



MISC 2011097633



NOV 14 2011 15:19 P 10

Fee amount: 50.50  
FB: 53-30462  
COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/14/2011 15:19:28.00



2011097633

Prepared By And When Recorded Return or Mail To: Nyemaster Goode, P.C., 700 Walnut St., Suite 1600, Des Moines, Iowa 50309, Attention: Anthony A. Longnecker

### TENANT IN COMMON AGREEMENT SUPPLEMENT

This Tenant In Common Agreement Supplement ("Agreement") is made as of November 14, 2011, by and among JASPER STONE FINANCIAL PLAZA LLC, a Delaware limited liability company; JASPER STONE FINANCIAL PLAZA II LLC, a Nebraska limited liability company; and JOHN ALFORD INVESTMENTS, LLC, a Nebraska limited liability company, with the mailing address of Jasper Stone Financial Plaza LLC, 2637 S. 158<sup>th</sup> Plaza; # 110, Omaha, NE 68130; Jasper Stone Financial Plaza II LLC, 2637 S. 158<sup>th</sup> Plaza, #110, Omaha, NE 68130; and John Alford Investments, LLC, 22102 Marcy Street, Omaha, NE 68130 (collectively, the "Co-Tenants"), for the benefit of AVIVA LIFE AND ANNUITY COMPANY, an Iowa corporation, with an address of c/o Aviva Investors North America, Inc., 699 Walnut Street, Dept. H-15, Des Moines, Iowa 50309 (the "Lender").

A. Under the terms of a certain Commitment Letter dated September 22, 2011 (the "Commitment"), Lender agreed to fund a loan to Co-Tenants in the principal amount of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00) (the "Loan").

B. Lender concurrently herewith is funding the Loan in the principal amount of \$5,800,000.00 in accordance with the Commitment, and to evidence the Loan, Co-Tenants have made and delivered to Lender a certain Promissory Note dated of even date herewith, in the original principal amount of \$5,800,000.00 (the "Note") and certain additional documents (together with the Note, the "Loan Documents").

C. The Loan is secured by a First Deed of Trust, Security Agreement and Fixture Filing (the "Security Instrument") encumbering certain Mortgaged Premises and improvements thereon (the "Mortgaged Premises") located at 9140 West Dodge, Omaha, NE 68114 described on Exhibit A, attached hereto and incorporated herein.

D. Co-Tenants are parties to the certain Tenant In Common Agreement dated as of June 1, 2009 and recorded June 4, 2009 as Document Number 2009057639 and as amended by

that certain Amendment to Tenants in Common Agreement dated April 20, 2011 and recorded April 25, 2011 as Document No. 2011035662 and as further amended that that certain Second Amendment to Tenants in Common Agreement dated \_\_\_\_\_ and recorded \_\_\_\_\_ as Document Number \_\_\_\_\_ all recorded with the Registrar of Deeds of Douglas County, Nebraska ("TIC Agreement").

E. Co-Tenants desire to supplement the terms of the TIC Agreement for the benefit of Lender to induce Lender to fund the Loan.

## 1. RELATIONSHIP OF PARTIES

Each Co-Tenant understands and acknowledges that such Co-Tenant owns a percentage interest in the Mortgaged Premises as set forth on Schedule I attached hereto.

Each Co-Tenant acknowledges and agrees that Lender shall be a third-party beneficiary of the TIC Agreement and may enforce the terms thereof against any Co-Tenant.

## 2. APPOINTMENT

For so long as the indebtedness under the Note remains unpaid and outstanding, Co-Tenants hereby appoint Jasper Stone Financial Plaza LLC, with the address of 2637 S. 158<sup>th</sup> Plaza; #110, Omaha, NE 68130 as their agent ("Agent") for purposes of the Loan and the Mortgaged Premises. Such agency authority shall include, without limitation, the following:

(a) to make, give, receive and respond to notices and other communications with Lender and its participants, successors and assigns, in connection with the Loan or the Mortgaged Premises, including service of process, and Co-Tenants acknowledge that any notice or communication made by, given to or served upon Agent shall be deemed to have been made by, received by and served upon each and all of Co-Tenants;

(b) to negotiate claims, settlements and similar matters pertaining to the Loan or the Mortgaged Premises;

(c) Omitted;

(d) to execute any documentation Agent deems necessary or appropriate in connection with the Loan or the Mortgaged Premises, including without limitation, affidavits, closing statements, assignments, certificates and other agreements and instruments, all upon such terms as Agent may deem appropriate;

(e) Omitted;

(f) to sign, endorse, receive, deposit and issue checks or other instruments as necessary to effectuate any transaction permitted above; and

(g) to do any other thing or perform any other act as Agent may deem appropriate to carry out the intent of the foregoing authorization.

