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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
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**NOTICE OF EASEMENTS**

Brashear LLP  
North Old Mill  
711 North 108 Court  
Omaha, NE 68154

This NOTICE OF EASEMENTS ("Notice") is made as of this 5<sup>th</sup> day of November, 2013 ("Effective Date"), by Brashear 711 Trust ("Trust").

**RECITALS**

WHEREAS, Trust is the owner of record of the property described on Exhibit "A" attached hereto ("Trust Parcel"); and

WHEREAS, the Trust Parcel is among parcels subject to an Easement for Access and Joint Use dated July 7, 1972 and recorded at Book 511 Page 609 with the Douglas County Register of Deeds (the "1972 Easement"); and

WHEREAS, the Trust Parcel is among parcels subject to a Non-Exclusive Parking Easement dated January 18, 1979 and recorded at Book 609 Page 448 with the Douglas County Register of Deeds (the "1979 Easement"); and

WHEREAS, the scope of both aforesaid easements encompasses the "Dominant" Parcel defined in the 1979 Easement and described on Exhibit "B" attached hereto (the "Old Mill Center Parcel") and the "Subservient" Parcel defined therein, which is the Trust Parcel; and

WHEREAS, the resulting record has caused confusion; and

WHEREAS, a clarification of the record is appropriate.

NOW, THEREFORE, in order to make a statement of record on its behalf and on behalf of its successors and assigns, the Trust hereby declares as follows:

(C)

1. **Recitals.** The foregoing recitals are expressly incorporated herein as a material part hereof.

2. **1972 Easement.**

- a. The 1972 Easement applied originally to six parcels, all within a tract being developed by its owner at the time, Old Mill Partnership.
- b. Although it was the intent of Old Mill Partnership to develop the entire parcel as a shopping center, but such intent was not fully realized, it was nevertheless the unambiguous intent of Old Mill Partnership that the parcels subject to the 1972 Easement remain unified as an integrated center (the "Old Mill Center").
- c. The 1972 Easement states that it was the intent of Old Mill Partnership that each of the separate tenants of the development has access to and the right of parking in the Old Mill Center.
- d. Accordingly, the 1972 Easement states that **"each of the tenants and their customers and the persons otherwise doing business with the tenants, no matter in which of the various buildings within the [Old Mill] shopping center, said tenant shall occupy, said party shall have the right of ingress and egress over, across and through the entrances, exits, driveways, and use of the parking areas, so as to provide for a coordinated and integrated shopping center composed of all the buildings and tenants therein for their mutual use and enjoyment both for themselves and their customers, invitees and licensees"** [emphasis added].
- e. Although not all of the parcels of the original tract were developed for the purpose of retail shopping, **there is no provision in the 1972 Easement that makes the right of ingress, egress or parking dependent upon the exclusive use of the entire tract for retail uses.**
- f. Moreover, the 1972 Easement expressly states that the right of ingress, egress and parking extends to customers and "persons otherwise doing business with the tenants."
- g. The 1972 Easement is perpetual, unless the shopping center contemplated therein shall "cease to exist." **The Old Mill Center contemplated therein has not ceased to exist.**
- h. The 1972 Easement is binding upon "heirs, executors, administrators, successors and assigns" of the owners of each parcel.
- i. Where a property right "runs with the land" it remains effective unless and until the owner thereof agrees to modify or terminate same.
- j. Except as expressly stated herein with respect to the 1979 Easement, **neither the Trust nor its predecessors in interest have agreed to**

**modify or terminate the right to ingress, egress and parking granted by the 1972 Easement as to all of the parcels subject thereto.**

