

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2008-22586

2008 AUG -6 A 11:58 B

Glenn J. Simmonds
REGISTER OF DEEDS

QUANTITY *ah* C.E. *ah*
NET *ah* D.E. *P*
FEE \$ *REMA 311.00*
COST \$ *100979*
DISC
CREDIT
TAX

This instrument prepared by
or under the supervision of
(and after recording should
be returned to):

Name: Danielle Gonzalez, Esquire
Address: Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Phone: 305-579-0633

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "Covenant") is made and entered into this *16th* day of *July*, 2008, by SIMMONDS PROPERTIES, LTD., a Nebraska limited partnership (the "Landlord"), whose address for purposes of this Covenant is 11404 W. Dodge Road, Omaha, Nebraska 68154-9759, Attn: Michael Simmonds, to and in favor of BURGER KING CORPORATION, a Florida corporation ("Tenant"), whose address for purposes of this Covenant is 5505 Blue Lagoon Drive, Miami, FL, 33126 and P.O. Box 020783, Miami, FL 33102-0783.

RECITALS

WHEREAS, Landlord is the owner of that certain real property located in Sarpy County, Nebraska, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Lot 6 Property");

WHEREAS, Landlord is also the owner of that certain real property located in Sarpy County, Nebraska, more particularly described in Exhibit B attached hereto and by this reference made a part hereof (the "Lot 7 Property");

Return to:
NEBRASKA TITLE COMPANY
4257 S 144TH STREET
OMAHA, NE 68137

\$36.06

NTC Commercial 6047222

A

WHEREAS, Landlord and Tenant have entered into a lease dated as of the date hereof, for the leasing of the Lot 7 Property (the "Lease");

WHEREAS, the Lease provides for an initial term of twenty (20) years commencing on as of the date hereof, together with four (4) additional consecutive renewal option(s) of five (5) years each;

WHEREAS, the Lease provides that no property presently or hereafter owned, leased or controlled by Landlord within fifteen hundred (1500) feet of the Lot 7 Property shall be sold, leased, used or occupied during the term of the Lease or any extensions thereof for a quick service restaurant; and

WHEREAS, the Lot 6 Property is the only Property presently owned, leased or controlled by Landlord that is also located within fifteen hundred (1500) feet of the Lot 7 Property.

NOW, THEREFORE, in consideration of the Lease, Landlord hereby acknowledges and agrees that the foregoing recitals are true and correct and further acknowledges and agrees as follows:

1. Restrictive Covenant.

1.1. Restrictive Covenant on Lot 6 Property. Landlord hereby covenants and agrees that no portion of the Lot 6 Property shall be sold, leased, used or occupied for a quick service restaurant whose primary menu item is hamburgers during the term of the Lease and any extensions thereof.

1.2. Restrictive Covenant on Other Property. Landlord hereby covenants and agrees that no property located within fifteen hundred (1500) feet of the Lot 6 Property and now or hereafter owned, leased or controlled by Landlord shall be sold, leased, used or occupied for a quick service restaurant whose primary menu item is hamburgers during the term of the Lease and any extensions thereof. Landlord hereby covenants and agrees to encumber any such property by executing and recording, and causing any lender with an interest in such property to join into, a restrictive covenant in material conformance with this Covenant in the public records of the applicable county immediately upon becoming in control of such property, whether by deed, lease, or other transfer document(s). Landlord further covenants and agrees that Landlord shall promptly advise Tenant of the foregoing by written notice and provide Tenant with a copy of the recorded restrictive covenant.

1.3. Expiration of Restrictive Covenant. This Covenant shall automatically expire and be of no further force and effect if Tenant ceases to use the Lot 7 Property for a quick service hamburger restaurant. Notwithstanding the foregoing, temporary closures related to casualty, condemnation, alterations, or remodeling, or as otherwise permitted under the Lease, shall not be construed to mean that Tenant has "ceased to use the Lot 7 Property for a quick service hamburger restaurant."

2. General.

2.1. Successors and Assigns. The terms and provisions of this Covenant shall be binding upon and inure to the benefit of Tenant, Landlord and their heirs, representatives, successors, and assigns. The benefits and burdens hereof shall run with the land and be appurtenant thereto, with the effect that any person or entity which acquires an interest in the Lot 6 Property shall be bound by the burdens of this Covenant, and any person or entity which acquires an interest in the Lot 7 Property shall be entitled to the benefits of this Covenant.

2.2. Amendments; Termination. Subject to the other provisions hereof, this Covenant may not be amended, modified or terminated except by written consent of: (a) Landlord and Tenant, and (b) the holders of any mortgages of record encumbering any portion of the Lot 6 Property and the Lot 7 Property. Further, no modification or amendment shall be effective unless in writing and recorded in the Public Records of Sarpy County, Nebraska.

2.3. Covenants Running with the Land. It is intended that the terms, conditions, covenants, restrictions, rights and obligations set forth in this Covenant shall burden and run with the title to the Lot 6 Property.

2.4. Severability. If any provision, or a portion thereof, of this Covenant, or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Covenant or the application of such provision, or portion thereof, to any persons or circumstances shall not be affected thereby and the remainder of this Covenant shall be given effect as if such invalid, inoperative or unenforceable portion has not been included; such invalid, inoperative or unenforceable provision, or portion thereof, or the application thereof to any person or circumstances, shall not be given effect.

2.5. Governing Law. This Covenant shall be construed in accordance with the laws of the State of Nebraska.

2.6. Prevailing Party Legal Fees. In the event of any action or proceeding brought under this Covenant, the prevailing party shall be entitled to recover all costs and expenses, including attorneys' fees, in such action and proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues.

2.7. Remedies. In the event that any party does not comply with the terms of this Covenant, the other parties shall have all remedies available at law or in equity or both. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

C

2.8. Notice. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand (including recognized overnight courier service, such as Federal Express) or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the recipient at the address for such party set forth in the introductory paragraph to this Covenant (or to such other address as any party hereunder shall hereafter specify to the other in writing).

2.9. Counterparts. This Covenant may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord has executed this Covenant as of the date first set forth above.

Witnessed by:

Helen S Bell
 Print Name: Helen S Bell

Sarah Cavanagh
 Print Name: Sarah Cavanagh

LANDLORD:

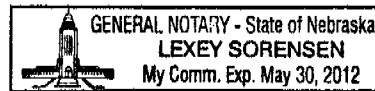
SIMMONDS PROPERTIES, LTD., a
Nebraska limited partnership

By: [Signature]
 Name: Michael Simmonds
 Title: President and CEO of
 Simmonds Restaurant Management, Inc.
 Its General Partner

STATE OF Nebraska)
) SS:
 COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 15th day of July, 2008, by Michael Simmonds, President and CEO of SIMMONDS PROPERTIES, LTD., a Nebraska limited partnership, on behalf of said company. He/she is personally known to me or has produced _____ as identification and did take an oath.

[Signature]
 Notary Public, State of Nebraska
 My Commission Expires: 5-30-2012
 [NOTARIAL SEAL]



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EXHIBIT A

THE LOT 6 PROPERTY

Lot 6, Southport East Replat Six, an Addition to the City of LaVista, as surveyed, platted and recorded in Sarpy County, Nebraska.

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EXHIBIT B

THE LOT 7 PROPERTY

Lot 7, Southport East Replat Six, an Addition to the City of LaVista, as surveyed, platted and recorded in Sarpy County, Nebraska.