In connection with this appointment, Co-Tenants hereby grant Agent an irrevocable, durable power of attorney, coupled with an interest, to perform all acts that Agent is authorized to perform pursuant to this Agreement. Agent hereby accepts this appointment and agrees to exercise diligent and good faith efforts in the execution of its duties as agent in accordance with reasonable and customary commercial practice.

**3. WAIVER OF CO-TENANCY RIGHTS AND OF RIGHT TO PARTITION**

For so long as the indebtedness under the Note remains unpaid and outstanding, Co-Tenants subordinate, to Lender's Security Instrument, all of their co-tenancy rights provided at law or in equity for tenants in common between, among or against each other, including, without limitation, any right to partition the Mortgaged Premises, any and all rights of subrogation and security interests, and all options to purchase and rights of refusal to purchase any interest of any of Co-Tenants including, without limitation, such rights provided for in the TIC Agreement, between or among them until such time as the Note and all obligations under the Loan Documents have been satisfied. The TIC Agreement shall not be terminated, or amended or modified in any respect, without the prior written consent of Lender. Each of Co-Tenants acknowledges and agrees that the filing of an action for partition by any Co-Tenant shall be a violation of the "Due on Sale or Encumbrance" provisions of the Security Instrument, and therefore an Event of Default under the Loan Documents. All Co-Tenants waive their right to partition the Mortgaged Premises for so long as the Note remains unpaid. Co-Tenants agree that Lender is a beneficiary of the waiver of the right to partition set forth herein.

**4. WAIVER OF LIEN RIGHTS**

For so long as the indebtedness under the Note remains unpaid and outstanding, each Co-Tenant waives and relinquishes during the term of this Agreement all lien rights against the property of any other Co-Tenant (including such Co-Tenant's interest in the Mortgaged Premises and any revenues from the Mortgaged Premises), and subordinates such Co-Tenant's rights in respect of amounts owed by any other Co-Tenant to the rights of Lender under the Loan Documents. Co-Tenants agree that Lender is a beneficiary of the waiver of lien rights set forth herein.

**5. DURATION AND EFFECT OF AGREEMENT**

This Agreement shall continue in effect and may not be terminated until the Loan has been fully paid and discharged. This Agreement shall automatically terminate, without the need of any further action, once the Loan is fully paid and discharged. In the event of any conflict or inconsistency between the terms of the TIC Agreement and the terms hereof, the terms of this Agreement shall control and supersede any such conflicting or inconsistent term of the TIC Agreement.

6. **TRANSFEREES**

In addition to restrictions on transfer set forth in the Security Instrument, no interest in the Mortgaged Premises shall be transferred or conveyed except upon, in all events, the transferee becoming a party to the TIC Agreement and this Agreement and Schedule I hereto amended accordingly.

7. **GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of Nebraska.

8. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this agreement sent by facsimile or transmitted electronically in either Tagged Image Format (“TIF”) or Portable Document Format (“PDF”) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this agreement by facsimile, TIF or PDF also shall deliver a manually executed counterpart of this agreement, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this agreement. The pages of any counterpart of this document containing any party’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

9. **BANKRUPTCY OF A CO-TENANT**

Each Co-Tenant hereby acknowledges and agrees that the filing of a bankruptcy proceeding by any Co-Tenant and the filing of an involuntary bankruptcy petition against a Co-Tenant by another Co-Tenant, shall pursuant to the terms of the Security Instrument constitute an Event of Default under each and all of the Loan Documents.

10. **NOTICES**

All notices, demands, consents or requests which are either required or desired to be given or furnished hereunder (a “Notice”) shall be in writing and shall be deemed to have been properly given if either delivered personally or by overnight commercial courier or sent by United States registered or certified mail, postage prepaid, return receipt requested, to the address of the parties hereinabove set out. Such Notice shall be effective on receipt or refusal if by personal delivery, the first Business Day after the

deposit of such Notice with an overnight courier service by the time deadline for next Business Day delivery if by commercial courier and the earlier of actual receipt or refusal (which shall include a failure to respond to notification of delivery by the U.S. Postal Service) or three (3) Business Days following mailing if sent by U.S. Postal Service mail. By Notice complying with the foregoing, each party may from time to time change the address to be subsequently applicable to it for the purpose of the foregoing. Notices to Borrower also may be sent to any guarantor of Borrower's obligations arising hereunder.

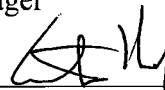
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Co-Tenants have caused this Agreement to be duly executed as of the date first above written.

