

MISC 2013003041



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
1/10/2013 09:26:04.69



2013003041

THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO: attached

CHECK NUMBER

Upon Recording Return to:
Rich Rosenblatt
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186

AMENDED AND RESTATED EASEMENT AND AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AND AGREEMENT (this "**Agreement**") is entered into this 14th day of December, 2012, by **E.R. NEWMAN**, a/k/a **EDWIN R. NEWMAN**, a/k/a **E. ROBERT NEWMAN**, an individual, as to an undivided 60.0952% interest, **PHYLLIS H. NEWMAN**, as Successor Trustee under that certain Trust Agreement dated July 6, 1982 for the benefit of Maxwell C. Newman, as to an undivided 3.2857% interest, and **PHYLLIS H. NEWMAN**, as Successor Trustee under that certain Trust Agreement dated July 6, 1982 for the benefit of Louis H. Newman, as to an undivided 3.2857% interest, and **M.H. NEWMAN**, a/k/a **MURRAY NEWMAN**, an individual, as to an undivided 33.3333% interest (collectively, together with their successors, "**Tract 2 Owner**"), **CANADIAN FOUR STATE HOLDINGS LTD**, a Canadian corporation, also known as **CANADIAN FOUR STATE HOLDINGS, LTD** (together with its successors, collectively, "**Tract 1 Owner**"), **R.D. BADLEY**, **ROBERT L. CORN**, **EARL HADDOW**, **NORMA B. CORN** and **JANIS BADLEY** (collectively, "**Badley**"), and **WESTLAKE HARDWARE, INC.**, a Delaware corporation (together with its successors, "**Westlake**"). Tract 1 Owner and Tract 2 Owner shall be individually referred to as an "**Owner**" and collectively referred to herein as "**Owners**" and Badley, and Westlake, shall be collectively referred to herein as the "**Consenting Tenants**".

WHEREAS, Storrington Realty Corp. (as the prior fee owner of Tract 1 as defined in the Original Agreement, defined below) and John E. Wenstrand, Trustee (as prior fee owner of Tract 2 as defined in the Original Agreement), entered onto that certain Easement and Agreement (the "**Easement Agreement**") dated November 9, 1966, and recorded on July 17, 1967 in Book 451, Page 271, Miscellaneous Records, Douglas County, Nebraska.

WHEREAS, Storrington Realty Corp., (as prior fee owner of Tract 1), and John E. Wenstrand, Trustee (as prior fee owner of Tract 2), entered into that certain Supplemental Easement and Agreement (the "**Supplemental Easement**"), dated June 27, 1967 and recorded July 17, 1967, in Book 451, at Page 297, Miscellaneous Records, Douglas County, Nebraska.

WHEREAS, John E. Wenstrand, Trustee, and Michael T. Levy, Trustee (as prior fee owners of Tract 2) and John Hancock Mutual Life Insurance Company (as prior fee owner of Tract 1), Storrington Omaha Corporation (as prior ground lessee of Tract 1) and Park Realty

Company (as assignee of rights from Storrington Omaha Corporation), entered into that certain Second Supplemental Easement and Agreement (the "**Second Supplemental Easement**") dated June 17, 1968 and recorded in Book 465, Page 23, in Miscellaneous Records, Douglas County, Nebraska. The Easement Agreement, as amended by the Supplemental Easement, and the Second Supplemental Easement is herein referred to as the "**Original Easement**."

WHEREAS, Tract 1 Owner is the successor in interest to Storrington Realty Corp. and Storrington Omaha Corporation and is the fee owner of Tract 1, which is the real property legally described in Exhibit A attached hereto and depicted in Exhibit C attached hereto. Tract 1 consists of two lots as shown on Exhibit C and referred to herein as "**Lot 1**" and "**Lot 2**".

WHEREAS, Tract 2 Owner is the successor in interest to John E. Wenstrand, Trustee, and Michael E. Levy, Trustee, and is the fee owner of Tract 2, which is the real property legally described in Exhibit B attached hereto and depicted in Exhibit C attached hereto. Tract 1 and Tract 2 shall be collectively referred to as the "**Tracts**" and individually as a "**Tract**."

WHEREAS, Nash-Finch Company, a Delaware corporation (together with its successors, "Nash"), holds a leasehold interest in a portion of Tract 2, but does not occupy any portion of Tract 2 or the Premises (as defined in the Original Easement), Badley is a sublessee of that same portion of Tract 2, and Westlake is a secondary sublessee of that same portion of Tract 2.

WHEREAS, the Owners desire to amend and restate the Original Easement in its entirety to forever remove and release all of the terms, conditions, covenants, easements and restrictions contained in the Original Easement burdening and benefitting the Tracts in order to facilitate the redevelopment of the Tracts as separate and independent Tracts subject only to the terms and conditions set forth in this Agreement. The Consenting Tenants desire to consent to this Agreement and agree to be bound by the terms and conditions herein stated.

