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LANCASTER COUNTY, NE

**AMENDED & RESTATED  
PARTY WALL AGREEMENT**

This Amended & Restated Party Wall Agreement (the "Agreement") is made and entered into by and between Center Associates, LLC, a Nebraska limited liability company ("Center"), and Kalwein Partnership, a Nebraska general partnership ("Kalwein") all as of this 21 day of OCTOBER, 2003.

WHEREAS, Center is the owner of Lots 9 through 16 inclusive, Block 41, Original Plat, Lincoln, Lancaster County, Nebraska (the "Center Property"); and

WHEREAS, Kalwein is the owner of Lots 7 and 8, Block 41, Original Plat, Lincoln, Lancaster County, Nebraska (the "Kalwein Property"); and

WHEREAS, there is currently constructed on, below, above and along the eastern 1.50 feet, plus or minus, of said Lot 8, and on, below, above and along the western 1 foot, plus or minus, of said Lot 9 an above and below ground common wall together with underground footings supporting said common wall (collectively the "Common Wall"); and

WHEREAS, the rights, duties and obligations of the parties hereto in connection with the use, maintenance and repair of the Common Wall are currently governed by the terms and provisions of a Party Wall Agreement recorded on December 2, 1880 in Book C, Page 378 on the records of Lancaster County, Nebraska, as amended by a Party Wall Agreement recorded on July 30, 1886 in Book 24, Page 205, on the records of Lancaster County, Nebraska (collectively the "Old Party Wall Agreements"); and

WHEREAS, Center desires to construct a new building on the Center Property, and in connection therewith utilize the Common Wall as hereinafter set forth; and

WHEREAS, the parties hereto desire to terminate the Old Party Wall Agreements, and enter into this Agreement for purposes of governing their future respective rights, duties and obligations in connection with ongoing the use, maintenance and repair of the Common Wall.

B41 PLZ 7-16

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

1. **Termination of Old Party Wall Agreement.** The parties hereto do hereby acknowledge and agree that following the execution of this Agreement by the parties hereto, and the recording of this Agreement with the Register of Deeds of Lancaster County, Nebraska, that the Old Party Wall Agreement shall be rendered null and void and of no force or effect, and shall be deemed to have been entirely replaced and superceded by the terms and provisions of this Agreement.

2. **New Construction.** Kalwein hereby consents to, and agrees that Center may, at Center's sole cost and expense, construct a new reinforced concrete block wall adjacent to and abutting the east side of the Common Wall from the top of the footings located on and forming a part of the current Common Wall, all along the eastern boundary of the Common Wall, to a point that is approximately 1 foot, plus or minus, below the current finished floor of the building currently located on said Lot 8 (the "New Retaining Wall"); and in connection therewith, may pin said New Retaining Wall to the existing footings forming a part of the east side of the Common Wall, and block the west side of the New Retaining Wall against any portion of the Common Wall that lies below the top of the New Retaining Wall.

Additionally, Kalwein hereby acknowledges, agrees, and consents to the construction of a new above grade wall by Center, at Center's sole cost and expense, along the western boundary of said Lot 9 from the top of the New Retaining Wall referred to above all along the western side of said Lot 9 to a point above the Retaining Wall, as determined by Center, in its sole discretion (the "Above Grade West Wall of Lot 9"); provided, however, that in connection with the construction of the Above Grade West Wall of Lot 9, Center shall maintain a dead air space of approximately 6 inches, plus or minus, between the west side of the Above Grade West Wall of Lot 9 and the east side of the Common Wall.

Additionally, Kalwein acknowledges, agrees and consents to the construction and attachment of a new roof by Center, at Center's sole cost and expense, to the east side of the Common Wall for purposes of constructing a new roof over the new facility to be constructed on the Center Property by Center, said roof over the new facility to be constructed by Center on the Center Property shall be attached to the Common Wall at a point that is no more than four (4) feet above the top of the new roof that is to be constructed by Center on the Center Property.

