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# FIRST AMENDMENT TO TENANTS IN COMMON AGREEMENT

THIS FIRST AMENDMENT TO TENANTS IN COMMON AGREEMENT is made and effective as of the 20 day of 7000 , 2011 (the "Effective Date"), by and among Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95; 121 Centennial, L.L.C., a Nebraska limited liability company; Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees, or their successors in trust, under the Jerome L. Heinrichs Living Trust dated April 28, 2004, and any amendments thereto; Thomas W. Schleisman, Trustee of the Gregory Schleisman Family Trust; and John Schmidt and Marcy Schmidt (individually a "Tenant in Common" and collectively the "Tenants in Common"), with reference to the facts set forth below.

#### RECITALS

- A. The parties or their predecessors in interest entered into the Tenants in Common Agreement dated July 1, 2005 ("Agreement") regarding the real property described on Exhibit "B" attached hereto and incorporated herein (the "Project"); and
- B. The Tenants in Common desire to enter this Amendment to the Tenants in Common Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Amendment to Tenants in Common Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

- 1. Section 2.2 of the Agreement is hereby amended and restated as follows:
  - "2.2 Unanimous Consent of the Tenants in Common. The

consent of all of the Tenants in Common shall be required with respect to any sale, exchange, lease or release of all or a portion of the Project, any loans or modifications of any loans secured by the Project, the approval of any property management agreement or any extension, renewal or modification thereof. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, with respect to any (i) sale or exchange of all or a portion of the Project or (ii) loan or modification of any loan secured by the Project, the Tenants in Common shall have three (3) business days after the date the request for such consent or approval is received pursuant to Section 10.8 to approve or disapprove of the matter. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, with respect to any modification or renewal of any property management agreement, the Tenants in Common shall have three (3) days after the date the request for consent or approval is received pursuant to Section 10.8 to the Tenants in Common for their approval or disapproval of the matter. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, with respect to any lease or release of all or a portion of the Project, the Tenants in Common shall have three (3) business days after the date the request for consent or approval is received pursuant to Section 10.8 to the Tenants in Common for their approval or disapproval of the matter. The Tenants in Common agree to use their best efforts to respond to any request for consent or approval. If a Tenant in Common does not disapprove of such matter within the specified response period described above, the Tenant in Common shall be deemed to have approved the matter. By execution hereof, the Tenants in Common confirm their approval of the Property Management Agreement."

#### 2. Section 2.3 of the Agreement is hereby amended and restated as follows:

"2.3 **Majority Consent of the Tenants in Common**. Whenever the approval or consent of the Tenants in Common is required with respect to any items, other than those set forth in Section 2.2, the approval or consent of the Tenants in Common holding more than 55% of the percentage interest in the Project shall be required to approve such action. If a Tenant in Common does not disapprove of such matter within three (3) business days after the date the request for consent or approval is received pursuant to Section 10.8, the Tenant in Common shall be deemed to have approved the matter."

#### 3. Section 10.8 of the Agreement is hereby amended and restated as follows:

"10.8 **Notice and Payments**. Any notice to be given or other document or payment to be delivered by any party hereunder may be delivered in person, or may be sent by electronic mail, or may be deposited in the United States mail, duly certified or registered, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the party for whom intended, as follows:

To the Tenants in Common at the addresses or e-mail address specified in Exhibit "A" hereto.

Any party hereto may from time to time, by written notice to the others, designate a different address or e-mail address which shall be substituted for the ones above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) as of the third (3<sup>rd</sup>) business day after mailing by United States registered or certified mail, postage prepaid, addressed as set forth above, (iii) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system or (iv) the date the electronic mail was sent."

- 4. Exhibit "A" attached hereto is hereby substituted as the Exhibit "A" for the Agreement.
  - 5. This Amendment may be signed and acknowledged in counterpart.

