

Mail to:

Eugene Feola
Corporate counsel
Burger King Corp.
P. O. Box 520783
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Miami, Florida 33152

BOOK ~~1263~~ PAGE ~~23~~

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BOOK 1272 PAGE 223

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NON-EXCLUSIVE EASEMENT AGREEMENT

This Agreement is made and entered into this 4 day of May, 1978, by and between DARRELL NIELSEN, hereinafter called "Lessor", whose address is 753 West 12th Street, Ogden, Utah, and BURGER KING CORPORATION, hereinafter called "Lessee", whose address is 7360 No. Kendall Drive, Miami, Florida, 33156.

WITNESSETH:

WHEREAS, the Lessor is the owner of certain real property outlined in red on Exhibit "A" attached hereto and made a part hereof, of which the portion designated 0031 is subject to an existing lease to Field Oil Company, and

WHEREAS, Lessee is the Lessee of certain real property outlined in blue on Exhibit "A" attached hereto, and made a part hereof, hereinafter referred to as "Lessee's property", and

WHEREAS, Lessor's property and Lessee's property are adjacent and contiguous to each other,

NOW, THEREFORE, for and in consideration of the specific lease rentals as hereinafter stated, Lessor does hereby GRANT and LEASE unto the Lessee and Lessee does hereby LEASE from the Lessor, the hereinafter described easement, for the term and upon the conditions as hereinafter stated:

1. LEASED PREMISES. Lessor does hereby lease unto the Lessee a non-exclusive easement over and across the real property hereinafter described as Parcel I, for the sole purpose of ingress and egress of vehicular traffic for the term as hereinafter stated:

PARCEL I

09-141-0032

A part of the Northwest quarter of Section 24, T5N, R2W, SLM, United States Survey: Beginning at a point which is 212 ft. E. and 33 ft. S. of the NW corner of said section 24, said point also being 162 feet East of the intersection of the southerly right-of-way line of 5600 South Street and the Easterly right-of-way line of U.S.Hgw.89-91 in Roy, Utah; and running thence South 165 feet; thence West 20 feet; thence North 40 feet; thence East 8 feet; thence North 125 feet thence East 12 feet to the point of beginning.

Lessor does hereby lease unto Lessee for the specific term and rentals and hereinafter stated, a non-exclusive right-of-way for the sole purpose of ingress and egress of vehicular traffic over and across the real property hereinafter described as Parcel II:

PARCEL II

09-141-0031

A part of the Northwest Quarter of Section 24, T5N, R2W, SLM, United States Survey: Beginning at a point which is 200 ft. E. and 33 ft. S. of the NW corner of said section 24, said point also being 150 feet East of the intersection of the southerly right-of-way line of 5600 South Street and the Easterly right-of-way line of U. S. Highway 89-91 in Roy, Utah; and running thence South 125 feet; thence West 8 feet; thence North 125 feet; thence East 8 feet to the point of beginning.

2. LEASE TERM. The lease term of Parcel I shall run for a term of twenty (20) years, commencing upon the first day that Lessee opens its doors for business upon its leased premises previously described herein, and terminating twenty (20) years thereafter.

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EF:ss
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*or sooner if the Field Oil Lease expires before that date,

The lease term for Parcel II shall commence on the first day of October, 1985, and shall terminate twenty (20) years after the date in which Lessee first opens its doors for business on its adjacent leased property. The termination date for Parcel I and Parcel II shall be the same date, although the commencement date of the lease terms for Parcels I and II differ. The Lessee, under separate Agreement, has leased the premises described as Parcel II from Field Oil Company for the term up to and including September 30, 1985, or sooner if the Field Oil Lease expires before that date.

3. RENTALS. The Lessee shall pay to the Lessor for the rentals on Parcel I during the lease term described above herein a fixed monthly rental in the sum of _____ per month, payable monthly in advance, on the 1st day of each month during the lease term.

The Lessee shall pay to the Lessor for the rentals on Parcel II a fixed monthly rental in the sum of _____ per month, payable monthly in advance on the first day of each month of the lease term for Parcel II, commencing on the first day of October, 1985, and continuing until the end of the lease term. *or sooner as mentioned above,

In the event that the first payment of rentals for Parcel I should fall on a day other than the first day of the month, such rentals shall be pro-rated so that each succeeding payment shall be due and payable on the first day of the month during the lease term.

It is the intent of the parties that the Lessor shall receive from Lessee the sum of _____ per month rentals on Parcel I, until such time as the lease term for Parcel II commences, whereupon Lessor shall thereafter receive the sum of _____ per month total rentals for the rental payments of both Parcels I and II for the remainder of the lease term.

