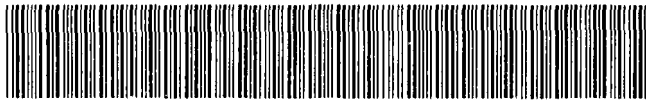




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2010061822

MORTGAGE LOAN MODIFICATION AGREEMENT **(Shoppes at Elk Creek)**

THIS MORTGAGE LOAN MODIFICATION AGREEMENT ("Agreement") is executed effective as of the 1st day of April, 2010, by and between SHOPPES AT ELK CREEK, L.L.C., a Nebraska limited liability company ("Borrower"), and FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender").

Preliminary Matters

1. **Original Loan.** On or about the 25th day of July, 2007, Borrower secured a loan from Lender in the original amount of \$3,350,000 (the "Loan"), as evidenced by Borrower's Promissory Note to Lender dated July 25, 2007, in the amount of \$3,350,000 (the "Original Promissory Note"), for the development of certain real estate located north and east of the intersection of West Maple Road and 168th Street, Douglas County, Nebraska. The Original Promissory Note is secured by a Deed of Trust, as hereinafter described, on the real estate in Douglas County, Nebraska, as legally described on Exhibit "A" attached hereto (the "Mortgaged Property"). The parties agree that the unpaid principal balance presently advanced and outstanding on the Original Promissory Note is the sum of \$3,174,978 as of the date hereof.

2. **Loan Documents.** The obligations of Borrower in connection with the Original Promissory Note are further evidenced, secured and/or guaranteed by documents and agreements executed contemporaneously with the Original Promissory Note which, as amended, modified and extended and together with the Original Promissory Note, are hereinafter referred to as the "Loan Documents", that include the following:

- i. Building Loan Agreement executed by Borrower and Lender;
- ii. Deed of Trust, Security Agreement and Assignment of Rents from Borrower to Lender (the "Deed of Trust"); *dated July 25, 2007, recorded July 26, 2007 as Instrument No. 2007084986*
- iii. Notice of Commencement;
- iv. Assignment of Rents and Leases;
- v. Assignment of Plans, Specifications, Construction and Service Contracts;
- vi. Security Agreement;
- vii. Environmental Indemnity Agreement from Borrower to Lender;
- viii. UCC-1 Financing Statement; and

RETURN TO:
 SPENCE TITLE SERVICES
 BOX 16

✓ 173995

TA-54219-A

- ix. Guarantys of Payment (the "Guarantys") from the following (the "Guarantors"):
- a. Jay B. Noddle
 - b. Susan Noddle Levine n/k/a Susan Noddle
 - c. Joseph Kirshenbaum Funnel Trust
 - d. Jeff Kirshenbaum
 - e. Allan Murow
 - f. Joseph Kirshenbaum

3. **Present Ownership.** Borrower represents, covenants and warrants to Lender that it remains the owner of the fee title to the Mortgaged Property, subject only to the liens and security interests arising out of the Loan Documents and the exceptions to title set forth in ALTA Loan Policy of Title Insurance issued at the Loan closing and any subsequent endorsements thereto.

4. **Modification of Loan.** The parties hereto have agreed to modify the Loan terms as follows:

- a. The principal amount of the Loan shall be adjusted from \$3,350,000 to \$3,750,000.
- b. The interest rate shall be modified to be a fixed rate of five and 00/100 percent (5.00%) until June 1, 2015 (the "Adjustment Date"). On the Adjustment Date the interest rate shall be adjusted to a fixed rate equal to three hundred (300) basis points greater than the three (3) year LIBOR Swap Rate for the remaining term of the Loan, as specified in the "Modified Promissory Note", as hereinafter defined.
- c. The maturity date of the Loan shall be extended to May 31, 2018.
- d. Interest only payments shall be required monthly through and including January 1, 2011. Thereafter monthly principal and interest payments shall be required for the remainder of the term of the Loan based on the principal amount of the Loan (whether or not all principal is advanced) and a twenty-five (25) year amortization period, provided, on the Adjustment Date, the monthly principal and interest payments shall be redetermined based on the adjusted interest rate, the then current principal amount of the Loan and the balance of the twenty-five (25) year amortization period.
- e. Borrower shall be permitted to make Loan draws for build out expenses and tenant improvement allowances through December 31, 2011.
- f. Borrower shall cause Guarantors to enter into a Master Lease as further described in this Agreement.

