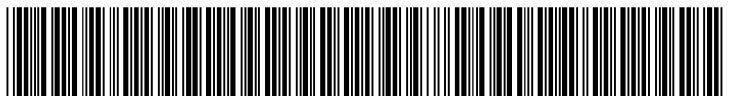




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DEC 17 2010 11:26 P 10

Fee amount: 55.00  
FB: 15-04560  
COMP: CC

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/17/2010 11:26:17.00



2010120438

**WAIVER AND CONSENT  
BY REAL PROPERTY OWNERS**

IT HAS BEEN REVIEWED

RECORDING REQUESTED BY:

Wells Fargo Foothill, LLC

AND WHEN RECORDED MAIL TO:

Paul, Hastings, Janofsky & Walker LLP  
515 South Flower Street  
25th Floor  
Los Angeles, CA 90071  
Attn: John Francis Hilson  
Re: American Blue Ribbon Holdings, LLC

Space above this line for recorder's use only

**WAIVER AND CONSENT BY REAL PROPERTY OWNER(S)**  
("Waiver and Consent")

THIS WAIVER AND CONSENT is made and entered into between **WELLS FARGO FOOTHILL, LLC**, a Delaware limited liability company ("WFF"), as arranger and administrative agent for certain lenders (in such capacity, "Agent"), and **Farmers & Merchants Bank and Trust of Watertown, South Dakota, Trustee of the Morton A. Ives Trust, "Owner"**, and affects that real property in the City or Town of Omaha, County of Douglas, State of NE, fully described on Exhibit A attached hereto and made a part hereof by this reference, and more commonly known as 4416 Dodge Street, Omaha, NE 68131-2725 (hereinafter referred to as the "Premises").

WHEREAS, **AMERICAN BLUE RIBBON HOLDINGS, LLC** ("Tenant") has leased the Premises from Owner by that certain Lease Agreement dated 5/1/1993 (the "Lease"). This Waiver and Consent does not amend any of the terms of the Lease and reference thereto is made for further particulars.

WHEREAS, this Waiver and Consent is executed pursuant to (i) that certain Credit Agreement, dated as of March 27, 2009 (as amended, restated, modified or supplemented from time to time, the "Credit Agreement") by and among WFF, Ableco Finance LLC, a Delaware limited liability company, and A3 Funding LP, a Cayman Islands limited partnership, as lenders (such lenders, together with their respective successors and permitted assigns, the "Lenders"), Fidelity Newport Holdings, LLC, a Delaware limited liability company ("Parent"), American Blue Ribbon Holdings, LLC, a Delaware limited liability company ("Borrower"), and Agent; (ii) that certain Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, dated as of November 12, 2009 (as amended, restated, modified or supplemented from time to time, the "Mortgage"), by Tenant in favor of Agent; and (iii) other agreements related thereto (hereinafter collectively referred to as the "Agreements") by and among the Lenders, Agent, Borrower and certain affiliates of Borrower (together with Borrower, individually and collectively, jointly and severally, the "Obligors"), which Agreements, among other things, were given by the Obligors to Agent for the purpose of securing the repayment of all obligations and the performance of all duties now or hereafter owing by the Obligors to the Lender Group, of every kind and description. This Waiver and Consent does not amend any of the terms of the Agreements and reference thereto is made for further particulars.

WHEREAS, as security for the payment and performance of the Obligor's obligations under the Credit Agreement and the Agreements, Agent has required, subject to the terms of the Lease, (a) Tenant to grant to Agent a mortgage lien on Tenant's leasehold interest in the Premises and (b) Tenant to grant a security interest in and lien upon, among other collateral, all of Tenant's personal property, including, but not limited to the inventory, equipment, furniture, furnishings, trade fixtures, machinery, and tools of Tenant, together with all additions, substitutions, replacements, and improvements to the same (hereinafter referred to as "Goods"), which Goods are or are to be located on and may be affixed to the Premises or be improvements thereon.

Agent and Owner agree that:

1. Owner acknowledges that (i) the Lease is in full force and effect and constitutes the legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, (ii) this Waiver and Consent constitutes the legal, valid and binding obligation of Owner enforceable against the Owner in accordance with its terms except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, and (iii) as of the date hereof, Owner is not aware of any existing default under the Lease or any such default which would result from the execution, delivery and performance of the Agreements.

2. Owner hereby unconditionally and irrevocably consents to Tenant encumbering its leasehold interest under the Lease by executing and recording the Mortgage. Owner agrees that the Mortgage may be assigned, modified or amended without the prior written consent of Owner.

3. The Goods shall be and remain personal property notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, or the intentions of the party making the annexation.

4. Owner hereby subordinates to Agent and the Lenders any rights which Owner may claim to have in and to the Goods, no matter how arising, including, without limitation, all rights of levy or distraint or liens for rent.

