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No	03487	#Pages	16
Doc Tax \$			
Fee \$		P&M \$	10. <sup>00</sup>
Fees Pd \$	100. <sup>00</sup>	Gen Fee \$	90. <sup>00</sup>
Ck#	16810		
Refund		Due	

THE STATE OF NEBRASKA } ss.  
MADISON COUNTY

This instrument filed for record  
the 8 day of August 2017  
at 11:15 A .M. and recorded in  
Book 2017 Page 03487  
Nancy J. Pross  
Register of Deeds

# FOURTH AMENDMENT TO CROSS-EASEMENT AND USE RESTRICTION AGREEMENT

When recorded, return to:

Michael J. Lokensgard  
Godfrey & Kahn, S.C.  
100 W. Lawrence Street  
Appleton, Wisconsin 54911

When Recorded, Return to:  
Michael J. Lokensgard  
Godfrey & Kahn, S.C.  
100 W. Lawrence Street  
Appleton, WI 54911

**FOURTH AMENDMENT TO  
CROSS-EASEMENT AND USE  
RESTRICTION AGREEMENT**

**EFFECTIVE DATE:** July 14, 2017

**PARTIES:**

Brian Gibbs ("Gibbs")  
Norfolk-Rock Max, L.L.C. ("Rock-Max")  
Advance Stores Company, Incorporated, a Virginia corporation ("Advance")  
U.S. Bank National Association, a national banking association ("U.S. Bank")  
Norfolk Wings, LLC, a Wisconsin limited liability company ("Norfolk Wings")  
Spirit SPE Portfolio 2006-1, LLC, a Delaware limited liability company ("Spirit")

True and Actual Consideration: Mutual Covenants

**RECITALS:**

- A. ShopKo Stores Operating Co., LLC, a Delaware limited liability company and successor in interest to ShopKo Stores, Inc., a Wisconsin corporation ("ShopKo") and Super Valu Stores, Inc., a Delaware corporation ("Super Valu"), entered into a Cross-Easement and Use Restriction Agreement (the "Cross-Easement Agreement") dated June 24, 1985 and recorded in the Madison County Register of Deeds Office on May 8, 1986 in M86-5 at Pages 235-258, concerning the use and development of adjacent parcels of real estate located in Madison County, Nebraska.
- B. ShopKo and Super Valu entered into an Amendment of Cross-Easement and Use Restriction Agreement (the "First Amendment") dated August 29, 1988 and recorded in the Madison County Register of Deeds Office on September 21, 1988 in M88-9 at Pages 704-710A, which amended the Cross-Easement Agreement.
- C. Nash Finch Company, a Delaware corporation ("Nash Finch") succeeded to the ownership of the parcel of real estate owned by Super Valu and affected by the Cross-Easement Agreement as amended and assumed all obligations of Super Valu under the Cross-Easement Agreement by reason of an Assumption of Cross-Easement and Use Restriction Agreement dated August 29, 1988 and recorded in the Madison County Register of Deeds Office on September 21, 1988 in M88-9 at Page 719.