4. IMPROVEMENTS AND MAINTENANCE. Lessee agrees, at its sole expense, to raze the building and install asphalt pavement on Lessor's property designated as Parcel 0032 on Exhibit "A" attached hereto. Lessee further AGREES, at its sole expense, to install black-top paving over and across the leased easements described herein, and to stripe the same as it may elect for traffic control. That Lessee, at its sole expense, shall keep all portions of the leased premises in good condition and repair during the lease term, and surrender the same to the Lessor at the termination of the lease in good order and condition, reasonable wear and tear from the proper use thereof excepted.

Lessor consents that Lessee shall have the right to erect a pole sign at a location near the ^{*north}westerly corner of Parcel II at a location acceptable to Grantee, the height, size, dimensions and design to be in accordance with all regulating governmental bodies and that Lessee may alter said sign without Lessor consent, provided that any such alterations are in accordance with all regulating governmental bodies.

^{*with the Lessor} Upon the date of commencement of the lease term of said Parcel II, Lessee shall thereupon make available to Lessor six (6) vehicle parking spaces extending until the end of the lease term, to be located at the rear of Lessee's Parcel as outlined in blue on the attached Exhibit "A". see Addendum

5. PAYMENT OF TAXES. The Lessor AGREES to pay all taxes assessed upon Parcel I and Parcel II during the period of the respective lease terms thereof. All taxes shall be paid before the same shall become delinquent, and in the event that Lessor shall fail to pay the taxes as provided for herein before the same become delinquent, the Lessee shall have the right to pay such delinquency and deduct the same from rentals due and owing to the Lessor until Lessee has been fully reimbursed for such taxes.

6. LIABILITY INSURANCE. The Lessee will carry at its own expense, an owners/tenants/landlord's public liability insurance policy in which the Lessor shall be one of the named insureds in not less than \$100,000/\$300,000.00 limits for property damage, personal injury or death occurrences upon the leased premises, insuring both the interests of the Lessor and the Lessee.

7. HOLD HARMLESS. The Lessee, during the term hereof, shall indemnify and save harmless the Lessor from and against any and all claims and demands, whether for injury to persons or loss of life, or damage to property, occurring within the demised premises and arising out of the use and occupancy of said demised premises by the Lessee.

8. RIGHTS OF PARTIES IN LEASED PREMISES UPON TERMINATION OF LEASE. The Leased premises, together with all improvements thereon, EXCEPT the sign pole and sign erected by the Lessee, shall revert to and become the property of the Lessor at the end of the lease term, and Lessor shall be under no obligation to Lessee for the payment of the value of the cost of any improvements made thereon or maintained during the lease term. Lessee shall, at its own expense, remove said sign pole and sign from the leased premises within thirty (30) days after the termination of said lease.

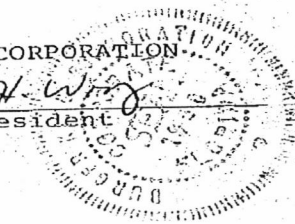
IN WITNESS WHEREOF, this Lease instrument is executed in duplicate by Lessor and Lessee, the day and year first written above, and the Lessee having caused this lease to be executed in its corporate name hereunto affixed by its proper officer thereunto duly authorized.

Darrell Nielsen
DARRELL NIELSEN, LESSOR

WITNESS
Michael Tracy

BURGER KING CORPORATION

BY: *R. V. ...*
Vice-President



ATTEST: *Eugene Feole*
Secretary

ADDENDUM

1. Legal descriptions are subject to accurate surveys.
2. Lessor covenants that title to this easement area is free, clear and unencumbered, and that there are no unrecorded documents affecting same.
3. The area that Lessee is required to make available to Lessor for six vehicle parking spaces shall be at the most westerly point of Lessee's Parcel as outlined in blue on Exhibit A. These parking spaces shall be used only for automobile parking spaces for such cars that are in good and operating condition, in the opinion of Lessee. Lessee will have the sole right to designate which parking spaces may be utilized by the Lessor.
4. In the event for any reason the easement on Parcel 2, or the Lease Agreement that Lessee has on the area outlined in blue attached on Exhibit A should terminate, then Lessee shall have the option of terminating this Agreement upon thirty days written notice to Lessor whereupon both parties shall be relieved of any further obligations hereinunder.

