

E 1587824 B 2640 P 194  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
2000 APR 21 12:18 PM FEE 18.00 DEP REC  
REC'D FOR BONNEVILLE TITLE COMPANY, INC

WHEN RECORDED MAIL TO:

Bruce J. Nelson  
576 East South Temple  
Salt Lake City, UT 84102

### DECLARATION OF RESTRICTIONS AND COVENANTS

This Declaration of Restrictions and Covenants (hereinafter the "**Declaration**") is made and entered into this 21<sup>st</sup> day of April, 2000, by and between SB CLINTON, L.C., a Utah limited liability company (hereinafter referred to as "**Grantor**"), whose mailing address is 2231 East Murray-Holladay Road, Suite 200, Salt Lake City, Utah 84117, and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation (hereinafter referred to as "**Grantee**"), whose mailing address is 4288 West Dublin-Granville Road, P.O. Box 256, Dublin, Ohio 43017.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in the State of Utah, County of Davis and City of Clinton, as more particularly described in **Exhibit A** which is attached hereto and made a part hereof (which real property is hereinafter referred to as "**Grantor's Parcel**"); and

WHEREAS, Grantee is the owner of that certain real property located in the State of Utah, County of Davis and City of Clinton, as more particularly described in **Exhibit B** which is attached hereto and made a part hereof (which real property is hereinafter referred to as "**Grantee's Parcel**"); and

WHEREAS, Grantor and Grantee desire to establish certain restrictions and covenants in connection with the use of their respective parcels.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

Grantor hereby covenants and agrees that Grantor's Parcel shall not be used for a restaurant use, the primary business of which is the sale of hamburgers, hamburger products or chicken sandwiches (or any combination thereof). For the purpose of this restriction, a restaurant has the aforesaid products as its primary business if fifteen percent (15%) or more of its gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers, hamburger products, or chicken sandwiches (or any combination thereof). This restriction shall burden and run with Grantor's Parcel for a period of twenty (20) years from the date of recording this Declaration, and shall benefit Grantee's Parcel, and the owners, successors and assigns thereof.

TO HAVE AND TO HOLD the rights unto Grantee, its successors and assigns forever. Grantor, for Grantor and Grantor's heirs, successors and assigns, hereby warrants and covenants with Grantee, its successors and assigns, that Grantor is the true and lawful owner in fee simple of Grantor's Parcel and has the right and full power to grant and convey and establish the restrictions and rights herein granted and established.

Grantee hereby covenants and agrees that Grantee's Parcel shall not be used for any purpose prohibited in the Declaration of Restrictions recorded October 23, 1998 as Entry No. 1451282 in Book 2379 at Page 380 in the Davis County Recorder's Office; nor for a gasoline station; a restaurant serving pizza products (unless such products comprise less than 10% of the sales of such business); a business selling prerecorded video cassettes, video tapes, video discs, or other video software; or a business whose primary use is the cutting of hair. This restriction shall burden and run with Grantee's Parcel for a period of twenty (20) years from the date of recording this Declaration, and shall benefit Grantor's Parcel, and the owners, successors and assigns thereof.

TO HAVE AND TO HOLD the rights unto Grantor, its successors and assigns forever. Grantee, for Grantee and Grantee's heirs, successors and assigns, hereby warrants and covenants with Grantor, its successors and assigns, that Grantee is the true and lawful owner in fee simple of Grantee's Parcel and has the right and full power to grant and convey and establish the restrictions and rights herein granted and established.

The above-described restrictions and covenants shall be for the use and benefit of Grantor's Parcel and Grantee's Parcel and the owners from time to time of all or any part thereof. All provisions of this Declaration, including the covenants, benefits and burdens, shall run with the land and be binding upon and inure to the heirs, executors, administrators, personal and/or legal representatives, successors, assigns and tenants of Grantee and Grantor. The rule of strict construction shall not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on Grantee is carried out.

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

SB CLINTON, L.C.

By: Eldon V. Haache  
Its Manager

WENDY'S OLD FASHIONED HAMBURGERS  
OF NEW YORK, INC.

By: [Signature]  
Its \_\_\_\_\_

By: [Signature]  
Its RAYMOND W. BAKER  
VICE PRESIDENT

STATE OF UTAH )  
COUNTY OF SALT LAKE ) :SS

Legal Dept. [Signature]

On this 20 day of April, 2000, personally appeared before me Eldon V. Haache, signer of the foregoing, who duly acknowledged to me that he/she executed the same in the capacity indicated.

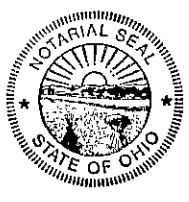


[Signature]  
NOTARY PUBLIC

STATE OF OHIO )  
COUNTY OF FRANKLIN ) :SS

On this 19 day of April, 2000, personally appeared before me RONALD E. WALLACE, VICE PRESIDENT RAYMOND W. BAKER, VICE PRESIDENT signer of the foregoing, who duly acknowledged to me that he/she executed the same in the capacity indicated.

[Signature]  
NOTARY PUBLIC



JANELLE R. JOHNSTON  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JUNE 28, 2003

EXHIBIT A

Lots 1, 3, 6, 8, 9, 10, 11 & 12, Clinton Towne Center, Clinton City,  
Davis County, Utah, according to the official plat thereof.

14 - 2nd + lot

**EXHIBIT B**

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Lot 5 Clinton Towne Center, Clinton City, Davis County, Utah,  
according to the official plat thereof.

14-266-0005