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RICHARD H TAKECHI
REGISTER OF DEEDS
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DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made this 14th day of September 2000, by West Bay, Inc., a Nebraska corporation (referred to herein as "Declarant").

RECITALS

WHEREAS, Declarant is the owner of the real property generally located at the northeast corner of 156th and "Q" Streets in Omaha, Douglas County, Nebraska and legally described as follows:

- MI-40578* Lots 1 and 2, Walnut Grove Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; Lots 1, 2, 4 and 5, Walnut Grove Plaza Replat
- MI-40589* Three, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; Lots 1 and 2, Walnut Grove Plaza Replat Four, a subdivision as
- MI-40577* surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Restricted Property"); and

WHEREAS, West Bay, Inc. and Cutchall Property Management, LLC, a Nebraska limited liability company, have entered into a Purchase Agreement dated March 24, 2000 (the "Purchase Agreement"), whereunder West Bay, Inc. agreed to sell and Cutchall Property Management, LLC agreed to purchase the following legally described real estate, to-wit:

- MI-40586* Lot 1, Walnut Grove Plaza Replat Two, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, pursuant to the terms of the Purchase Agreement, Declarant has granted certain permanent use restrictions with respect to the Restricted Property, as covenants running with the land; and

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Declarant agrees as follows:

Return to Greg Cutchall
4524 Farnam Street
Omaha, NE 68131

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1. **Restricted Property.** No portion of the Restricted Property shall be used for (i) the operation of a free standing fast food establishment where hamburgers, hot dogs, or soft serve ice cream products account for more than fifteen (15%) percent of their sales for a period of six (6) years from the date hereof. Notwithstanding the foregoing, the Restricted Property may be used for: (i) the operation of a fast food establishment where pizza, chicken, Mexican and/or Italian food is served; (ii) a full service restaurant; and/or (iii) an in-line store or department within such a store where soft serve ice cream is sold.

2. **Covenants to Run with Land.** It is intended that each of the restrictions 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 for a period of six (6) years after the date hereof.

3. **Governing Law.** This Declaration is declared to have been made under the laws of the State of Nebraska.

4. **Amendment.** The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the owner of Lot 1, Walnut Grove Plaza Replat Two, evidenced by a document that has been fully executed and acknowledged by such party and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

5. **Remedies and Enforcement.**

5.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by the owner of any portion the Restricted Property, or such owner's tenants or their employees, agents, contractors, customers, invitees, or licensees, of any of the terms, covenants, restrictions or conditions hereof, the other party 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 in addition to all other remedies permitted at law or in equity.

5.2 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party 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 portion of the Restricted Property made in good faith for value. The covenants, conditions and restrictions hereof shall be binding upon and effective against any owner of any portion of the Restricted Property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

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

7. **Severability.** Each provision of this Declaration and the application thereof 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 WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year first above written.

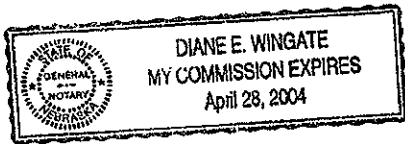
DECLARANT:


WEST BAY, INC., a Nebraska corporation,

By: 
Thomas E. Smith, President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 14 day of September 2000, by Thomas E. Smith, President of West Bay, Inc., a Nebraska corporation, on behalf of the corporation.




Notary Public