

mtc SS323

ASSIGNMENT AND ASSUMPTION OF SUBLEASE

THIS ASSIGNMENT AND ASSUMPTION OF SUBLEASE is made and entered into as of the 31st day of October, 2001, by U.S. RESTAURANT PROPERTIES OPERATING L.P. ("Assignor"), and John V. Rachor and Susan L. Rachor ("Assignee").

W I T N E S S E T H:

WHEREAS, the Assignor is the successor in interest to lessee under the sublease agreement dated January 3, 1983, by and between Burger King Corporation, Lessor, and Burger King Limited Partnership I, Lessee (the "Sublease"), which Sublease affects the real property described in Exhibit A attached hereto and made a part hereof for all purposes and the improvements thereon (the "Property"); and

WHEREAS, pursuant to an Assignment and Assumption of Sublease dated December 16, 1997, Burger King Limited Partnership I assigned its interest as Lessee to U.S. Restaurant Properties Operating L.P.; and

WHEREAS, Assignor is selling its interest under the Sublease to Assignee.

NOW THEREFORE, Assignor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, hereby agrees as follows:

1. Assignor has ASSIGNED, and by these presents does hereby ASSIGN to Assignee, its successors and assigns all of its right, title and interest in and to the Sublease, and any funds or other collateral of the tenant deposited with Assignor as security deposit pursuant to the Sublease.

2. Assignee hereby assumes the obligations of Assignor as lessee under the Sublease accruing from and after the date hereof. Assignee agrees to hold Assignor harmless from and against any and all claims, loss, damages, liability, cost and expense (including attorneys fees) with respect to the Sublease arising or accruing from and after the date hereof. Assignor agrees to hold Assignee harmless from and against any and all claims, loss, damages, liability, cost and expense (including attorney's fees) with respect to the Sublease arising or accruing prior to the date hereof.

3. This Assignment and Assumption of Sublease shall be binding upon, and shall inure to the benefit of, all of the parties hereto, their successors and assigns.

4. This Assignment and Assumption of Sublease may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one instrument. Facsimile copies of this Assignment and Assumption of Sublease, bearing the parties' respective signatures, shall be enforceable as originals.

EXECUTED as of the day and year first above written.

ASSIGNOR:

U.S. RESTAURANT PROPERTIES OPERATING L.P.

By: USRP Managing, Inc., general partner

By: Valerie S. Siverling
Name: Valerie S. Siverling
Title: Secretary

ASSIGNEE:

By: _____
John V. Rachor

By: _____
Susan L. Rachor

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4. This Assignment and Assumption of Sublease may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one instrument. Facsimile copies of this Assignment and Assumption of Sublease, bearing the parties' respective signatures, shall be enforceable as originals.

EXECUTED as of the day and year first above written.

ASSIGNOR:

U.S. RESTAURANT PROPERTIES OPERATING L.P.

By: USRP Managing, Inc., general partner

By: _____
Name: _____
Title: _____

ASSIGNEE:

By: John V. Rachor
John V. Rachor

By: Susan L. Rachor
Susan L. Rachor

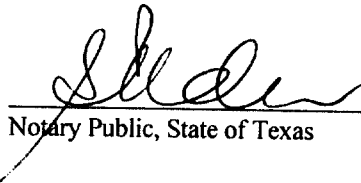
ACKNOWLEDGMENTS

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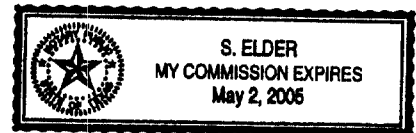
STATE OF TEXAS }
 }
COUNTY OF DALLAS }

Personally appeared before me, Valerie S. Siverling, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Secretary of USRP Managing, Inc. the general partner of U.S. Restaurant Properties Operating L.P., the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office, this 1st day of November, 2001



Notary Public, State of Texas



STATE OF OREGON }
 }
COUNTY OF }

Personally appeared before me, John V. Rachor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this _____ day of November, 2001

Notary Public, State of Oregon

STATE OF OREGON }
 }
COUNTY OF }

Personally appeared before me, Susan L. Rachor, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this _____ day of November, 2001

Notary Public, State of Oregon

PARCEL 1

EXHIBIT A

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.

EXCEPTING THEREFROM any portion lying within the right of way of the Klamath Falls-Lakeview Highway No. 140 also known as South Sixth Street and any portion lying within the right of way of Washburn Way.

PARCEL 2

A Nonexclusive easement for egress and ingress parking and utilities over the unconstructed portion of the following property:

A parcel of land lying in the Northwest Quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, 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 the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South $55^{\circ}52'30''$ East, at Engineers Station 9+17.42 on Washburn Way and Engineers Station 16+14.87 on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineers Station 9+65.74 on south boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16+41.99; thence South $55^{\circ}52'30''$ East parallel to the said centerline

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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 feet; 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, Klamath County, Oregon, being more particularly described as follows:

Starting at the northwest corner of said Section 3; thence South 0°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 on Washburn Way and Engineer's Station 16+14.87 on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineer's Station 9+65.74 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 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.

State of Oregon, County of Klamath
Recorded 11/05/01 3:16 p. m.
In Vol. M01 Page 56609
Linda Smith,
County Clerk Fee \$ 46.00