NOW, THEREFORE, for and in consideration of the terms and conditions contained herein, the sufficiency of which is hereby acknowledged, the Owners and Consenting Tenants agree to amend and restate the Original Easement as follows:

AGREEMENT

1. **No Restrictions on Development or Use of the Tracts.** Except as otherwise set forth in this Agreement, the parties hereby terminate and release all right, title and interest in and to the Original Easement, and replace the Original Easement in its entirety with this Agreement. The Tracts, and the improvements located thereon, may be developed, redeveloped, constructed, reconstructed, used, operated and maintained in any manner desired by the Tract 1 Owner (with respect to Tract 1) and the Tract 2 Owner (with respect to Tract 2), subject only to the requirements of applicable laws and regulations (collectively, the "**Laws**") and this Agreement. For purposes of clarification, and not as a limitation and except as specifically provided herein to the contrary, (i) the Tracts shall not be subject to any use restrictions regarding the type of business conducted on the Tracts, or any use made of the Tracts, (ii) there shall be no restrictions on the operation, use, maintenance, or modification of the Tract 1 Common Area (as defined below) or the Tract 2 Common Area (as defined below), (iii) the Tract 1 Owner shall not have any approval rights with regard to the development, redevelopment, operation or use of Tract 2 and the improvements located thereon, and the Tract 2 Owner (or any of the Consenting Tenants or other tenants thereof) shall not have any approval rights with regard to the development, redevelopment operation or use of Tract 1 and the improvements located thereon, (iv) the Tracts may be subdivided in any manner approved by the City of Omaha, and (v) the Tracts shall not share any expenses or liabilities related to the

operation, maintenance, repair or replacement of any of the Tracts. Notwithstanding the foregoing, the Owners (and if applicable, the Consenting Tenants) shall remain responsible for the payment of all common area charges due under the Original Easement until the commencement of demolition activities upon Tract 1. Further, upon any subdivision and conveyance of any of the Tracts so that the Tracts comprise more than one legal lot owned by more than one party, then "**Tract 1 Owner**" or "**Tract 2 Owner**" as applicable, shall refer to each fee title owner of Tract 1 or Tract 2, as the case may be, with regard to the portion of Tract 1 or Tract 2 that such party owns.

2. **Cross Access Easements.** The Tract 1 Owner hereby grants to the Tract 2 Owner, its tenants, customers, invitees and licensees, a non-exclusive access easement (the "**Tract 1 Access Easement**") across all drive aisles, access roads, and sidewalks (the "**Tract 1 Common Areas**") now or hereafter located on Tract 1 for the ingress and egress of vehicular and pedestrian traffic across Tract 1. The Tract 1 Owner may modify, change, add to, remove or block off any or all of the Tract 1 Common Areas at any time and in any manner desired by the Owner of Tract 1; provided, however that at all times (except during any periods of construction or reconstruction on Tract 1) the Tract 1 Owner shall maintain two access lanes (one north and one south) that run the length of Tract 1 that will permit traffic from Tract 2 to cross Tract 1 to utilize any of the access points to Saddle Creek Road on Tract 1. The Tract 2 Owner hereby grants to the Tract 1 Owner, its customers, invitees licensees, and any tenants, a non-exclusive access easement (the "**Tract 2 Access Easement**") across all drive aisles, access roads and sidewalks (the "**Tract 2 Common Areas**") now or hereafter located on Tract 2 for the ingress and egress of vehicular and pedestrian traffic across Tract 2. The Tract 2 Owner may modify, change, add to, remove or block off any or all of the Tract 2 Common Areas at any time and in any manner desired by the Tract 2 Owner; provided, however, that that at all times (except during any periods of construction or reconstruction on Tract 2) the Tract 2 Owner shall maintain two access lanes (one north and one south) that run the length of Tract 2 that will permit traffic from Tract 1 to cross Tract 2 to utilize any of the access points to Saddle Creek Road on Tract 2. The Tract 1 Owner shall be solely responsible for all costs to repair and maintain the Tract 1 Common Areas and the Tract 2 Owner shall be solely responsible for all costs to repair and maintain the Tract 2 Common Areas.

