



MISC 2004010054



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Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
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2004010054

Prepared by and return to: First Westroads Bank, 10855 West Dodge Road, Omaha, NE 68154

MEMORANDUM OF INTERCREDITOR AGREEMENT

BE IT KNOWN THAT effective on the 21 day of January, 2004, **FIRST AMERICAN BANK**, an Iowa banking corporation ("FAB") entered into an Intercreditor Agreement dated January 21, 2004 (the "Agreement") with **FIRST WESTROADS BANK**, a Nebraska banking corporation ("First Westroads"), **EARL MAY SEED & NURSERY L.C.** (d/b/a Earl May Garden Centers), an Iowa limited liability company ("Earl May"), and **BJS ENTERPRISES, L.C.**, an Iowa limited liability company ("BJS"), which was executed in order to define the parties' respective rights, remedies and interests appearing against the real estate located in Douglas County, State of Nebraska, more fully described on Exhibit "A" attached hereto (the "Real Estate"), together with all improvements located thereon and rights appertaining thereto. Said rights, remedies and interests appearing against the Real Estate are set forth in the following documents:

1. FAB Loan Agreement, as defined in the Agreement, by and between FAB and Earl May; and
2. Corporate Guaranty from BJS to FAB pursuant to the FAB Loan Agreement; and
3. Various First Westroads secured financial accommodations to BJS through notes and agreements which are listed on Exhibit A of the Agreement (the "BJS Secured Obligations"); and
4. Certain lease agreements between BJS, as landlord, and Earl May, as tenant, attached to the Agreement as Exhibit B.

The Intercreditor Agreement provides among other things, that the interests of FAB pursuant to the FAB Loan Agreement are subordinate to the right, title and interest held by First Westroads with respect to BJS Secured Obligations and the Real Estate.

This is only a Memorandum of Intercreditor Agreement, and the complete agreement between the parties is contained in the Agreement, and any further amendment thereto. All parties affected by such Agreement are hereby put on notice of its contents and effects thereof, and should review said document for its contents. You should contact First American Bank to request a copy of said Agreement at 12333 University Avenue, Clive, Iowa 50325, and First Westroads Bank at 10855 West Dodge Road, Omaha, Nebraska 68154.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Intercreditor Agreement to be effective January 21, 2004.

FIRST AMERICAN BANK,
an Iowa banking corporation

FIRST WESTROADS BANK,
a Nebraska banking corporation

By:
Name: Raymond E. Meyer
Title: Executive Vice President

By:
Name: Lynn F. Gamm
Title: Senior Vice President

misc 59-21330
 FEE 2650 FB 01-60000
 BKP 12-14-11 C/O _____ COMP _____
 DEL _____ SCAN _____ FV _____

(B) 3/15 (16) *

EARL MAY SEED & NURSERY L.C.,
an Iowa limited liability company

BJS ENTERPRISES L.C., an Iowa
limited liability company

By: Betty Jane Shaw
Name: Betty Jane Shaw
Title: President

By: Betty Jane Shaw
Name: Betty Jane Shaw
Title: President

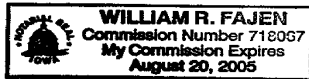
Approved as to form only:

WGMS ENTERPRISES, L.C.,
an Iowa limited liability company

By: William E. Shaw
Name: William E. Shaw
Title: President

STATE OF IOWA)
) ss.
COUNTY OF Polk)

On this 20 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared RAYMOND E. MEISTER, to me personally known, who being by me duly sworn, did say that he/she is the EXECUTIVE VICE PRESIDENT of FIRST AMERICAN BANK, an Iowa banking corporation; that said instrument was signed on behalf of said corporation; and that the said EXECUTIVE VICE PRESIDENT as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.



William R. Fajen
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

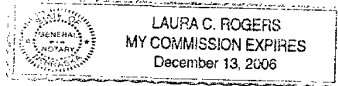
On this 21 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Lynn F. Blum, to me personally known, who being by me duly sworn, did say that he/she is the senior Vice Pres. of FIRST WESTROADS BANK, a Nebraska banking corporation; that said instrument was signed on behalf of said corporation; and that the said Senior Vice Pres. as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.



