

FILED SARPY CO. NE.
 INSTRUMENT NUMBER
 2006-35107
 2006 OCT 11 P 1:36 R
Glenn J. Slowiaczek
 REGISTER OF DEEDS

COUNTER WD P.E. WD
 VERIFY DH D.E. P
 PROOF LM P
 FEES \$ 30.50
 CHECK # _____
 CHG. STS CASH _____
 REFUND _____ CREDIT _____
 SHORT _____ NCR _____

Prepared by:
 James B. Cavanagh, Lieben, Whitted, Houghton, Slowiaczek & Cavanagh, P.C., 100 Scouler Building, 2027 Dodge Street,
 Omaha, NE 68102

REAL ESTATE USE RESTRICTION AGREEMENT

This Real Estate Use Restriction Agreement ("Agreement") is entered into effective as of September 20, 2006 by and between the following:

GRANTORS: Joe McDermott Associates, Inc., a Nebraska corporation as the owner of an undivided one-half (1/2) interest, an John L. Hoich, holder of an undivided one-half (1/2) interest, and for purposes of effectively granting this restriction Denise M. Hoich, wife of John L. Hoich (collectively the "Grantor"); and

GRANTEE: Simmonds Properties, Ltd., a Nebraska limited partnership ("Grantee").

RECITALS:

A. Contemporaneously with this Agreement, Grantee has purchased from Grantor the following described real estate: see exhibit A

That part of Lot 3, in SOUTHPORT EAST REPLAT TWO, an Addition to the City of LaVista, as surveyed, platted and recorded in Sarpy County, Nebraska, to be replatted and to be known as Lot 6 and Lot 7, in SOUTHPORT EAST REPLAT SIX, an Addition to the City of LaVista, as surveyed, platted and recorded in Sarpy County, Nebraska. ("Lots 6 and 7")

Recorder Note: Check metes an bounds of legal description. 10/11/06 DH

A

B. Grantor is the owner and titleholder of the following described real estate:

All of Lot 3 in SOUTHPORT EAST REPLAT TWO an Addition to the City of LaVista, as surveyed, platted and recorded in Sarpy County, Nebraska (the "Restricted Property").

The Restricted Property designation shall apply to the property after completion of any replat to be generally known as SOUTHPORT EAST REPLAT SIX.

C. Grantor and Grantee have entered into a Purchase Agreement dated by final acceptance as of June 23, 2006 ("Purchase Agreement") by which Grantor has agreed to certain use restrictions with respect to the Restricted Property.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENT BETWEEN THE PARTIES, INCLUDING THE PURCHASE AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. **Use and Restriction.** In consideration of the terms and conditions contained in the Purchase Agreement, Grantor hereby promises, declares and covenants with Grantee that the Grantor shall not sell, lease, or otherwise allow the use or occupancy of the Restricted Property, excluding Lots 6 and 7, by a restaurant or restaurant chains commonly known as McDonald's, Wendy's or Taco Bell or Taco Bueno restaurants.

2. Grantor warrants and represents as follows:

- a. Grantor has all necessary authority to enter into this covenant with respect to the Restricted Property and this covenant shall be binding on the Restricted Property.
- b. As of the date of this Agreement, no party other than Grantor has any interest in the Restricted Property.
- c. The execution of this covenant with respect to any of the Restricted Property is not in violation of any other agreements regarding the Restricted Property.

B

3. **Run with Land.** This covenant and the restrictions upon the Restricted Property shall be binding upon the Grantor, and their successors and assigns, and shall run with the land for the benefit of Lots 6 and 7 and the benefit of Grantee or its successors and assigns. This covenant shall be binding upon all parties who have any interest in any part of the Restricted Property and shall be enforceable by Grantee and its successors and assigns.

4. **Consent of Lender.** Great Western Bank holds an interest to the Restricted Property, including Lots 6 and 7, as a Trustee and Beneficiary pursuant to certain Deeds of Trust filed of record against the Restricted Property. Great Western Bank executes this Agreement as evidence of its consent to the restrictions contained in this Agreement authorization of the Grantors to enter into the use restriction pursuant to this Agreement.

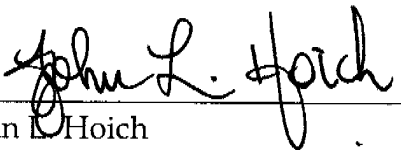
5. **Recording.** This Agreement shall be filed of record and shall constitute notice to all parties of the rights and restrictions granted by this covenant.