3. **Cross Parking Easements.** The Tract 2 Owner hereby establishes and grants a non-exclusive parking easement (the "**Tract 2 Parking Easement**") for the benefit of the tenants and users of Lot 2 across and over the parking stalls now or hereafter established on Tract 2. Tract 2 Owner retains the right to add, remove or modify the parking stalls located on Tract 2 at any time, and to block off or obstruct any parking stalls now or hereafter established on Tract 2, including for purposes of outdoor selling conducted by tenants of Tract 2, and for construction, reconstruction, repair or maintenance activities, subject to the rights of the tenants of Tract 2 under their respective leases. The Tract 2 Owner shall maintain all parking areas on Tract 2 at its own cost or expense. The Tract 1 Owner, or its successor in title, desires to demolish the existing building located on Tract 1, remove the Party Wall (as defined herein) and construct the Replacement Wall (as defined herein) on Tract 2, and construct a parking lot on Lot 2, including, without limitation, the construction of the Shared Parking (as defined herein) (collectively, the "**Lot 2 Improvements**"). Until such time as the Tract 1 Owner commences the Lot 2 Improvements, the non-exclusive cross parking easement (the "**Existing Parking Easement**") between Lot 2 and Tract 2 set forth in the Original Easement shall remain in full force and effect. Once the Tract 1 Owner commences the Lot 2 Improvements, the Existing Parking Easement shall forever terminate. The Tract 1 Owner shall provide the Tract 2 Owner with at least ten (10) days written notice of the commencement of the Lot 2 Improvements and termination of the Existing Parking Easement. In the event that Tract 1 Owner or Lot 2 Owner, as the case may be, shall perform any construction that will temporarily reduce the number of parking stalls or outdoor sales area located on Tract 2, then Tract 1 Owner or Lot 2 Owner, as

the case may be, shall provide an equal number of temporary parking stalls or an equal area for outdoor sales on Tract 1 or Lot 2, as the case may be, during the period of such reduction. Following the completion of the Lot 2 Improvements, Tract 1 Owner hereby establishes and grants to Tract 2 Owner and the tenants and users of Tract 2 a non-exclusive parking easement (the "**Lot 2 Shared Parking Easement**") across and over all parking stalls on Lot 2 from time to time, including, without limitation, those certain 18 parking spaces located along the southern boundary of Lot 2, as more particularly shown on Exhibit C attached hereto, together with sufficient access thereto (the "**Shared Parking**"). Tract 1 Owner covenants and agrees that (a) no building or structure on Lot 2 shall be constructed east of the far eastern wall of the adjacent building on Tract 2 (the "**East Wall**"), as the East Wall may be extended or relocated from time-to-time, provided, however, that if the East Wall shall be demolished, relocated or otherwise altered after construction of any building on Lot 2, such building on Lot 2 need not be altered or relocated to satisfy the restriction of this subsection until after such building on Lot 2 is subsequently demolished, (b) all areas of Lot 2 between the extended East Wall line and Saddle Creek Road shall consist of parking stalls, drive lanes and any landscaping required by applicable Laws and other reasonable landscaping desired by the Tract 1 Owner that would not materially reduce the utility of Lot 2 for parking and access, (c) completion of the Lot 2 Improvements, including the Shared Parking, shall occur within six (6) months after commencement of the Lot 2 Improvements, and (d) once constructed, the Shared Parking, including the 18 parking spaces located along the southern boundary of Lot 2, shall not be removed or blocked, nor shall access to the same be unreasonably impeded, without the written consent of Tract 2 Owner and Westlake (provided Westlake is operating its retail business on Tract 2). Tract 1 Owner shall maintain the Shared Parking at its own cost and expense.

4. **Cross Utility Easements.** Tract 1 Owner hereby establishes and grants a non-exclusive easement (the "**Tract 1 Utility Easement**") for the benefit of the Tract 2 Owner on, under and across the Tract 1 Common Areas to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other property services necessary for the orderly development of Tract 2), now upon or hereafter installed on, across, over or under the Tract 1 Common Areas, to the extent necessary to serve Tract 2. Tract 2 Owner hereby establishes and grants a non-exclusive easement (the "**Tract 2 Utility Easement**") for the benefit of the Tract 1 Owner on, under, and across the Tract 2 Common Areas to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other property services necessary for the orderly development of Tract 1), now upon or hereafter installed on, across or under the Tract 2 Common Areas, to the extent necessary to serve Tract 1. The location of any utilities on Tract 1 shall be determined by the Tract 1 Owner, and the location of any utilities on Tract 2 shall be determined by the Tract 2 Owner. Any such installed utilities may be relocated by the Owner of the applicable Tract to another location on such Owner's Tract, subject to compliance with applicable Laws, at the expense of the Owner of the Tract upon which the utilities are to be relocated, and provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to the other Tract.

5. **Party Wall Easement.**

(a) A wall is located between the boundary of Tract 2 and Lot 2 (the "**Party Wall**"). The Owners do hereby grant to each other, their successors and assigns, a mutual, reciprocal, non-exclusive easement (the "**Party Wall Easement**") in and to the other Owner's respective Tract for the limited purpose of maintaining, repairing, replacing, using and removing the Party Wall. As part of the Party Wall Easement, the Owners each shall have the non-exclusive right to use the Party Wall for support, structural or otherwise, including the portion of the other Owner's respective Tract that contributes to the support of the Party Wall. Each Owner shall maintain the portion of

the Party Wall that is located on their Tract in a good condition and repair and at their own cost and expense. Except as provided in Section 5(b), any costs and expenses of maintaining, repairing, restoring and rebuilding the entire Party Wall shall be split 50.00% for the Lot 2 Owner, and 50.00% for the Tract 2 Owner. Neither the Owners, or the Consenting Tenants, as applicable, shall take any action that would result in a loss of structural support or integrity of, or damage to, any building located on the Tract owned by the other Owner.

