

FILED SARPY CO. NE
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2008-08776

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Shawn J. Lawling
REGISTER OF DEEDS

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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

The Katz Law Firm
Attn: Mark J. Musson
435 Nichols Road, Second Floor
Kansas City, MO 64112

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration"), made and entered into this 26 day of March, 2008, by and between **PAPILLION DEVELOPMENT, LLC**, a Nebraska limited liability company ("Developer") and **TACO BELL CORP.**, a California corporation ("Owner").

WITNESSETH:

WHEREAS, under the Agreement of Sale dated July 20, 2007 (the "Agreement"), Developer has agreed to sell to Owner the premises described in the Agreement (which premises are legally described on **Exhibit A** attached hereto) (hereafter, the "Premises") and located at Shadow Lake Towne Center in Papillion, Sarpy County, Nebraska (the "Shopping Center");

WHEREAS, the Premises are subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions Agreement by and between Landlord and Hy-Vee, Inc., an Iowa corporation, and recorded in the Office of the Register of Deeds, Sarpy County, Nebraska, on June 20, 2006, as Instrument No. 2006 - 20802 (the "ECR"); and

WHEREAS, the Agreement provides that Developer shall restrict the permitted uses or, in the case of an existing ground lease, reasonably withhold consent to any change of permitted uses for certain real property in the Shopping Center as legally described on **Exhibit B** hereof (the "Restricted Property") and depicted on the site plan attached hereto as **Exhibit C** which Restricted Property is owned by Developer.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner covenant and agree as follows:

1. **Owner's Exclusive Use.** Developer, will not lease, sublease or otherwise operate or contract the Restricted Property, by conveyance or otherwise, for use as a "**fast food Mexican restaurant**" (as hereinafter defined) so long as: (i) the Premises shall be open for business to the public as a typical fully staffed and operating "Taco Bell" fast food Mexican restaurant or a multi-branded restaurant which includes typical "Taco Bell" menu items as part of its menu offering, in excess of 30 consecutive days or 45 days in any period of 365 consecutive days, subject to reasonable commercial temporary closures due to (a) strikes (so

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long as Owner diligently uses best efforts to end such strike or replace striking workers), (b) casualties (not to exceed 365 days), (c) interruptions in supply (so long as Owner diligently uses best efforts to end such interruptions in supply), or (d) other actions beyond the reasonable control of Owner; (ii) Owner shall not be in default of any term of the ECR beyond any notice and applicable cure period; (iii) Owner shall not be in violation (beyond any notice and applicable cure period) of any exclusive use rights applicable to the Premises which benefit other lots in the Shopping Center; or (iv) Owner has not conveyed the Premises to a third party who is not an affiliate or franchisee of Owner (hereinafter "**Owner's Exclusive Use**"). For purposes hereof, the term "**fast food Mexican restaurant**" shall mean a restaurant which does not provide wait service at its tables and whose sale of Mexican food makes up at least 50% of gross sales from its premises, such as Taco Bueno or Taco John's. Owner's Exclusive Use shall automatically terminate upon the earliest occurrence of any one of the events listed in (i) through (iv) in the foregoing sentence. In the event of a Willful Violator (as defined below), Owner shall not have any remedy against Developer for the actions of such Willful Violator. For purposes of this Section, a "**Willful Violator**" shall mean and refer to any tenant or owner of property within the Shopping Center not otherwise excluded from the provisions of this Section that operates its premises in violation of an express prohibition in its lease or an express prohibition in a deed restriction or restrictive covenant, against operating for Owner's Exclusive Use hereunder. Furthermore, in the event a Willful Violator is violating Owner's Exclusive Use, Developer agrees that Owner shall have the right to seek "Judicial Relief" for the actions of the Willful Violator, in which event, Developer agrees to execute any and all documents reasonably necessary for Owner to seek Judicial Relief against the Willful Violator and Owner agrees to indemnify and hold Developer harmless from and against any all costs and expenses of any kind incurred by Developer in reviewing and executing documents reasonably necessary for Owner to seek Judicial Relief. The term "Judicial Relief" shall mean a temporary restraining order, preliminary injunction, order of eviction, or other court order enjoining the Willful Violator from violating Owner's Exclusive Use. In the event a court of competent jurisdiction determines that the Owner does not have standing to seek Judicial Relief against the Willful Violator for violations of Owner's Exclusive Use, Developer agrees to promptly seek Judicial Relief against the Willful Violator and Owner hereby agrees to indemnify and hold Developer harmless from and against any and all costs and expenses of any kind incurred by Developer in seeking Judicial Relief.