Dated this 7 day of July, 1978, Darrell Nielsen

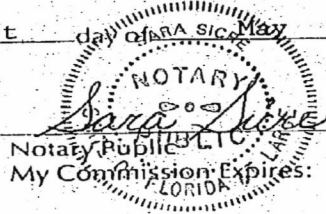
Dated this 10 day of May, 1978, BURGER KING CORPORATION
 By: R. Victor H. [Signature]
 Attest: Eugene [Signature]



STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME, the undersigned authority, personally appeared _____
R. Victor H. Wood, Jr. and Eugene Feola
to me well known and known to me to be the individuals described in and who executed the foregoing instrument as Vice President and Assistant Secretary of BURGER KING CORPORATION, a Florida corporation, and severally acknowledged to and before me that they executed such instrument as such Vice President and Assistant Secretary respectively of said corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 31st day of May, 1978



(SEAL)

STATE OF
COUNTY OF

NOTARIAL COMMISSION EXPIRATION
OCTOBER 19, 1980

BEFORE ME, the undersigned authority, personally appeared _____
and _____
to me well known and known to me to be the individuals described in and who executed the foregoing instrument as _____ President and _____ Secretary of _____ a _____ corporation, and severally acknowledged to and before me that they executed such instrument as such _____ President and _____ Secretary respectively of said corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this _____ day of _____, 19 _____

(SEAL)

Notary Public

My Commission Expires: 4-20-81

STATE OF UTAH
COUNTY OF WEBER

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____
DARRELL NIELSEN

to me known and known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

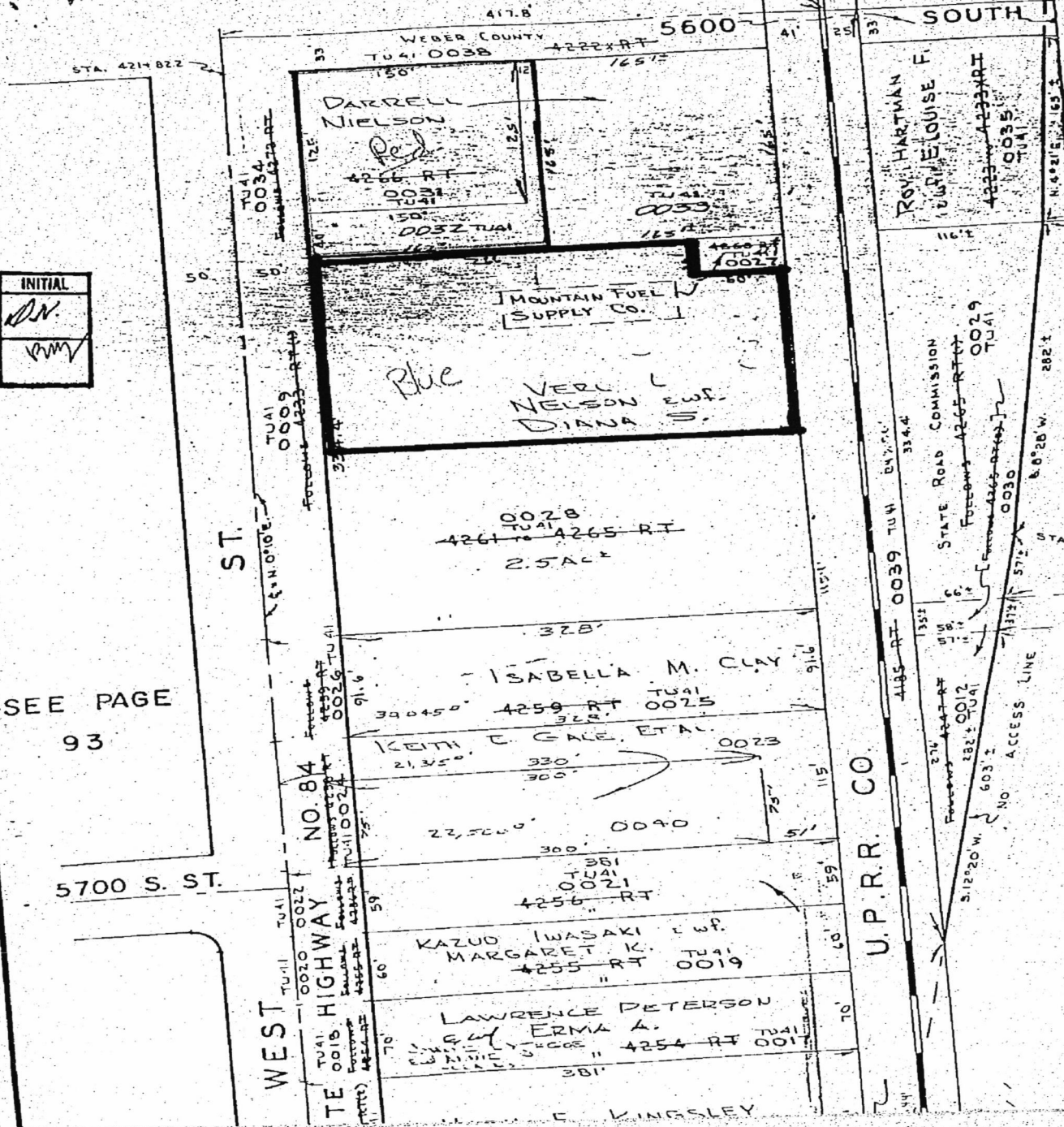
WITNESS my hand and official seal this 4 day of May, 1978.