(b) Notwithstanding the provisions of Section 5(a), either Owner shall have the right, with a minimum of thirty (30) days prior written notice to the other Owner, to construct a replacement wall (the "**Replacement Wall**") entirely upon such Owner's Tract at any location desired by the Owner at its own cost and expense, provided that the construction of the Replacement Wall is permitted by the Laws. The Replacement Wall shall comply with all applicable Laws, including without limitation all applicable building code requirements. The Entering Owner (as defined below) shall provide the Non-Entering Owner (as defined below) with plans and specifications for the construction of the Replacement Wall (the "**Plans**") prior to its construction of the Replacement Wall for the Non-Entering Owner's review and approval, which Plans shall include the new building façade materials and color, which approval the Non-Entering Owner shall not unreasonably withhold, condition or delay and which approval or disapproval the Non-Entering Owner shall provide within 10 days of receipt of the Plans, as the same may be revised. The Entering Owner agrees to cooperate with any tenant of space adjacent to the Party Wall in connection with the construction of the Replacement Wall, and shall not unreasonably interfere with such tenant's business. The Entering Owner shall also provide the Non-Entering Owner with a proposed timeline for the construction of the Replacement Wall, which shall be updated to reflect the actual dates of construction once the Non-Entering Owner sets the date for the commencement of construction of the Replacement Wall, and shall diligently pursue completion of the Replacement Wall subject only to delays and events beyond Entering Owner's reasonable control. The Owners hereby grant to each other non-exclusive easements in and to the other Owner's respective Tract as necessary for the construction of the Replacement Wall; provided that the Owner constructing the Replacement Wall (the "**Entering Owner**") shall promptly repair any damage caused by the Entering Owner or its agents as a result of the construction of the Replacement Wall (including any damage to pavement) and the Entering Owner shall coordinate its construction activities with the Owner who is not constructing the Replacement Wall (the "**Non-Entering Owner**") in order to keep any interference with the use of the Non-Entering Owner's Tract to a reasonable minimum. The right of entry granted by the Non-Entering Owner in the foregoing sentence shall also include the right of the Entering Owner and its agent to enter onto the Non-Entering Owner's Tract prior to the construction of the Replacement Wall at reasonable times approved by the Non-Entering Owner in order to inspect the Party Wall. Upon the construction of the Replacement Wall, subsection (b) of this Section 5 shall terminate.

(c) Irrespective of the actual location of the Party Wall, the boundary line between the Tracts is and shall remain the true boundary line between Tract 1 and Tract 2. The Owners grant to each other a perpetual easement to the extent the Party Wall encroaches onto Tract 1 or onto Tract 2 and the Owners waive any and all rights and claims to compel removal of the Party Wall or for any compensation or damage with respect to any encroachment of the Party Wall.

6. **Development Period.** Notwithstanding anything herein to the contrary, Tract 2 Owner hereby acknowledges, consents and agrees that during such period of time as the Tract 1 Owner is developing all or part of Lot 1 for its intended uses (the "**Lot 1 Development Period**"), that Tract 2 Owner, its tenants, agents, customers, invitees, licensees, tenants and employees, shall not have access to Lot 1 or use of any easements related to Lot 1 as otherwise granted hereunder.

7. **Temporary Construction Easement.** Tract 2 Owner hereby grants to Tract 1 Owner, its affiliates, agents, contractors and licensees, for the benefit of Tract 1 temporary rights of access (the "**Temporary Construction Easement**") over, under and across that certain portion of the Tract 2 as reasonably necessary to remove the Party Wall, construct the Replacement Wall on Tract 2, and construct the Shared Parking and any other improvements to the parking lot located on Lot 2 that is adjacent to Tract 2.

8. **Runs with the Land.** The easements granted herein and the rights granted under the terms of this Agreement shall be appurtenant to and run with the Tracts, including future subdivisions and/or reconfiguration of the Tracts, and shall be binding on all individuals or entities having or acquiring any right, title, or interest in the Tracts and shall inure to the benefit of each owner, tenant, subtenant, employee, or invitee thereof.

9. **Remedies Upon Breach.** It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder or under applicable law by reason of any such breach.

10. **No Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Tracts to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

11. **No Additional Consents Needed.** The Tract 1 Owner represents that there are no consents of any tenant or mortgagee required to enter into this Agreement or bind Tract 1 and any party with an interest therein to the agreements contained herein. The Tract 2 Owner represents that there are no other consents of any tenant or mortgagee required to enter into this Agreement or bind Tract 2 and any party with an interest therein to the agreements contained herein.

12. **Modification; Merger; Invalidity.** This Agreement may not be amended or modified except by written agreement signed by the Tract 1 Owner and the Tract 2 Owner. In the event that any provision of this Agreement shall be held invalid, the same shall not affect in any respect the validity of the remainder of this Agreement.

13. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

| | |
|--------------------------|--|
| If to the Tract 1 Owner: | Canadian Four State Holdings, Ltd. 1000 Sherbrooke St. West #1800 Montreal, Quebec H3A 0A6 Attn: Barry Kotler |
|--------------------------|--|

If to the Tract 2 Owner: c/o Edwin R. Newman
9140 West Dodge Road
Omaha, NE 68114

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in Tract 1 or Tract 2 said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the Douglas County Register of Deeds. Any party shall be entitled to change its address for notice by providing written notice of such change and recording a copy of the notice of such change in the Douglas County Register of Deeds. Until such time as the notice of change is effective pursuant to the terms of this Section 13 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

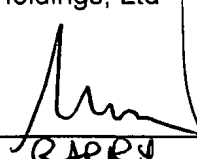
14. **Tenants.** The Consenting Tenants acknowledge that this Agreement is for the benefit of the Tract 1 Owner and the Tract 2 Owner only and acknowledge and agree that the Tract 2 Owner, as the landlord of the Consenting Tenants, may impose additional conditions, restrictions and obligations upon the Consenting Tenants under the terms of their leases of Tract 2 (individually, a "**Lease**" and collectively, the "**Leases**") and the Consenting Tenants agree to be bound by the terms of their applicable Lease. Further, the Consenting Tenants hereby subordinate their Leases to the terms and conditions of this Agreement.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which when taken together shall constitute one entire agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, Tract 1 Owner has executed this Agreement the day and year first above written.

CANADIAN FOUR STATE HOLDINGS LTD, a
Canadian corporation, also known as Canadian
Four State Holdings, Ltd

By: 
Name: Barry Kotler
Its: Treasurer

COUNTRY OF CANADA

PROVINCE OF QUEBEC

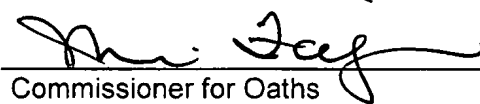
CITY OF MONTREAL

The foregoing instrument was acknowledged before me this 14th day of DECEMBER, 2012 by Barry Kotler, Treasurer of Canadian Four State Holdings Ltd, a Canadian corporation, also known as Canadian Four State Holdings, Ltd, on behalf of the corporation.

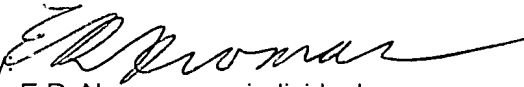
(Seal and Expiration Date)

Nov 11 2014




Commissioner for Oaths

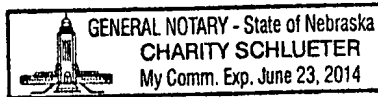
IN WITNESS WHEREOF, Tract 2 Owners have executed this Agreement the day and year first above written.

By: 
E.R. Newman, an individual

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this 31 day of July, 2012 by E.R. Newman, an individual.
(Seal and Expiration Date)




Notary Public

IN WITNESS WHEREOF, Tract 2 Owners have executed this Agreement the day and year first above written.

By: M.H. Newman
M.H. Newman, an individual

STATE OF NE

COUNTY OF Douglas

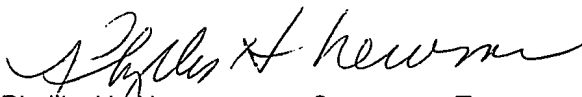
The foregoing instrument was acknowledged before me this 1st day of August, 2012 by M.H. Newman, an individual.

(Seal and Expiration Date)



Jennifer Bistline
Notary Public

IN WITNESS WHEREOF, Tract 2 Owners have executed this Agreement the day and year first above written.

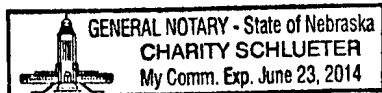
By: 
Phyllis H. Newman, as Successor Trustee
for the benefit of Maxwell C. Newman under
that certain Trust Agreement dated July 6,
1982

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this 31 day of July, 2012 by Phyllis H. Newman, as Successor Trustee for the benefit of Maxwell C. Newman under that certain Trust Agreement dated July 6, 1982.

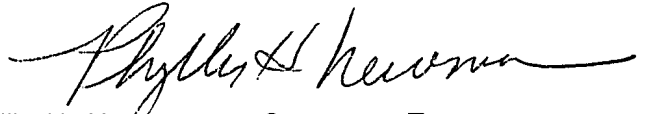
(Seal and Expiration Date)




Notary Public

IN WITNESS WHEREOF, Tract 2 Owners have executed this Agreement the day and year first above written.

By:



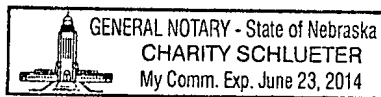
Phyllis H. Newman, as Successor Trustee
for the benefit of Louis H. Newman under
that certain Trust Agreement dated July 6,
1982

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this 31 day of July, 2012 by Phyllis H. Newman, as Successor Trustee for the benefit of Louis H. Newman under that certain Trust Agreement dated July 6, 1982.