- D. ShopKo and Nash Finch entered into a Second Amendment of Cross-Easement and Use Restriction Agreement (the "Second Amendment") dated August 18, 1989 and recorded in the Madison County Register of Deeds Office on August 25, 1989 in M89-8 at Pages 682-687, which amended the Cross-Easement Agreement and modified the Site Plan. Western Auto Supply Company thereafter succeeded to the ownership of a parcel of the real estate owned by ShopKo and affected by the Cross-Easement Agreement as amended, title to which parcel was subsequently transferred to Tire and Auto Holdings, Inc. Tire and Auto Holdings, Inc. subsequently changed its name to Parts America, Inc., which thereafter merged into Advance Stores Company, which parcel is legally described on EXHIBIT 1 attached hereto (the "Advance Site").
- E. Rock-Max succeeded to the ownership of the parcel of real estate owned by Super Valu and subsequently by Nash Finch and affected by the Cross-Easement Agreement as amended, which parcel is legally described on EXHIBIT 1 attached hereto (the "Super Valu/Rock-Max Site"). OfficeMax Incorporated is a tenant on the Rock-Max Site.
- F. ShopKo, Rock-Max, Advance, and JJRJR, Inc., a Kentucky corporation ("JJRJR") entered into a Third Amendment of Cross-Easement and Use Restriction Agreement (the "Third Amendment") dated March 12, 2004 and recorded in the Madison County Register of Deeds Office on March 17, 2004 in M2004-3 at Pages 1226-1237, which further amended the Cross-Easement Agreement in order to authorize the creation of two (2) outlots, the first of which was sold by ShopKo to JJRJR, and subsequently sold by JJRJR to U.S. Bank and is legally described on EXHIBIT 1 attached hereto (the "U.S. Bank Site"), and the second of which was sold by ShopKo to Norfolk Wings as of the date of this Fourth Amendment to Cross-Easement and Use Restriction Agreement (the "Fourth Amendment") and is described on EXHIBIT 1 attached hereto (the "Wings Site").
- G. Spirit succeeded to the ownership of that certain portion of the original ShopKo Site legally described on EXHIBIT 1 attached hereto (the "Spirit Site").
- H. Gibbs succeeded to the ownership of that certain portion of the original ShopKo Site legally described on EXHIBIT 1 attached hereto (the "Gibbs Site").
- I. The Spirit Site, Gibbs Site, and Wings Site comprise one hundred percent of the former ShopKo Site. ShopKo remains a tenant on the Spirit Site.
- J. The parties to this Fourth Amendment are all of the current owners of the property benefited by and burdened by the terms and conditions of the Cross-Easement Agreement, as amended.
- K. The parties enter into this Fourth Amendment in order to further amend the Cross-Easement Agreement, to modify the Site Plan and for such other purposes as are set forth herein.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Fourth Amendment hereby agree as follows:

1. **Incorporation of Recitals:** Recitals A through J are incorporated into this Fourth Amendment by this reference.
2. **New Site Plan:** The Site Plan attached to this Fourth Amendment as EXHIBIT 3 is hereby substituted for the Site Plan attached to the Cross-Easement Agreement as EXHIBIT 3 and all references to EXHIBIT 3 in the Agreement as amended will be deemed to refer to EXHIBIT 3 as attached hereto.
3. **U.S. Bank Site:** All references in the Cross-Easement Agreement to "JJRJR Site" shall be deemed amended hereby to refer to the "U.S. Bank Site."
4. **Wings Site:** The Wings Site is the additional outlot the creation of which by ShopKo was authorized in Section 3 of the Third Amendment. Norfolk Wings shall be permitted to construct and maintain a pylon sign on the Wings Site.
5. **Modification of Height Restriction Applicable to Wings Site.** Section 7.05 of the Cross-Easement Agreement is amended to permit a building height of 28 feet above grade, plus 3 additional feet for HVAC purposes, on the Wings Site.
6. **ATM Authorized on Wings Site.** Notwithstanding anything in Section 4 of the Third Amendment to the contrary, U.S. Bank, as owner and occupant of the U.S. Bank Site, hereby consents to the placement of a single automatic teller machine ("ATM") within the building to be constructed on the Wings Site. This is a one-time waiver and relates only to the Wings Site, and except as expressly stated in this Fourth Amendment, U.S. Bank retains all rights under Section 4 of the Third Amendment. If the ATM is not in place by December 31, 2017, then the parties agree that this waiver shall be void and of no further force or effect.
7. **Capitalized Terms:** All capitalized terms in this Fourth Amendment shall have the same meaning as in the Cross-Easement Agreement, as amended to date.
8. **Binding Effect.** The covenants, terms and conditions of the Cross-Easement Agreement, as amended, shall run with the land and be binding upon all successors and assigns.
9. **Notices:** All notices under the Cross-Easement Agreement, as amended, shall be effective if mailed certified mail, return receipt requested, as follows (unless a change of address is given pursuant hereto):

