



MISC 2017036926



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COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/16/2017 09:42:19.00



2017036926

Upon Recording return to:  
QuikTrip Corporation  
5725 Foxridge Drive,  
Mission, Kansas 66202  
Attn: Larry Dickerson, Director of Real Estate

**RIGHT OF FIRST REFUSAL AND RESTRICTIVE COVENANT AGREEMENT**

THIS RIGHT OF FIRST REFUSAL AND RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made and entered into this 12<sup>th</sup> day of May, 2017, by and between QUIKTRIP CORPORATION, an Oklahoma corporation ("QuikTrip"), and GREATER OMAHA PACKING CO. INC., a Nebraska corporation ("Greater Omaha Packing").

**RECITALS:**

WHEREAS, QuikTrip is the owner of the following legally described real property, to-wit:

Lot 1, Stockyards Plaza 2 Replat 1, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Benefitted Property"); and

WHEREAS, Greater Omaha Packing and QuikTrip have entered into a Contract of Sale of Real Estate dated effective as of February 21, 2017, a First Amendment to Contract of Sale of Real Estate dated as of March 13, 2017, and a Second Amendment to Contract of Sale of Real Estate dated as of April 7, 2017 (collectively, the "Purchase Agreement"), whereunder QuikTrip, as seller, agreed to sell and Greater Omaha Packing, as buyer, agreed to purchase the following legally described real estate, to-wit:

Lot 2, Stockyards Plaza 2 Replat 1, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (the "Burdened Property"); and

WHEREAS, pursuant to the terms of the Purchase Agreement, Greater Omaha Packing has agreed to grant certain permanent restrictions with respect to the Burdened Property, as covenants running with the Burdened Property and Benefitted Property; and

WHEREAS, pursuant to the terms of the Purchase Agreement, Greater Omaha Packing has granted a right of first refusal to QuikTrip with respect to the Burdened Property.

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, Greater Omaha Packing and QuikTrip agree as follows:

1. Right of First Refusal. In the event that Greater Omaha Packing elects to sell the Burdened Property, Greater Omaha Packing shall provide written notice of such election to QuikTrip, which written notice shall be delivered in accordance with paragraph 9, below, and upon Greater Omaha Packing entering into a binding contract with a third party to sell the Burdened Property (a "Third-Party Contract") at any time prior to the date which is thirty (30) years from the date hereof (the "Term"), Greater Omaha Packing shall provide QuikTrip with a copy of the Third-Party Contract. Upon QuikTrip's receipt of a copy of the Third-Party Contract, QuikTrip shall have the right of first refusal to purchase the Burdened Property on the same terms and conditions of such Third-Party Contract. QuikTrip may exercise its right of first refusal at any time within thirty (30) days of QuikTrip's receipt of such Third-Party Contract (the "ROFR Period"). The exercise of the right of first refusal by QuikTrip shall be by written notice to Greater Omaha Packing in the manner prescribed in paragraph 9, below prior to the expiration of the ROFR Period. In the event QuikTrip has not exercised its right of first refusal prior to the expiration of the ROFR Period, Greater Omaha Packing shall be free to sell the Burdened Property to such third person, in accordance with the terms and conditions of such Third-Party Contract. In any event, QuikTrip's failure to exercise its right of first refusal on any offer shall not be a waiver of its right of first refusal on any subsequent sale. In the event QuikTrip exercises its right of first refusal in accordance with this paragraph 1, QuikTrip and Greater Omaha Packing shall promptly enter into a purchase and sale contract for the purchase and sale of the Burdened Property on the commercial terms set forth in the Third-Party Contract.

2. Additional Restrictions on the Burdened Property.

2.1 Use Restriction. During the Term, Greater Omaha Packing hereby agrees that the Burdened Property shall not be used as a retail convenience grocery store, donut shop, coffee shop, fast food or quick service restaurant (excluding any sit-down restaurant with full-service wait staff), smoke shop or other retail outlet selling tobacco products, electronic cigarettes, vapor devices or nicotine-based products as one of its primary uses, a sexually oriented business for the sale of adult materials or drug paraphernalia, the retail sale of package or carry out beer, wine, liquor or spirits, the retail sale of motor fuels, or for the sale of items commonly sold in a convenience store including, but not limited to, candy, chips, donuts, sandwiches, pizza, snacks, coffee, soda, and other carbonated beverages.

2.2 Signage Restriction. During the Term, Greater Omaha Packing hereby agrees that Greater Omaha Packing shall present to QuikTrip all pole and monument signage plans for QuikTrip's approval as to size, shape, height and location for any signage to be placed on the Burdened Property for so as long as there is a QuikTrip convenience store located on the Benefitted Property. The procedures for submittal and approval shall be governed by paragraph 2.4, below.