(Seal and Expiration Date)


Notary Public

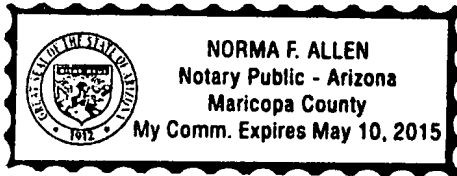
IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

R.D. Badley
R.D. Badley

STATE OF ARIZONA
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 2 day of AUGUST, 2012 by R.D. Badley, an individual.

(Seal and Expiration Date)



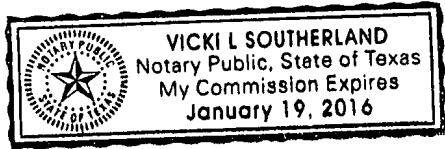
Norma F. Allen
Notary Public

IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

Robert L. Corn
Robert L. Corn

STATE OF Texas
COUNTY OF Montgomery

The foregoing instrument was acknowledged before me this 1 day of August, 2012 by Robert L. Corn, an individual.
(Seal and Expiration Date)



Vicki L. Southerland
Notary Public

IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

Earl Haddow
Earl Haddow

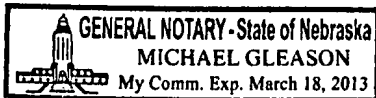
STATE OF Nebraska

COUNTY OF Lancaster

The foregoing instrument was acknowledged before me this 2nd day of August, 2012 by Earl Haddow, an individual.

(Seal and Expiration Date)

Michael Gleason
Notary Public

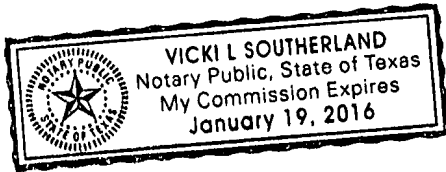


IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

Norma B. Corn
Norma B. Corn

STATE OF Texas
COUNTY OF Montgomery

The foregoing instrument was acknowledged before me this 1 day of August, 2012 by Norma B. Corn, an individual.
(Seal and Expiration Date)



Vicki L. Southerland
Notary Public

IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

Janis Badley
Janis Badley

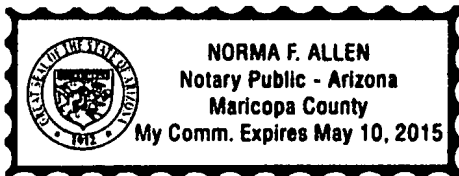
STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 2 day of AUGUST, 2012 by Janis Badley, an individual.

(Seal and Expiration Date)

Norma F. Allen
Notary Public



IN WITNESS WHEREOF, the Consenting Tenants have executed this Agreement the day and year first above written.

WESTLAKE HARDWARE, INC., a Delaware corporation

By: George W. Smith
Name: George Smith
Its: President

STATE OF Kansas

COUNTY OF Johnson

The foregoing instrument was acknowledged before me this 21st day of August, 2012 by George W. Smith, President of Westlake Hardware, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)

MICHELLE DOVE
Notary Public - Notary Seal
State of Kansas
My Appointment Expires 5-14-13


Michelle Dove
Notary Public

Consent and Subordination by Tenant

Panera

Panabraska, LLC, an Iowa limited liability company ("Panera") is a tenant of a portion of Tract 2 pursuant to that certain Lease dated January 1, 2004 (as amended, the "Panera Lease"). By its execution hereof, Panera consents to the terms and conditions set forth in this Agreement and to subordinate the Panera Lease to the terms of this Agreement.

Panera
PANEBRASKA, LLC, an Iowa limited liability company

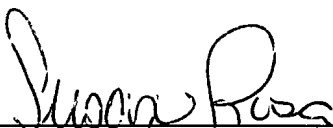
By: 
Name: _____
Its: Scott G. Blair
Sr. Vice President,
General Counsel

STATE OF Massachusetts
COUNTY OF Norfolk

The foregoing instrument was acknowledged before me this 10th day of September, 2012 by Scott G. Blair, Sr. Vice President of Panabraska, LLC, an Iowa limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)




Notary Public

Consent and Subordination by Tenant

Yu Zhang Garden, LLC, a Nebraska limited liability company ("**Restaurant**") is a tenant of a portion of Tract 2 pursuant to that certain Business Property Lease dated May 20, 2010 (as amended, the "**Restaurant Lease**"). By its execution hereof, Restaurant consents to the terms and conditions set forth in this Agreement and to subordinate the Restaurant Lease to the terms of this Agreement.

