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## DEVELOPER ACQUISITION RIGHTS AGREEMENT

This Developer Acquisition Rights Agreement (the "**Agreement**") is made and entered into this 10 day of May, 2004, by and between **REALTY TRUST GROUP, INC.**, a Delaware corporation, as Trustee pursuant to that certain Realty Trust Agreement Dated May 12, 2000 ("**Owner**"), and **168th AND DODGE, L.P.**, a Nebraska limited partnership, ("**Developer**").

### RECITALS:

**WHEREAS**, contemporaneously herewith (i) Owner has acquired from Developer that certain parcel of land (hereafter, the "**Tract**") described in **Exhibit A** attached hereto pursuant to the terms and conditions set forth in an Agreement of Sale dated March 24, 2004 (the "**Purchase Agreement**"), which transaction is evidenced by the recording of a Special Warranty Deed (the "**Deed**") from Developer to Owner, which is filed of record prior to the recording of this Agreement. The Tract is subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions Agreement by and between Developer and Scheel's All Sports, Inc., dated June 23, 2003 and recorded on July 2, 2003 as Document No. 2003128568, as amended from time to time (the "**ECR**"); and

**WHEREAS**, the Deed contains a restriction governing the use of the Tract (the "**Deed Restriction**"); and

**WHEREAS**, Owner has agreed to grant to Developer certain options to re-purchase the Tract and all improvements and appurtenances thereon, exclusive of movable equipment and fixtures, inventory, signs and other personal property upon certain conditions.

**NOW, THEREFORE**, in consideration of the premises, and good and valuable consideration given, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Option Events.** Upon the occurrence of any "Option Event" (defined below), Developer shall have the right to repurchase the Tract, subject to all of the provisions set forth in this Agreement. The following shall be deemed to be "Option Events"; provided, no such occurrence, if arising in connection with any eminent domain or condemnation proceeding or voluntary transfer in lieu of eminent domain or condemnation proceeding, shall be deemed to be an Option Event:

1.1. **Commencement of Construction.** In the event Owner or its successor and assigns does not commence construction of the "Purchaser Work" (as defined in the Purchase Agreement), such that the Purchaser Work includes at completion thereof a restaurant of at least six thousand (6,000) square feet, and no more than eight thousand (8,000) square feet, with no less than seventy-five (75) parking spaces (hereafter, the "Purchaser Work") on or before the later of: (a) thirty (30) days after the date the Deed is recorded, or (b) April 1, 2004 (the "**Construction Commencement Date**"), subject to delays beyond the reasonable control of Owner, and such failure continues for a period of thirty (30) days after notice to Owner.

1.2. **Completion of Construction.** In the event Owner or its successor and assigns does not open for business within the Tract a "Mimis Cafe" restaurant on or before the later of one hundred eighty (180) days after the Construction Commencement Date, or October 1, 2004 (the "**Construction Completion Date**"), subject to delays beyond the

reasonable control of Owner, and such failure continues for a period of thirty (30) days after notice to Owner.

1.3. **Vacation.** In the event that Owner, its successors or assigns, vacates or discontinues to operate upon the Tract at any time for a period in excess of three hundred sixty (360) days, other than closures resulting from any casualty or other cause beyond the reasonable control of Owner, and such failure continues for a period of thirty (30) days after notice to Owner.

1.4. **Change of Use.** In the event Owner, its successors or assigns, changes the use of the Tract from either (i) a casual/family style, full service, sit down, restaurant serving breakfast, lunch and dinner together with the incidental sale of beer and wine, or (ii) such other use consented to by Developer, which consent shall not be unreasonably withheld, conditioned or delayed if the requested change of use remains a restaurant, and such change in use not otherwise consented to by Developer continues for a period of thirty (30) days after notice to Owner.