5. Owner consents to the installation of the Goods on the Premises, agrees that Agent may do to and with the Goods any or all of the acts below enumerated, and grants Agent the right, as set forth below, to enter into possession of the Premises to do any or all of the following (the "Permitted Actions") with respect to the Goods: assemble, have appraised, display, sever, remove, maintain, prepare for sale or lease, advertise, inspect, repair, lease, transfer, and/or sell (at public auction or private sale). Agent shall have the right and license to enter into and to occupy the Premises, for the purposes described above, for an actual occupancy period of up to one hundred twenty (120) days (at Agent's discretion), following the later of (a) Owner placing Agent in possession of the Premises; and (b) abandonment or surrender of the Premises by Tenant, whether voluntary or involuntary; provided, however, if Agent is prohibited by any process or injunction issued by any court, or by reason of any bankruptcy or insolvency

proceeding involving the Tenant, from enforcing its security interest in the Goods, the one hundred twenty (120) day period shall commence upon termination of such prohibition. In consideration of the foregoing, Agent agrees (to the extent not paid by the Tenant) to pay to Owner, for the use and occupancy of the Premises by Agent as provided above, per diem rent (based upon then current base rent and the Tenant's pro rata share of operating costs, utilities and taxes payable by the Tenant under the Lease but excluding any supplemental rent or other costs, expenses or amounts or any indemnities payable thereunder, upon default or otherwise) for each day Agent actually uses or occupies the Premises as provided above, based upon a thirty (30) day month for actual days of occupancy by Agent. Any extensions of the foregoing period shall be with the written consent of Owner and at the same rate. All physical damage to the Premises caused by the removal of the Goods shall be reimbursed or repaired by Agent at the Lender Group's expense.

6. Owner acknowledges and agrees that if the Lease terminates because of a rejection of the Lease by Tenant in any state or federal insolvency or bankruptcy proceeding or because of any default by Tenant which by its nature cannot be cured by Agent, Owner shall provide Agent with written notice that the Lease has been terminated (the "New Lease Notice"), together with a statement of (1) all sums that would have been due under the Lease on the date of the termination had such termination not occurred, and (2) all other defaults, if any, then known to Owner and not previously included in a Default Notice (as defined below). Upon such termination, Owner agrees to enter into a new lease (the "New Lease") of the Premises with Agent or its designee, at the sole and exclusive option of Agent, for the remainder of the term of the Lease. The New Lease shall be effective as of the date of termination of the Lease, at the same rent and upon the terms, covenants and conditions of the Lease (including without limitation all remaining options to renew but excluding requirements which are not applicable or which have already been fulfilled); provided that:

a. Agent makes written request upon Owner for the New Lease within thirty (30) days after the date such Agent receives a New Lease Notice;

b. Agent or its designee pays or causes to be paid to Owner at the time of execution and delivery of the New Lease any and all sums that would at the time of execution and delivery thereof be due pursuant to the Lease but for such termination and which were listed in the New Lease Notice (with a credit for any income from the Premises received by Owner during the time that the Lease was terminated). Additionally, Agent or its designee shall pay or cause to be paid to Owner all reasonable expenses, including without limitation reasonable attorneys' fees that Owner incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Owner from Tenant or other party in interest under the Lease;

c. Agent or its designee shall agree to remedy any of Tenant's defaults of which Agent was notified in the New Lease Notice and that are reasonably susceptible of being cured by Agent or its designee; and

d. The tenant under the New Lease shall have the same right, title and interest in and to the Premises and the Goods as Tenant had under the Lease.

7. [for space leases only] Owner acknowledges and agrees that any sale of Tenant's interest in the Lease (the "Leasehold Interest") under a foreclosure of the Mortgage shall be deemed to be a permitted sale, transfer or assignment of the Lease under the Lease. Upon acquiring the Leasehold Interest, a transferee may sell and assign the Leasehold Interest with the consent of Owner, which shall not be unreasonably withheld, and the transferor shall thereafter be relieved of all obligations under the Lease; provided that the entity acquiring the Leasehold Interest has delivered to Owner its written agreement to be bound by all the provisions of the Lease.

[for ground lease only] Owner acknowledges and agrees that any sale of Tenant's interest in the Lease and of the leasehold estate created thereunder (the "Leasehold Estate") under a foreclosure of the Mortgage shall be deemed to be a permitted sale, transfer or assignment of the Lease under the Lease. Upon acquiring the Leasehold Estate, a transferee may sell and assign the Leasehold Estate with the consent of Owner, which shall not be unreasonably withheld, and the transferor shall thereafter be relieved of all obligations under the Lease; provided that the entity acquiring the Leasehold Estate has delivered to Owner its written agreement to be bound by all the provisions of the Lease.

8. Owner acknowledges that at any time prior to Owner placing Agent in possession of the Premises, or abandonment of or surrender of the Premises by Tenant, Agent may take any or all of the Permitted Actions subject only to Agent's Agreements with the Obligors.