Notwithstanding anything in this Section to the contrary, the provisions of this Section shall not apply to any of the following: (1) any tenant or occupant under a lease or occupancy agreement, or the purchaser under a purchase agreement, entered into prior to the Effective Date of this Declaration, and any such tenant, occupant or purchaser's successors, assigns and subtenants, or any tenant or occupant leasing pursuant to any renewal, extension or modification of any lease that was executed prior to the Effective Date of this Declaration; (2) any tenant or occupant in the Shopping Center whose premises contain more than 10,000 square feet of Floor Area; or (3) if applicable law or governing authorities so require, any tenant or occupant which has been permitted to assume a lease or operate its business based upon or as a result of a bankruptcy, insolvency or similar action, or as the result of an action or order by any court. For purposes of this Section, "**Effective Date**" shall be the last date on which this Declaration is executed by all parties hereto.

2. This Declaration and the restrictions contained herein constitute covenants running with the land which shall bind subsequent owners and users of the Premises.

B

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

"OWNER"

TACO BELL CORP.,
a California corporation

By: 
Name: LAURENCE GERICH
Title: Assistant Secretary

Date Executed: March 24, 2008

"DEVELOPER"

PAPILLION DEVELOPMENT, LLC,
a Nebraska limited liability company

By: RED Papillion, LLC,
a Missouri limited liability company
Its Manager

By: E & R Holdings, LLC,
an Arizona limited liability company
Its Manager

By: _____
Michael L. Ebert, Manager

Date executed: _____

Delivered By
[Signature]
[Date]

C

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

"OWNER"

TACO BELL CORP.,
a California corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

"DEVELOPER"

PAPILLION DEVELOPMENT, LLC,
a Nebraska limited liability company

By: RED Papillion, LLC,
a Missouri limited liability company
Its Manager

By: E & R Holdings, LLC,
an Arizona limited liability company
Its Manager

By: 
Michael L. Ebert, Manager

Date executed: 3.26.08

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On March 24, 2008 before me, Cheri A. St.Clair, Notary Public,

Date Name, Title of Officer - E.G., "Jane Doe, Notary Public"

Personally appeared Laurence Gerich,

Name(s) of signer(s)

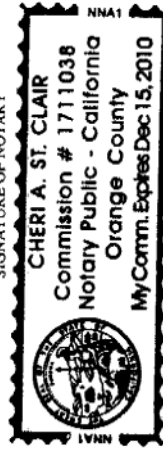
who proved to me on the basis of satisfactory evidence to be the person whose name ~~(s)~~ is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/these~~ authorized capacity(~~ies~~), and that by his/~~hers/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal

Cheri A. St.Clair

SIGNATURE OF NOTARY



CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL(S)

☐ CORPORATE
OFFICER(S) _____

TITLE(S)

☐ PARTNER(S)

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ SUBSCRIBING WITNESS

☐ GUARDIAN/CONSERVATOR

☒ OTHER Assistant Secretary

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

Taco Bell of America, Inc.

Site No. 305258

Declaration of Restrictive Covenant

E

STATE OF _____)
) ss.
COUNTY OF _____)

Now on this _____ day of March, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came _____ of Taco Bell Corp., a California corporation, personally known to me to be the same person who executed the within instrument on behalf of said corporation and who duly acknowledged the execution of the same to be his free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

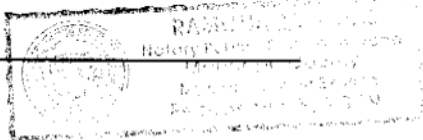
Now on this 24 day of March, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, Manager of E & R Holdings, LLC, an Arizona limited liability company, Manager of RED Papillion, LLC, a Missouri limited liability company, Manager of Papillion Development, LLC, a Nebraska limited liability company, personally known to me to be the same person who executed the within instrument on behalf of limited liability company and who duly acknowledged the execution of the same to be the act and deed of limited liability company duly authorized by its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



Notary Public

My Commission Expires: _____



F

EXHIBIT A
to Declaration of Restrictive Covenants

THE PREMISES

Lot 2, Shadow Lake Towne Center, a Subdivision, in Sarpy County, Nebraska.