2. **Exercise of the Option.** Developer may exercise its option to re-purchase the Tract under Section 1 hereof by delivering to Owner ninety (90) days written notice of such intent, together with an earnest money deposit of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) in cash or certified check made payable to the Escrow Agent, within the period ("Option Period") commencing with the occurrence of an Option Event and expiring one hundred eighty (180) days thereafter. The failure of Developer to exercise an option within the Option Period and in accordance with the requirements herein provided shall result in such option expiring. No claim or event shall cause such option to be extended or reinstated.

3. **Purchase Price.** The Purchase Price shall be determined as follows:

3.1. **Section 1.1 or 1.2 Purchase.** If the option in Section 1.1 or 1.2 is exercised, the purchase price of the Tract shall be equal to:

3.1.1. The purchase price paid by Owner under the Purchase Agreement, **PLUS**

3.1.2. Owner's unamortized costs of constructing improvements upon the Tract,

3.1.3. **REDUCED BY** the lesser of:

3.1.3.1. the sum of all costs incurred by Developer relating to the sale and purchase of the Tract under the Purchase Agreement, including, but not limited to, reasonable and necessary attorney's fees and broker commissions,

3.1.3.2. **OR** the sum of Forty Thousand Dollars (\$40,000.00),

3.1.4. Data. Owner shall assemble the required data, including reasonable supporting material, invoices, bids and contracts, which shall reasonably relate to the hard and soft costs. Owner shall advise Developer of the amount of such costs and deliver to Developer copies of all relevant information within thirty (30) days of Owner's receipt of Developer's written request.

3.2. **Section 1.3 or 1.4 Purchase.** If the option in Section 1.3 or 1.4 is exercised, the purchase price of the Tract shall be equal to the Fair Market Value of said Tract as determined in Section 5, **REDUCED BY** the lesser of:

3.2.1. the sum of all costs incurred by Developer relating to the sale and purchase of the Tract under the Purchase Agreement, including, but not limited to, reasonable and necessary attorney's fees and broker commissions,

3.2.2. **OR** the sum of Forty Thousand Dollars (\$40,000.00),

3.3. **Encumbrances.** In any event the Purchase Price shall be further reduced by amounts necessary to discharge liens or other encumbrances placed upon the Tract after Owner's acquisition of the Tract by or at the direction of Owner or any user of the Tract or in connection with any work or improvement conducted on the Tract by or at the direction of such Owner or user.

4. Intentionally deleted.

5. **Fair Market Value ("FMV").** For the purpose of this Agreement, the FMV shall mean the price at which the Tract could be sold by a person who desires to sell, but is not required to sell, and is sought by a person who desires to buy, but who is not required to buy, after due consideration of all the elements reasonably affecting value. In the course of any appraisal, the appraiser shall consider at least the following factors: the existing governmental regulations, including zoning, P.U.D. or land use designation; the condition of the building improvements; the condition of building occupancy; the location of the land and access thereto; and use restrictions and other covenants of record which either limit or enhance the enjoyment of the Tract: provided, however, the ECR shall not be considered a detriment to the value of the Tract. Within thirty (30) days after receipt of Developer's notice, Owner and Developer shall each select an appraiser and advise each other of the appraiser's name, address and telephone number. The two (2) appraisers shall consult with each other and shall select a third appraiser within fifteen (15) days of the designation of Owner's appraiser. If the two (2) appraisers cannot agree upon a third appraiser, then either party shall have the right to request appointment of such third appraiser by any judge of the County Circuit Court having jurisdiction over the county where the Tract is located, and the non-requesting party shall not raise any question as to such judge's full power and jurisdiction to entertain the application and make the appointment. Each person designated to participate in the appraisal of the Tract shall (i) be a real estate professional specializing in retail commercial property sales and leasing, with emphasis (if possible) on projects containing 50,000 square feet of Floor Area or more, in the metropolitan area where the Shopping Center is located, (ii) have at least five (5) years experience as an appraiser, (iii) be a member of the American Institute of Real Estate Appraisers, and (iv) have no material, financial or other business interest in common with a party to this Agreement. Owner shall cause a current title report covering the Tract to be delivered contemporaneously to each appraiser, such report to be issued by the Escrow Agent referred to in Section 6 below. Each party's appraiser shall submit its appraisal to its client within thirty (30) days following receipt of the title report. The third appraiser shall submit its appraisal of the Tract in escrow to the Escrow Agent in a sealed envelope within thirty (30) days following receipt of the title report. Developer and Owner shall meet on the last day for the submission of the appraisals (or if such day is not a business day, then on the first business day thereafter) at 11:00 a.m. at the office of the Escrow Agent. Each party shall disclose its appraiser's valuation. If ninety percent (90%) of the higher valuation is equal to or less than the lower valuation, the two valuations shall be added together and the total divided by two, with the result being the purchase price of the Tract. If the purchase price is not determined by the method set forth in the preceding sentence, then Escrow Agent shall open the envelope received from the third appraiser and disclose his valuation. The third appraiser's valuation, and the appraiser's valuation which is closest by dollar amount to the third appraiser's valuation