(SEAL)

Richard W. Steffy
Notary Public, residing at Ogden, Utah
My Commission Expires:

INITIAL
 DN.
 [Signature]

SEE PAGE
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Return

AMENDMENT #1
TO
NON-EXCLUSIVE EASEMENT

AMENDMENT to AGREEMENT dated the 4th day of May, 1978, by and between DARRELL NIELSEN, as Lessor, and BURGER KING CORPORATION, as Lessee.

Notwithstanding Paragraph I entitled "Leased Premises", stating Parcel I and Parcel II of the easement areas, Parcel I and Parcel II shall be more particularly described as follows:

Parcel I

A part of the Northwest quarter of Section 24, T5N, R2W, SLB & M, U.S. Survey:

Beginning at a point 198.00 ft. South 0°07'05" West and 192.00 ft. South 89°52'55" East from the Northwest corner of said quarter section, running thence North 0°07'05" East 40.00 ft., thence South 89°52'55" East 8.00 ft., thence North 0°07'05" East 125.00 ft. to the South line of 5600 South Street, thence South 89°52'55" East 12.00 ft. along the South line of said Street, thence South 0°07'05" West 165.00 ft., thence North 89°52'55" West 20.00 ft. to the point of beginning.

Parcel II

A part of the Northwest quarter of Section 24, T5N, R2W, SLB & M, U.S. Survey:

Beginning at a point 158.00 ft. South 0°07'05" West and 192.00 ft. South 89°52'55" East from the Northwest corner of said quarter section, running thence North 0°07'05" East 125.00 ft. to the South line of 5600 South Street, thence South 89°52'55" East 8.00 ft., thence South 0°07'05" West 125.00 ft., thence North 89°52'55" West 8.00 ft. to the point of beginning.

IN WITNESS WHEREOF, the Lessor has hereunto set his hand and seal this 21st day of October, 1978.

Witnesses:

Michael Tracy

Darrell Nielsen
DARRELL NIELSEN

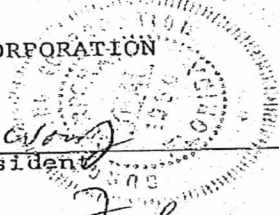


IN WITNESS WHEREOF, the Lessee has hereunto set its hand and seal this 6th day of September, 1978.

Witnesses:

Kanda D. Clark
Sara Sicre

BURGER KING CORPORATION
By: R. W. H. [Signature]
Vice President
Attest: Eugene Feola
Assistant Secretary



STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME, the undersigned authority, personally appeared R. Victor H. Wood, Jr. and Eugene Feola
to me well known and known to me to be the individuals described in and who
executed the foregoing instrument as Vice President and Assistant Secretary
of BURGER KING CORPORATION, a Florida corporation,
and severally acknowledged to and before me that they executed such instrument as
such Vice President and Assistant Secretary respectively of said corpora-
tion and that the seal affixed to the foregoing instrument is the corporate seal of
said corporation, and that it was affixed to said instrument by due and regular cor-
porate authority, and that said instrument is the free act and deed of said corpora-
tion.

WITNESS my hand and official seal this 27th day of September,
19 78.

(SEAL)

NOTARY PUBLIC
My Commission Expires:
FLORIDA

STATE OF Utah
COUNTY OF Salt Lake

NOTARIAL COMMISSION EXPIRATION
OCTOBER 19, 1980

BEFORE ME, the undersigned authority, personally appeared Darrell Nielsen
to me well known and known to me to be the individuals described in and who
executed the foregoing instrument as _____ President and _____ Secretary
of _____ a _____ corporation,
and severally acknowledged to and before me that they executed such instrument as
such _____ President and _____ Secretary respectively of said corpora-
tion and that the seal affixed to the foregoing instrument is the corporate seal of
said corporation, and that it was affixed to said instrument by due and regular cor-
porate authority, and that said instrument is the free act and deed of said corpora-
tion.

WITNESS my hand and official seal this 20th day of October,
19 78.

(SEAL)

Notary Public
My Commission Expires: Oct. 13, 1980

STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for said County and
State, on this day personally appeared _____

to me known and known to me to be the person(s) whose name(s) is (are) subscribed
to the foregoing instrument, and acknowledged to me that he executed the same
for the purposes and considerations therein expressed.

WITNESS my hand and official seal this _____ day of _____,
19 _____.

(SEAL)

Notary Public
My Commission Expires:

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FILED AND RECORDED FOR

Carbon Land

1979 NOV 6 AM 11 45

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RUTH KAMEE OLSEN
 WEBER COUNTY RECORDER
 DEPUTY *Marianne L. Phelan*