



MISC 2012112783



NOV 05 2012 16:56 P 7

Fee amount: 41.50  
FB: 64-40578  
COMP: DW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/05/2012 16:56:49.00



2012112783

return to: Steve Woolley, 11404 W. Dodge Rd Omaha, NE 68154-2784  
**CONSENT**

This Consent is given and delivered as of this 31 day of October, 2012, by Walnut Grove Plaza I, L.L.C., a Nebraska limited liability company, successor in interest to West Bay, Inc., a Nebraska corporation ("Landlord") and U Save Foods, Inc., a Nebraska corporation ("Tenant"), f/k/a Sixth Street Food Stores, Inc., a Nebraska corporation.

**RECITALS:**

A. Landlord and Tenant have entered into a certain lease dated January 15, 1999 (the "Lease"), whereby Tenant has leased from Landlord certain real property and the improvements located thereon as described on Exhibit A attached hereto and made a part hereof by this reference (the "Premises"). The Premises are part of the shopping center constructed on the property legally described on Exhibit "B" attached hereto and made a part hereof by this reference (the "Shopping Center").

B. Great Western Bank, a South Dakota banking corporation ("GWB"), is the present owner of the portion of the Shopping Center described as Lots 1 and 2, Walnut Grove Plaza, consisting of vacant and unimproved land (the "Vacant Land").

C. Landlord and Tenant have recorded a Memorandum of Lease dated as of January 15, 1999, recorded in Book 1282, Page 440 of the Miscellaneous Records in the Office of the Douglas County Register of Deeds (the "Memorandum") which Memorandum specifies certain use restrictions on the Vacant Land for the benefit of the Premises.

D. GWB desires to sell the Vacant Land to permit the construction and operation of an assisted living facility on the Vacant Land, and the consent of Landlord and Tenant to such use of the Vacant Land is required to permit the transfer of the Vacant Land and its use as an assisted living facility.

E. Operation of an assisted living facility is a use permitted by the present zoning classification of the Premises, but is a "non-retail use" as described in the Memorandum.

**AGREEMENT**

**NOW THEREFORE** it is agreed:

1. **Consent to Proposed Use.** Landlord and Tenant do hereby consent to the use of the Vacant Land for the construction and operation of an assisted living facility, and do hereby release the Vacant Land from the use restriction set forth in Paragraph 4.3.6 of the Memorandum and the corresponding use restriction set forth in the Lease. All other use restrictions set forth in the Memorandum and corresponding provisions of the Lease shall remain in full force and effect.

2. **Duration of Consent.** This consent shall terminate upon the earlier of the first to occur: (a) cessation of the operation of the assisted living facility constructed on the Vacant Land; or (b) conversion of the improvement ultimately constructed on the Vacant Land to any use which does not comply with the "Permitted Uses" under Section 55-563 of the Omaha Municipal Code or the Mixed Use District Development Agreement for Walnut Grove Plaza, dated April 19, 1999, as from time to time amended or under the Shopping Center use restrictions set forth in the Memorandum and in the Lease.

3. **Counterparts.** This consent may be executed in one or more counterparts (including by means of faxed or other electronically transmitted signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this consent as of the date first above written.

903

**U SAVE FOODS, INC., Tenant**

By: Robert B Dimond  
Its: \_\_\_\_\_

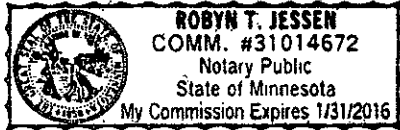
**WALNUT GROVE PLAZA I, L.L.C.,**

**WEST BAY SPE, INC., a Nebraska corporation, Managing Member**

By: Thomas E. Smith  
Thomas E. Smith, President

STATE OF MINNESOTA )  
) vs.  
COUNTY OF Hennepin

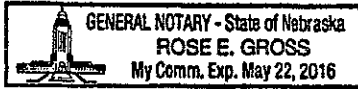
This instrument was acknowledged before me on October 16, 2012, by Robert B Dimond as the President of U Save Foods, Inc., a Nebraska corporation.

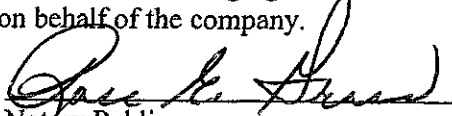


[Signature]  
Notary Public

STATE OF NEBRASKA    )  
                                  ) vs.  
COUNTY OF DOUGLAS   )

This instrument was acknowledged before me on October 31, 2012, by Thomas E. Smith as the President of West Bay Inc., a Nebraska corporation, managing member of West Bay SPE, L.L.C., a Nebraska limited liability company, on behalf of the company.



