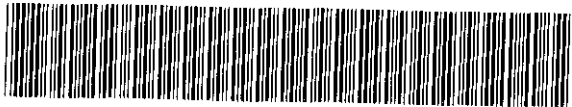


M



MISC 2005141766



NOV 09 2005 08:34 P 9

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/9/2005 08:34:21.68



2005141766

**Title of Document:** Memorandum of Lease

**Date of Document:** October 18, 2005

**Grantor (Lessor):** Fifty Joint Venture c/o PDM, Inc.

**Grantee (Lessee):** Westlake Hardware, Inc.

**Grantee's Mailing Address:** Westlake Hardware, Inc.  
Attention: Legal Department  
14000 Marshall Drive  
Lenexa, KS 66215

**Legal Description:** See Exhibit "A" attached to Memorandum of Lease.

9  
Mick  
9/1

45<sup>50</sup> 47-36767  
CO CO MB  
CO FM

V577194

## MEMORANDUM OF LEASE

This Memorandum of Lease is made this 18<sup>th</sup> day of October, 2005, between Fifty Joint Venture, c/o PDM, Inc., with its mailing address at 8805 Indian Hills Drive, Suite 210, Omaha, NE 68114-4077, hereinafter referred to as "Landlord," and Westlake Hardware, Inc., a Delaware corporation, 14000 Marshall Drive, Lenexa, Kansas, 66215, hereinafter referred to as "Tenant."

### **WITNESSETH:**

Landlord and Tenant have entered into a Lease on the 2nd day of September, 2005, for a portion of real estate located in Douglas County, Nebraska, as is fully described on Exhibit "A" attached hereto and incorporated herein by reference, with Tenant's demised premises being shown on the plat of the shopping center attached hereto and incorporated herein as Exhibit "B."

The term of said Lease is five (5) years, three (3) months, commencing on the 15th day of September, 2005, with Tenant to have an option to renew for three (3) additional terms of five (5) years each.

Among other things the Lease contains the following provisions:

- 1. Landlord's Covenants with Respect to the Parking and Common Areas and the Shopping Center.** Landlord covenants in no event shall (a) the ratio of the number of parking spaces available for standard size American cars to the amount of square footage of ground floor space within the buildings comprising the Shopping Center be reduced below three (3) parking spaces for each 1,000 square feet of gross leasable area, unless such reduction is caused by Tenant's use of the Outdoor Selling Space, (b) there be any interference in the access to the Demised Premises from the abutting public thoroughfares and the parking and common areas to such degree as to preclude or materially adversely affect such access, or (c) the visibility of the Demised Premises from the parking and common areas and from the abutting public thoroughfares be materially obstructed by the construction of additional buildings or remodeling of existing buildings within the Shopping Center.
- 2. Tenant's Outdoor Selling Space.** Tenant shall have the exclusive use of a portion of the sidewalk in front of the Demised Premises as shown on Exhibit B, for use in storing or selling merchandise for year round sales provided pedestrian traffic is not materially obstructed, and shall have the exclusive use of that portion of the outside parking lot area as shown on Exhibit B surrounding the Demised Premises to conduct special and seasonal sales, promotions, and lawn and garden sales ("Outdoor Selling Space"). Tenant shall have the right to store merchandise behind the Demised Premises within the area shown on Exhibit B and install a form of security (fence or storage building) as needed. Tenant may at Tenant's expense relocate the existing handicap parking space(s) to the row of parking just north of the designated Outdoor Selling Space to accommodate the Outdoor Selling Space. Landlord agrees to cooperate with the Tenant's efforts to obtain any necessary variances, licenses or permits required for Tenant to exercise its rights under this Section 3.3 of this Lease,

provided there is no cost or expense to Landlord or that Tenant agrees to reimburse Landlord for all such costs and expenses. Landlord agrees and understands that this Section 3.3 is a material part of this Lease and without the described Outdoor Selling Space, Tenant would not be entering this Lease. In the event Tenant is precluded from exercising its rights under this Section 3.3 due to any cause which is not a result of Landlord's or Landlord's agent's actions, Tenant's sole remedy against Landlord shall be the right to terminate this Lease upon sixty (60) days' prior written notice, provided however that other than tenants of the Shopping Center exercising or attempting to exercise common area rights over the designated Outdoor Selling Space shall not constitute Landlord's actions for purposes of this sentence.