[Signature page follows]

## TENANTS IN COMMON:

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Station (1995) See saw (1995) et le	HAROLD E. SEARS, Co-Trustee  By: Phylics of the Control of the Con
	PHYILLIS G. SEARS, Co-Trustee
	121 CENTENNIAL, L.L.C., a Nebraska limited liability liability
	By: In the
	Title: Managering Member
	JEROME L. HEINRICHS LIVING TRUST, dated April 28, 2004, and any amendments thereto
	By: Jerome L. Heinrichs, Trustee
	By: Juticia la Dunicha PATRICIA A. HEINRICHS, Trustee
	GREGORY SCHLEISMAN FAMILY TRUST
	By: THOMAS W. SCHLEISMAN, Trustee
	•
	JOHN SCHMIDT
	MARCY SCHMIDT

STATE OF KANSAS )
COUNTY OF Shawnee ) ss:
The foregoing instrument was acknowledged before me this 15 day of 2011, by Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95.
Notary Public State of Kansas  Wy Appt. Expires 10 30 44
STATE OF NEBRASKA
COUNTY OF DOUGLAS ) ss:
The foregoing instrument was acknowledged before me this 10 day of 2011, by Lee Ehlers, Managing Member of 121 Centennial, L.L.C., a Nebraska limited liability company.
GENERAL NOTARY - State of Nebraska STEPHANIE L. CHEVALIER My Comm. Exp. Oct. 12, 2014  Notary Public
STATE OF NEBRASKA ) ) ss:
COUNTY OF DOUGLAS )
The foregoing instrument was acknowledged before me this 10 day of May 2011, by Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees of the Jerome L. Heinrichs Living Trust dated April 28, 2004, on behalf of such Living Trust.
GENERAL NOTARY - State of Nebraska STEPHANIE L. CHEVALIER My Comm. Exp. Oct. 12, 2014  Notary Public

TENA	NTS IN COMMON:
	PLD E. AND PHYLLIS G. SEARS LIVING T u/t/d 4/11/95
By:	
· · · · · · · · · · · · · · · · · · ·	HAROLD E. SEARS, Co-Trustee
By:	DIMITING CORPORAGE
	PHYLLIS G. SEARS, Co-Trustee
121 CE	ENTENNIAL, L.L.C., a Nebraska limited liability
liabilit	·
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By:	- fel Eli
Title:	Mansgirn, Menber
	Lee Ehlers
JERON	ME L. HEINRICHS LIVING TRUST, dated
	28, 2004, and any amendments thereto
By:	Jerome I Deinsichs
	JEROME L. HEINRICHS, Trustee
By:	Latricia la Reinricha
Dy.	PATRICIA A. HEINRICHS, Trustee
GREG	ORY SCHLEISMAN FAMILY TRUST
ъ.	
By:	THOMAS W. SCHLEISMAN, Trustee
	THOMAS W. SCHLEISWAN, Hustee
JOHN	SCHMIDT
MARC	CY SCHMIDT

STATE OF KANSAS	)	
COUNTY OF	) ss: )	
		acknowledged before me this day of ars and Phyllis G. Sears, Co-Trustees of the Harold E.
and Phyllis G. Sears Living Trust		
		Notary Public
STATE OF NEBRASKA	) ) ss:	
COUNTY OF DOUGLAS	)	
	ee Ehlers	acknowledged before me this 10th day of Managing Member of 121 Centennial, L.L.C., a
GENERAL NOTARY - State of Nebrasks STEPHANIE L. CHEVALIEF My Comm. Exp. Oct. 12, 2014		Suplianif Chwali- Notary Public
STATE OF NEBRASKA	) ) ss:	
COUNTY OF DOUGLAS	)	
	ome L. I	acknowledged before me this 10 day of Heinrichs and Patricia A. Heinrichs, Trustees of the ril 28, 2004, on behalf of such Living Trust.
GENERAL NOTARY - State of Nebra STEPHANIE L. CHEVAL My Comm. Exp. Oct. 12, 201	IEM	Stephanie & Chwalin Notary Public

## TENANTS IN COMMON:

	ST u/t/d 4/11/95
Ву:	HADOIDE GEADS Co Trustos
Ву:	HAROLD E. SEARS, Co-Trustee
Dj.	PHYLLIS G. SEARS, Co-Trustee
121 C liabili	CENTENNIAL, L.L.C., a Nebraska limited liability
By:	Yee Eli
Title:	Mansgering Member
JERC	DME L. HEINRICHS LIVING TRUST, dated
April	28, 2004, and any amendments thereto
By:	Jerome I Heinswhe
	TEROME L. HEINRICHS, Trustee
By:	PATRICIA A. HEINRICHS, Trustee
GRE	GORY SCHLEISMAN FAMILY TRUST
By:	THOMAS W. SCHI PROMAN TO
	THOMAS W. SCHLEISMAN, Trustee
	Un Lephandt N SCHMIDT
MAN	N SCHMIDT
N	nary fold
MAR	CY SCHMIDT

