

After recordation, return to:

Hinkle Services, Inc.
Attn: Kimberly D. Hinkle
P.O. Box 5914
Edmond, OK 73083

Doc # 2006172021
Bk 10308
Pg 366-376
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Carolynn Caudill
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STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

MUTUAL CROSS ACCESS EASEMENT AGREEMENT

THIS MUTUAL CROSS ACCESS EASEMENT AGREEMENT ("Agreement") made and entered into this the 16th day of November, 2006, by FD-RE, LLC, an Oklahoma limited liability company and all future owners, as owner of Tract I, (hereinafter referred to as "Tract I") and FD-RE, LLC, an Oklahoma limited liability company, as owner of Tract II, (hereinafter referred to as "Tract II") and collectively known as the Parties.

RECITALS:

- A. FD-RE, LLC, is the owner of certain real property located in Oklahoma City, Oklahoma, as more particularly described on Exhibit "A" attached hereto and made a part hereof ("Tract I").
- B. FD-RE, LLC is the owner of certain real property located in Oklahoma City, Oklahoma, as more particularly described on Exhibit "B" attached hereto and made a part hereof ("Tract II").
- C. The west 333' of the south boundary of Tract I and the north boundary of Tract II abut one another. The adjoining boundary lines of both properties will be utilized to form a 30' wide access/ingress paved driveway (the "Common Access Drive") to both properties from Kelley Avenue as shown on Exhibit "C" - Site Plan.
- D. The parties desire to enter into this Agreement to establish certain non-exclusive perpetual easement rights.

TERMS AND CONDITIONS:

In consideration of the mutual benefits each party will derive from this Agreement, and of One Dollar and other valuable consideration, the Parties hereby agree as follows:

1. **Total Site.** As used herein, the term and expression "Total Site" shall mean Tract I and Tract II combined.

11/33

2. **Grant of Driveway Easement.**

2.1 The Parties mutually grant each other, their assigns, successors, employees, agents, licensees, and invitees, the permanent, non-exclusive easement to use its portion of the Common Access Drive for purposes of ingress and egress to and from Kelley Avenue. Pedestrian and vehicular traffic including trucks and trailers and service vehicles making deliveries to any current or future tenant on the Total Site shall have the right to use the Common Access Drive.

3. **Other Easement Purposes.** As used herein, the term and expression "Other Easement Purposes" shall refer to:

3.1 the creation of any utility easements and the construction, installation, and maintenance of utility services over, under and across the Total Site to ensure the delivery of adequate and efficient utility services to both properties;

3.2 drainage easements over and across the Total Site to the extent necessary to comply with applicable drainage ordinances; and to ensure adequate drainage from the Total Site to off-site collection channels; and,

3.3 any purpose reasonably necessary to enable the Parties to perform any of the provisions of this Agreement, which a defaulting party has failed to perform or cure.

4. **Grant of Limited License.** Each Party grants to the other a license, right and privilege to enter upon any of the easement areas described herein ("Easement Areas") for purposes reasonably required to construct, install, maintain, repair and replace improvements located or to be located upon the Total Site as contemplated herein.

5. **Unimpaired Access.** Each Party understands and agrees that, except as incidental to and temporarily during the construction of or repair to any facility located on either property, no barriers, impediments, or obstructions of any kind shall be erected, built or placed by, at the directions of, or with the permission of any of the parties hereto on the 30' wide Common Access Drive, and no other action shall be taken to prohibit, unreasonably restrict, or discourage the free and uninterrupted flow of both pedestrian and vehicular traffic on, over and across the Easement Area. Each party hereto agrees to use commercially reasonable efforts to keep trucks and trailers of either party and/or their tenants, and third parties delivering inventory, supplies, merchandise and other goods to the respective properties from parking on the other party's property. Each party hereto agrees to always maintain parking on its property sufficient to satisfy requirements of applicable governmental authorities.