9. Owner acknowledges and agrees that Tenant's granting of a security interest in the Goods and the granting of a mortgage lien in and upon Tenant's leasehold interest in the Premises, in each case, in favor of Agent shall not, upon receipt of Owner's consent thereto, constitute a default under the Lease or permit Owner to terminate the Lease or re-enter or repossess the Premises or otherwise be the basis for the exercise of any remedy by Owner, and Owner hereby expressly consents to the granting of such security interest and mortgage lien.

10. Owner agrees to give Agent written notice (each, a "Default Notice") (a) within five (5) business days after any default under or termination of the Lease by Tenant, or any abandonment or surrender of the Premises by the Tenant, and (b) thirty (30) days prior to any termination of the Lease or repossession of the Premises by Owner, said notice to be sent to the following address:

Wells Fargo Foothill, LLC,  
2450 Colorado Boulevard, Suite 3000 West  
Santa Monica, California 90404  
Attention: Business Finance Manager

11. Agent shall have the right, without the obligation, to cure any event of default under the Lease within ten (10) days after the receipt of the notice described in Section 10, provided, however, if such default cannot reasonably be cured by Agent within such 10 day period, Agent shall have such additional period of time as may be reasonably necessary to cure such default, so long as Agent commences such curative measures within such 10 day period and thereafter proceeds diligently to complete such curative measures. Any of the foregoing done by

Agent shall be effective to cure an event of default as if the same had been done by the Tenant and shall not be deemed an assumption of the Lease or any of the Tenant's obligations thereunder by Agent. Owner agrees that Agent shall not have any obligations to Owner under the Lease or otherwise or any obligation to assume the Lease or any obligations thereunder.

12. This Waiver and Consent shall continue until the earlier of (a) such time as Agent notifies Owner that all the Obligors' obligations to Agent and the Lender Group under the Agreements, and expenses (including, without limitation, attorneys' fees) incurred in connection therewith, have been paid in full and all covenants and conditions as more specifically enumerated in the Agreements have been fully performed, or (b) such time as the mortgage lien on the Premises shall be released by Agent.

13. This Waiver and Consent may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Waiver and Consent. Delivery of an executed counterpart of this Waiver and Consent by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Waiver and Consent. Any party delivering an executed counterpart of this Waiver and Consent by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Waiver and Consent but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Waiver and Consent. This Waiver and Consent may not be supplemented, amended or modified except in writing executed by the parties hereto.

14. This Waiver and Consent or a memorandum hereof may be recorded in the real property records of the county in which the Premises are located.


15. This Waiver and Consent shall inure to the benefit of and be binding upon the successors, heirs, and assigns of Owner and Agent.

16. THE VALIDITY OF THIS WAIVER AND CONSENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS WAIVER AND CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE IN WHICH THE PREMISES ARE LOCATED.

[Signature pages to follow]

Dated: 9/11/09

**WELLS FARGO FOOTHILL, LLC,**  
a Delaware limited liability company,  
as Agent


By:   
Its: Sr. Account Officer, VP

Address: 2450 Colorado Avenue  
Suite 3000 West  
Santa Monica, California 90404

Dated: \_\_\_\_\_

**Farmers & Merchants Bank and Trust of  
Watertown, South Dakota, Trustee of the  
Morton A. Ives Trust,**

as Owner

By:   
Its: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ACKNOWLEDGMENT

State of California  
County of Los Angeles )

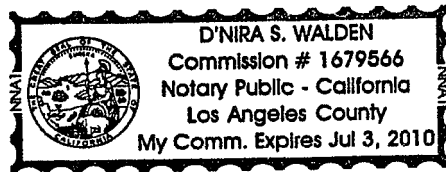
On September 11, 2009 before me, D'Nira S. Walden, Notary Public  
(insert name and title of the officer)

personally appeared James Belanger,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in  
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

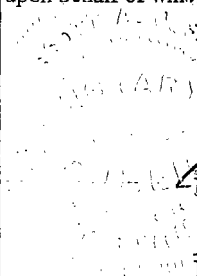




STATE OF SD )  
 ) ss.  
COUNTY OF Codington

On 8/17/09 before me, Scott A. Olson, a Notary Public, appeared Gregory K. Blaw personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within Waiver and Consent and acknowledged to me that she/he executed the same in her/his authorized capacity, and that by her/his signature on the Waiver and Consent, the entity upon behalf of which the person acted, executed the Waiver and Consent.

WITNESS my hand and official seal.



Scott A. Olson  
Notary Public

(Seal)

Scott A. Olson  
Name (Typed or Printed)

## Exhibit A

### Legal Description

Lots Four (4), Five (5), Six (6), Seven (7), Eight (8), EXCEPT that part thereof taken for street purposes previously taken, and all of the West 30 feet of Lots Three (3) and Thirty-six (36), together with vacated alley lying between West 30 feet of Lots Three (3) and Thirty-six (36), and between Lots Four (4), Five (5), Six (6), Seven (7), Eight (8), Thirty-three (33), Thirty-four (34) and Thirty-five (35), all in Block Four (4), Briggs Place, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.