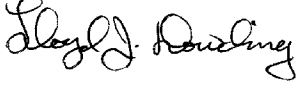



COUNTER_DKH
VERIFY_DKH
FEES \$ 52.00
CHG_SFILE
SUBMITTED_FIRST AMERICAN TITLE - OMAH

FILED SARPY CO. NE. INSTRUMENT NUMBER
<b>2015-27961</b>
2015 Nov 13 10:50:40 AM

REGISTER OF DEEDS


Space above reserved for recording information

After Recording, Return to:  
Mark B. Johnson  
Fullenkamp, Doyle & Jobeun  
11440 West Center Road  
Omaha, NE 68144

**AMENDMENT TO SHARED ACCESS DRIVEWAY  
USE AND MAINTENANCE AGREEMENT**

This Amendment to Shared Access Driveway Use and Maintenance Agreement (this “**Amendment**”) is made effective as of November 13, 2015, by and among Simmonds Properties, LTD, a Nebraska limited partnership (“**Simmonds**”), and Burger King Corporation, a Florida Corporation (“**BKC**”) (collectively the “**Parties**”, or in the singular, a “**Party**”).

RECITALS:

The Amendment is made to the Shared Access Driveway Use and Maintenance Agreement between the Parties recorded with the Sarpy County Register of Deeds on October 28, 2008 as Instrument No. 2008-29636 (the “**Agreement**”).

Simmonds is the owner of Lot 7, Southport East Replat 6, an Addition to the City of LaVista, as surveyed platted and recorded in Sarpy County, Nebraska (the “**Simmonds/BKC Property**”).

Simmonds has leased the Simmonds/BKC Property to BKC pursuant to a lease dated the 16<sup>th</sup> day of July, 2008, as evidenced by a Memorandum of Lease recorded in the land records of Douglas County, Nebraska, on the 6<sup>th</sup> day of August 2008 under Instrument Number 2008-22585.

Simmonds is the owner of Lot 6, Southport East Replat 6, an Addition to the City of LaVista, as surveyed platted and recorded in Sarpy County, Nebraska (“**Simmonds Property**”).

BKC has previously constructed the Shared Access Driveway on a portion of the Simmonds/BKC Property and the Simmonds Property as contemplated under and generally depicted in Exhibit A to the Agreement.

The Parties wish to amend the Agreement to replace, in its entirety, the Shared Access Driveway exhibit attached to the Agreement as Exhibit A with the Shared Access Driveway exhibit attached to this Agreement as Exhibit A.

NOW, THEREFORE, for good, lawful and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

AGREEMENT:

1. Amendment. The Shared Access Driveway exhibit attached to the Agreement as Exhibit A is hereby deleted in its entirety and replaced with the Shared Access Drive exhibit attached hereto and incorporated herein as Exhibit A, which depicts, as cross hatched thereon, the existing Shared Access Driveway as previously constructed by BKC. The Parties agree that neither Party will have any obligation under the Agreement to construct any addition or extension to the Shared Access Driveway. However, if Simmonds hereafter constructs any extension to the Shared Access Driveway along or immediately adjacent to the existing property line between Simmonds/BKC Property and the Simmonds Property that is intended for ingress/egress access purposes (an "Extension"), then BKC, together with its tenants, sub-tenants, employees, customers, vendors, and other business invitees, shall have the non-exclusive right to use such Extension for ingress, egress and access to the Simmonds/BKC Property. For the avoidance of doubt, if Simmonds hereafter constructs any Extension, then such construction shall be at the sole cost and expense of Simmonds, and BKC shall have no liability for the cost and expense of such construction, nor for the performance of, and cost and expense of, any maintenance, repair, and replacement of the Extension. Notwithstanding anything herein to the contrary, Simmonds shall not hereafter construct or permit any improvements or alterations, including without limitation, medians, pavement markings, and/or curbs as part of any Extension or otherwise, that would reduce or adversely affect the ability of pedestrian and vehicular traffic to use the Shared Access Driveway for access, ingress, and egress to or from the Simmonds/BKC Property.