Laura C. Rogers
Notary Public

STATE OF IOWA)
) ss.
COUNTY OF Douglas)

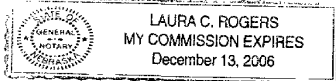
On this 21 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Betty Jane Shaw, to me personally known, who being by me duly sworn, did say that he/she is the President of EARL MAY SEED & NURSERY L.C., an Iowa limited liability company; that said instrument was signed on behalf of said limited liability company; and that the said President as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him/her voluntarily executed.



Laura C Rogers
Notary Public

STATE OF IOWA)
) ss.
COUNTY OF Douglas)

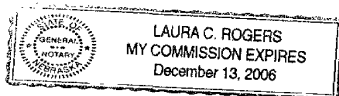
On this 21 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Betty Jane Shaw, to me personally known, who being by me duly sworn, did say that he/she is the President of BJS ENTERPRISES, L.C., an Iowa limited liability company; that said instrument was signed on behalf of said limited liability company; and that the said President as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him/her voluntarily executed.



Laura C Rogers
Notary Public

STATE OF IOWA)
) ss.
COUNTY OF Douglas)

On this 21 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared William E. Shaw, to me personally known, who being by me duly sworn, did say that he/she is the President of WGMS ENTERPRISES, L.C., an Iowa limited liability company; that said instrument was signed on behalf of said limited liability company; and that the said President as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him/her voluntarily executed.



Laura C Rogers
Notary Public

EXHIBIT "A"

A tract of land lying in the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section 12, Township 14 North, Range 11 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, being more particularly described as follows:

Commencing at the Southeast corner to the Northwest Quarter of the Northwest Quarter of Section 12-14-11; thence North $89^{\circ}10'20''$ West, along the South line of the Northwest Quarter of the Northwest Quarter of Section 12-14-11 (a/k/a the Northerly right-of-way of "U" Street), a distance of 36.33 feet, to the Point of Beginning; thence continuing along said South line, a distance of 239 feet; thence North $00^{\circ}05'57''$ West, a distance of 130.08 feet; thence North $52^{\circ}53'44''$ East, along a line 25 feet Southeasterly from and parallel to the Southeasterly right-of-way line of State Highway Number 50, a distance of 95.87 feet; thence South $89^{\circ}10'20''$ East, along a line 189 feet Northerly from and parallel to the Northerly right-of-way line of "U" Street, a distance of 162.43 feet; thence South $00^{\circ}05'57''$ East, a distance of 189 feet, to the Point of Beginning.

(14005 S PLZ, RT 26 OMAHA, NE 68137)

TA-47825

EXHIBIT "A"

A tract of land being part of Lots 2 and 3, in KVI - 132ND STREET PLAZA, an Addition to the City of Omaha, as surveyed, platted, and recorded, in Douglas County, Nebraska, being more particularly described as follows:

Commencing at the Southeast corner of Lot 2, KVI - 132ND STREET PLAZA; thence North 00°12'00" East (Platted Bearing) along the Easterly line of said Lot 2 a distance of 506.41 feet to a point; thence South 89°58'07" West, a distance of 82.40 feet to the true Point of Beginning; thence South 00°00'22" West a distance of 182.00 feet to a point; thence South 89°58'07" West a distance of 240.71 feet to a point; thence North 00°12'00" East a distance of 30.00 feet to a point; thence South 89°58'07" West a distance of 167.87 feet to a point; thence South 00°01'53" East a distance of 46.07 feet to a point of curvature; thence Southwest along a curve to the right, said curve having a radius of 400.00 feet, a long chord of 150.81 feet bearing South 10°50'04" West, an arc length of 151.72 feet to a point of tangency; thence continuing South 21°42'01" West a distance of 34.49 feet to the Southerly line of said addition; thence along said Southerly line North 66°40'32" West a distance of 30.00 feet to a point; thence North 21°42'01" East a distance of 33.64 feet to a point of curvature; thence Northeast along a curve to the left, said curve having a radius of 370.00 feet, a long chord of 139.50 feet bearing North 10°50'04" east, an arc length of 140.34 feet to a point of tangency; thence continuing North 00°01'53" West a distance of 198.07 feet to a point; thence North 89°58'07" East a distance of 438.58 feet to the Point of Beginning.

(13130 W. DODGE RD. OMAHA, NE 68154)

TA-47825