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**SPACE ABOVE FOR RECORDER'S USE ONLY**

After Recording Return To:

Baird Holm LLP  
Attn: Michael D. Sands  
1700 Farnam Street  
Suite 1500  
Omaha, NE 68102

BATTI

**MEMORANDUM OF WAIVER OF EXCLUSIVITY**

THIS MEMORANDUM OF WAIVER OF EXCLUSIVITY ("**Memorandum**"), is dated this 22nd day of May, 2019 ("**Effective Date**"), by and between 168TH AND DODGE L.P., a Nebraska limited partnership ("**Dodge LP**"), Johnny's Italian Steakhouse LLC, an Iowa limited liability company ("**Johnny's**"), REVAH, LLC, a Nebraska limited liability company ("**REVAH**"), and Copper Investments, L.L.C., a Nebraska limited liability company ("**Copper**"). Each of the foregoing is sometimes referred to as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

WHEREAS, the Parties entered into that certain agreement of even date herewith detailing the waiver of certain rights, obligations, conditions and requirements under the Exclusivity Documents (defined below) pursuant to the terms and conditions detailed therein ("**Agreement**").

WHEREAS, reference is made in the Agreement to that certain Lease Agreement dated May 17, 2004 (as amended from time to time, the "**Lease**") by and between Dodge LP and Johnny's, in Village Pointe Shopping Center ("**Shopping Center**"), Omaha, Nebraska.

WHEREAS, further reference is made in the Agreement to that certain Development Acquisition Rights Agreement by and between Realty Trust Group, Inc., a Delaware corporation, as Trustee pursuant to that certain Realty Trust Agreement Dated May 12, 2000, predecessor in interest to REVAH and Copper, and Dodge LP, filed May 14, 2004 as Instrument No. 2004-062136; as amended by that certain Amendment to Developer Acquisition Rights Agreement, filed December 4, 2014 as Instrument No. 2014-094188 in the office of the Register of Deeds Douglas County, Nebraska (collectively, "**Acquisition Rights Agreement**").

WHEREAS, further reference is made in the Agreement to that certain Declaration of Restrictive Covenants, declared by Realty Trust Group, predecessor in interest to REVAH and Copper, and Dodge LP, filed May 14, 2004 as Instrument No. 2004-062137 in the office of the Register of Deeds Douglas County, Nebraska ("**Declaration of Restrictive Covenants**").

WHEREAS, the Lease, the Acquisition Rights Agreement and the Declaration of Restrictive Covenants are collectively referred to herein as the "**Exclusivity Documents**".

WHEREAS, the Agreement affects the exclusivity rights held by Johnny's pursuant to the Lease for real property located in the Shopping Center, more particularly described on Exhibit "1", attached hereto and incorporated herein (the "**Johnny's Parcel**").

WHEREAS, the Agreement further affects the restrictions pursuant to the Acquisition Rights Agreement and Declaration of Restrictive Covenants pertaining to the use of real property located in or near the Shopping Center, more particularly described on Exhibit "2", attached hereto and incorporated herein ("**Out Parcel 3**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby state, declare and establish as follows:

1. All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Agreement and the terms, covenants and conditions of the Agreement are incorporated herein by reference with the same force and effect as though fully set forth herein.

2. The Agreement provides the terms and conditions of Johnny's' express waiver of exclusivity rights under the Exclusivity Documents with respect to construction and operation of a Saltgrass Steak House restaurant on Out Parcel 3. Subject to REVAH and Copper upholding their obligations under the Agreement, Johnny's agrees to indemnify and hold harmless Dodge LP, Copper, REVAH and Landry's Restaurants, Inc., and their respective affiliates, successors and assigns, from any and all Johnny's claims of breach of the Lease, Acquisition Rights Agreement, the Declaration of Restrictive Covenants, or any other agreement or instrument to which Johnny's is a party purporting to restrict the use of Out Parcel 3 with regard to the operation of a Saltgrass Steak House on Out Parcel 3; provided that Johnny's shall not indemnify and hold harmless Copper/Revah and Landry's Restaurants, Inc., and their respective affiliates, successors and assigns from any claims not covered by the scope of the Agreement.