2. Definitions. Terms used in this Amendment shall have the meanings set forth in the Agreement except as otherwise defined herein.

3. No Other Amendments. Except as set forth herein, all other terms and provisions of the Agreement shall remain in full force and effect.

4. Counterparts. This Amendment may be executed in any number of counterparts, all of which shall constitute a single agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to form one legally effective document.

5. Joinder by Mortgagees. Each of the parties hereto represent and warrant to the other parties hereto that there are no holders of mortgages or other liens on its respective parcel other than those holders of mortgages and other liens joining in this Amendment.

WHEREFORE, the Parties, representing all the owners of the land area covered by the Agreement, have executed this Amendment as of the date stated above.

**[SIGNATURES ON FOLLOWING PAGES]**

**Simmonds Properties, LTD,**  
a Nebraska limited partnership

By: Simmonds Restaurant Management, Inc.,  
General Partner

By: *Paula K. Gissman*

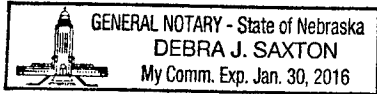
Name: *Paula K. Gissman*

Its: *President*

STATE OF NEBRASKA    )  
                                  )  
COUNTY OF *Douglas* )

The foregoing instrument was acknowledged before me on this *12* day of *November*, 2015, by *Paula K. Gissman*, the *President* of Simmonds Restaurant Management, Inc., General Partner of Simmonds Properties, LTD, a Nebraska limited partnership, by and on behalf of the limited partnership.

(SEAL)



*Debra J. Saxton*  
Notary Public

Printed Name: *Debra J. Saxton*

My commission expires: \_\_\_\_\_

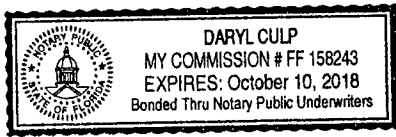
**Burger King Corporation,**  
a Florida corporation

By: \_\_\_\_\_  
Name: Zebulin Periana  
Its: Director of Real Estate

STATE OF Florida )  
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me on this 30<sup>th</sup> day of Oct., 2015, by Zebulin Periana, the Director of Burger King Corporation, a Florida corporation, by and on behalf of the corporation.

(SEAL)



Daryl Culp  
Notary Public

Printed Name: Daryl Culp

My commission expires: \_\_\_\_\_

**MORTGAGEE/BENEFICIARY CONSENT**

Wells Fargo Bank, National Association (“Beneficiary”) is the Beneficiary of that certain Deed of Trust dated August 22, 2013 and recorded on September 3, 2013 as Instrument Number 2013-27984 in the office of the Register of Deeds of Sarpy County, Nebraska.

Beneficiary hereby consents to this Amendment.

**BENEFICIARY:**

**Wells Fargo Bank, National Association**

By: Katherine Blodd

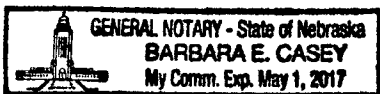
Name: Katherine B. Todd

Title: Vice President

Date: 10-15-15

STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 15 day of October, 2015, by Katherine B. Todd, Vice President of **Wells Fargo Bank, National Association**, on behalf of said bank.