Now, therefore, it is hereby agreed by and among the parties as follows:

5. **Incorporation of Preliminary Matters.** All of the provisions and statements in the foregoing Preliminary Matters are affirmed by Lender and Borrower.

6. **Modified Promissory Note.**

Concurrently with the execution hereof, Borrower has executed and delivered to Lender a Modified Promissory Note, in the amount of \$3,750,000 (the "Modified Promissory Note"), which the parties agree shall be substituted for the Original Promissory Note, which shall be cancelled and returned to Borrower. Borrower hereby acknowledges and agrees that the Modified Promissory Note, and the repayment thereof, shall continue to be secured by the Loan Documents, as amended by this Agreement.

7. **Loan Document Modifications.** Effective upon the execution hereof:

a. All references in the Loan Documents to the Original Promissory Note shall be modified to mean the Modified Promissory Note;

b. All references in the Loan Documents to the Loan amount of \$3,350,000 shall be changed to \$3,750,000;

c. The reference to the scheduled Maturity Date of the Promissory Note as set forth in the Deed of Trust on page 3 is hereby modified from August 1, 2009 to May 31, 2018; and

d. Borrower shall cause the Guarantors (or an affiliated entity) to enter into a Master Lease ("Master Lease") that requires the Guarantors, either by way of direct obligations or by way of a personal guaranty of the Master Lease, to pay any net rent shortfall required for Borrower to meet a 1.0 times debt service coverage requirement as measured by "Project" Leases. The terms and conditions of the Master Lease shall be acceptable to Lender, in Lender's sole discretion. In the event there is a default in the payment of obligations under the Master Lease that are not timely cured by the tenant of the Master Lease or the Guarantors, such default shall constitute an "Event of Default" under the Loan Documents.

e. Provided that Borrower is not in default and otherwise satisfies the disbursement conditions set forth in Section 9 of the Building Loan Agreement, Lender agrees to allow Borrower to draw down on remaining principal of the Loan through December 31, 2011, for: (i) payment of pending Borrower draw requests up to the amount of \$159,524.48; and (ii) payment of Project build out work, tenant improvement allowances, and leasing commissions which shall be made and in accordance with the disbursement procedures set forth in Section 10 of the Building Loan Agreement.

f. Except as modified herein, all of the terms, conditions and provisions of the Loan Documents are hereby ratified and confirmed and shall remain in full force and effect.

8. **Representations and Warranties.**

Borrower hereby represents and warrants to Lender that:

a. To Borrower's knowledge, each of the representations and warranties set forth in this Agreement and in the Loan Documents amended hereby are true and correct as of the date hereof;

b. this Agreement constitutes the legal, valid and binding obligation of Borrower and is enforceable in accordance with its terms; and

c. as of the date hereof, there exists no event of default under the Modified Promissory Note or any of the other Loan Documents executed by Borrower in connection with the Loan as amended by this Agreement.

9. **Conflict.**

In the event of any conflict or inconsistency between the provisions of this Agreement or any of the other Loan Documents heretofore executed by Borrower in connection with the Loan, the provisions of this Agreement shall govern.

10. **Successors and Assigns.**

This Agreement shall be binding upon, and inure to the benefit of Borrower, Lender and their respective successors and assigns.

11. **Nonwaiver.**

Borrower hereby acknowledges and agrees that:

a. except as specifically set forth herein, Lender's execution and performance of this Agreement is not, and shall not be construed to be, a waiver, release, amendment or modification of, or to any rights or remedies which Lender currently has, or may hereafter acquire, with respect to any of the obligations owed to Lender by Borrower by virtue of any documents or instruments evidencing, securing, guaranteeing or relating to such obligations; nor shall it be deemed to be an agreement to forebear from exercising any rights or remedies which Lender currently has or may hereafter acquire.

b. Lender's agreement herein shall not be construed as, or be deemed to create, any course of dealing between Borrower and Lender, nor shall it be deemed to require or imply any future settlements; nor shall it be construed as a waiver of any defaults of Lender's rights or remedies with regard thereto, or as an amendment to any other agreements, except as expressly set forth herein.