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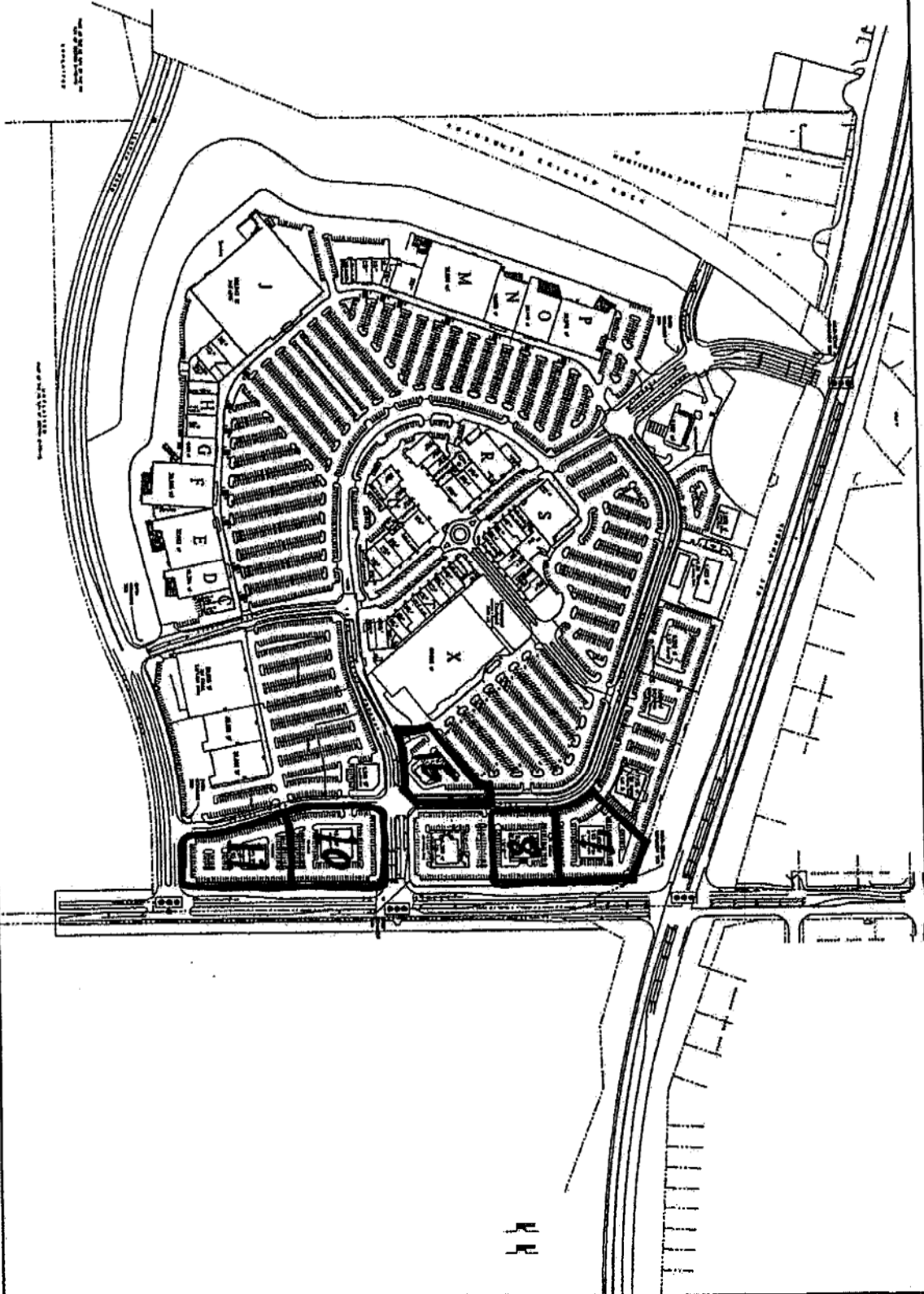
EXHIBIT B
to Declaration of Restrictive Covenants

LEGAL DESCRIPTION OF THE RESTRICTED PROPERTY

Lots 7, 8, 10, 11 and 15, Shadow Lake Towne Center, a Subdivision, in Sarpy County, Nebraska.

2008-08776 H

EXHIBIT C



NOT TO SCALE
 SHADOW LAKE TOWNE CENTER
 PAVILLION, NE
 OCTOBER 11, 2007



SHADOW LAKE TOWNE CENTER
 PAVILLION, NE
 OCTOBER 11, 2007

