

19194DW

**SECOND AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

This Second Amendment to Declaration of Easements, Covenants, Conditions and Restrictions (this "Second Amendment") is made effective the 5th day of January, 2018 (the "Effective Date") by **HEB GROCERY COMPANY, LP**, a Texas limited partnership ("HEB"), **COLLEGE STATION MARKETPLACE, LP**, a Texas limited partnership ("CSMarketPlace"), and the parties identified on the attached signature pages (collectively, the "CSMP Parcel Owners").

RECITALS:

WHEREAS, CSMarketPlace and HEB entered into that Declaration of Easements, Covenants, Conditions and Restrictions dated February 10, 2010, and which was recorded as Document 01054761 in Volume 9530 Pages 98 through 144 in the Official Records of Brazos County, Texas, and amended by the First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions dated October 7, 2011, recorded as Document 01103816 in Volume 10381, Pages 67 through 81 in the Official Records of Brazos County, Texas (collectively, the "REA");

WHEREAS, HEB currently owns all of that certain real property defined in the REA as the HEB Parcel;

WHEREAS, CSMarketPlace and the CSMP Parcel Owners together own at least seventy-five percent (75%) of the land area of the CSMarketPlace Parcel;

WHEREAS, CSMarketPlace and HEB desire to grant a variance to certain restrictions relating to the allowable Maximum Floor Area on Lot D5, also known as Lot 19A, Block 3, Tower Point Phase 7B, City of College Station, according to plat recorded in Volume 13468, Page 206, Official Records of Brazos County, Texas; and

WHEREAS, under Section 10.6 of the REA, the REA may be amended by the written and recorded agreement of the Owners of seventy-five percent (75%) of the land area of the HEB Parcel and seventy-five percent (75%) of the land area of the CS MarketPlace Parcel (excluding any portion of Area D west of the Demarcation Line as shown on the Site Plan).

NOW, THEREFORE, CSMarketPlace, HEB, and the CSMP Parcel Owners hereby declare, adopt, grant, and establish the following modifications to the REA as more fully set forth in this Second Amendment.

1. The foregoing recitals are incorporated into this Second Amendment as if fully set forth herein. All terms used in this Second Amendment not otherwise defined herein shall have the same definition and meaning as set forth in the REA.

2. Notwithstanding the 5,000 square foot Maximum Floor Area described in the Building Restriction Plan for Lot D5, a variance (the "Permitted Use Variance") is hereby granted from the provisions of the Building Restriction Plan to permit solely the operation on Lot D5 of an AutoZone store not to exceed 7,500 square feet (the "Permitted Use"); subject to the limitations, terms, provisions and conditions set forth herein.

3. The Permitted Use Variance shall automatically expire and shall be null and void if AutoZone does not open for business on Lot D5 within three hundred sixty-five (365) days from the Effective Date of this Second Amendment (the "Permitted Use Variance Expiration Date"). In the event that the AutoZone opens for business on Lot D5 prior to the Permitted Use Variance Expiration Date, then the Permitted Use Variance shall terminate and be null and void upon the date on which AutoZone ceases to operate on Lot D5.

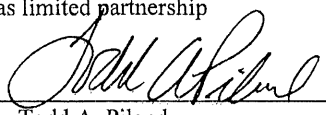
4. Except as otherwise specifically set forth in this Second Amendment, the REA shall remain in full force and effect. If there shall be any inconsistency between the REA and the Second Amendment, the terms of this Second Amendment shall control. Upon execution and recordation of this Second Amendment the REA and Second Amendment shall thereafter be referred to collectively as the REA.

5. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument and shall be binding upon, and shall inure to the benefit of, each of the undersigned individually as fully and completely as if all had signed one instrument.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the Effective Date of this Second Amendment.

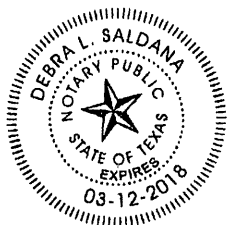
HEB GROCERY COMPANY, LP,
a Texas limited partnership


By: 
Name: Todd A. Piland
Title: Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF BEXAS §

Before me on this day personally appeared Todd A. Piland, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Executive Vice President of HEB GROCERY COMPANY, LP, a Texas limited partnership, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 2nd day of December, 2017.




Notary Public in and for the State of Texas

Debra L. Saldana
Printed Name of Notary
My Commission Expires:

COLLEGE STATION MARKETPLACE, LP,
A Texas limited partnership

By: College Station Marketplace GP, LLC,
a Texas limited liability company, as General Partner

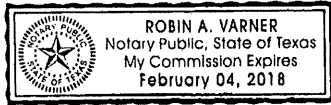
By: [Signature]
Name: Andy Weiner
Title: President

Owner of Lots C5, B1, B3, B4, B5, D5 and a portion of D1 within the Demarcation Line as depicted on the Site Plan (15.819 acres)

STATE OF TEXAS §
 §
COUNTY OF Harris §

Before me on this day personally appeared Andy Weiner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as President of College Station Marketplace GP, LLC, a Texas limited liability company, the general partner of COLLEGE STATION MARKETPLACE, LP for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 22 day of September, 2017.