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6. **Maintenance.** Each party and their respective tenants, licensees, permittees, successors or assigns, shall assume all maintenance and repair and removal of trash and debris from their respective portion of the Common Access Drive.
 7. **Right to Cure Defaults.** If any party fails to perform any of the covenants and provisions imposed upon it by this Agreement (the "Defaulting Party"), and the Defaulting Party does not cure the failure within 30 days after receipt of a written notice from the non-defaulting party, or parties, or in the case of an emergency (any situation that has caused or could cause damage to the Easement Areas or personal injury, or would affect any other parties' normal business operation, shall constitute an emergency) does not cure or commence to cure the failure within 48 hours after notice from the other party as is reasonable under the circumstances, including any notice by fax or telephone, then the non-defaulting party, or parties, shall have the right to perform the covenant as the Defaulting Party's agent, and the full amount of the costs and expenses incurred shall immediately be owing by the Defaulting Party to the non-defaulting party or parties. Any payment for costs and expenses incurred that is not paid within 30 days after receipt of written demand for reimbursement will accrue interest if not paid within the 30-day period at the prime rate charged by Bank of America, its successors or assigns, plus 4% per annum. The parties hereto shall also have the right to restrain by injunction any violation or threatened violation by any other party hereto of any term, covenant, or condition hereof, or to obtain a decree to compel performance of any term, covenant, or condition. All remedies are cumulative and shall be deemed additional to any and all other remedies that any party may have by law or equity.
 8. **Duration.** Notwithstanding anything herein to the contrary, the easements, licenses, rights and privileges created hereunder will not terminate except pursuant to a written agreement executed by all the parties hereto, their respective successors or assigns, and mortgagee(s), (if any), with proper acknowledgement, and recorded in the Office of the County Clerk of Oklahoma County. Upon execution of a written agreement of termination, the easements, licenses, rights and privileges created hereunder shall immediately terminate and will be of no further force or effect.
 9. **Condemnation.** If any portion of the Easement Areas located on the either property are taken in any proceeding by public authorities by condemnation or otherwise, or acquired for public or quasi-public purposes or transferred by agreement in connection with or in lieu of or under threat of condemnation, each party shall have the right to participate in any proceeding pertaining to condemnation of the Easement Areas and each party shall be entitled to its separate claims based on its respective interests.

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10. **Indemnification.** Each party hereto ("indemnifying party") agrees to indemnify and hold harmless the other parties from any and all such other parties' claims, demands, damages, costs, liens, judgments or awards arising out of or as a result of any use of the Easement Areas by the indemnifying party, its employees, agents, tenants and licensees, unless the liability arose in whole or in part by the act or omission of one of the parties, its agents or employees, in which case the waiver shall not apply to the party.
11. **Use.**
- 11.1 Each Party agrees that for so long as Family Dollar is operating a store on Tract I, Tract II will not be used as a variety store, discount store, dollar store, variety discount store, discount department store, thrift store, discount clothing store, any store selling used clothing, or any store similar to Family Dollar in operation or merchandising.
- 11.2 Each Party agrees that so long as a business that is not in conflict with Section 11.1 hereinabove is being operated on Tract II, Tract I will not be used as a business that is substantially the same as the business being operated on Tract II.
12. **Certificates.** The parties, and their permitted successors and assigns, and mortgagee(s), if any, shall execute, acknowledge and deliver, from time to time, upon demand by another party or parties hereto, any certificates, whether in recordable form or any other form the requesting party may reasonably request, for purposes of confirming the applicability, inapplicability, termination or expiration of the easements, licenses, rights and privileges granted hereunder or the existence or absence of any known, uncured defaults by another party hereto.
13. **Successors; Assigns.** The easements, restrictions, and agreements granted herein shall constitute reciprocal benefits to and burdens upon Tract I and Tract II and are created as appurtenances to, and shall run with the ownership of the Properties for the benefit of the respective owner and any and all subsequent owners of the Properties, and may be enjoyed by the tenants, customers, employees and invitees of the parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of the properties of any of them, or by any change of use, demolition, reconstruction, or other circumstances, except as specified herein. This Agreement shall create privity of contract and estate with and among the parties hereto and all grantees and mortgagees of all or any part of the Easement Areas, their successors and assigns.
14. **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Areas or Total Site to the general public or for any public use or purpose whatsoever, it being the

intention of the parties hereto that this Agreement will be strictly limited to the private use of the Parties and their invitees.