- A. If to Gibbs:  
Brian Gibbs  
11808 Standing Stone Dr.  
Gretna, Nebraska 68028  
Email: [briang@gretnaauto.com](mailto:briang@gretnaauto.com)
- B. If to Rock-Max:  
Dial Realty Corp.  
11506 Nicholas Street  
Omaha, Nebraska 68154  
Attention: Chris Held
- C. If to Advance:  
Advance Stores Company, Incorporated  
5673 Airport Road  
Roanoke, Virginia 24012  
Attention: Real Estate Department
- With a copy to:  
Advance Stores Company, Incorporated  
5673 Airport Road  
Roanoke, Virginia 24012  
Attention: Legal Department
- D. If to U.S. Bank:  
U.S. Bank National Association  
1700 Farnam Street  
Omaha, NE 68102  
Attention: Corporate Real Estate
- E. If to Wings:  
Norfolk Wings, LLC  
100 W. Lawrence Street  
Appleton, WI 54911  
Attention: Daniel Klister  
Email: [dklister@foreinvestmentgroup.com](mailto:dklister@foreinvestmentgroup.com)
- F. If to Spirit:  
Spirit SPE Portfolio 2006-1, LLC  
2727 North Harwood St., Suite 300  
Dallas, Texas 75201  
Attn: Portfolio Servicing  
Email: [portfolioservicing@spiritrealty.com](mailto:portfolioservicing@spiritrealty.com)

10. **Building Area:** The definition in Section 1.03 to of "Building Area" is hereby amended to state:

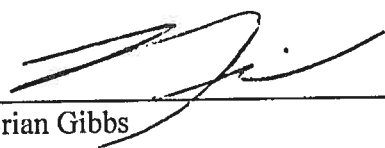
The term "Building Areas" means and includes all areas of the Entire Parcel which are shown on EXHIBIT 3 as buildings.

11. **Effect of Agreement:** All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Cross-Easement Agreement. Except to the specific extent amended by this Fourth Amendment, the Cross-Easement Agreement (including all exhibits thereto not replaced by this Fourth Amendment) remains in full force and effect and shall remain unchanged and unmodified.

12. **Effective Date:** This Fourth Amendment shall be effective as of the day and year first written above.

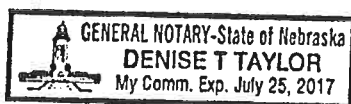
13. **Counterparts:** This Fourth Amendment may be executed in several counterparts, each of which shall be deemed an original.

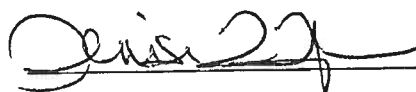
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Brian Gibbs

STATE OF Nebraska  
COUNTY OF Sarpy ) ss.

Personally came before me this 21 day of June, 2017, Brian Gibbs to me known to be the person who executed the foregoing instrument and acknowledged the same.



  
Notary Public, ~~Wisconsin~~ Nebraska  
My Commission expires: 7/25/17

03487

NORFOLK-ROCK MAX, L.L.C.

By: ROCKFORD RIVERSIDE LIMITED  
PARTNERSHIP, its sole member

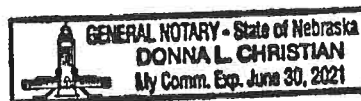
By: HELD REAL ESTATE COMPANY,  
its general partner

By: [Signature]  
Name: Jeannine DeVetter  
Title: President

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

Personally came before me this 13th day of July, 2017,  
Jeannine DeVetter of Held Real Estate Company, a corporation duly organized and existing  
under and by virtue of the laws of the State of Nebraska, and to me known to be the person who  
executed this instrument on behalf of Held Real Estate Company, as the general partner of  
Rockford Riverside Limited Partnership, as the sole member of Norfolk-Rock Max L.L.C., and  
to me known to be such individual and President of said company and  
acknowledged that he executed the foregoing instrument as such officer as the act of said  
corporation, by its authority.