  
\_\_\_\_\_  
Notary Public

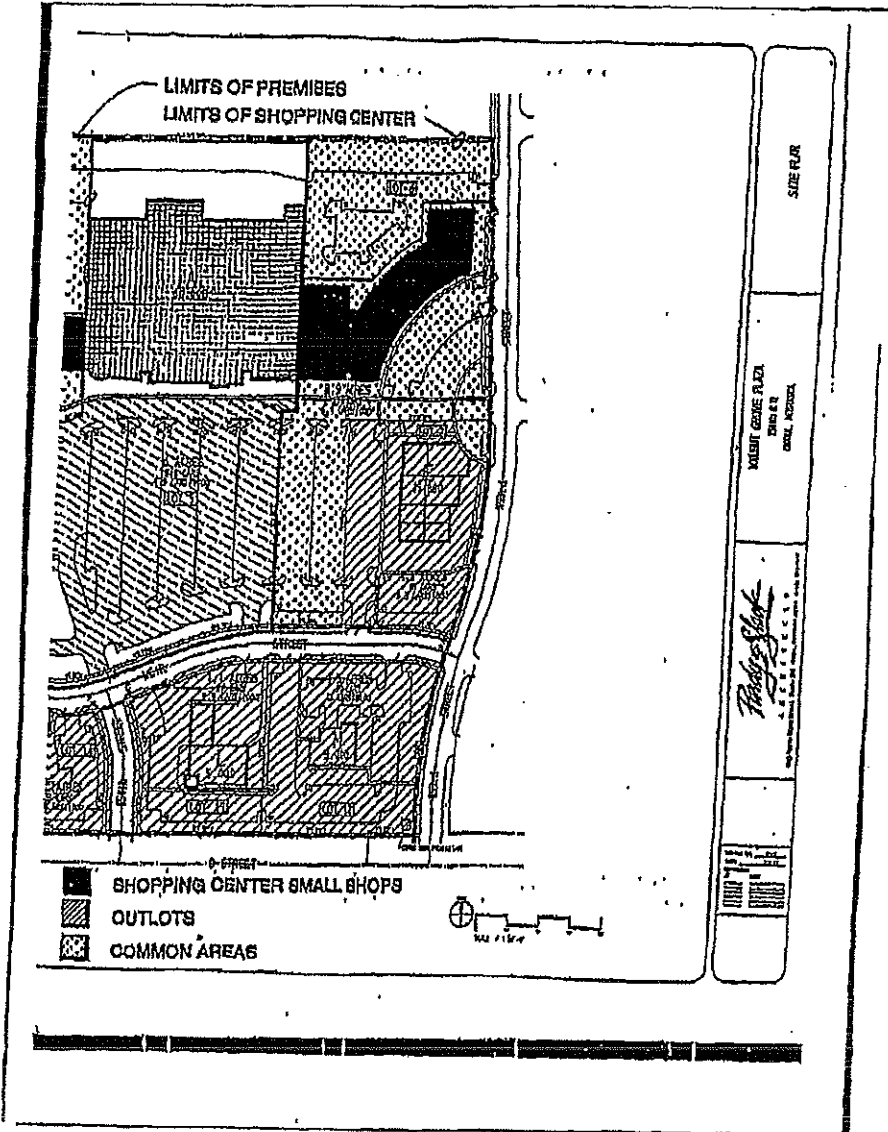
First American Title

EXHIBIT A  
Omaha, Nebraska  
SITE PLAN

See attached Site Plan.