The Agreement further provides the terms and conditions of Dodge LP's express approval and consent under the Exclusivity Documents with respect to construction and operation of a Saltgrass Steak House restaurant on Out Parcel 3. Subject to REVAH and Copper upholding their obligations under the Agreement, Dodge LP agrees to indemnify and hold harmless Copper, REVAH and Landry's Restaurants, Inc., and their respective affiliates, successors and assigns, from any and all claims of (i) breach of the Acquisition Rights Agreement with respect to Dodge LP's consent to the change in the use of "Property" (as defined therein), and (ii) breach of the Declaration of Restrictive Covenants with respect to Dodge LP's consent to the change in use of the Tract (as defined therein) for the operation of a Saltgrass Steak House on Out Parcel 3.

3. The Parties' rights and obligations are more particularly set forth in the Agreement. This Memorandum has been executed and delivered by the Parties for the purpose of recording and giving notice of the Agreement. The terms and conditions of the Agreement are incorporated by reference into this Memorandum as if set forth fully herein at length. In the event of any conflict between the terms and provisions of the Agreement and this Memorandum, the Agreement shall control. This Memorandum

may be executed by parties on any number of separate counterparts and by different parties on separate counterparts, all of which shall be considered one and the same document and each of which shall be deemed an original. The Agreement shall inure to the benefit of and be binding upon Dodge LP, Johnny's, Copper, REVAH, and their respective affiliates, successors and assigns.

(Signatures on following pages)

**Dodge LP:**

168<sup>th</sup> and Dodge L.P.  
a Nebraska limited partnership

By: RED Development of West Dodge, LLC,  
a Missouri limited liability company,  
its General Partner and Manager

By: RED Development, LLC,  
a Missouri limited liability company,  
its Manager

By: Scott Rehorn

Name: Scott Rehorn

Its: Vice President

STATE OF Arizona )  
 ) ss.  
COUNTY OF Maricopa )

Before me, Lisa Gayle Sheets in and for this state, on this 6<sup>th</sup> day of June, 2019 personally appeared Scott Rehorn, Vice President of Red Development, LLC, Manager of RED Development of West Dodge, LLC, Manager and General Partner of 168<sup>th</sup> and Dodge L.P., a Nebraska limited partnership, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Lisa Gayle Sheets  
Notary Public



**REVAH:**

REVAH, LLC,  
a Nebraska limited liability company

By: John Haver

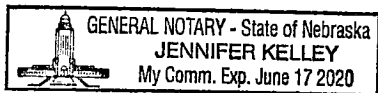
Name: John Haver

Its: Manager

STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

Before me, Jennifer Kellan and for this state, on this 23 day of May, 2019 personally appeared John Haver, Manager of REVAH, LLC, a Nebraska limited liability company, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Jennifer Kelley  
Notary Public

**COPPER:**

Copper Investments, L.L.C.,  
a Nebraska limited liability company -

By: Todd W. Schneidewind

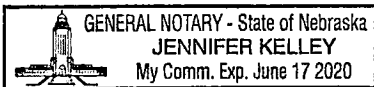
Name: Todd W. Schneidewind

Its: President

STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

Before me, Jennifer Kelley and for this state, on this 23 day of May, 2019 personally appeared Todd W. Schneidewind President of Copper Investments, L.L.C., a Nebraska limited liability company, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]  
Notary Public

**Exhibit "1" to Memorandum of Waiver of Exclusivity**

Johnny's Parcel

That certain real property situated in the City of Omaha, Douglas County, Nebraska, described as follows:

LOT 2, VILLAGE POINTE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, ACCORDING TO THE  
PLAT THEREOF



**Exhibit "2" to Memorandum of Waiver of Exclusivity**

Out Parcel 3

That certain real property situated in the City of Omaha, Douglas County, Nebraska, described as follows:

LOT 1, VILLAGE POINTE REPLAT TWO, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA,  
ACCORDING TO THE PLAT THEREOF