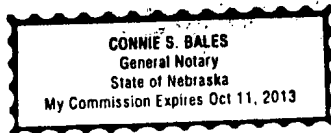
YU ZHANG GARDEN, LLC, a Nebraska limited liability company

By: Mei D. Zhang
Name: YU ZHANG GARDEN Mei D. Zhang
Its: Owner

STATE OF Nebraska
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 16 day of August, 2012 by Mei D. Zhang, owner of Yu Zhang Garden, LLC, a Nebraska limited liability company on behalf of the limited liability company.

(Seal and Expiration Date)



Connie S. Bales
Notary Public

Consent of Mortgage

Bank Leumi USA, a New York banking corporation ("**Mortgagee**"), hereby consents to the terms and conditions set forth in the forgoing Agreement and to be bound by the terms and conditions of the Agreement in the event that Mortgagee shall acquire fee title to any portion of the real property which is the subject of the Agreement.

BANK LEUMI USA, a New York banking
corporation

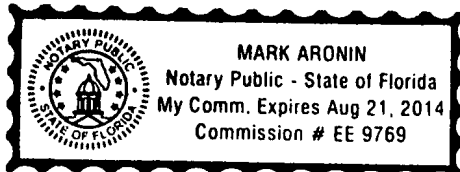
By: _____
Name: Richard Oleszewski
Its: SVP

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 8th day of November, 2012 by Richard Oleszewski, Senior Vice President of Bank Leumi USA, a New York banking corporation, on behalf of the corporation.

(Seal and Expiration Date)



Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF TRACT 1

Parcel 1: A tract of land consisting of part of Lot 11, Block 13; part of Lot 5 and Lots 6 through 12, Block 14; part of Lot 9, part of Lot 10, Lot 11, part of Lot 12 and part of Lot 13, Block 15; part of Lot 8, Lots 9 through 12 and part of Lot 13, Block 22; Lots 1 through 9 and part of Lot 10, Block 23; part of Lot 8, Lots 9 and 10 and part of Lot 11, part of Lot 12 and part of Lot 13, Block 24; all in Poppleton Park Addition to the City of Omaha, Douglas County, Nebraska, and portions of vacated street and alleys adjacent to the above lots, more particularly described as follows:

10-30940

Beginning at a point on the West line of Lot 10, Block 23, Poppleton Park Addition, which is 670.00 feet North of the Southwest Corner of Lot 23, Block 4, Briggs Place Addition; thence North along the East line of the Omaha Belt Line Railway Right of Way, a distance of 940.13 feet; thence South 89°29' E (assuming said East line of the Omaha Belt Line Railway to be due North and South) a distance of 204.45 feet to the West line of Saddle Creek Road; thence South along a curve to the left with a radius of 200.7 feet a distance of 48.20 feet; thence South 14°42' East a distance of 417.55 feet; thence South 0°24' West a distance of 490.75 feet, the three previous courses being along the West line of Saddle Creek Road; thence North 89°16' West a distance of 313.63 feet to the point of beginning; excluding from such tract, however, that portion thereof described as follows:

Beginning at a point on the West line of Lot 10, Block 23, Poppleton Park Addition, which is 670.00 feet North of the Southwest corner of Lot 23, Block 4, Briggs Place Addition, thence North along the East line of the Omaha Belt Line Railway Right of Way, a distance of 0.07 feet; thence South 89°16' East (Assuming said East Line of the Omaha Belt Line Railway to be due North and South) a distance of 10.45 feet to the Southwest corner of Arlan's Department Store Building; thence South 89°55' East along the South wall of said Arlan Building a distance of 175.11 feet to the Southeast corner of said Arlan Building, thence South 89°16' East a distance of 14.42 feet; thence South 00°00' West a distance of 2.07 feet; thence North 89°16' West a distance of 200.00 feet to the point of beginning.

Further excepting that portion of the above -described property deeded to the City of Omaha in a Warranty Deed filed September 15, 1998, in Book 2101, Page 17 of the records of Douglas County, Nebraska, and re-recorded on October 6, 1998 in Book 2103, Page 2 of the records of Douglas County, Nebraska, more particularly described as follows:

An irregularly shaped parcel of land located in Poppleton Park Addition to the City of Omaha, Douglas County, Nebraska, and certain vacated street and alley rights of way located therein, more specifically being part of Lots 9, 10, 12, 13 and the vacated East/West alley in Block 15, Lots 8, 13 and the vacated East/West alley in Block 22, Lots 8, 13 and the vacated East/West alley in Block 24, and portions of vacated Wakely Street, vacated Chicago Street and vacated Cass Street.