12. **Additional Covenants and Provisions.**

a. Borrower agrees to pay or reimburse Lender for any and all fees, costs and expenses incurred by Lender relating to the Agreement including, without limitation, title expenses, recording fees and attorney fees.

b. Borrower agrees that Borrower has no defense to the payment of the Modified Promissory Note and Borrower has no defenses to the terms or provisions of the Deed of Trust or other Loan Documents, as amended herein, or right of offset to claim against Lender. Borrower specifically acknowledges and agrees that Lender has performed each and all of its obligations, commitments and agreements under the Loan Documents and all other agreements related to the indebtedness up to and including the date of this Agreement and further agrees that Lender is not in default in the observance or performance of any obligation, commitment, agreement or covenant, express or implied, including, but not limited to, covenants of good faith and fair dealing, to be observed or performed by Lender and that no fact exists and that no event has occurred which now or hereafter will authorize Borrower to fail or refuse to abide by the terms of the Loan Documents or form the basis, in whole or in part, for a claim of any kind against Lender.

c. This Agreement contains the entire agreement between the parties with respect to the modification of the Original Promissory Note and the other Loan Documents modified herein and that no statement, promise or inducement made by any party, or the agent of any party, that is not contained in this Agreement shall be valid or binding upon Lender.

d. Borrower agrees that time is of the essence with respect to all dates for payment and performance, as set forth in the Loan Documents, as amended herein.

e. Invalidity of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof to any given circumstance, shall not affect the validity of the remainder of this Agreement.

f. This Agreement shall be construed in accordance with the laws of the State of Nebraska. Borrower hereby irrevocably submits to the jurisdiction of the courts of the State of Nebraska in any suit, action or proceeding. Borrower agrees that any and all service of process and any such suit, action or proceeding mailed or delivered in the manner provided for the delivery of notices in the Deed of Trust, as amended herein, shall be deemed in every respect effective service of process upon Borrower.

g. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

13. **Loan Participation.**

Lender hereby discloses to Borrower and Borrower hereby acknowledges and agrees that Lender may sell participation interests in the Loan, and in conjunction with such Loan participations may furnish any information concerning Borrower or guarantors in its possession from time to time to participants and prospective participants and may furnish information in response to credit inquiries consistent with general banking practices and applicable laws.

14. **Credit Agreement.** A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

[Space Below Intentionally Left Blank –
Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement to be effective as of the day and year first above written.

BORROWER:

SHOPPES AT ELK CREEK, L.L.C., a Nebraska
limited liability company

By: _____

Jay B. Noddle, President and Manager

LENDER:

FIRST NATIONAL BANK OF OMAHA, a
national banking association

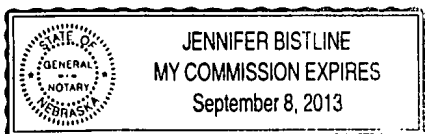
By: _____

Title: _____

Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Jay B. Noddle, President and Manager of Shoppes at Elk Creek, L.L.C., a Nebraska limited liability company, on behalf of the company.



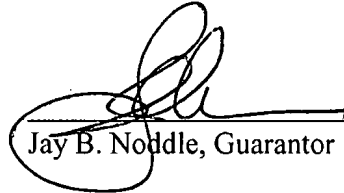
Notary Public

Jennifer Bistline

CONSENT AND AGREEMENT OF GUARANTORS

The undersigned, as Guarantors, hereby consent to the foregoing Mortgage Loan Modification Agreement.

