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RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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Prepared by:
 James B. Cavanagh
 Lieben, Whitted, Houghton,
 Slowiaczek & Dougherty, 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 June 1, 1998 by and between the following:

GRANTORS: Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust and Carol Gendler, Trustee of the Carol J. Gendler Revocable Trust, as tenants in common, and Northwest Business Park Limited Partnership, a Nebraska limited partnership (collectively the "Grantor"); and

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

RECITALS:

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

Lot 13, in Starwood South, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska ("Lot 13")

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

Lots 1, 3, 4, 5 and 12, in Starwood South, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (the "Restricted Property").

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C. Grantor and Grantee have entered into a Purchase Agreement dated February 20, 1997 ("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 for any restaurant including restaurants with drive-through hamburger sales, whose primary menu is hamburgers or by a restaurant or restaurant chains commonly known as McDonald's, Wendy's or Hardee's restaurants. The term restaurant which are excluded by this covenant shall apply to any type of food service establishment which primarily serves hamburgers or any type of ground beef products served in sandwich form. This covenant shall not prohibit the use of the Restricted Property for any food service establishment which offers as the primary method of service, for all meal times, food and drink orders taken by and served by a waiter or waitress at the customer's table, and further provided this covenant shall not prohibit any food service establishment that primarily offers deli sandwiches, pizza, ice cream (including Dairy Queen Brazier), tacos, burritos, tamales, enchiladas, fajitas or nachos.

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.

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 Lot 13 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.

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

5. **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.

6. **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: _____, 1998.


GRANTOR:

NORTHWEST BUSINESS
PARK LIMITED PARTNERSHIP

IRVIN GENDLER, TRUSTEE OF THE
IRVIN GENDLER REVOCABLE TRUST
AND CAROL J. GENDLER, TRUSTEE
OF THE CAROL J. GENDLER
REVOCABLE TRUST

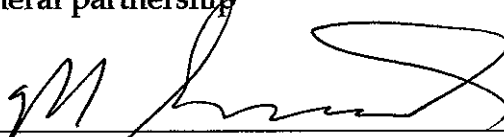
By _____
General Partner

By  _____
Irvin Gendler, Trustee

By  _____
Carol J. Gendler, Trustee

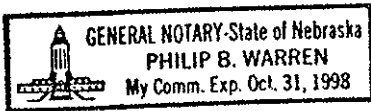
GRANTEE:

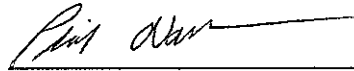
SIMMONDS PROPERTIES, a Nebraska
general partnership

By 
Michael H. Simmonds, Partner

STATE OF NEBRASKA)
) ss.
County of)

Subscribed and sworn to before me this 28 day of
May, 1998, by Irvin Gendler, Trustee of the Irvin Gendler
Revocable Trust.

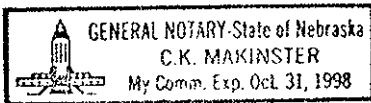





My Commission Expires:

STATE OF NEBRASKA)
) ss.
County of)

Subscribed and sworn to before me this 28 day of
May, 1998, by Carol J. Gendler, Trustee of the Carol J. Gendler
Revocable Trust.





My Commission Expires:

STATE OF NEBRASKA)
) ss.
County of Douglas)

Subscribed and sworn to before me this ____ day of _____, 1998, by _____, the _____ of Northwest Business Park Limited Partnership.

My Commission Expires:

STATE OF NEBRASKA)
) ss.
County of Douglas)

Subscribed and sworn to before me this 19 day of June, 1998, by Michael H. Simmonds, Partner, Simmonds Properties, a Nebraska general partnership.

Paula K. Glissman

My Commission Expires:

