

OPTION AGREEMENT AND GRANT OF RIGHT OF FIRST REFUSAL

THIS AGREEMENT, made as of January 3, 1983, between BURGER KING LIMITED PARTNERSHIP I, a New York limited partnership having its principal place of business at Two World Trade Center, New York, New York 10048 (the "Optionor"), and BURGER KING CORPORATION, a Florida corporation having its principal place of business at 7360 North Kendall Drive, Miami, Florida 33156 ("BKC").

W I T N E S S E T H :

THAT WHEREAS as of the date hereof, Optionor has acquired the fee simple title to, or a subleasehold interest in, the parcel of land, located in the City of Klamath Falls, County of Klamath, State of Oregon, more particularly described in Exhibit A hereto (the "Land") and BKC shall construct or cause to be constructed on behalf of Optionor a Burger King restaurant building and other improvements (together, the "Improvements") on the Land (Optionor's interest in the Land, together with the Improvements shall be hereinafter referred to as the "Property");

WHEREAS, the Property is a Ground Leasehold Property;

WHEREAS (i) if the Property is a Fee Property, Optionor is the owner of the fee simple title to the Property, or (ii) if the Property is a Ground Leasehold Property, Optionor is the subtenant under a sublease (the "Sublease") from BKC, which holds the lessee's interest in a Ground Lease (the "Ground Lease"), and Optionor is the owner of the Improvements;

WHEREAS Optionor owns or will own fee title to, or has or will have subleasehold interests in, certain other parcels of land, and owns or will own the buildings and improvements thereon (collectively, the "Other Properties" and together with the Property, the "Properties"), all of which are, or will be, subject to other option agreements (collectively, the "Other Option Agreements") substantially in the form of this Agreement;

## AFTER RECORDING RETURN TO:

Burger King Corp  
7360 North Kendall Drive  
P.O. Box 520783  
General Mail Facility  
Miami, Florida 33152 - Attention Lisa Wilson

RS - BKLP  
5/11/82 - 6th Draft  
#3645 - Klamath Falls, OR  
PAH - 1/10/83

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WHEREAS pursuant to a lease agreement (the "Lease") covering the Property, to be executed by and between a franchisee of BKC ("Franchisee") and Optionor, Franchisee shall lease the Property from Optionor for the purpose of operating a Burger King restaurant thereon.

NOW, THEREFORE, in consideration of the receipt of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and BKC hereby agree as follows:

Section 1. The Option. In accordance with the terms hereof and subject to the conditions hereinafter recited, Optionor hereby grants to BKC, its successors and assigns, the exclusive right and option ("Option") to purchase (i) if the Property is a Fee Property, the fee simple title to the Property, or (ii) if the Property is a Ground Leasehold Property, all of Optionor's right, title and interest in the Sublease, together, in either event, with the title to the Improvements located on the Land. BKC has no obligation to exercise the Option to purchase the Property.

a. BKC may exercise the Option to purchase the Property at any time during the eighth (8th), ninth (9th), and tenth (10th) years after June 1, 1982 (the "Option Period").

b. Written notice of its intention to exercise the Option ("Notice") must be given by BKC to Optionor within the Option Period, not more than one hundred eighty (180) days and not fewer than sixty (60) days prior to the date established by BKC in the Notice for closing the purchase of the Property ("Purchase Date"). The Purchase Date must occur during the Option Period, unless otherwise agreed in writing by Optionor and BKC.

c. BKC may purchase the Property pursuant to its timely exercise of the Option whether or not it has exercised or intends to exercise, its rights to purchase any of the Other Properties, in accordance with any of the Other Option Agreements.

d. Upon exercise of the Option, BKC shall purchase the Property on the Purchase Date for cash (unless otherwise agreed by Optionor and BKC) at a price equal to its fair market value (encumbered by the Lease, if the Lease is then in full force and effect, but not encumbered by this Agreement), determined as of a date not later than thirty (30) days subsequent to receipt by Optionor of the Notice. Fair market value of the Property shall be determined by calculating the average of three appraisals obtained as follows: within ten (10) days after the date of the Notice, Optionor and BKC each shall choose one appraiser and such two appraisers shall promptly jointly choose a third appraiser (or, if they cannot agree, the third appraiser shall be appointed

by the American Arbitration Association located in the community wherein the Property is located). Each appraiser selected hereunder shall be reasonably familiar with the local community wherein the Property is located and shall be a member in good standing of the American Institute of Real Estate Appraisers or any successor organization. Each appraiser shall promptly prepare and submit to Optionor and BKC his appraisal of the Property.

e. Delivery by BKC of the Notice shall be deemed to commit BKC irrevocably to purchase, and Optionor irrevocably to sell, the Property in accordance with this Agreement.

## Section 2. Terms of Conveyance and Settlement.

a. Closing. The Purchase Date shall occur at the time set forth in the Notice.

b. Title to be Conveyed. If (i) the Property is a Fee Property, or (ii) the Property is a Ground Leasehold Property but Optionor, as of the Purchase Date, has acquired the fee title to the Land, Optionor shall convey the fee title to the Property to BKC by a deed with covenant against Optionor's affirmative acts (other than acts consented to, or requested by, BKC) and subject to the matters described in Section 2c. hereof. If the Property is a Ground Leasehold Property, Optionor shall convey, assign and transfer to BKC all of its right, title and interest in the Sublease by an assignment, and shall convey title to the Improvements on the Land by a deed in the form described in the preceding sentence and subject to the matters described in Section 2c. hereof.

c. Encumbrances. The Property will be conveyed subject to (i) the Lease (which will be assigned to BKC), (ii) such encumbrances as existed at the date of commencement of business of the Burger King restaurant on the Property (iii) easements, covenants, agreements and other encumbrances (except liens securing indebtedness of Optionor, its successors and assigns), arising or created in connection with the construction, use or operation of the Improvements on the Land, but which do not adversely affect the value of the Property or the operation of the restaurant thereon, (iv) any zoning laws and ordinances, (v) exceptions resulting from any condemnation, pending condemnation or conveyance in lieu of condemnation, (vi) current taxes, utilities and other similar charges which are to be prorated at the closing, (vii) any state of facts a current survey would show, and (viii) exceptions created by, at the request of, or with the approval of BKC.

d. Title Insurance Binder. Prior to the Purchase Date, BKC may obtain, at its own expense, an updated title insurance binder evidencing the current status of the title to the Property, and Optionor will remove and/or cause to be released,

at its expense, before or simultaneously with the closing, all encumbrances and exceptions recited in such title binder and not permitted by Section 2c. hereof.

e. Indemnity. BKC will execute and deliver to Optionor an indemnity, substantially in the form attached hereto as Exhibit B, indemnifying Optionor from any and all continuing liability under the Lease, the Ground Lease, and the Sublease, if applicable, except for any obligations arising prior to the Purchase Date.

f. Costs. All charges incident to the conveyance, transfer and sale of the Property hereunder, including counsel fees, escrow fees, recording fees, title insurance premiums, title company costs, survey costs, and all applicable federal, state and local taxes (other than income or franchise taxes levied upon or assessed against Optionor), which may be incurred or imposed by reason of such conveyance, transfer and sale or by reason of the delivery of any deeds and/or assignments shall be paid by the respective parties hereto in accordance with the custom prevailing in the locality where the Property is located.

g. Brokerage. The parties hereto agree that no brokerage commission shall be due or payable by Optionor or BKC in connection with any purchase and sale of the Property hereunder.

h. Failure to Convey Title. If Optionor fails or refuses to convey title to the Property as required by Sections 2b. and 2c. hereof, or if the title insurance binder obtained by BKC evidences encumbrances or exceptions not permitted in Section 2c. hereof and which are not removed by Optionor, the sole remedy of BKC will be either (i) to enforce specific performance by Optionor of its duty to convey and transfer the Property upon the terms set forth herein or (ii) to refuse to purchase the Property ("the Refusal"), whereupon the parties hereto shall have no further rights or obligations hereunder to purchase or sell the Property on the Purchase Date and neither party hereto shall be liable to the other hereunder for the failure or inability to close the purchase of the Property. Provided, however, BKC shall not be prohibited as a result of the Refusal, from later exercising the Option, although it may be necessary for BKC to again refuse to purchase the Property as a result of Optionor's inability to convey title, as contemplated in this paragraph.

### Section 3. Grant of Right of First Refusal.

(a) At any time during the first seven (7) years after June 1, 1982, if, as and when Optionor receives a bona fide offer from a third party to purchase the Property acceptable to Optionor, Optionor shall give BKC written notice setting forth the name and address of the prospective purchaser, the price and terms of the offer, and such other information as BKC may reasonably request

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in order to evaluate the offer. BKC shall then have the prior right to purchase the Property at the price and upon the terms of such offer. BKC shall have fourteen (14) working days (excluding weekends and legal holidays) after receipt of Optionor's notice of offer and the furnishing of all reasonably requested information within which to notify Optionor of its intent to accept or reject the offer. Silence on the part of BKC shall constitute rejection. If the proposed sale includes assets of Optionor not related to the Property, BKC may purchase either the Property or the Property together with the other assets, and an equitable purchase price shall be allocated to each asset included in the proposed sale.

(b) The election by BKC not to exercise its right of first refusal as to any offer which is not consummated shall not affect its right of first refusal as to any subsequent offer. Any sale or attempted sale effected without first giving BKC the right of first refusal described above shall be void and of no force and effect. If BKC does not accept the offer to purchase the Property, Optionor may conclude the sale to the purchaser upon the terms of such offer, and upon any such sale, this Agreement shall terminate and the option rights and rights of first refusal hereunder shall be of no further effect.

Section 4. Warranty. Optionor represents and warrants that at the time of execution of this Agreement it has the lawful right and authority to grant to BKC the Option and the Right of First Refusal described herein.

Section 5. No Assignment. Neither this Agreement, nor the rights or options set forth herein, may be sold, assigned, transferred, pledged or encumbered in any manner, whether voluntarily or by operation of law, without the prior written consent of Optionor or its successors in interest to the Property. This Agreement, and the rights and options set forth herein, shall not be affected by the merger or consolidation of BKC with another corporation or by the sale or transfer by any parent of BKC of any or all of BKC's outstanding securities. This Agreement, shall run with the title to the Property and shall be binding upon Optionor and its successors in interest to the Property and shall inure to the benefit of BKC and its successors.

Section 6. Notices. Any notice or other communication given by either party hereto to the other relating to this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, addressed to such other party at the respective address set forth below (or such other address as may be specified by such other party from time to time in accordance with the notice provisions herein), and each notice or other communication shall be deemed given when so mailed.

If to BKC, to:

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Burger King Corporation  
7360 North Kendall Drive  
Miami, Florida 33156

Attention: General Counsel

If to Optionor, to:

Burger King Limited Partnership I  
c/o Shearson/BK Realty, Inc.  
Two World Trade Center  
New York, New York 10048

Attention: President

Section 7. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the jurisdiction wherein the Property is located.

Section 8. Entire Agreement. This Agreement constitutes the entire agreement between BKC and Optionor with respect to the subject matter hereof. Neither this Agreement nor the provisions hereof may be waived, modified or amended except by an instrument in writing signed by BKC and Optionor.

Section 9. Subordination. Optionor agrees that any mortgage, deed of trust or other security interest encumbering the Property for indebtedness of Optionor will be subject and subordinate to the Lease and this Agreement. Each document evidencing such mortgage, deed of trust or other security interest in the Property, including documents to be recorded, will contain an acknowledgment that it is subordinate to the Lease and this Agreement.

Section 10. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be considered an original, but all of which shall constitute only one instrument. The parties agree to execute this Agreement in a form capable of recording. Either party may record this Agreement in the jurisdiction where the Property is located.

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

Witnesses:

Polly A. Stahl

Marcella S. Olin

Witnesses:

Norma Delepine

W. Mayo

BURGER KING CORPORATION

By: Thomas L. C.

Vice President

Attest: Joseph L. C.

Assistant Secretary

BURGER KING LIMITED PARTNERSHIP I  
By Its General Partner:  
SHEARSON/BK REALTY, INC.

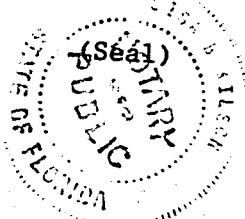
By: Robert F. Guendall

Attest: William M. Kahn

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STATE OF FLORIDA     )  
                              ) SS.  
COUNTY OF DADE     )

The foregoing instrument was acknowledged before me this  
January 11, 1983, by Thomas F. Crumme  
President and Joseph T. Meyer, Assistant Secretary,  
respectively, of Burger King Corporation, a Florida  
corporation, on behalf of the corporation.



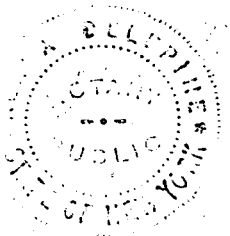
Louis B. Wilson  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES MAR 10 1986  
BONDED THRU GENERAL INS. UNDERWRITERS

STATE OF NEW YORK     )  
                              )  
COUNTY OF NEW YORK   )

On this 25<sup>th</sup> day of January, 1983, before me personally  
came ROBERT F. GREENWALD, to me personally known, who, being by  
me duly sworn, did depose and say that he resides at 6766 108th  
Street, New York, New York; that he is the Vice President of  
SHEARSON/BK REALTY, INC., the sole general partner of BURGER KING  
LIMITED PARTNERSHIP I, the partnership described in and which  
executed the within OPTION AGREEMENT AND GRANT OF RIGHT OF FIRST  
REFUSAL; and that he signed his name thereto by authority of such  
partnership.



Norma Delepine  
Notary Public

NORMA DELEPINE  
NOTARY PUBLIC, State of New York  
No. 31-4785783  
Qualified in New York County  
Commission Expires March 30, 1984



EXHIBIT ALEGAL DESCRIPTIONPARCEL 1:

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian; thence South  $0^{\circ}00'30''$  East along the Westerly boundary of Section 3 and the centerline of Washburn Way 917.42 feet to its intersection with the centerline of South Sixth Street, formerly known as the Dalles-California Highway, at Engineer's Station 9+17.42 on Washburn Way and Engineer's Station 16+14.87 on South Sixth Street, the recorded bearing of the centerline of South Sixth Street being South  $55^{\circ}52'30''$  East; thence continuing South  $0^{\circ}00'30''$  East along the West line of said Section 3 and the centerline of Washburn Way 48.32 feet to a point on the South boundary of South Sixth Street which is 40.0 feet distant from, when measured at right angles to, the centerline of South Sixth Street thence South  $55^{\circ}52'30''$  East parallel to said centerline 125.56 feet to the true point of beginning of this description; thence continuing South  $55^{\circ}52'30''$  East parallel to said centerline 181.50 feet to a point; thence South  $34^{\circ}07'30''$  West at right angles to said centerline 160.00 feet to a point; thence North  $55^{\circ}52'30''$  West 150.27 feet to a point on the Easterly boundary of Washburn Way; thence North  $0^{\circ}00'30''$  West along the Easterly boundary of Washburn Way 103.29 feet to the beginning of a 49.00 foot radius curve to the right; thence along said 49.00 foot radius curve, the long chord of which bears North  $53^{\circ}51'50''$  East 79.16 feet, 92.14 feet, more or less, to the true point of beginning.

PARCEL 2 - a non-exclusive easement for ingress, egress, parking and utilities over the unconstructed portions of the following described property:

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South  $00^{\circ}00'30''$  East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with

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the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55°52'30" East, at Engineer's Station 9+17.42 feet on Washburn Way and Engineer's Station 16+14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineer's Station 9+65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineer's Station 16+41.99 feet; thence South 55°52'30" East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South 55°52'30" East parallel to said centerline 795.36 feet; thence at right angles South 34°07'30" West, 204 feet; thence South 55°52'30" East parallel to Sixth Street 145.00; thence at right angles South 34°07'30" West, 183.80 feet; more or less, to Northerly right of way line of the Oregon, California and Eastern Railroad; thence North 66°57'30" West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North 00°00'30" West, along said right of way line 503.39 feet; thence South 55°52'30" East, 306.22 feet; thence North 34°07'30" East, 160.00 feet to the true point of beginning.

PARCEL 3 - a non-exclusive easement for ingress, egress, parking and utilities over the unconstructed portions of the following described property:

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South 00°00'30" East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55°52'30" East, at Engineer's Station 9+17.42 feet on Washburn Way and Engineer's Station 16+14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineer's Station 9+65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineer's Station 16+41.99 feet, to the true point of beginning; thence South 55°52'30" East parallel to said centerline 463.02 feet; thence South 34°07'30" West 160.00 feet; thence North 55°52'30" West 306.22 feet to the East right of way of Washburn Way; thence North to the point of beginning.

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EXCEPT THEREFROM that portion deeded to State of Oregon more particularly described as follows:

A parcel of land lying in Tract 44, ENTERPRISE TRACTS, situated in Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; the said parcel being described as follows:

Beginning at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian; thence South  $00^{\circ}00'30''$  East 977.8 feet along the Westerly line of said Section 3, to a point 50 feet Southwesterly of (when measured at right angles to) the centerline of the Dalles-California Highway (also known as South Sixth Street), as the same is now located and constructed; thence South  $55^{\circ}52'30''$  East parallel with said centerline 36.2 feet, more or less, to a point 30 feet Easterly of (when measured at right angles to) the centerline of the relocated Midland Highway (also known as Washburn Way), which point is marked by a railroad spike with a cross on top, embedded in the pavement and is the true point of beginning; thence South  $00^{\circ}00'30''$  East, parallel with said last mentioned centerline 227.83 feet to a point 30 feet Easterly of (when measured at right angles to) said last mentioned centerline at Engineer's Station 12+26; thence North  $89^{\circ}59'30''$  East 10 feet; thence North  $00^{\circ}00'30''$  West 143.12 feet to the point of tangency of a 49 foot radius curve right, thence Northeasterly along said 49 foot radius curve right to a point South  $55^{\circ}52'30''$  East 64.26 feet from the true point of beginning; thence North  $55^{\circ}52'30''$  West 64.26 feet to the true point of beginning.

EXCEPT THEREFROM Parcel 1 above.

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EXHIBIT B

Agreement of Indemnification

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Burger King Corporation, a Florida corporation having its principal place of business at 7360 North Kendall Drive, Miami, Florida 33156 ("BKC"), hereby assumes all liability, obligations and undertakings under that certain sublease between BKC, as lessor and Burger King Limited Partnership I, a New York limited partnership having its principal offices at Two World Trade Center, New York, New York (the "Partnership"), as lessee, and dated time to time (the "Sublease") and that certain lease between the Partnership, as lessor and \_\_\_\_\_, as lessee, and dated time to time (the "Lease"), as the same may have been amended from time to time (the "Lease"), and BKC hereby agrees to defend and indemnify the Partnership against all liability under the Sublease and the Lease other than liability for obligations arising prior to the date hereof. It is a condition of this agreement that the Partnership shall, within a reasonable period of time after becoming aware of any claim for which defense and indemnification may be sought hereunder, (a) give written notice thereof to BKC, (b) afford BKC a reasonable opportunity to defend, settle, compromise or otherwise dispose of such claim with counsel selected by BKC and (c) cooperate with BKC, at BKC's cost and expense, in the investigation and defense of such claim. If BKC fails or refuses in a timely manner to defend any such claim, then the Partnership shall have the right to defend against or compromise such claim by counsel of its own choosing and BKC shall pay to the Partnership immediately upon demand the amount of the costs and expenses reasonably incurred by the Partnership in defending against such claim (including, without limitation, counsel fees and disbursements and court costs), together with the amount of any judgment obtained or any amount paid by way of compromise of such claim.

Date: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record .  
this 8th day of February A.D. 19 83 at 10:52 o'clock A.M., and  
duly recorded in Vol. M83, of Deeds on Page 1965

By JOYCE M. BIEHN County Clerk  
\$48.00