6. **Waiver.** Failure of Grantee to enforce any breach or violation of this covenant or the conditions contained in this Agreement shall not be deemed to be a waiver of the right to subsequently enforce the Agreement with respect to any portion of the Restricted Property nor shall the failure or delay by Grantee to enforce any violation of the covenant be deemed to be an abandonment of the covenant or restriction with respect to any portion of the Restricted Property.

7. **Amendment.** This Agreement may be revoked or amended only by an instrument in writing bearing the signatures of all parties to the covenant or their successors or assigns.

DATED: September 19, 2006.

GRANTOR:



John L. Hoich


Denise M. Hoich

C

JOE MCDERMOTT ASSOCIATES, INC., a
Nebraska corporation

By: Joe McDermott
Joe McDermott, President

GRANTEE:

SIMMONDS Properties, LTD

By: Simmonds Restaurant
Management, Inc., General
Partner

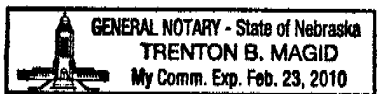
By: Paul K. Glissman
Name: Paul K. Glissman
Title: CFO

GREAT WESTERN BANK

By: Paul T. Friejen
Name: Paul T Friejen
Title: SVP

STATE OF NEBRASKA)
) ss.
County of)

Subscribed and sworn to before me this 29th day of
September, 2006, by John L. Hoich.



Trenton B. Magid

My Commission Expires: 2-23-2010

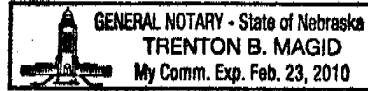
D

state of Nebraska

County of Douglas

subscribed and sworn to before me this 19th day of September 2006, by Joseph McDermott.

STATE OF NEBRASKA)
) ss.
County of Douglas)



Trenton B. Magid

Subscribed and sworn to before me this 19 day of September 2006, by Denise M. Hoich.



Trenton B. Magid

My Commission Expires:

STATE OF NEBRASKA)
) ss.
County of DOUGLAS)

Subscribed and sworn to before me this 20 day of SEPTEMBER 2006, by PK Bussman, the CFO of Simmonds Properties, Ltd.



Janet J. Clark

My Commission Expires: 2-21-08

STATE OF NEBRASKA)
) ss.
County of Douglas)

Subscribed and sworn to before me this 20th day of September 2006, by Paul T. Friesen of Great Western Bank.



Trenton B. Magid

My Commission Expires: 2-23-10

LEGAL DESCRIPTION
FUTURE LOT 6, SOUTHPORT EAST REPLAT SIX

Part of Lot 3, Southport East Replat Two, a subdivision located in the SE1/4 of Section 18, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of said Lot 3, Southport East Replat Two, said point also being the Southeast corner of Lot 2, said Southport East Replat Two, said point also being on the Northerly right-of-way line of Giles Road (formerly 126th Street); thence N62°16'25"E (assumed bearing) along the Westerly line of said Lot 3, Southport East Replat Two, said line also being the Easterly line of said Lot 2, Southport East Replat Two, a distance of 177.25 feet to the Northeast corner of said Lot 2, Southport East Replat Two, said point also being on the Southerly line of Lot 1, said Southport East Replat Two; thence Southeasterly along said Westerly line of Lot 3, Southport East Replat Two, said line also being said Southerly line of Lot 1, Southport East Replat Two on a curve to the left with a radius of 268.56 feet, a distance of 26.82 feet, said curve having a long chord which bears S57°23'17"E, a distance of 26.81 feet to the Southeast corner of said Lot 1, Southport East Replat Two; thence Southeasterly on a curve to the right with a radius of 281.80 feet, a distance of 66.28 feet, said curve having a long chord which bears S53°30'39"E, a distance of 66.13 feet; thence S46°46'21"E, a distance of 13.21 feet; thence Southeasterly on a curve to the left with a radius of 158.32 feet, a distance of 37.49 feet, said curve having a long chord which bears S53°33'18"E, a distance of 37.40 feet; thence S46°41'02"W, a distance of 191.21 feet to a point on the Southerly line of said Lot 3, Southport East Replat Two, said line also being said Northerly right-of-way line of Giles Road (formerly 126th Street); thence Northwesterly along said Southerly line of Lot 3, Southport East Replat Two, said line also being said Northerly right-of-way line of Giles Road (formerly 126th Street) on a curve to the right with a radius of 1275.00 feet, a distance of 188.95 feet, said curve having a long chord which bears N44°53'17"W, a distance of 188.78 feet to the point of beginning.

Said tract of land contains an area of 30,113 square feet or 0.691 acres, more or less.

#2000030.30jar

09/07/2006 - revised: 09/15/2006

E & A CONSULTING GROUP, INC.
330 NORTH 117TH STREET
OMAHA, NEBRASKA 68154

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