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 Register of Deeds, Douglas County, NE  
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2013003157

# **FIRST AMENDMENT TO AMENDED AND RESTATED EASEMENT AND AGREEMENT**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED EASEMENT AND AGREEMENT** (this "Amendment") is entered into this 14<sup>th</sup> 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 Owners**"), and **CANADIAN FOUR STATE HOLDINGS LTD.** (together with its successors, the "**Tract 1 Owner**").

**WHEREAS**, the Tract 1 Owner and the Tract 2 Owners, together with certain other parties referred to therein as the "**Consenting Tenants**", have entered into an Amended and Restated Easement and Agreement (the "**Restated Easement**") pertaining to the real estate described on Exhibit A and Exhibit B attached hereto and by this reference incorporated herein; and

**WHEREAS**, the Tract 1 Owner and the Tract 2 Owners desire to amend the Restated Easement in the manner set forth below.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Tract 1 Owner and the Tract 2 Owners agree as follows:

1. **Representations by Owners.** The Tract 1 Owner represents and warrants to the Tract 2 Owners that the Tract 1 Owner owns the entire fee simple interest in and to Tract 1 describe on Exhibit A. The Tract 2 Owners represent and warrant to the Tract 1 Owner that the Tract 2 Owners collectively own the entire fee simple interest in and to Tract 2 described on Exhibit B. The Tract 1 Owner


After recording, return to:  
 John S. Katelman  
 Husch Blackwell LLP  
 1620 Dodge St., Suite 2100  
 Omaha, NE 68102

represents that there are no consents of any tenant or mortgagee required to enter into this Amendment 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 Amendment or bind Tract 2 and any party with an interest therein to the agreements contained herein.

2. **Common Area Real Estate Taxes.** The word "and" immediately preceding "(v)" in Section 1 of the Restated Easement is deleted, and the following is added after the word "Tracts" at the end of clause (v) at the end of Section 1: "and (vi) as long as the Tracts are separately assessed for real estate tax purposes, the Tracts shall not share any real estate tax liabilities levied against any part of either of the Tracts".
3. **Deleted Provision.** The second to last sentence of Section 1 of the Restated Easement is hereby deleted from the Restated Easement.
4. **Clarification.** For clarification, notwithstanding any of the provisions of the Restated Easement, the Tract 1 Owner shall not be required to demolish the existing building located on Tract 1, and unless the Tract 1 Owner elects to do so, the Tract 1 Owner shall not be obligated to perform the Lot 2 Improvements described in Section 3 of the Restated Easement. For further clarification, rather than demolishing the building on Tract 1, the Tract 1 Owner shall have the right to renovate and reuse the building on Tract 1 which is currently vacant.
5. **Counterparts.** This Amendment may be executed in counterparts, each of which when taken together with the others shall constitute one entire agreement.
6. **Reaffirmation of Restated Easement.** As hereby amended, the Restated Easement shall remain in full force and effect.
7. **Effective Date.** This Amendment shall be effective as of the date of the Restated Easement.

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

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

By:   
E. R. Newman, an individual

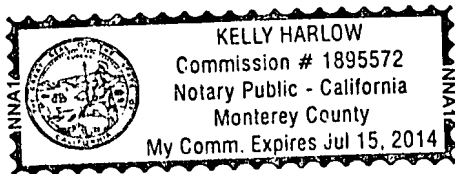
STATE OF *California* )  
 ) ss.  
COUNTY OF *Monterey* )

The foregoing instrument was acknowledged before me this 10 day of December, 2012, by E. R. Newman, an individual.

(Seal and Expiration Date)



Notary Public



IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

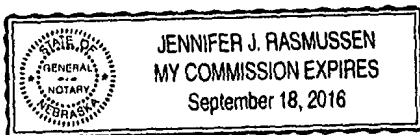
By: M. H. Newman  
M. H. Newman, an individual

STATE OF NE )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2012, by M. H. Newman, an individual.

(Seal and Expiration Date)

Jennifer J. Rasmussen  
Notary Public



IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

By:

*Phyllis H Newman*

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

STATE OF *California* )  
 ) ss.  
COUNTY OF *Monterey* )

The foregoing instrument was acknowledged before me this 10 day of December, 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)

*KH*

Notary Public



IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

By:

*Phyllis H Newman*

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

STATE OF *California* )  
 ) ss.  
COUNTY OF *Monterey* )

The foregoing instrument was acknowledged before me this 10 day of December, 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)

*[Signature]*

Notary Public



IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

CANADIAN FOUR STATE HOLDINGS LTD.,  
a Canadian corporation,

By: 

Name: Barry Kotler

Title: TREASURER

COUNTRY OF CANADA

PROVINCE OF QUEBEC


CITY OF MONTREAL

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of December, 2012, by Barry Kotler, , TREASURER of Canadian Four State Holdings Ltd., a Canadian corporation, on behalf of the corporation.

(Seal and Expiration Date)

Nov 11/2014



  
Commissioner for Oaths

## EXHIBIT A

### LEGAL DESCRIPTION OF TRACT 1

10.30940

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:

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

15.04560  
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°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°16'00" E, a distance of 152.20 feet; thence S00°00'00" E, a distance of 220.00 feet to a point on the Northerly Right-of-Way line of Dodge Street; thence N89°16'00" W, along said Northerly Right-of-Way line of Dodge Street, a distance of 152.20 feet to the point of beginning.

15.04560  
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°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°13'W a distance of 58.00 feet; thence S3°22'W a distance of 77.93 feet; thence S0°22'W a distance of 199.32 feet; thence S5°35'E a distance of 2.20 feet, the four previous courses being along the West line of Saddle Creek Road; thence N89°16'W a distance of 304.40 feet to the point of beginning.

10.30940  
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°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°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°16'E a distance of 14.42 feet; thence S00°00'W a distance of 2.07 feet; thence S89°16'E a distance of 113.63 feet to the West line of Saddle Creek Road; thence S00°24'W a distance of 60.95 feet; thence S00°49'W a distance of 43.68 feet; thence S02°13'W a distance of 8.03 feet; thence three previous courses being along the West line of Saddle Creek Road; thence N89°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.