**3. Prohibited Uses in Shopping Center.** As a material consideration for Tenant to enter into this Lease for the Demised Premises, Landlord agrees that (except for any current tenants and their successors (successors being defined as successors to the current tenants, and not including new lessees of Landlord), assigns, and sublessees where Landlord does not have the control or the right to control the use of the premises occupied by the current tenant or its successor, assignee or sublessee neither Landlord nor any person or entity controlled by Landlord shall use, lease or permit the use, leasing or subleasing of, or sell any space in or any portion of the Shopping Center for any of the following uses:

- a. a pornographic bookstore, cinema, video store, massage parlor, modeling studio or similar business which would tend to injure the family oriented reputation of the Shopping Center;
- b. topless/bottomless nightclub or restaurant or similar venue for adult entertainment;
- c. roller skating rink;
- d. gaming hall;
- e. nightclub, bar or dance hall;
- f. flea market, thrift shop, swap meet or similar enterprise;
- g. manufacturing or processing plant;
- h. church;
- i. bowling alley;
- j. cinema or theater;
- k. fitness center or gym located within the portion of the Shopping Center currently operating as a "No Frills" grocery store, regardless of size; nothing in this subsection k shall preclude a fitness center or gym in any

other portion of the Shopping Center;

- l. any use of any medium that might constitute a nuisance such as loud speakers, sound amplifiers, phonographs, radios, televisions or any other sound producing device which will carry sound outside of the respective premises of the Shopping Center; and
- m. any use within the portion of the Shopping Center currently operating as a "No Frills" grocery store, which would require a disproportionately greater number of parking spaces than those being used currently by "No Frills" grocery store or would be typically required or utilized by a 73,000 square foot full-service supermarket and/or discount department store retailer and which adversely affects Tenant's interest by materially reducing Tenant's parking areas available at the Commencement Date of this Lease. For purposes of this Subsection m, a single restaurant within the "No Frills" Premises of no greater than 10,000 square feet of gross leaseable space would be an acceptable use.

**4. Exclusives.** Landlord now owns or controls all the property described in Exhibit A and attached hereto. With respect to all of said property, and with respect to any real property which hereafter Landlord may develop in common with or add to the Shopping Center (excluding Lots 1 and 2 Spring Valley Replat 2, Landlord covenants that it will not (except as to the Tenant and any other current tenants in the Shopping Center and their successors (successors being defined as successors to the current tenants, and not including new lessees of Landlord), assigns, and sublessees where Landlord does not have the control or the right to control the use of the premises occupied by the current tenants or their successors, assigns or sublessees) construct or lease a building thereon or sell or lease any of such property or permit the use of any such property for the conduct of any store or business, (whether separately or as a part of another entity) which sells hardware, paint, home improvement supplies or lawn and garden as a primary use of its business. The covenants, conditions, and restrictions contained in this Section are for the benefit of the Demised Premises, and shall run with the land and inure to and pass with the said property, and are intended to be binding on any and all successive owners of the land herein restricted. Landlord covenants that in the event Landlord shall hereafter sell the real property referred to in this Section or any portion thereof, or any interest therein, it will impose or cause to be imposed on the documents of transfer a restriction preventing and prohibiting the grantee or any future owner from using the property so sold in violation of the foregoing restrictive provisions. In the event violation of any of the restrictive covenants hereinabove set forth in this Section continues for more than one hundred eighty (180) days, Tenant, in addition to any other right or remedy it may have as a result of such violation, shall have and is hereby granted an option to terminate this Lease upon written notice to Landlord.

***IN WITNESS WHEREOF***, the parties hereto have caused this Memorandum of Lease to be executed for the purpose of providing an instrument for recording.

**Landlord:**

**FIFTY JOINT VENTURE, a Nebraska General Partnership**

**By: Venture-50, Inc., a Nebraska Corporation  
c/o PDM, INC.**

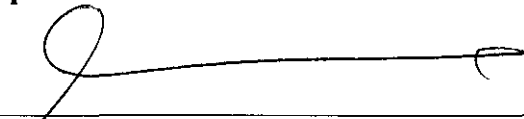
By: 

Printed Name: JEFFREY M. KEATING

Title: VICE PRESIDENT

Date: 10-20-05

**LERNER FIFTY PARTNERSHIP, a Nebraska General Partnership**

By: 

Printed Name: Salvador Cruz

Title: Partner

Date: October 18, 2005

**Tenant: WESTLAKE HARDWARE, INC.**

By: 

Printed Name: Anne W Elsperry

Title: Jr. V. P.

