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MISC 1990 06660

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April 17, 1990

EASEMENT NON-DISTURBANCE AGREEMENT

THIS EASEMENT NON-DISTURBANCE AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into as of the day and year first above written by and between DIAL REIT, Inc., a Maryland corporation, with a principal address of 11506 Nicholas Street, Suite 200, Omaha, Nebraska 68154 (hereinafter referred to as "MORTGAGEE"), and HARDEE'S FOOD SYSTEMS, INC., a North Carolina corporation, with a principal place of business at 1233 Hardee's Boulevard, Rocky Mount, North Carolina 27804, (hereinafter referred to as "TENANT").

W I T N E S S E T H:

WHEREAS, STOCKYARDS PLAZA LIMITED PARTNERSHIP, a Nebraska limited partnership, with a principal place of business at 11506 Nicholas Street, Suite 200, Omaha, Nebraska 68154 (hereinafter referred to as "LANDLORD") is the fee owner of that certain real property located at 33rd and "L" Street, Stockyards Plaza Shopping Center, in the City of Omaha, County of Douglas, State of Nebraska as more particularly described on EXHIBIT A attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

WHEREAS, on February 21, 1990, LANDLORD entered into a written Lease Agreement (hereinafter referred to as this "Lease Agreement") with TENANT wherein LANDLORD leased TENANT that certain parcel of real property located at Outlot 1, Stockyards Plaza in the City of Omaha, County of Douglas, State of Nebraska, as more particularly described on EXHIBIT B attached hereto and made a part hereof (hereinafter referred to as "TENANT'S PREMISES") and granted certain non-exclusive and non-revocable common area easements (the "Easements") to TENANT over the Premises (hereinafter referred to as the "Easement Area"); and

WHEREAS, LANDLORD on or about November 29, 1989 executed and delivered to MORTGAGEE its promissory note and its mortgage deed to the Premises as security for payment of such note, which mortgage deed was filed for record in the Office of the Register of Deeds of the County of Douglas, State of Nebraska on November 30, 1989 and duly recorded in such Official Records at Mortgage Book 3435 Page 427; and

WHEREAS, TENANT and MORTGAGEE desire to confirm their understanding with respect to priority between the Easements and the aforesaid first mortgage lien on the Easement Area.

RECEIVED

APR 19 11 40 AM '90

GEORGE J. BUNYARD
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

OK 920 N 4-14-13 KP C/O FEE 25.50
PG 514-518 N 4-14-13 DEL MCL
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NOW, THEREFORE, in consideration of their mutual covenants and agreements contained herein, ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ITEM 1. TENANT'S right to the use of the Easement Area as set forth in the Lease Agreement shall not be diminished or interfered with in any manner by MORTGAGEE for any reason whatsoever during the term of the Lease Agreement or any extension or renewal thereof.

ITEM 2. In the event of any default by LANDLORD under such mortgage obligation, and by reason thereof, in the event of a sale of the Easement Area by foreclosure or by other proceedings, or by any sale, transfer, or conveyance of the Easement Area in lieu thereof, the Easement Area shall be sold, transferred, and conveyed subject to the Easements.

Under such circumstances, the Easements shall be binding between the purchaser and TENANT to the same extent as though such purchaser had been named the grantor in such Easements.

ITEM 3. This Agreement may be modified, changed or amended only in writing signed by the parties hereto, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto; their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

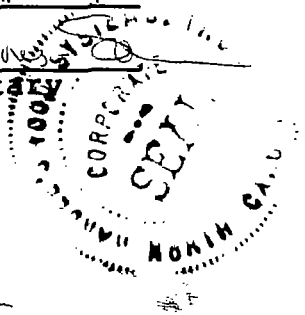
APPROVED
LEGAL DEPARTMENT
BY: NDS
DATE: 4-18-90

HARDEE'S FOOD SYSTEMS, INC.