shall be added together and the total divided by two, with the result being the purchase price of the Tract. The determination of the purchase price of the Tract shall be final and binding upon the parties, absent fraud or gross error. Developer and Owner shall each bear the fees and expenses of their own appraiser and one-half (1/2) of the fees and expenses of the third appraiser.

6. **Closing; Payment of Liens and Encumbrances.** The purchase of Owner's interest in the Tract shall be consummated through an escrow established at a title insurance company (the "**Escrow Agent**") selected by the Owner. The purchase price shall be payable in cash or other method acceptable to Owner. Title to the Tract shall be conveyed by Owner to Developer by general warranty deed, subject to all real estate taxes, installments of special assessments, easements, restrictions, covenants and conditions of record, except that delinquent real property taxes or installments of special assessments, and any mortgage or liens, including potential mechanics liens or other liens outstanding on the Tract, shall be discharged from the proceeds payable by Developer hereunder. Current real property taxes and installments of special assessments shall be prorated as of the date of Closing. The costs of closing and title shall be discharged from the proceeds payable by Developer hereunder.

7. Intentionally deleted.

8. **Termination.** The separate options to purchase herein granted shall automatically terminate as follows:

8.1.1. Upon the expiration of the Option Period applicable to each of the Option Events.

8.1.2. As to an Option Event, the performance by Owner of the condition which if not performed would either trigger the applicable Option Period to commence, or continue to exist beyond the 90-day period described in paragraph 2 above.

9. **Release.** Upon termination of each option to purchase, Developer agrees to duly execute and deliver freely, without charge, to Owner a release (properly executed, acknowledged and in recordable form) of such option right and any interest of Developer in the Tract arising out of each such option right. Except to the extent so terminated, the rights of Developer shall be continuing and shall run with the land and the failure of Developer to exercise any right hereunder shall not preclude Developer from exercising any right in this Agreement, should an Option Event arise at a later date.

10. **Assignment.** Developer may assign its rights arising under this Agreement, including an assignment to its original first mortgagee, provided that the assignee at the time of such assignment agrees in writing to be bound by all terms and conditions contained herein which are applicable to Developer, and provided further, that a copy of such instrument is given to Owner within ten (10) days of such assignment.

11. **Binding Effect.** Subject to the provisions hereof regarding assignment, this Agreement shall be binding upon and inure to the benefit of the owners of the Tract and any subsequent transferee, owner, or assignee, but only during the period of such ownership.

12. **Amendment and/or Modification.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

13. **Costs and Attorneys' Fees.** If any party hereto shall bring any suit or other action against another for relief, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the prevailing party's reasonable costs and expenses, including such sum as the Court may determine to be reasonable attorneys' fees.