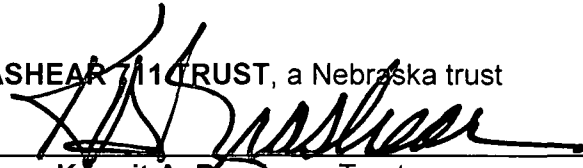
3. **1979 Easement.**

- a. In contrast to the 1972 Easement, the 1979 Easement applies only to two specific parcels, and not the entirety of the Old Mill Center.
- b. The 1979 Easement governs the rights and duties of the Trust Parcel and the Old Mill Center Parcel.
- c. The 1979 Easement grants a perpetual easement for use of the applicable area of the Trust Parcel described on Exhibit "C" attached hereto (the "Easement Area") for parking, subject to specific terms and conditions. The 1979 Easement is not conditional upon any terms other than the specific duties and obligations created thereunder.
- d. In contrast to the 1972 Easement, the 1979 Easement provides for the owner of the Old Mill Center Parcel to provide for maintenance of the Easement Area and to pay a pro-rata share of the taxes on the Trust Parcel equal to the proportion the Easement Area to the total area of the Trust Parcel.
- e. Accordingly, **the 1979 Easement created a new, two-party relationship as between the owners of the Old Mill Center Parcel and the Trust Parcel.**
- f. Therefore, **termination of the 1979 Easement for cause, as specifically provided by the terms thereof, would terminate the rights granted to the owner of the Old Mill Center Parcel thereunder, but would not reinstate terms of the 1972 Easement as to those two specific parties,** given that they have specifically agreed to modify the terms of such by virtue of the 1979 Easement.

IN WITNESS WHEREOF, the Trust has duly executed and delivered this Statement as of the day and year first above written.

BRASHEAR 711 TRUST, a Nebraska trust

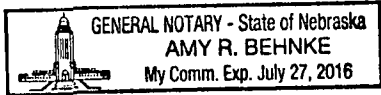
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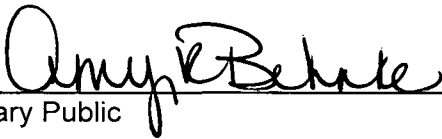
  
Kermit A. Brashear, Trustee

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

Before me, a Notary Public, qualified in and for said County, personally came **Kermit A. Brashear**, Trustee of Brashear 711 Trust, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on this 5<sup>th</sup> day of November, 2013.



  
Notary Public

**Exhibit "A"**

**TRUST PARCEL**

Lot 2, North Old Mill, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

**Exhibit "B"**

**OLD MILL CENTER PARCEL**

Lot 1, Old Mill Place, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

## Exhibit "C"

### EASEMENT AREA

That part of the Southeast ¼ of Section 17, T15N, R12E of the 6<sup>th</sup> P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at the Southeast Corner of said Section 17; thence West for 945.63 feet; thence North for 761.83 feet to the Southwest corner of said Building Site D; thence North 0°20' 47" E for 296.5 feet to the Northwest corner of said Building Site D; thence S 89°39' 13" E for 106.09 feet along the North line of said Building Site D to the true point of beginning; thence N 23° 10' 43" W for 12.05 feet; thence N 88° 48' 34" E for 62.88 feet; thence S 22° 11' 34" E for 146.70 feet to the curved Northeasterly line of Building Site D; thence along a curve to the right (having a radius of 148.48 feet and a long chord bearing N 29° 27' 47" W for 141.48 feet) an arc distance of 147.47 feet along the northeasterly line of Building Site D to the Northeast corner of said Site; thence N 89° 39' 13" W for 43.95 feet along the North line of said Building Site D to the true point of beginning.

For purposes of the foregoing legal description, Building D is defined as follows:

That part of the SE ¼ of Section 17, T 15 N, R 12 E of the 6<sup>th</sup> P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at a point which is 945.63 feet West of and 761.83 feet North of the Southeast corner of said Section 17 to the true point of beginning; thence N 0° 20' 47" E, 296.50 feet; thence S 89° 39' 13" E, 150.04 feet to a curve; thence along a curve to the left, an arc length of 207.72 feet, (radius being 148.48 feet – long chord bearing S 41° 05' 18" E – a long chord distance of 191.19 feet); thence S 81° 09' 57" E, 40.00 feet to the West R.O.W. line of New 108<sup>th</sup> Street; thence S 8° 50' 03" W, 148.68 feet along the West R.O.W. line of New 108<sup>th</sup> Street; thence N 89° 39' 13" W, 294.09 feet to the point of beginning.