JASPER STONE FINANCIAL PLAZA LLC, a Delaware limited liability company

By: Jasper Stone Properties III LLC, a Delaware limited liability company, its Manager

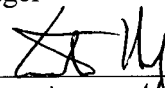
By: Jasper Stone Partners LLC, a Delaware limited liability company, its Manager

By:   
Name: CURT HOFER  
Title: Manager

JASPER STONE FINANCIAL PLAZA II LLC, a Nebraska limited liability company

By: Jasper Stone Properties III LLC, a Delaware limited liability company, its Manager

By: Jasper Stone Partners LLC, a Delaware limited liability company, its Manager

By:   
Name: CURT HOFER  
Title: Manager

JOHN ALFORD INVESTMENTS, LLC, a Nebraska limited liability company

By:   
Name: John Alford  
Title: Member

[SIGNATURE PAGE TO TENANT IN COMMON]

STATE OF NEBRASKA )  
 ) SS:  
COUNTY OF DOUGLAS )

On this 11<sup>th</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Curt Hofer, Manager of Jasper Stone Partners, LLC, a Delaware limited liability company, the manager of Jasper Stone Properties III LLC, a Delaware limited liability company, the manager of Jasper Stone Financial Plaza LLC, a Delaware limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the limited liability company.

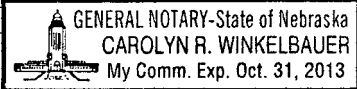
[SEAL] 

Carolyn R. Winkelbauer  
Notary Public

My commission expires: ~~2~~ October 31, 2013

STATE OF NEBRASKA )  
 ) SS:  
COUNTY OF DOUGLAS )

On this 11<sup>th</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Curt Hofer, Manager of Jasper Stone Partners, LLC, a Delaware limited liability company, the manager of Jasper Stone Properties III LLC, a Delaware limited liability company, the manager of Jasper Stone Financial Plaza II LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the limited liability company.

[SEAL] 

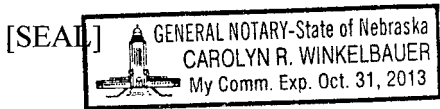
Carolyn R. Winkelbauer  
Notary Public

My commission expires: October 31, 2013

[CONTINUATION OF SIGNATURE PAGE TO TENANT IN COMMON]

STATE OF NEBRASKA    )  
  ) SS:  
COUNTY OF DOUGLAS    )

On this 11<sup>m</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared John Alford, Member of John Alford Investments, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Member on behalf of the limited liability company.



  
\_\_\_\_\_  
Notary Public

My commission expires: Oct. 31, 2013

[CONTINUATION OF SIGNATURE PAGE TO TENANT IN COMMON]



EXHIBIT A

MORTGAGED PREMISES

Real property in the City of Omaha, County of Douglas, State of Nebraska, described as follows:

Parcel 1:

Lot 1, Pierson's Subdivision Replat 2, an Addition to the City of Omaha, in Douglas County, Nebraska, EXCEPT that part conveyed to the City of Omaha by Warranty Deed filed March 2, 2002 in Book 2204 at Page 221 described as follows: Beginning at the Southwest corner of said Lot 1; thence Easterly along the Southerly line of said Lot 1, a distance of 327.70 feet; thence Northerly along the Easterly line of said Lot 1, a distance of 3.0 feet; thence Westerly, along a line 3.0 feet Northerly of, perpendicular measurement and parallel to, the Southerly line of said Lot 1, a distance of 306.7 feet; thence Northwesterly a distance of 35.1 feet to a point on the Westerly line of said Lot 1; thence Southerly, along the Easterly line of said Lot 1, a distance of 31.0 feet to the point of beginning.

Parcel 2:

Non-exclusive easements as contained in that certain Roadway and Parking Easement and Covenants Agreement filed January 18, 1980 in Book 627 at Page 622, Miscellaneous Records, Douglas County, Nebraska.

Parcel 3:

Non-exclusive easements as contained in that certain Roadway and Parking Easement and Covenants Agreement filed January 18, 1980 in Book 627 at Page 633, Miscellaneous Records, Douglas County, Nebraska.

SCHEDULE I

Co-Tenants

	<u>Name and Address</u>	<u>Tenancy Interest</u>
1.	Jasper Stone Financial Plaza LLC 2637 S. 158 <sup>th</sup> Plaza; # 110 Omaha, NE 68130	51.6%
2.	Jasper Stone Financial Plaza II LLC 2637 S. 158 <sup>th</sup> Plaza; # 110 Omaha, NE 68130	20.0%
3.	John Alford Investments, LLC 22102 Marcy Street Omaha, NE 68130	28.4%