[Signature]
Notary Public in and for the State of Texas
Robin A. Varner
Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

CONSENT AND SUBORDINATION OF LIENHOLDER

Lienholder, as the holder of the lien on a portion of the CS MarketPlace Parcel owned by College Station MarketPlace, L.P., consents to the foregoing Second Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the REA as amended by such Second Amendment, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the REA as amended by such Second Amendment.

THE BANK & TRUST OF BRYAN/COLLEGE STATION

By: Nora Thompson
Name: Nora Thompson
Title: Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Nora Thompson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Executive Vice President of THE BANK & TRUST OF BRYAN/COLLEGE STATION for the purposes and consideration therein expressed, and in the capacity therein stated.


Given under my hand this 20 day of December, 2017.



[Signature]
Notary Public in and for the State of Texas
Lisa Lane
Printed Name of Notary
My Commission Expires: May 14, 2018

CSMP PARCEL OWNER:

TP-CS Retail, LLC

By: 
Name: OMAR PETER AJLOUNI
Title: MANAGER

Owner of Lot B1, depicted on the Site Plan (1.92 acres).

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA §

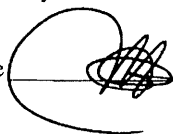
COUNTY OF Santa Clara

On ~~October~~ February 20th, 2018 before me, Nichelle Russien (Notary Public)
(insert name and title of the officer)

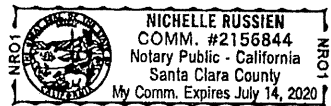
personally appeared Omar Peter Ajlouni,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



[signatures continue on following page]

CSMP PARCEL OWNER:

353-365 Broadway Realty LLC

By: [Signature]
Name: Marc Kornitzky
Title: Manager

Owner of Lot 213 depicted on the Site Plan (1.31 acres).

STATE OF ~~TEXAS~~ Massachusetts
COUNTY OF Essex

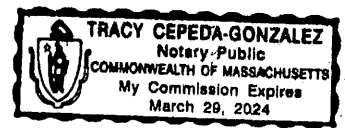
Before me on this day personally appeared Marc Kornitzky, Manager, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Manager of 353-365 Broadway Realty LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 28th day of September, 2017.

[Signature]

Notary Public in and for the State of ~~Texas~~ Massachusetts

Tracy Cepeda-Gonzalez
Printed Name of Notary
My Commission Expires: 3/29/2024



[signatures continue on following page]

CSMP PARCEL OWNER:

The Bank & Trust of Bryan/College Station

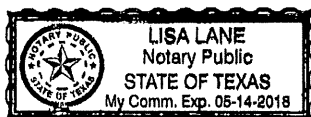
By: _____
Name: JERRY FOX
Title: CHIEF FINANCIAL OFFICER

Owner of Lot C2, depicted on the Site Plan (1.65 acres).

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Jerry Fox, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Chief Financial Officer of The Bank & Trust for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 20 day of December, 2017.



Lisa Lane
Notary Public in and for the State of Texas
Lisa Lane
Printed Name of Notary
My Commission Expires: May 14, 2018

[signatures continue on following page]

CSMP PARCEL OWNER:

Lehtonen Investments II, Ltd.

By: Lehtonen Management, LLC,
a Texas limited liability company, as General Partner

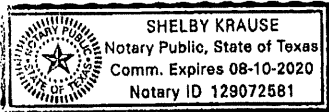
By: [Signature]
Name: Al Lehtonen II
Title: President

Owner of Lot A4, depicted on the Site Plan (1.96 acres).

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Al Lehtonen, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as President of Lehtonen Management LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 8 day of March, 2018



[Signature]
Notary Public in and for the State of Texas

Shelby Krause
Printed Name of Notary
My Commission Expires: 8-10-2020

[signatures continue on following page]

CSMP PARCEL OWNER:

ALMARCO PROPERTIES, LLC,
A Kansas limited liability company

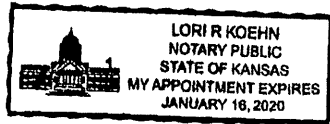
By: *Keith A. Alter*
Keith A. Alter, Managing Member

Owner of Lot 17A, depicted on the Site Plan (.877 acres).

STATE OF KANSAS §
 §
COUNTY OF SEDGWICK §

Before me on this day personally appeared Keith A. Alter, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Managing Member of AlMarCo Properties, LLC, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 5th day of September, 2017.



Lori R. Koehn
Notary Public in and for the State of Kansas
Lori R. Koehn
Printed Name of Notary
My Commission Expires: 1-16-2020

[signatures continue on following page]

CSMP PARCEL OWNER:

JL COLLEGE STATION 889, LLC,
a Delaware limited liability company.

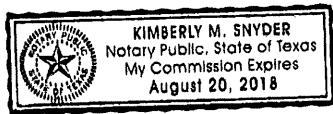
By: [Signature]
Name: TRAVIS SCHWARTZ
Title: SVP- GC

Owner of Lot D-3, depicted on the Site Plan (0.738 acres).