Additionally, Kalwein acknowledges, agrees and consents to the attachment of a new finish material by Center, at Center's sole cost and expense, to the unfinished southeast corner of the Common Wall from a point at which the southeast corner of the Common Wall is level with the grade of the southeast corner of the Common Wall to a point that is fifteen (15) feet above the grade of the southeast corner of the Common Wall.

3. **Ongoing Maintenance & Repair.** Center shall be solely and separately liable and responsible for the maintenance and repair of: (i) the roof located on the Center Property

including, but not limited to, all points at which the roof located on the Center Property attaches to the Common Wall; (ii) the New Retaining Wall to be constructed by Center pursuant to paragraph 2 above; (iii) the new Above Grade West Wall of Lot 9 to be constructed by Center pursuant to paragraph 2 above; and (iv) the exterior eastern portion of the Common Wall that lies below the roof located on the Center Property.

Kalwein shall be solely and separately liable and responsible for the ongoing maintenance and repair of: (i) the roof located on the building constructed on the Kalwein Property; and (ii) the interior western portion of the Common Wall.

Except as set forth above, each of the parties shall be responsible and liable for one-half (1/2) of all other expenses associated with the ongoing maintenance and repair of the Common Wall, and all foundations forming a part of the Common Wall.

In the event that either party fails to properly maintain the Common Wall in accordance with the terms and provisions of this Agreement (the "Non-Maintaining Party"), then following thirty (30) days written notice from the other party to this Agreement to the Non-Maintaining Party of such failure, the other party may proceed to repair and/or maintain the Common Wall in accordance with the terms and provisions of this Agreement; and upon the completion of such repair and/or maintenance, the Non-Maintaining Party shall pay to the party performing such maintenance and/or repairs one-half (1/2) of the costs and expenses incurred by the party performing such maintenance and/or repairs, together with interest thereon at the then rate of interest charged for delinquent real estate taxes in Lincoln, Lancaster County, Nebraska from the date that such expense was incurred by the party performing such maintenance and/or repairs to the Common Wall.


4. **Limited Cross Easements.** Center hereby grants to Kalwein a limited easement on, over, below and above Lot 9, for the sole purpose of maintaining and/or repairing the Common Wall in accordance with the terms and provisions of this Agreement. Kalwein hereby grants to Center a limited easement on, over, below and above Lot 8 for the sole purpose of maintaining and/or repairing the Common Wall in accordance with the terms and provisions of paragraph 3 of this Agreement. Any damage caused by the negligence or intentional action of either party to the property of the other party in connection with the exercise of the easement rights set forth herein shall be repaired by the party causing such damage.

5. **Signs.** No signs shall be placed on the exterior of the exterior eastern portion of the Common Wall without the prior written consent of all parties hereto.

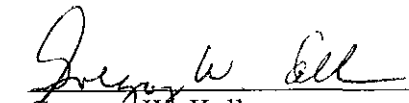
6. **Governing Law and Binding Effect.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be deemed to be a covenant upon, and shall run with the Center Property and the Kalwein Property.

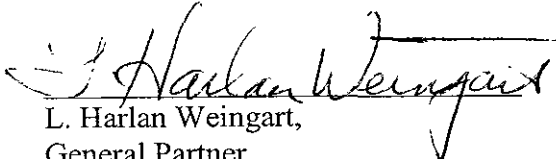
IN WITNESS WHEREOF, the parties hereto have executed this Agreement all as of this  
28 day of October, 2003.

Center Associates, LLC,  
a Nebraska limited liability company

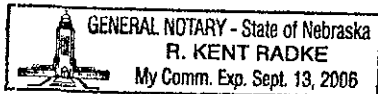
By:   
Russell Brehm,  
Managing Member

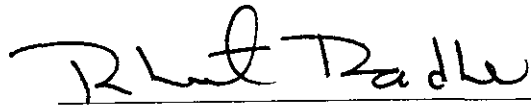
Kalwein Partnership,  
a Nebraska general partnership

By:   
Gregory W. Kallos,  
General Partner

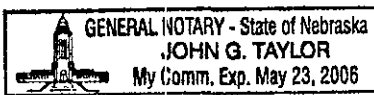
By:   
L. Harlan Weingart,  
General Partner

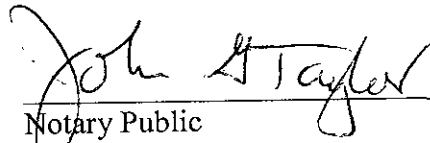
Subscribed, sworn to and acknowledged before me this 28 day of October,  
2003 by Russell Brehm, Managing Member of Center Associates, LLC, a Nebraska limited  
liability company, for and on behalf of said company.



