

FILED SARPY CO. NE.
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2000 - 10102

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Sharon G. Hawley
REGISTER OF DEEDS

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DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made as of this 28th day of April, 2000, by **Twin Creek L.P.**, a Nebraska limited partnership ("Twin Creek").

RECITALS

WHEREAS, Twin Creek is the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (hereinafter collectively referred to as the "Twin Creek Lots"):

Lots 1, 2, 3, 6, 7, 8, 9, and 15 of TWINCREEK PLAZA, Lot 5 of TWINCREEK PLAZA REPLAT I; Lot 2 of TWINCREEK PLAZA REPLAT III; and Lot 2 of TWINCREEK PLAZA REPLAT IV, all surveyed, platted, and recorded in Sarpy County, Nebraska

WHEREAS, Twin Creek is also the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (the "Premises"):

Lot 1 of TWINCREEK PLAZA REPLAT III, as surveyed, platted, and recorded in Sarpy County, Nebraska;

WHEREAS, subsequent to the execution and filing of this Declaration, Twin Creek is conveying the Premises to **Taco Bell Corp.**, a California corporation ("Taco Bell").

WHEREAS, Twin Creek and Taco Bell have entered into certain agreements pursuant to which Taco Bell has covenanted, warranted and represented: that it will commence construction of a Taco Bell restaurant on the Premises on or before June 30, 2000; that construction of the Taco Bell restaurant shall be diligently prosecuted to completion and be open for business within 180 days after commencement of construction, provided that the foregoing times may be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God; and that Taco Bell will fully stock and open a Taco Bell restaurant for one day, provided, however, that Buyer shall have no obligation to continuously operate a Taco Bell restaurant for any period of time thereafter. (Paragraph in its entirety, the "Covenant to Develop.")

STS

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the Covenant to Develop, Twin Creek does hereby establish and declare the following covenants, conditions, reservations and restrictions:

1. **Use Restriction:** Provided that Taco Bell fulfills the Covenant to Develop within the time periods set forth in the above recital, and further provided that Taco Bell thereafter continuously thereafter operates a Taco Bell restaurant on the Premises, no part of the Twin Creek Lots shall be used a for a restaurant with drive through service, whose primary menu item is prepared Mexican food. This restriction includes but is not limited to Taco John's. However, this restriction shall not apply to or in any way limit the use of the Twin Creek Lots or any part thereof for: (i) restaurants without drive through service; (ii) Carlos O'Kelley's Mexican Cafe, El Bee's, Julio's, Fernando's, Lil' Burro or other similar restaurants; (iii) operations whose primary menu item is other than prepared Mexican food; (iv) family-style, full-service restaurants which do not offer fast food over the counter, except for incidental sales, which restaurants include but are not limited to Village Inn, Baker's Square, Denny's, Shoney's, Big Boy, Perkins, Sizzler, Bonanza, or any so-called steak house; (v) so-called fast-food roast beef restaurants, which restaurants include but are not limited to Arby's, Rax, or Barnards; (vi) so-called chicken restaurants, which restaurant include but are not limited to KFC, Popeye's, Church's, or Boston Market; or, (vii) any so-called fish restaurants, which restaurants include but are not limited to Long John Silver's or Red Lobster. (The foregoing provisions of this paragraph shall collectively be referenced as the "Use Restriction.") The Use Restriction may be terminated with respect to the Twin Creek Lots or any part thereof at the election of Twin Creek, if the use of the Premises for the sale of prepared Mexican foods is discontinued.

2. **Duration, Modification and Termination:** The term of this Declaration shall be for fifteen (15) years from and after the date hereof. In the event Taco Bell fulfills the Covenant to Develop within the time frames set forth in the above recital, and thereafter continuously operates a Taco Bell restaurant on the Premises, the Use Restriction shall not be modified or terminated without the mutual prior written consent of the owner of the Premises and Twin Creek. In the event Taco Bell fails to fulfill the Covenant to Develop within the time frames set forth in the above recital, then Twin Creek shall thereafter have the sole and exclusive right, at its election, at any time, to modify or terminate the Use Restriction of the Twin Creek Lots.

3. **Covenants Run With the Land:** This Declaration shall be binding on and inure to the benefit of the parties hereto, their heirs, successors, and assigns and shall run with the land, except that the right to modify or terminate the Use Restriction, as set forth in Paragraph 1 and 2 above, shall be personal to Twin Creek, shall not run with the land, and may be assigned by Twin Creek.

4. **Default:** A party hereto shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such party, prior to the expiration of said thirty (30) has rectified the particulars specified in said notice of default.

5. **Remedies:** In the event of any violation or threatened violation of the Restriction, any of the parties hereto shall have the right, in addition to all other rights and remedies provided by law or equity, to enjoin such violations or threatened violation in a court of competent jurisdiction.

6. **Waiver:** The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

7. **Severability:** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8. **Not a Partnership:** The provisions of this Declaration are not intended to create nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9. **Third Party Beneficiary Rights:** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

10. **Captions and Headings:** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreement contained herein.

11. **Not a Public Dedication:** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Twin Creek Lots to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

12. **Recordation:** This Declaration shall be recorded in the records of the Register of Deeds, Sarpy County, Nebraska.

13. **Recitals:** The recitals appearing in this declaration are incorporated herein by reference just as if specifically set forth in full.

14. **Time:** Time is of the essence.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first above written.

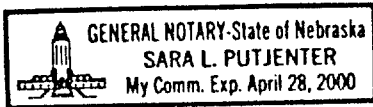
**Twin Creek L.P.,
a Nebraska limited partnership,
Seller**

By: Twin Creek Development Company, L.L.C.,
a Nebraska limited liability company,
Its General Partner

By: *John R. Thompson*
John R. Thompson, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF *Douglas*)

SUBSCRIBED and sworn to before me, a Notary Public, this *27th* day of *April*, 2000, by John R. Thompson, as a Member of Twin Creek Development Company, L.L.C., the general partner of Twin Creek, L.P., a Nebraska limited partnership, for and on behalf of the limited partnership.



Sara L. Putjenter
Notary Public

My Commission Expires:

4-28-2000