[Signature]  
Notary Public, Omaha, NE  
My Commission: 6/30/2021





03487

ADVANCE STORES COMPANY, INCORPORATED

By: Allison Bubar  
Name: Allison Bubar  
Title: VP, Real Estate

COMMONWEALTH OF VIRGINIA )  
 ) ss.  
COUNTY OF Roanoke )

Personally came before me this 4th day of August, 2017, Allison Bubar, as VP, Real Estate of Advance Stores Company, Incorporated, a corporation duly organized and existing under and by virtue of the laws of the State of Virginia, and to me known to be the person who executed the foregoing instrument, and to me known to be such VP, Real Estate of said corporation and acknowledged that he executed the foregoing instrument as such officer of the act of said corporation, by its authority.

Cathy G. Crowder  
Notary Public, State of Virginia  
My Commission: July 31, 2017



03487

## U.S. BANK NATIONAL ASSOCIATION

By: [Signature]  
 Name: PETER ALVESTAD  
 Title: AVP

By: [Signature]  
 Name: THOMAS J. DEFFY  
 Title: V.P.

STATE OF Nebraska )  
 ) ss.  
 COUNTY OF Douglas )

Personally came before me this 23 day of June, 2017,  
Peter Alvestad, the AVP of U.S. Bank  
 National Association, a national banking association, and to me known to be the person who  
 executed the foregoing instrument, and to me known to be such AVP of said  
 limited liability company and acknowledged that he executed the foregoing instrument as such  
 officer as the act of said limited liability company, by its authority.

TREVOR JOHNSON  
 General Notary - State of Nebraska  
 My Commission Expires Jun 12, 2021

[Signature]  
 Notary Public, State of Nebraska  
 My Commission expires: June 12 2021

STATE OF Ohio )  
 ) ss.  
 COUNTY OF Franklin )

Personally came before me this 11<sup>th</sup> day of July, 2017,  
Thomas J. Deffy, the V.P. of U.S. Bank  
 National Association, a national banking association, and to me known to be the person who  
 executed the foregoing instrument, and to me known to be such V.P. of said  
 limited liability company and acknowledged that he executed the foregoing instrument as such  
 officer as the act of said limited liability company, by its authority.



SHERRY L. WIGGINS  
 Notary Public, State of Ohio  
 My Commission Expires 09-06-2021

[Signature]  
 Notary Public, State of Ohio  
 My Commission expires: 9-16-2021

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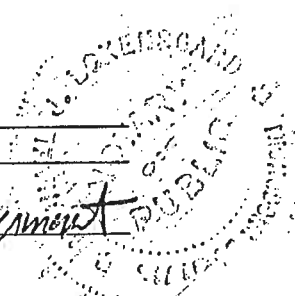
NORFOLK WINGS, LLC

By: Paul A. Kish  
Name: Paul A. Kish  
Title: Member

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF OUTAGAMIE)

Personally came before me this 12<sup>th</sup> day of July, 2017,  
Paul A. Kish, the Member of Norfolk Wings,  
LLC, a limited liability company duly organized and existing under and by virtue of the laws of  
the State of Wisconsin, and to me known to be the person who executed the foregoing  
instrument, and to me known to be such Member of said limited liability  
company and acknowledged that he executed the foregoing instrument as such officer as the act  
of said limited liability company, by its authority.