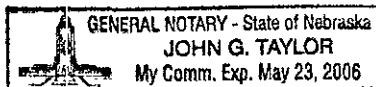
  
Notary Public

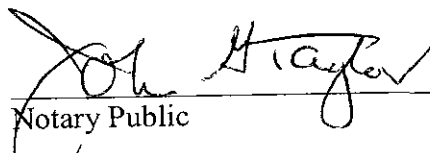
Subscribed, sworn to and acknowledged before me this 21 day of October,  
2003 by Gregory W. Kallos, General Partner of Kalwein Partnership, a Nebraska general  
partnership, for and on behalf of said partnership.



  
Notary Public

Subscribed, sworn to and acknowledged before me this 21 day of October,  
2003 by L. Harlan Weingart, General Partner of Kalwein Partnership, a Nebraska general  
partnership, for and on behalf of said partnership.



  
Notary Public

**CONSENT, APPROVAL & SUBORDINATION**

Cornhusker Bank, as Trustee and Beneficiary under that certain Deed of Trust filed of record with the Register of Deeds of Lancaster County, Nebraska on December 15, 1997 as Instrument Number 97-51793, as modified by a Modification of Deed of Trust recorded on July 27, 2001 as Instrument Number 2001-42101 with the Register of Deeds of Lancaster County, Nebraska (collectively the "First Deed of Trust"); and Ward F. Hoppe, as Trustee, and Cornhusker Bank, as Beneficiary, under that certain Deed of Trust filed of record with the Register of Deeds of Lancaster County, Nebraska on August 14, 2001 as Instrument Number 2001-46203 (the "Second Deed of Trust"), do by their signatures below, hereby:

1. Consent to and approve of the above and foregoing Amended & Restated Party Wall Agreement; and
2. Acknowledge and agree that the First Deed of Trust and the Second Deed of Trust shall be junior, subordinate, and inferior to the above and foregoing Amended & Restated Party Wall Agreement, the same as if the above and foregoing Amended & Restated Party Wall Agreement had been filed of record with the Register of Deeds of Lancaster County, Nebraska prior to the time that the First Deed of Trust and the Second Deed of Trust were filed with the Register of Deeds of Lancaster County, Nebraska.

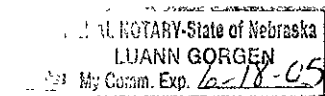
Dated Oct 10, 2003.

Cornhusker Bank, Beneficiary & Trustee

By: John F. Dittman, Pres.  
Authorized Representative

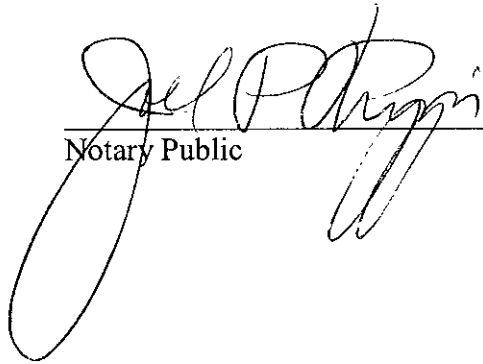
By: Ward F. Hoppe Trustee  
Ward F. Hoppe, Trustee

Subscribed, sworn to and acknowledged before me this 10 day of October, 2003 by John F. Dittman, President of Cornhusker Bank, for and on behalf of said Bank.



Luann Gorgen  
Notary Public

Subscribed, sworn to and acknowledged before me this 13 day of October,  
2003 by Ward F. Hoppe, Trustee.

  
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Notary Public