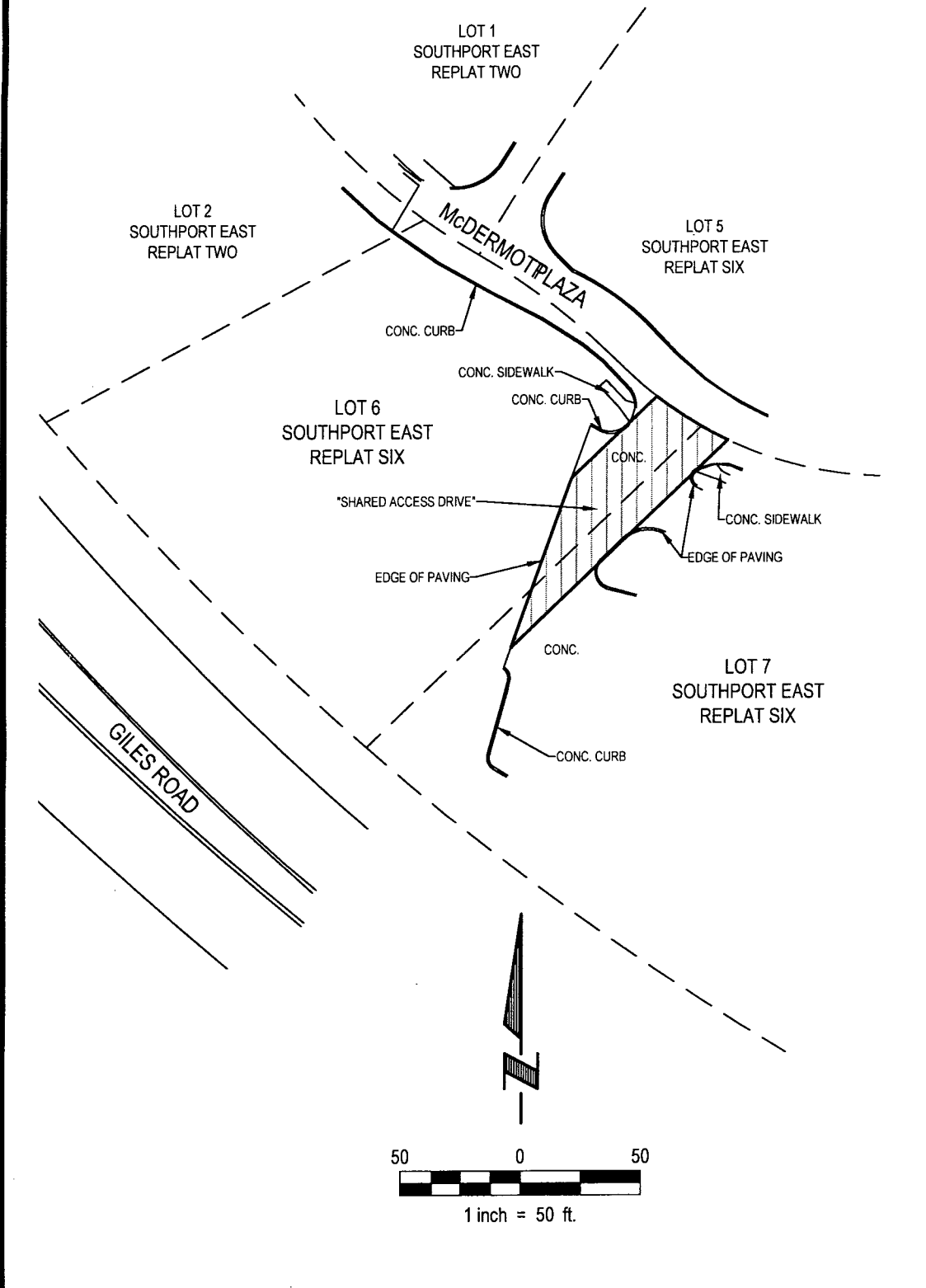


Barbara E. Casey  
Notary Public

Exhibit "A"

See Attached.

# EXHIBIT "A"



**E & A CONSULTING GROUP, INC.**  
Engineering • Planning • Environmental & Field Services  
10909 Mill Valley Road, Suite 100 • Omaha, NE 68154 Phone: 402.895.4700 • Fax: 402.895.3599

Drawn by: FCE	Date: 09/04/2015
Job No.: P2000.030.125	

**SHARED ACCESS DRIVE**  
**LOTS 6 & 7, SOUTHPORT EAST REPLAT SIX**  
**SE 1/4 SECTION 14, T14N, R12E**  
SARPY COUNTY, NEBRASKA