Michael J. Leung  
Notary Public, State of Wisconsin  
My Commission expires: 12/31/2018



03487

**SPIRIT SPE PORTFOLIO 2006-1, LLC**

By Spirit SPE Manager, LLC, its Manager

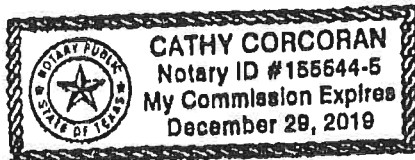
By: *KRM*

Name: Ken Heimlich

Title: Senior Vice President

STATE OF TEXAS           )  
                                      ) ss.  
COUNTY OF DALLAS       )

Personally came before me this 19th day of July, 2017,  
Ken Heimlich, the Senior Vice President of Spirit SPE  
Manager, LLC, a Delaware limited liability company, the Manager of SPIRIT SPE PORTFOLIO  
2006-1, LLC, a limited liability company duly organized and existing under and by virtue of the  
laws of the State of Delaware, and to me known to be the person who executed the foregoing  
instrument, and to me known to be such Senior Vice President of said limited liability  
company and acknowledged that he executed the foregoing instrument as such officer as the act  
of said limited liability company, by its authority.



*Cathy Corcoran*  
\_\_\_\_\_  
Notary Public, State of Texas  
My Commission expires: \_\_\_\_\_

**EXHIBIT 1****FOURTH AMENDMENT TO  
CROSS-EASEMENT AND USE RESTRICTION AGREEMENT  
NORFOLK, NEBRASKA****LEGAL DESCRIPTIONS****ADVANCE SITE**

Lot 2 of Block 1 of the Replat of ShopKo Acres, being a part of the City of Norfolk, Madison County, Nebraska, and located in the Southwest Corner of Section 28, Township 24 North, Range 1 West of Madison County, Nebraska, according to the recorded Plat thereof filed the 16<sup>th</sup> day of April, 1985, in Cabinet 1 of Plats on Page 178A in the Office of the Register of Deeds for Madison County, Nebraska.

**SUPER VALU/ROCK-MAX SITE**

Lot 3 of Block 1, of the Replat of ShopKo Acres, being a part of the City of Norfolk, Madison County, Nebraska, and located in the Southwest Corner of Section 28, Township 24 North, Range 1 West of Madison County, Nebraska, according to the recorded Plat thereof filed the 16<sup>th</sup> day of April, 1985, in Cabinet 1 of Plats on Page 178A, in the Office of the Register of Deeds for Madison County, Nebraska.

**U.S. BANK SITE**

Lot 2-R of the Replat of Lot 1, Block 1 of Replat of ShopKo Acres, a Subdivision City of Norfolk, Madison County, Nebraska, all according to the recorded Plat filed on November 5, 2003 in Cabinet 5 of Plats on Page 27A in the office of the Register of Deeds of Madison County, Nebraska.

**WINGS SITE**

Lot 2 of Replat 2 of Lot 1-R, Block 1 of ShopKo Acres in the City of Norfolk, Madison County, Nebraska; and in that certain Subdivision Agreement dated September 6, 2005 as recorded September 19, 2005 in M2005-09 at Pages 1428-1430 inclusive, in the office of the Register of Deeds, Madison County, Nebraska.

**SPIRIT SITE**

Lot 1 of Replat 2 of Lot 1-R, Block 1 of ShopKo Acres in the City of Norfolk, Madison County, Nebraska; and in that certain Subdivision Agreement dated September 6, 2005 as recorded September 19, 2005 in M2005-09 at Pages 1428-1430 inclusive, in the office of the Register of Deeds, Madison County, Nebraska.

03487

**GIBBS SITE**

Lot 4 of Block 1 of the Replat of ShopKo Acres, being a part of the City of Norfolk, Madison County, Nebraska, and located in the Southwest Corner of Section 28, Township 24 North, Range 1 West of Madison County, Nebraska, according to the recorded Plat thereof filed the 16<sup>th</sup> day of April, 1985, in Cabinet 1 of Plats on Page 178A in the Office of the Register of Deeds for Madison County, Nebraska.

03487

**EXHIBIT 2**

**FOURTH AMENDMENT TO  
CROSS-EASEMENT AND USE RESTRICTION AGREEMENT  
NORFOLK, NEBRASKA**

RESERVED

03487

**EXHIBIT 3**

**FOURTH AMENDMENT TO  
CROSS-EASEMENT AND USE RESTRICTION AGREEMENT  
NORFOLK, NEBRASKA**

**SITE PLAN**