By: [Signature]
Its: SENIOR VICE PRESIDENT

ATTEST: [Signature]
Assistant Secretary

(CORPORATE SEAL)



DIAL REIT, INC.

By: [Signature]
Its: [Signature]

ATTEST: [Signature]
Assistant Secretary

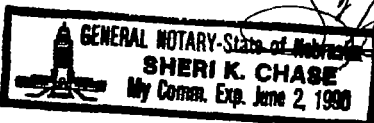
(CORPORATE SEAL)

ACKNOWLEDGMENT-DIAL

STATE OF Nebraska
COUNTY OF Douglas

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 Joseph H. Carter & Donald G. Day to me known to be the persons described in and who executed the foregoing instrument as the Vice President and Assistant Secretary respectively of Dial REIT, Inc. a Massachusetts 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 seal at Omaha said County and State, this 17th day of April, 1990.

My Commission Expires:  Sheri K Chase Notary Public

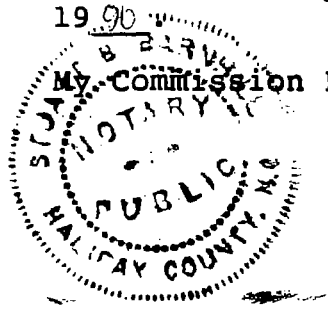
ACKNOWLEDGMENT-HARDEE'S

NORTH CAROLINA
COUNTY OF NASH

I, Stuart B. Barnhill, a Notary Public, certify that Diane L. Parsons-Salem personally came before me and acknowledged that (s)he is Assistant Secretary of HARDEE'S FOOD SYSTEMS, INC., a North Carolina 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, Jesse M. Harrington, III, sealed with its corporate seal and attested by (her)himself as its Assistant Secretary.

WITNESS my hand and seal this 18 day of April, 1990

My Commission Expires: 10-28-94 Stuart B. Barnhill Notary Public



STUART B. BARNHILL
NOTARY PUBLIC
HALIFAX COUNTY

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 $07^{\circ}00'14''$ EAST (ASSUMED BEARING) ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID 33RD STREET A DISTANCE OF 205.23 FEET; THENCE SOUTH $88^{\circ}52'32''$ 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 $01^{\circ}07'28''$ WEST A DISTANCE OF 20.00 FEET; THENCE SOUTH $88^{\circ}52'32''$ EAST, A DISTANCE OF 145.11 FEET; THENCE NORTH $01^{\circ}07'28''$ EAST A DISTANCE OF 293.55 FEET; THENCE SOUTH $89^{\circ}02'07''$ EAST ALONG THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF "L" STREET A DISTANCE OF 229.95 FEET; THENCE SOUTH $84^{\circ}26'48''$ EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 70.26 FEET; THENCE SOUTH $01^{\circ}07'28''$ WEST A DISTANCE OF 198.76 FEET; THENCE SOUTH $88^{\circ}52'32''$ EAST A DISTANCE OF 171.00 FEET; THENCE NORTH $01^{\circ}07'28''$ EAST A DISTANCE OF 192.86 FEET; THENCE SOUTH $89^{\circ}02'07''$ EAST ALONG THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF "L" STREET, A DISTANCE OF 50.00 FEET; THENCE SOUTH $01^{\circ}07'28''$ WEST A DISTANCE OF 339.00 FEET; THENCE NORTH $88^{\circ}52'32''$ WEST A DISTANCE OF 264.81 FEET; THENCE SOUTH $01^{\circ}07'28''$ WEST A DISTANCE OF 225.72 FEET; THENCE NORTH $78^{\circ}25'46''$ WEST ALONG THE PROPOSED NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE A DISTANCE OF 457.29 FEET; THENCE NORTH $51^{\circ}24'31''$ WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 24.10 FEET TO THE POINT OF BEGINNING, (Proposed Lot 3 Stockyards Plaza II)

EXHIBIT "A"

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: ~~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.~~

EXHIBIT "B"