2.3 Site Plan and Architectural Approval. During the Term, Greater Omaha Packing hereby agrees that Greater Omaha Packing shall present to QuikTrip all site plans, including, but not limited to, building set-backs, grading plans, and landscaping plans for QuikTrip's approval as long as there is a QuikTrip convenience store located on the Benefitted Property. QuikTrip's right of approval shall include, but not be limited to, ensuring clear visibility to the QuikTrip convenience store located on the Benefitted Property and ensuring that Greater Omaha Packing's development will not cause drainage problems or grade problems for the QuikTrip convenience store located on the Benefitted Property. The procedures for submittal and approval shall be governed by paragraph 2.4, below.

2.4 Procedure. Prior to submitting any plans to any applicable governmental jurisdiction, Greater Omaha Packing shall present to QuikTrip two copies of documentation concerning signage, site plans, grading plans, landscaping plans and architectural designs in a form for QuikTrip to review and approve or disapprove. Within fifteen (15) days from the date of receipt of any of the above, QuikTrip shall deliver to Greater Omaha Packing its written approval or disapproval of the same. Approval shall not be unreasonably withheld or delayed. If QuikTrip does not respond within thirty (30) days after receipt of such documentation, approval shall be deemed denied.

3. Covenants to Run with Land. It is intended that each of the restrictions set forth herein shall run with the Benefitted Property and Burdened Property 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.

4. Governing Law. This Agreement is declared to have been made under the laws of the State of Nebraska.

5. Amendment. The provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the owner of the Benefitted Property and Burdened Property, as evidenced by a document that has been fully executed and acknowledged by such parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

6. Remedies and Enforcement.

6.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by the owner of any portion the Burdened 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 QuikTrip, or its successors/assigns, 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.

6.2 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any portion of the Burdened 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 Burdened Property and Benefitted Property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

7. 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.

8. Severability. Each provision of this Agreement and the application thereof are hereby declared to be independent of and severable from the remainder of this Agreement. 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 Agreement.

9. Notices: All notices required under this Agreement shall be deemed to be properly served if reduced to writing and sent by (i) certified or registered mail; (ii) Federal Express or similar overnight courier; (iii) facsimile transmission; or (iv) personal delivery and the date of such notice will be deemed to have been the date on which such notice is delivered or attempted to be delivered as shown by the certified mail return receipt or a commercial delivery service record or in the case of facsimile on the date of receipt of the transmission as shown on a successful transmission confirmation receipt. Provided, however, that if the date for the performance of any action or obligation, or any time period specified hereunder occurs on a Saturday, Sunday, days proclaimed as legal holidays by the state, city or federal government or days where the recipient party's office is closed due to natural disaster, then such date or time period shall be extended until the next business day. All notices shall be addressed as follows, unless otherwise specified in writing:

GREATER OMAHA PACKING:

Greater Omaha Packing Co. Inc.  
3001 L Street  
P.O. Box 7566  
Omaha, NE 68107  
Attn: Mark Theisen

QUIKTRIP:

QuikTrip Corporation  
5725 Foxridge Drive,  
Mission, Kansas 66202  
Attn: Larry Dickerson, Director of Real Estate Dispositions  
Fax: 918-994-3558

with a copy to:

QuikTrip Corporation  
1120 N. Industrial Blvd.,  
Euless, TX 76039  
Attn: Jim Beilman  
Fax: 918-994-3656

with a copy to:

QuikTrip Corporation  
P.O. Box 3475, Tulsa, Oklahoma 74101  
or, 4705 S. 129<sup>th</sup> E. Ave., Tulsa, Oklahoma 74134-7008  
Attn: General Counsel  
Fax: (918) 994-3594

**[Remainder of Page Left Intentionally Blank; Execution Page Follows.]**

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

**QUIKTRIP**

QUIKTRIP CORPORATION

By: [Signature]  
Larry Dickerson  
Director of Real Estate Dispositions

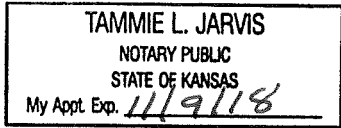
STATE OF KANSAS        )  
                                  )  
COUNTY OF JOHNSON    )

This instrument was sworn to, subscribed and acknowledged on May 11, 2017 by Larry Dickerson, the Director of Real Estate Dispositions of QuikTrip Corporation, an Oklahoma corporation, on behalf of said corporation.

Tammie L. Jarvis  
Notary Public, State of Kansas

My Commission Expires: 11/9/18

(SEAL)



**GREATER OMAHA PACKING**

GREATER OMAHA PACKING CO. INC.

By: [Signature]  
Angelo Fili  
Executive Vice President

STATE OF NEBRASKA    )  
                                  )  
COUNTY OF DOUGLAS    )

This instrument was sworn to, subscribed and acknowledged on May 12, 2017 by Angelo Fili, Executive Vice President of Greater Omaha Packing Co., Inc., a Nebraska corporation, on behalf of said corporation.

Mark Theisen  
Notary Public, State of Nebraska

My Commission Expires: 11/7/2017

(SEAL)

