [Signature]
DATE: 3/2/90

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written...

WITNESS:

Patricia A. Harris
Lucinda A. Bass

APPROVED
LEGAL DEPARTMENT
BY: EMP For DLPS
DATE: 2/21/90

HARDEE'S FOOD SYSTEMS, INC.

BY: J. Schmitt
Vice President

ATTEST:

Edward M. Berman
Assistant Secretary

LIMITED (General) PARTNERSHIP

Stockyards Plaza, A Nebraska
Limited Partnership

STATE OF PARTNERSHIP:

Nebraska

WITNESS:

A. Hooper
W. J. Judelson

By All its General Partners

by Stockyards Plaza, Inc. (Seal)
General Partner
a Nebraska Corporation

by Edward M. Berman (Seal)
General Partner
President

General Partner (Seal)

IMPRINTED SEAL
REGISTER OF DEEDS

(ACKNOWLEDGMENT - INDIVIDUAL)
(USE WITH PARTNERSHIP)

STATE OF

COUNTY OF

SS:

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments personally appeared

to me well known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that _____ executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at _____ said County and State, this _____ day of _____, 19____.

My Commission Expires:

Notary Public, State of _____

STATE OF

COUNTY OF

SS:

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments personally appeared

to me well known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that _____ executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at _____ said County and State, this _____ day of _____, 19____.

My Commission Expires:

Notary Public, State of _____

STATE OF *Nebraska*

COUNTY OF *Douglas*

SS:

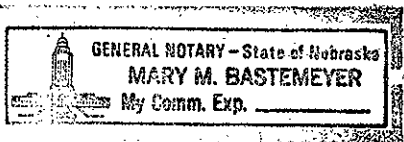
I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared *DONALD F. Day*

and _____
to me known and known to be the persons described in and who executed the foregoing instrument as the (~~Vice~~) President and (~~Asst.~~) Secretary respectively of *Stockyards Plaza Inc* a _____ corporation, and they severally acknowledged before me that they executed the same as such officer, that they were authorized so to do, and that such is the act and deed of said corporation.

WITNESS my hand and official seal at _____ said County and State, this *21* day of *December* 19*89*.

My Commission Expires: *3-15-91*

Mary Bastemeyer
Notary Public, State of _____



STATE OF NORTH CAROLINA
COUNTY OF NASH

I, Stuart B. Barnhill, a Notary Public,
certify that Ethan M. Powsner personally came
before me and acknowledged that he is (Asst.) Secretary of Hardee's Food
Systems, Inc., a corporation, and that by authority duly given and as the
act of the corporation the foregoing instrument was signed in its name by
its Vice President, Legal John F. Schmutz, sealed,
with its corporate seal and attested by himself as its (Asst.) Secretary.

Witness my hand and official seal, this 21 day of February,
1990.

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS



My Commission expires: 10-28-94

Stuart B. Barnhill
Notary Public

P201/GL/182

LEGAL DESCRIPTION

Part of Tax Lot 10, located in the Southwest Quarter of Section 4, Township 14 North, Range 13 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, described as follows:

Commencing at the point of intersection of the Northerly right-of-way line of Edward Babe Gomez Avenue and the Easterly right-of-way line of 33rd Street; thence North 07°00'14" East (assumed bearing) along the Easterly right-of-way line of said 33rd Street a distance of 205.23 feet; thence South 88°52'32" East along the Easterly right-of-way line of 33rd Street as dedicated and recorded in Book 823, Page 100, of the Douglas County Register of Deeds, a distance of 46.52 feet, to the point of beginning; thence North 01°07'28" East along said Easterly right-of-way line of 33rd Street a distance of 263.50 feet; thence North 86°46'42" East along the proposed "L" Street right-of-way line a distance of 132.08 feet; thence South 89°02'07" East along said right-of-way line a distance of 13.41 feet; thence South 01°07'28" West a distance of 293.55 feet; thence North 88°52'32" West a distance of 145.11 feet; thence North 01°07'28" East a distance of 20.00 feet to the point of beginning, containing 0.963 acres, more or less.

~~NOTE:~~ NOTE: The above premises is to known as Lot 1, in Stockyards Plaza II, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska.

NW/SW
NE/SW

EXHIBIT A

PART OF TAX LOT 10, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE AND THE EASTERLY RIGHT-OF-WAY LINE OF 33RD STREET; THENCE NORTH 07°00'14" EAST (ASSUMED BEARING) ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID 33RD STREET A DISTANCE OF 205.23 FEET; THENCE SOUTH 88°52'32" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF 33RD STREET AS DEDICATED AND RECORDED IN BOOK 823, PAGE 100, OF THE DOUGLAS COUNTY REGISTER OF DEEDS A DISTANCE OF 46.52 FEET; THENCE SOUTH 01°07'28" WEST A DISTANCE OF 20.00 FEET; THENCE SOUTH 88°52'32" EAST, A DISTANCE OF 145.11 FEET; THENCE NORTH 01°07'28" EAST A DISTANCE OF 293.55 FEET; THENCE SOUTH 89°02'07" EAST ALONG THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF "L" STREET A DISTANCE OF 229.95 FEET; THENCE SOUTH 84°26'48" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 70.26 FEET; THENCE SOUTH 01°07'28" WEST A DISTANCE OF 198.76 FEET; THENCE SOUTH 88°52'32" EAST A DISTANCE OF 171.00 FEET; THENCE NORTH 01°07'28" EAST A DISTANCE OF 192.86 FEET; THENCE SOUTH 89°02'07" EAST ALONG THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF "L" STREET, A DISTANCE OF 50.00 FEET; THENCE SOUTH 01°07'28" WEST A DISTANCE OF 339.00 FEET; THENCE NORTH 88°52'32" WEST A DISTANCE OF 264.81 FEET; THENCE SOUTH 01°07'28" WEST A DISTANCE OF 225.72 FEET; THENCE NORTH 78°25'46" WEST ALONG THE PROPOSED NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE A DISTANCE OF 457.29 FEET; THENCE NORTH 51°24'31" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 24.10 FEET TO THE POINT OF BEGINNING, *(Proposed Lot X (Rockyards Plaza II))

243

NW SW
NE SW

EXHIBIT B