Date: 10-2-05

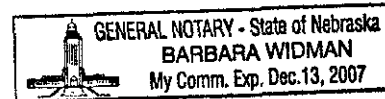
STATE OF NEBRASKA }  
 } ss:  
COUNTY OF Douglas }

I, a Notary Public, do hereby certify that Salvatore Carta, personally known to me to be the Partner of Leanna Fitzpatrick's the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the same instrument as Partner of said Partnership, pursuant to proper authority for the joint venture, as his/her free act and deed and the free and voluntary act and deed of the joint venture, acting in its capacity as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal this 18<sup>th</sup> day of October, 2005.

Barbara Widman  
Notary Public in and for said County and State

My Commission Expires: 12/13/07



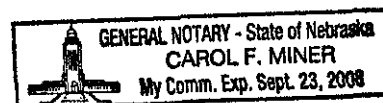
STATE OF NEBRASKA }  
 } ss:  
COUNTY OF DOUGLAS }

I, a Notary Public, do hereby certify that JEFFERY M. KEATING, personally known to me to be the VICE PRESIDENT of VENTURE-50, INC. the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the same instrument as VICE PRESIDENT of said CORPORATION, pursuant to proper authority for the joint venture, as his/her free act and deed and the free and voluntary act and deed of the joint venture, acting in its capacity as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal this 20<sup>th</sup> day of OCTOBER, 2005

Carol F. Miner  
Notary Public in and for said County and State

My Commission Expires: 9/23/08



STATE OF KANSAS        }  
                                      }ss:  
COUNTY OF JOHNSON    }

I, a Notary Public, do hereby certify that Anne W. Elsberry, personally known to me to be the Sr. Vice President of Westlake Hardware, Inc., the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the same instrument as Sr. Vice President of said Westlake Hardware, Inc., and caused the corporate seal of said corporation to be affixed, pursuant to the authority given by the Board of Directors of said corporation, as his/her free act and deed and the free and voluntary act and deed of the corporation, acting in its capacity as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal this 2<sup>nd</sup> day of October, 2005

Michelle Dove  
Notary Public in and for said County and State

My Commission Expires:

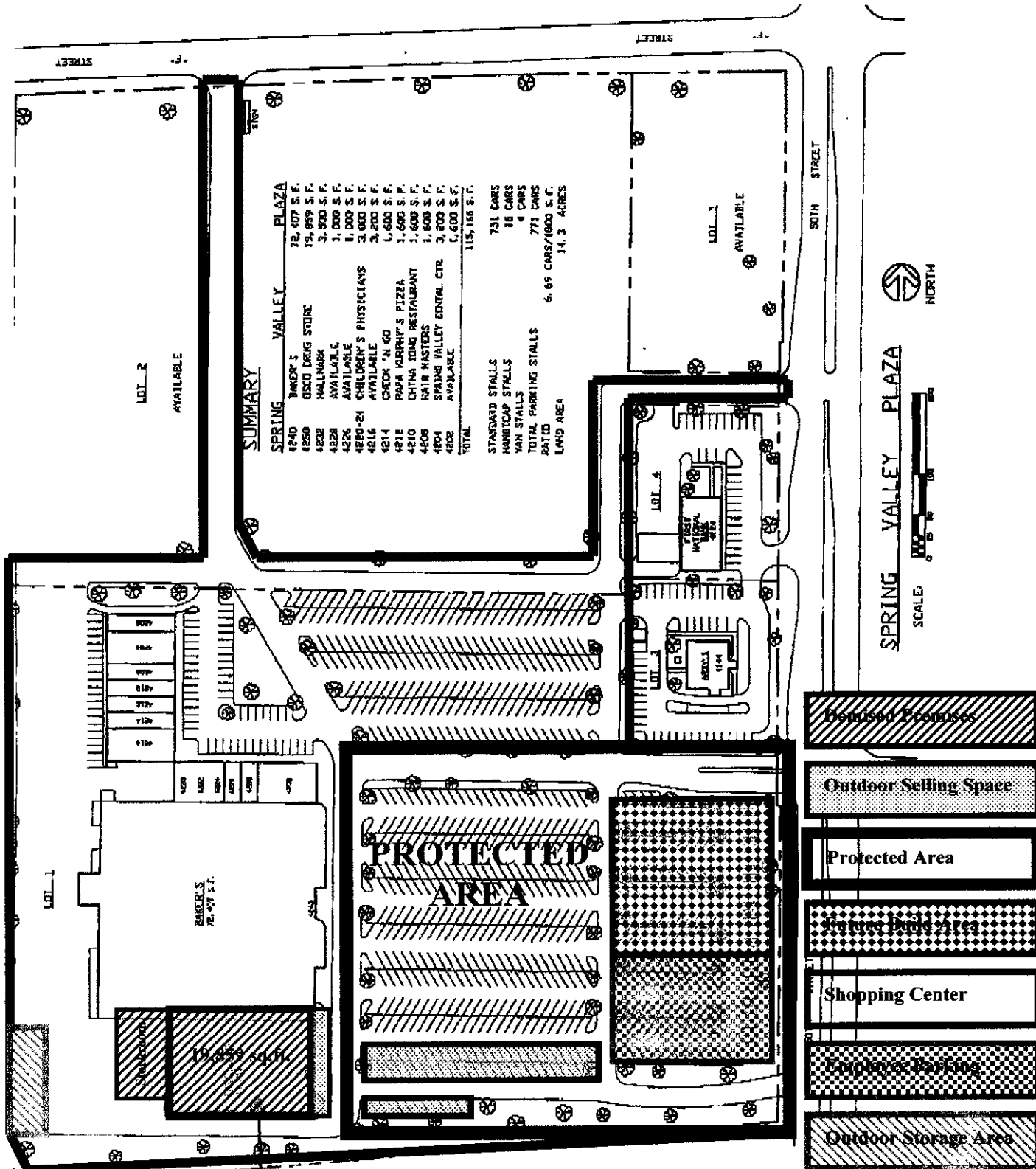
**MICHELLE DOVE**  
Notary Public - Notary Seal  
State of Kansas  
My Appointment Expires 5-14-09

**MEMORANDUM OF LEASE - EXHIBIT A  
LEGAL DESCRIPTION OF SHOPPING CENTER**

Lot 1, Spring Valley Plaza, an Addition to the City of Omaha, in Douglas County, Nebraska together with rights of ingress and egress as contained in the Declaration recorded June 14, 1991 in Book 967 at page 23 of the Miscellaneous Records of Douglas County, Nebraska.



# MEMORANDUM OF LEASE - EXHIBIT B SITE PLAN OF SHOPPING CENTER



**SUMMARY**

SPRING VALLEY PLAZA	PLAZA
4240 BAKER'S	72,407 S.F.
4250 OSCO DRUG STORE	19,899 S.F.
4232 HALLMARK	3,900 S.F.
4228 AVAILABLE	1,000 S.F.
4226 AVAILABLE	1,000 S.F.
4220-24 CHILDREN'S PHYSICIANS	3,000 S.F.
4216 AVAILABLE	3,200 S.F.
4214 CHECK 'N GO	1,600 S.F.
4212 PAPA MERRY'S PIZZA	1,600 S.F.
4210 CHINA KING RESTAURANT	1,600 S.F.
4208 PAIR MASTERS	1,600 S.F.
4204 SPRING VALLEY CENTRAL CTR.	3,200 S.F.
4202 AVAILABLE	1,600 S.F.
<b>TOTAL</b>	<b>115,168 S.F.</b>

STANDARD STALLS	731 CARS
HANDICAP STALLS	16 CARS
VAH STALLS	4 CARS
<b>TOTAL PARKING STALLS</b>	<b>771 CARS</b>
<b>RATIO</b>	<b>6.65 CARS/1000 S.F.</b>
<b>LAND AREA</b>	<b>14.3 ACRES</b>

**SPRING VALLEY PLAZA**

SCALE: 1" = 100'

NORTH