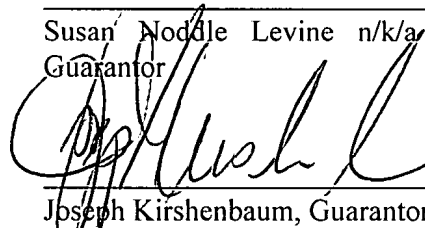
Dated: 6/30/10


Jay B. Noddle, Guarantor

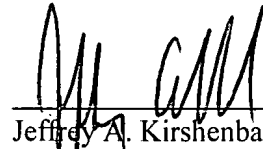
Dated: _____

Susan Noddle Levine n/k/a Susan Noddle,
Guarantor

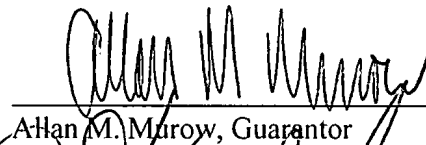
Dated: 6/30/10


Joseph Kirshenbaum, Guarantor

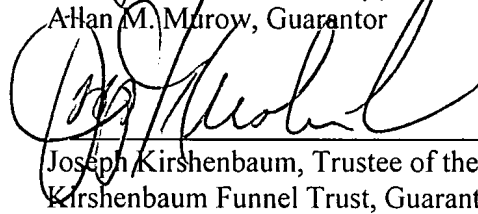
Dated: 6/30/10


Jeffrey A. Kirshenbaum, Guarantor

Dated: 6/30/10

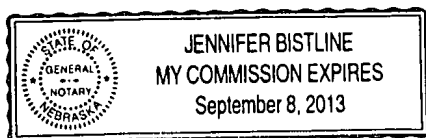

Allan M. Murow, Guarantor

Dated: 6/30/10


Joseph Kirshenbaum, Trustee of the Joseph
Kirshenbaum Funnel Trust, Guarantor

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Jay B. Noddle.




Notary Public

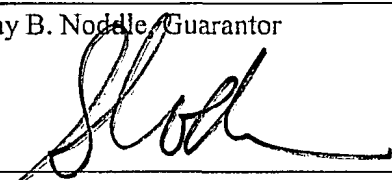
CONSENT AND AGREEMENT OF GUARANTORS

The undersigned, as Guarantors, hereby consent to the foregoing Mortgage Loan Modification Agreement.

Dated: _____

Jay B. Noddle, Guarantor

Dated: _____



Susan Noddle Levine n/k/a Susan Noddle,
Guarantor

Dated: _____

Joseph Kirshenbaum, Guarantor

Dated: _____

Jeffrey A. Kirshenbaum, Guarantor

Dated: _____

Allan M. Murow, Guarantor

Dated: _____

Joseph Kirshenbaum, Trustee of the Joseph
Kirshenbaum Funnel Trust, Guarantor

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of June, 2010, by Jay B. Noddle.

Notary Public

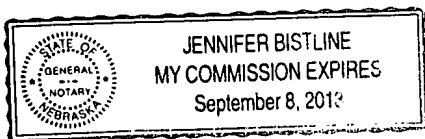
STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of June, 2010, by Susan Noddle Levine n/k/a Susan Noddle.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

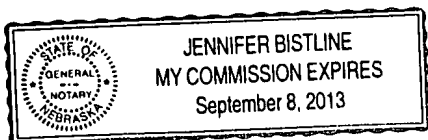
The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Joseph Kirshenbaum.



Jennifer Bistline
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Jeffrey A. Kirshenbaum.



Jennifer Bistline
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Allan M. Murow.



Jennifer Bistline
Notary Public

STATE OF New York)
COUNTY OF New York) ss.

The foregoing instrument was acknowledged before me this 1st day of July, 2010, by Susan Noddle Levine n/k/a Susan Noddle.

Celestine Hill-Taylor
Notary Public

CELESTINE HILL-TAYLOR
Notary Public, State of New York
No. 31-4788772
Qualified in New York County
Commission Expires June 30, 20 11

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this ____ day of June, 2010, by Joseph Kirshenbaum.

Notary Public

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this ____ day of June, 2010, by Jeffrey A. Kirshenbaum.

Notary Public

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this ____ day of June, 2010, by Allan M. Murow.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Joseph Kirshenbaum, Trustee of the Joseph Kirshenbaum Funnel Trust, for and on behalf of the Trust.



Jennifer Bistline
Notary Public

EXHIBIT "A"
Legal Description

Lot 8, in Elk Creek Pines, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.