And commencing at a point on the West line of Lot 10, Block 23 of said Poppleton Park Addition, said point, being 670.00 feet North of the Southwest corner of Lot 23, Block 4, Briggs Place Addition; thence North (assumed bearing) along the East line of the former Omaha Belt Line Railroad Right of Way for a distance of 940.13 feet thence South 89°29' East for a distance of 204.45 feet to the West Right of Way line of Saddle Creek Road; thence Southerly along said West Right of Way line on a curve to the left with a radius of 200.70 feet for an arc distance of 48.30 feet to a point of tangency; thence South 14°42' East along said West line for a distance of 59.04 feet to the point of beginning; thence continuing South 14°42' East along said West line for a distance of 358.51 feet to a point of deflection; thence South 0°24' West along said West line for a distance of 490.75 feet; thence North 89°16' West for a distance of 1.76 feet; thence North 0°29'09" East for a distance of 335.79 feet to a point 1.26 feet West of the West Right of Way line of Saddle Creek Road; thence northerly on a curve to the left with a radius of 780.51 feet for an arc distance of 182.63 feet (chord bearing North 6°13'04" West for 182.21 feet) thence North 12°55'15" West for a distance of 239.93 feet; thence Northerly on a curve to the right with a radius of 856.51 feet for an arc distance of 88.09 feet (chord bearing North 9°58'29" West for 88.05 feet) to the point of beginning.

EXHIBIT B

LEGAL DESCRIPTION OF TRACT 2

A tract of land consisting of part of Lots 14, 15, 16 and 25, and all of Lots 23 and 24, and the vacated alley abutting said Lots, all in Block 4, Briggs Place Addition, an addition located in the Northwest Quarter of Section 20, Township 15 North, Range 13 East of the 6th P.M., in the City of Omaha, Douglas County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of said Lot 23, Block 4, Briggs Place Addition; thence $N00^{\circ}00'00''$ E, (assumed bearing) along the East Right-of-Way line of the former Omaha Beltline Railway, a distance of 220.00 feet; thence $S89^{\circ}16'00''$ E, a distance of 152.20 feet; thence $S00^{\circ}00'00''$ E, a distance of 220.00 feet to a point on the Northerly Right-of-Way line of Dodge Street; thence $N89^{\circ}16'00''$ W, along said Northerly Right-of-Way line of Dodge Street, a distance of 152.20 feet to the point of beginning.

And a tract of land consisting of part of Lot 11, Lots 12 through 16, Lots 23 through 27 and part of Lot 28, Block 1; and part of Lots 11 through 16, Block 4, all in Briggs Place Addition to the City of Omaha, Douglas County, Nebraska, and of vacated streets and alleys adjacent to the above lots, more particularly described as follows:

Beginning at a point on the West line of Lot 16, Block 4, Briggs Place Addition, which is 220.00 feet North of the Southwest corner of Lot 23, Block 4, Briggs Place Addition; thence North along the East line of the former Omaha Belt Line Railway Right-of-Way a distance of 333.94 feet; thence $S89^{\circ}54'E$ (assuming said East line of said Omaha Belt Line Railway to be due North and South) a distance of 312.10 feet to the West line of Saddle Creek Road; thence $S2^{\circ}13'W$ a distance of 58.00 feet; thence $S3^{\circ}22'W$ a distance of 77.93 feet; thence $S0^{\circ}22'W$ a distance of 199.32 feet; thence $S5^{\circ}35'E$ a distance of 2.20 feet, the four previous courses being along the West line of Saddle Creek Road; thence $N89^{\circ}16'W$ a distance of 304.40 feet to the point of beginning.

A tract of land consisting of part of Lot 10 and Lots 11 and 12, Block 23; part of Lot 11, part of Lot 12 and part of Lot 13, Block 24; all in Poppleton Park Addition to the City of Omaha, Douglas County, Nebraska; and portions of vacated streets adjacent to the above lots more particularly described as follows:

Commencing at the Southwest corner of Lot 23, Block 4, Briggs Place Addition; thence North along the East line of the former Omaha Belt Line Railway Right-of-Way a distance of 553.94 feet to the point of beginning; thence continuing North along the East line of the said Omaha Belt Line Railway Right-of-Way, a distance of 116.13 feet; thence $S89^{\circ}16'E$ (assuming said East line of the said Omaha Belt Line Railway to be due North and South) a distance of 10.45 feet to the Northwest corner of the former Hinky Dinky Store Building; thence $S89^{\circ}55'E$ along the North wall of said Hinky Dinky Building a distance of 175.11 feet to the Northeast corner of said Hinky Dinky Building; thence $S89^{\circ}16'E$ a distance of 14.42 feet; thence $S00^{\circ}00'W$ a distance of 2.07 feet; thence $S89^{\circ}16'E$ a distance of 113.63 feet to the West line of Saddle Creek Road; thence $S00^{\circ}24'W$ a distance of 60.95 feet; thence $S00^{\circ}49'W$ a distance of 43.68 feet; thence $S02^{\circ}13'W$ a distance of 8.03 feet; thence three previous courses being along the West line of Saddle Creek Road; thence $N89^{\circ}54'W$ a distance of 312.10 feet to the point of beginning, the last course being along the South building line of said Hinky Dinky Building.

EXHIBIT C

DEPICTION OF TRACT 1, TRACT 2, LOT 1, LOT 2 AND 18 PARKING STALLS