0441118-1

First American Title



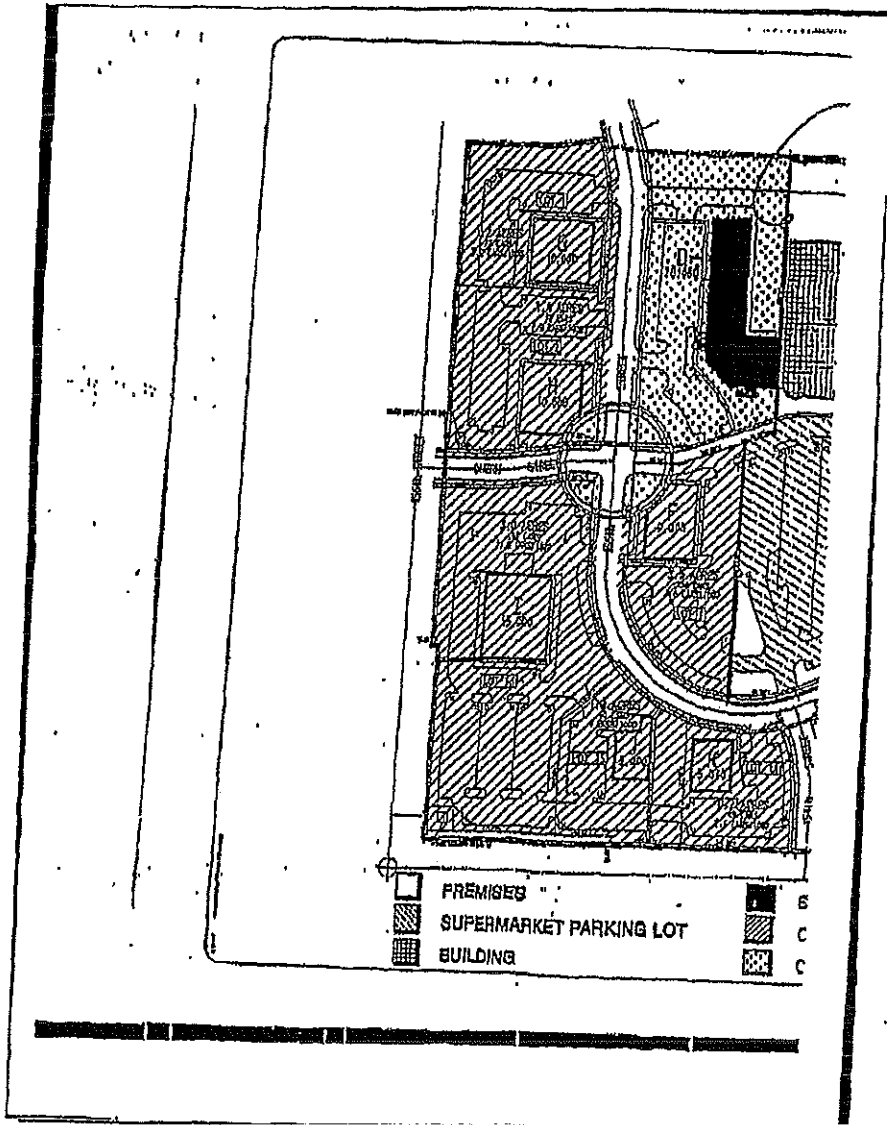


EXHIBIT B

Omaha, Nebraska  
LEGAL DESCRIPTION OF SHOPPING CENTER

Walnut Grove Plaza Shopping Center - A tract of land located in the SW 1/4 of Section 2, Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said SW 1/4 of Section 2; thence N00°16'38"E (assumed bearing) along the West line of said SW 1/4 of Section 2, a distance of 60.00 feet; thence N88°31'18"E, a distance of 60.00 feet to the point of beginning; thence N00°16'38"E, a distance of 300.00 feet; thence N88°44'22"W, a distance of 10.00 feet; thence N00°16'38"E, a distance of 7879.22 feet; thence S89°44'22"E, a distance of 100.00 feet; thence Northeasterly, on a curve to the left with a radius of 441.47 feet, a distance of 120.37 feet, said curve having a long chord which bears N82°28'58"E, a distance of 120.00 feet; thence S74°41'54"E, a distance of 70.71 feet; thence N89°37'28"E, a distance of 804.09 feet; thence S02°38'50"E, a distance of 448.16 feet; thence Southwesterly on a curve to the right with a radius of 770.00 feet, a distance of 302.87 feet, said curve having a long chord which bears S08°35'49"W, a distance of 300.73 feet; thence S18°54'28"W, a distance of 111.38 feet; thence Southerly on a curve to the left with a radius of 630.58 feet, a distance of 188.15 feet, said curve having a long chord which bears S08°42'00"N, a distance of 187.76 feet; thence S04°28'26"E, a distance of 36.80 feet to a point on the Easterly extension of the Northern right-of-way line of "Q" Street; thence S88°31'31"W along said Northern right-of-way line of "Q" Street and the Easterly extension thereof, a distance of 742.00 feet; thence N00°28'28"W, a distance of 10.00 feet; thence S88°31'31"W, a distance of 300.00 feet to the point of beginning.

Said tract of land contains an area of 1,208,780 square feet or 27.708 acres, more or less.

Now legally described as: 64 - 40578

Lots 1 and 2, Walnut Grove Plaza, an Addition to the City of Omaha, Douglas County, Nebraska;

64-40579 lot 1 only

Lots 1 and 2, Walnut Grove Plaza Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska;

64 - 40586

Lots 1 and 2, Walnut Grove Plaza Replat 2, an Addition to the City of Omaha, Douglas County, Nebraska;

64-40589

Lots 1, 2, 3 and 5, Walnut Grove Plaza Replat 3, an Addition to the City of Omaha, Douglas County, Nebraska;

64-40577 lot 2 only

Lots 1 and 2, Walnut Grove Plaza Replat 4, an Addition to the City of Omaha, Douglas County, Nebraska, and

64-40593

Lot 1, Walnut Grove Plaza Replat 5, an Addition to the City of Omaha, Douglas County, Nebraska

\* now known as Lots 1+2 Walnut Grove Plaza Replat Two

\*\* now known as Lots 1 & 2 Walnut Grove Plaza Replat Seven