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me on this day personally appeared TRAVIS SCHWARTZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as SVP- GC of JL COLLEGE STATION 889, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 15th day of SEPTEMBER, 2017.



Kimberly M. Snyder
Notary Public in and for the State of Texas
KIMBERLY M. SNYDER
Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

CONSENT AND SUBORDINATION OF LIENHOLDER

Lienholder, as the holder of the lien on Lot 17B, Block 3, Replat of Tower Point Subdivision, Phase 8B, an addition to the City of College Station, according to the Plat recorded in Volume 14076, Page 95, Official Records of Brazos County, Texas, being a portion of the CS Market Place Parcel owned by JL College Station 889, LLC, consents to the foregoing Second Amendment to Declaration of Easements, Covenants, Conditions and Restrictions (the "Second Amendment"), and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the Declaration of Easements, Covenants, Conditions and Restrictions (the "REA"), as amended by such Second Amendment, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the REA as amended by such Second Amendment.

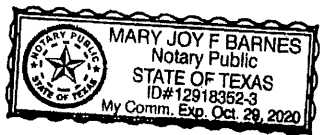
SOUTHSIDE BANK,
a Texas state charter bank

By: *John Wood*
John Wood,
Senior Vice President

STATE OF TEXAS
COUNTY OF TARRANT

NOTARY

The foregoing instrument was acknowledged before me this 29th day of September, 2017, by John Wood, as Senior Vice President of SOUTHSIDE BANK, a Texas state charter bank. He is personally known to me or has produced _____ as identification.



Mary Joy Barnes
Printed Name: MARY JOY F BARNES
Notary Public
My Commission Expires: 10/29/2020

CSMP PARCEL OWNER:

By: John Stimson
Name: John Stimson
Title: Owner

Owner of Lot D4, depicted on the Site Plan (1.17 acres).

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared John Stimson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as John Stimson of CSMP Parcel for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 6th day of September, 2017.



Joan Sims
Notary Public in and for the State of Texas
Joan Sims
Printed Name of Notary
My Commission Expires: April 6, 2019

[signatures continue on following page]

CSMP PARCEL OWNER:

07 - Behame Buys Joseph Roman

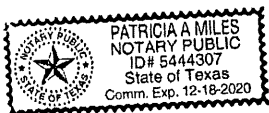
By: [Signature]
Name: Joseph Roman
Title: Owner

Owner of Lot 07, depicted on the Site Plan (1.01 acres).

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Joseph Roman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Owner of Behame Buys, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 20 day of September, 2017.



[Signature]
Notary Public in and for the State of Texas
Patricia A. Miles
Printed Name of Notary
My Commission Expires: 12-18-2020

[signatures continue on following page]

CSMP PARCEL OWNER:

Vaquero Lakeway Fitch Partners, LP,
a Texas limited partnership

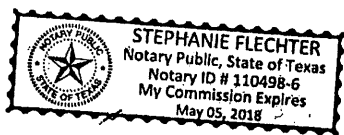
BY: Vaquero Ventures Management,
LLC, its general partner

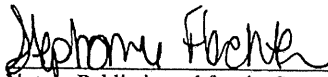
By: 
W.A. Landreth, Manager

Owner of Lot D8, depicted on the Site Plan (1.27 acres).

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Before me on this day personally appeared W.A. Landreth, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Manager of Vaquero Ventures Management, LLC, general partner of Vaquero Lakeway Fitch Partners, LP, a Texas limited partnership, on behalf of such limited partnership, for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand this 27 day of February, 2018.





Notary Public in and for the State of Texas
Stephanie Flechter
Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

CSMP PARCEL OWNER:

Lehtonen Investments II, Ltd.

By: Lehtonen Management, LLC,
a Texas limited liability company, as General Partner

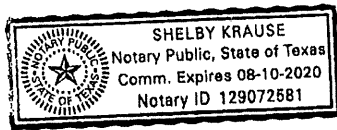
By: 
Name: Al Lehtonen II
Title: President

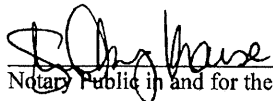
Owner of Lot C3, depicted on the Site Plan (1.787 acres).

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Al Lehtonen, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as president of Lehtonen Management, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 8 day of March, 2018.




Notary Public in and for the State of Texas
Shelby Krause
Printed Name of Notary
My Commission Expires: 8-10-2020

[signatures continue on following page]

**Brazos County
Karen McQueen
County Clerk**

Instrument Number: 1326148

Volume : 14603

ERecordings - Real Property

Recorded On: April 12, 2018 12:59 PM

Number of Pages: 17

" Examined and Charged as Follows: "

Total Recording: \$90.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 1326148
Receipt Number: 20180412000054
Recorded Date/Time: April 12, 2018 12:59 PM
User: Susie C
Station: CCLERK06

Record and Return To:

eRx
8600 Harry Hines Blvd. Ste 300
Dallas TX 75235



STATE OF TEXAS
COUNTY OF BRAZOS

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Brazos County, Texas.

Karen McQueen
County Clerk
Brazos County, TX