14. **Notice.** All notices, demands and requests (collectively, the "**Notice**") required or permitted to be given under this Agreement must be in writing and shall be delivered either in person, or by express, certified or registered mail, with return receipt requested and all postage and fees prepaid, or by commercial overnight courier delivery, or by all or any combination of the above. Any such notice shall be considered given on the earliest date of: actual receipt, or the first attempted delivery if delivery shall be refused. Any notice from counsel for either party shall be deemed an official notice from such party. Such notice shall be given the parties hereto at the following addresses. Upon at least ten (10) days prior written notice, each party shall have the right to change its address to any other address within the United States of America. The initial address of the parties shall be:

Owner: Realty Trust Group, Inc.  
2300 S. 48<sup>th</sup> Street, Suite 1  
Lincoln, NE 68506  
Attn: Robert Weigel

With copy to: SWH Corporation  
17852 E. 17<sup>th</sup> Street, #108  
Tustin, CA 92780  
Attn: Real Estate Department

With copy to: SWH Corporation  
17852 E. 17<sup>th</sup> Street, #108  
Tustin, CA 92780  
Attn: Roger H. Tefft, Esq.

Developer: Michael L. Ebert  
RED Development  
6263 N. Scottsdale Road  
Suite 222  
Scottsdale, AZ 85250; and

Dan Lowe  
RED Development  
4717 Central  
Kansas City, MO 64112,

With copy to: Richard B. Katz, Esq.  
The Katz Law Firm, L.C.  
6299 Nall Avenue, Suite 210  
Shawnee Mission, KS 66202  
(913) 312-5040 / (913) 312-5047 fax

15. **Time.** Time is of the essence with respect to each option term; provided, however, that if the Owner is prevented at any time by reason of acts of God, war, civil commotion, riots,

strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of Owner (jointly and severally, a "**Force Majeure Event**") from completing a performance act which, if completed, would preclude the occurrence of an option event, then the commencement date of the option event shall be postponed by the duration of the delay experienced by Owner. To be effective as to an extension of the period of performance, within ten (10) days of the Force Majeure Event, Owner shall have provided notice of the Force Majeure Event to Developer.

16. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State where the Tract is located, without giving effect to principles and provisions thereof relating to conflict or choice of laws and irrespective of the fact that any one of the parties is now or may become a resident of a different state. Venue for any action under this Agreement shall lie in the State where the Tract is located.

17. **Documents.** Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

18. **Entire Agreement.** This Agreement (and any attached exhibits) contains the entire agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating thereto are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein. This agreement shall be filed of record.

19. **Severability.** In the event any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been inserted herein.

20. **Headings.** The section or paragraph headings shown in this Agreement are for convenience of reference only and shall not be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Owner and Developer have caused this Agreement to be executed effective as of the day and year above referenced.

"OWNER"

REALTY TRUST GOUP, INC., a Delaware corporation  
As Trustee pursuant to that certain Realty Trust Agreement Dated May 12, 2000

By: [Signature]  
Name: \_\_\_\_\_  
Title: President  
Date of Execution: 5-10-04

STATE OF Nebraska )  
COUNTY OF Lancaster ) ss.

\*\* FILED: AS IS

Now on this 10 day of May, 2004, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Robert Weigel, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[Signature]  
Notary Public

My Commission Expires: 7-19-07





**"DEVELOPER"**

**168th AND DODGE, L.P.,  
a Nebraska limited partnership**

By: RED DEVELOPMENT OF WEST DODGE, L.L.C,  
a Missouri limited liability company, its General  
Partner

By: E&R Holdings, LLC,  
an Arizona limited liability company, Manager

By: *Michael L. Ebert*  
Michael L. Ebert, Manager

STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF MARICOPA )

\*\* FILED: AS IS

Now on this 10<sup>th</sup> day of May, 2004, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

*Amy McLaughry*  
Notary Public

My Commission Expires: 3/2/08



**EXHIBIT A**  
**To Developer Acquisition Rights Agreement**

**THE TRACT**

Lot 1, Village Pointe Replat Two, a subdivision in Douglas County, Nebraska, according to the recorded plat thereof.