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MISC 2003 12186

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DOUGLAS COUNTY, NE

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S/ BKP _____ C/O _____ COMP B
6 DEL _____ SCAN R FV _____

AMENDMENT TO REAL ESTATE USE RESTRICTION AGREEMENT

THIS AMENDMENT TO REAL ESTATE USE RESTRICTION AGREEMENT (this "Amendment") is made as of this 3 day of APRIL, 2003 by and among Carol J. Gendler and Steven H. Gendler, Co-Trustees of the H. Lee Gendler Family Trust, Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust, Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust (collectively, "Grantors") and Simmonds Properties, Ltd, a Nebraska limited partnership (formerly known as Simmonds Properties, a Nebraska general partnership) ("Grantee").

PRELIMINARY STATEMENTS

Grantee is the sole owner of the following real property:

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

Grantors are the sole owners of the following real property:

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

Lot 13 is benefited by and the Restricted Property is burdened by the rights and restrictions set forth in that certain Real Estate Use Restriction Agreement (the "Restrictions") dated June 1, 1998 and recorded in the office of the Register of Deeds of Douglas County, Nebraska on June 29, 1998 at Miscellaneous Book 1253, Page 292. The terms of this Amendment shall burden the Restricted Property and benefit Lot 13 as set forth below. Grantors and Grantee desire to amend the Restrictions as set forth herein;

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NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties do hereby amend the Restrictions as follows:

Section 1. Relocation of Existing Easement. Section 1 of the Restrictions is hereby replaced in its entirety with the following language:

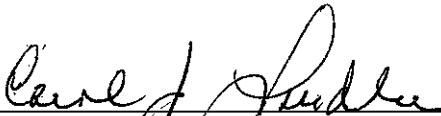
“1. Use and Restriction. In consideration of the terms and conditions contained in the Purchase Agreement, Grantor hereby promises, declares and covenants with Grantee that the Grantor shall not sell, lease, or otherwise allow the use or occupancy of the Restricted Property for any restaurant with drive-through hamburger sales and whose primary menu is hamburgers or by a restaurant or restaurant chains commonly known as McDonald’s, Wendy’s, Culver’s, Sonic, or Hardee’s restaurants. The term restaurant which is 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 meals 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.”

Section 2. Full Force and Effect. To the extent not inconsistent herewith, all other terms and provisions of the Restrictions shall remain in full force and effect and are ratified by the Declarants.

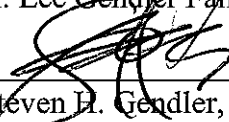
Section 3. Counterparts. This Amendment may be executed in counterparts, each of which when taken together shall constitute one entire agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

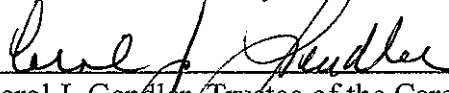
GRANTORS:



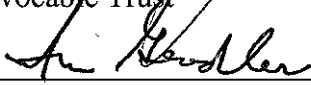
Carol J. Gendler, Co-Trustee of the
H. Lee Gendler Family Trust



Steven H. Gendler, Co-Trustee of the
H. Lee Gendler Family Trust



Carol J. Gendler, Trustee of the Carol J. Gendler
Revocable Trust

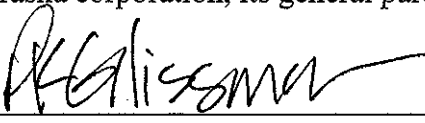


Irvin Gendler, Trustee of the Irvin Gendler
Revocable Trust

GRANTEE:

SIMMONDS PROPERTIES, LTD, a Nebraska
limited partnership (formerly known as
Simmonds Properties, a Nebraska general
partnership)

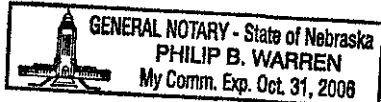
By Simmonds Restaurant Management, Inc., a
Nebraska corporation, its general partner

By 

Paula K. Glissman
President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of March, 2003 by Carol J. Gendler, Co-Trustee of the H. Lee Gendler Family Trust, on behalf of the trust.

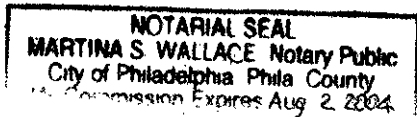


Philip B. Warren

Notary Public

Pennsylvania
STATE OF NEBRASKA)
Philadelphia ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11th day of March, 2003 by Steven H. Gendler, Co-Trustee of the H. Lee Gendler Family Trust, on behalf of the trust.

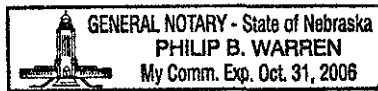


Martina S. Wallace

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of MARCH, 2003 by Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust, on behalf of the trust.



Philip B. Warren

Notary Public

WASHINGTON
STATE OF NEBRASKA)
KING) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 12th day of March, 2003 by Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust, on behalf of the trust.

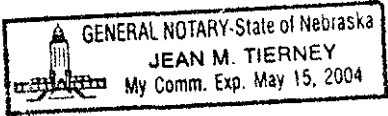
Thomas P. Farrell

Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3 day of March 03, 2003 by Paula K. Glissman, President of Simmonds Restaurant Management, Inc., a Nebraska corporation, general partner of Simmonds Properties, Ltd, a Nebraska limited partnership, on behalf of the limited partnership.



Jean M Tierney
Notary Public