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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

PREPARED BY AND RETURN TO: Nicolas Abou-Assaly Simmons Perrine Moyer Bergman PLC
115 – 3rd St. S.E., Suite 1200,Cedar Rapids, IA 52401, (319) 366-7641

AGREEMENT

THIS AGREEMENT is made and entered into effective December 4, 2009, by and among David K. Fry (the "Tenant"), Kenneth L. Fry as Trustee of Kenneth L. Fry Trust dated May 22, 1998 and Laura Ann Fry as Trustee of the Laura Ann Fry Trust dated May 22, 1998 (collectively, the "Mortgagees") and Marcheta R. Cooey (the "Landlord").

RECITALS

A. Mortgagees are the holders of a mortgage from the Tenant as borrower, which mortgage covers improvements only (the "Mortgaged Property") on certain real estate legally described as:

Lot 7 of the Plat of Hartwick Lake Club West Subdivision of Part of the S ½ of Section 24, and of Part of the N ½ of Section 25, all in Township 88 North, Range 5 West of the Fifth P.M., Delaware County, Iowa, According to Plat recorded in Book 5 Plats, Page 40 of the records of the Delaware County, Iowa, Recorder,

And

Lot 8 of the Plat of Hartwick Lake Club West Second Subdivision of Part of the SE ¼ of the SW ¼ of Section 24, and of Part of the NE ¼ of the NW ¼ of Section 25, all in Township 88 North, Range 5 West of the Fifth P.M., Delaware County, Iowa, According to Plat recorded in Book 1999 at Page 3326 of the records of the Delaware County, Iowa, Recorder,

(the "Real Estate").

B. By virtue of that certain lease dated August 27, 1994, and all addenda and amendments thereto (the "Lease"), between the Landlord and the Tenant, the Tenant has leased the Real Estate from the Landlord.

C. The Mortgagees desire to have certain assurances with regard to the Lease and the Mortgaged Property.

NOW, THEREFORE, for value received and in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. **Amendment**. The Landlord and Tenant acknowledge and agree that all the rights, benefits and privileges of "Lender" pursuant to Amendment No. 1 to Lease, dated July 21, 2004 ("Amendment") shall apply to and inure to the benefit of Mortgagees and that Mortgagees, as intended third-party beneficiaries, shall have the right to rely on said Amendment and to fully enforce its provisions against Landlord and Tenant notwithstanding the fact that Mortgagees are not a party to said Amendment.

2. **Option to Buy**. In the event that the Tenant's interest in the Mortgaged Property shall at any time vest in the Mortgagees or the Mortgagees succeed to the Tenant's rights under the Lease for any reason whatsoever, Landlord agrees that Mortgagees shall also automatically succeed to the rights of the Tenant in the First Option to Buy between Landlord and Tenant, dated April 21, 1995 and filed for record June 2, 1995 in Book 5 at Page 152 of the records of the Delaware County, Iowa, Recorder.

3. **Tenant's Representations**. The Tenant represents and warrants to Mortgagees that:

A. The Lease is in full force and effect;

B. Neither the Landlord nor the Tenant is in default in the performance of or compliance with any provision of the Lease;

C. The Tenant has not received any notice of default or termination of the Lease;

D. The Lease is a complete statement of the agreement between Landlord and Tenant with respect to the leasing of the Real Estate; and

E. The Tenant is the sole owner of the leasehold estate and the Mortgaged Property.

4. **Notices**. Any notice, demand or consent under the Lease or this Agreement shall be in writing and may be given or mailed by mailing the same by registered or certified mail, return receipt requested, addressed as follows:

a. If to Tenant, to: David Fry, 3330 Newcastle Rd., Marion, IA 52302

b. If to Mortgagees, to: Kenneth L. Fry, Trustee and Laura Ann Fry, Trustee
26435 212th Avenue, Delhi, IA 52223

c. If to Landlord, to: Marcheta R. Cooey, 2607 – 220th Avenue, Delhi, IA 52223

Any party may designate a new address by notice in writing to the other parties. Any notice given in accordance with this Agreement shall be effective upon deposit in the United States mail.

5. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties.

6. **Applicable Law**. This Agreement shall be governed by, and construed under the laws of the State of Iowa.

7. **Severability**. Should any provision of the Agreement be construed or declared invalid, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect as if this Agreement had been executed with such invalid portion eliminated.

8. **Construction of Terms**. Words and phrases herein, including the acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

David K. Fry, TENANT

Kenneth L. Fry as Trustee of Kenneth L. Fry Trust dated May 22, 1998, MORTGAGEE

Marchetta Cooey, LANDLORD

Laura Ann Fry as Trustee of the Laura Ann Fry Trust dated May 22, 1998, MORTGAGEE

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

This instrument was acknowledged before me on December 31, 2009 by David K. Fry.

NOTARY PUBLIC - STATE OF IOWA

BRENDA S. CARNEY
COMMISSION NO. 198699
MY COMMISSION EXPIRES
SEPTEMBR 29, 2010

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

This instrument was acknowledged before me on December 31, 2009 by Marcheta R. Cooey.

NOTARY PUBLIC - STATE OF IOWA

Marlys Rees
COMMISSION NUMBER 191318
My Commission Expires
7-24-2012

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

This instrument was acknowledged before me on December 31, 2009 by Kenneth L. Fry as Trustee of the Kenneth L. Fry Trust dated May 22, 1998 and Laura Ann Fry as Trustee of the Laura Ann Fry Trust dated May 22, 1998.

NOTARY PUBLIC - STATE OF IOWA

BRENDA S. CARNEY
COMMISSION NO. 198699
MY COMMISSION EXPIRES
SEPTEMBR 29, 2010