STATE OF N	BRASKA	)			
COUNTY OF	DOUGLAS	) ss: )			
	oregoing instrum 2011, by T	homas W. Sc	nowledged bet hleisman, Trust	fore me this see of the Grego	day of ory Schleisman
Family Trust, o	on behalf of such F	amily Trust.			,
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			Notary Publ	10	
STATE OF	Sova Folk	) ) ss: )			
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			Notary Publ	by Myri	m_
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Return to:

Michael D. Matejka Woods & Aitken LLP 10250 Regency Circle, Suite 525 Omaha, NE 68114

TENANTS IN COMMON:
HAROLD E. AND PHYLLIS G. SEARS LIVING TRUST u/t/d 4/11/95
By: HAROLD E. SEARS, Co-Trustee
By: PHYLLIS G. SEARS, Co-Trustee
121 CENTENNIAL, L.L.C., a Nebraska limited liability liability
By: Title:  Managering Manber  Lee Ehlers
JEROME L. HEINRICHS LIVING TRUST, dated April 28, 2004, and any amendments thereto
By: Jerome L. HEINRICHS, Trustee
By: Latricia de Reinricha PATRICIA A. HEINRICHS, Trustee
GREGORY SCHLEISMAN FAMILY TRUST
By: Thomas W. SCHLEISMAN, Trustee
JOHN SCHMIDT
MARCY SCHMIDT

STATE OF NEBRASKA	)
COUNTY OF DOUGLAS	) ss: )
	t was acknowledged before me this 25 day of mas W. Schleisman, Trustee of the Gregory Schleisman nily Trust.
	Morma A. Achnalu () Notary Public
STATE OF <u>Nebraska</u> COUNTY OF Deriglas	GENERAL NOTARY-State of Nebraska NORMA S. SCHNABEL My Comm. Exp. Sept. 21, 2011
The foregoing instrument	t was acknowledged before me this day of Schmidt and Marcy Schmidt, husband and wife.
	Notary Public

Return to:

Michael D. Matejka Woods & Aitken LLP 10250 Regency Circle, Suite 525 Omaha, NE 68114

### **EXHIBIT A**

## **Tenants in Common and Percentage Interests**

<u>Name</u>	Percentage Int	erest Address
Harold E. Sears and Phyllis G. Sea Co-Trustees of the Harold E. a Phyllis G. Sears Living Trust u/ 4/11/95	and 25%	Harold Sears 2349 SE Crestwater Drive Topeka, KS 66605 Email:hsears82@sbcglobal.net
121 Centennial, L.L.C., a Nebras limited liability company	ska 25%	Lee Ehlers c/o Investors Realty 11303 Davenport Omaha, NE 68154 Email: lee@investorsomaha.com
Jerome L. Heinrichs and Patricia Heinrichs, Trustees, or their successe in trust, under Jerome L. Heinric Living Trust, dated April 28, 2004, a any amendments thereto	ors chs 20%	Jerry Heinrichs c/o Investors Realty 11301 Davenport Omaha, NE 68154 Email: jheinrichs@investorsomaha.com
Thomas W. Schleisman, Trustee of t Gregory Schleisman Family Trust	the 15%	Thomas Schleisman c/o Schleisman White & Associates, P.C. 13434 "A" Street Omaha, NE 68144 Email: tom@soa-cpas.com
John Schmidt and Marcy Schmidt	<u>15%</u>	John and Marcy Schmidt 1180 NW 67 Place Des Moines, IA 50310 Email: marcyschmidt67@yahoo.com

100%

#### **EXHIBIT B**

### **Legal Description of Project**

Lot 6, Papio Valley 2 Business Park, a Subdivision in Sarpy County, Nebraska.