15. **Governing Law.** This Agreement is executed and delivered pursuant to a transaction negotiated and to be performed in Oklahoma County, Oklahoma, and is to be construed, to the full extent permitted by applicable law, according to the internal laws of the State of Oklahoma. All actions with respect to this Agreement may be instituted in the courts of the State of Oklahoma sitting in Oklahoma County, Oklahoma, or the courts of the State of Oklahoma or the United States District Court sitting in Oklahoma County, Oklahoma, to the extent relief cannot be obtained in the Oklahoma court, and by the execution and delivery of this Agreement, the parties irrevocably and unconditionally submit to the jurisdiction (both subject matter and personal) of each court and irrevocably and unconditionally waive: (a) any objection the parties might now or hereafter have to the venue in any such courts; and (b) any claim that any action or proceeding brought in any such courts has been brought in an inconvenient forum.
16. **Miscellaneous Provisions.**
 - 16.1 **Entire Agreement.** This Agreement contains the final and entire agreement between the parties hereto with respect to the subject matter hereof and the parties shall not be bound by any conditions, statements or representations, oral or written, not herein contained.
 - 16.2 **Modification.** Any subsequent amendment to this Agreement shall be valid only if executed in writing by the parties hereto, their successors or assigns, and their respective mortgagee(s), if any.
 - 16.3 **Recording.** The parties agree that this Agreement may be recorded in the appropriate office for the recordation of real estate conveyances in Oklahoma County, Oklahoma. Any amendment to this Agreement may be recorded in the Office of the County Clerk of Oklahoma County; provided, however, that failure to do so shall not affect the validity of the amendment between the parties thereto.
 - 16.4 **Interpretation.** As used in this Agreement the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
 - 16.5 **Cumulative Provisions.** The provisions of this Agreement shall be deemed to be cumulative. No provision of this Agreement shall be deemed to be in limitation of or to exclude any other provision hereof, or any right, remedy or provision of law, unless otherwise expressly stated.

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- 16.6 **Captions.** The captions of this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part hereof.
- 16.7 **Attorneys' Fees.** If any party files suit to enforce any provision of this Agreement, then the prevailing party will be entitled to receive its reasonable attorneys' fees and expenses from the losing party or parties.
- 16.8 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement which shall be binding on the parties notwithstanding that the parties are not signatories on the same counterpart or counterparts.
17. **Notices.** All notices provided for in this Agreement shall be in writing and unless otherwise stated shall be deemed to have been given when addressed as set forth below and (i) deposited in the United States mail sent via Certified Mail, Return Receipt Requested, and any notice sent in this manner shall be deemed given even if the party to whom the notice is sent refuses to accept delivery, or (ii) sent by commercial overnight national delivery service capable of providing written proof of delivery:

As to TRACT I:

FD-RE, LLC

Attn: Hinkle Services, Inc., its Manager
Kimberly D. Hinkle, Vice President
Nancy Dennis, CLA, SA
1400 S. Fretz Ave.
Edmond, OK 73003
(405) 359-9350
(405) 359-6366 (fax)

As to TRACT II:

FD-RE, LLC

Attn: Hinkle Services, Inc., its Manager
Kimberly D. Hinkle, Vice President
Nancy Dennis, CLA, SA
1400 S. Fretz Ave.
Edmond, OK 73003
(405) 359-9350
(405) 359-6366 (fax)

18. **Authority.** The Parties represent and warrant that they have full right and authority to enter into this Agreement for the respective Tract I and Tract II.

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

("TRACT I")

FD-RE, LLC
an Oklahoma limited liability company

By: HINKLE SERVICES, INC.,
an Oklahoma corporation
its Manager

By: Dewain Kesler
Dewain Kesler, Vice-President

("TRACT II")

FD-RE, LLC
an Oklahoma limited liability company

By: HINKLE SERVICES, INC.,
an Oklahoma corporation
its Manager

By: Dewain Kesler
Dewain Kesler, Vice-President

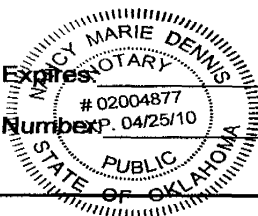
ACKNOWLEDGMENTS

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS:

Before me, the undersigned a Notary Public in and for said County and State, on this 16 day of November, 2006, personally appeared Dewain Kesler, as Vice-President of Hinkle Services, Inc., an Oklahoma corporation, Manager of FD-RE, LLC, an Oklahoma limited liability company.

My Commission Expires _____

My Commission Number _____



Nancy Marie Dennis
Notary Public

EXHIBIT "A"

TRACT I

LEGAL DESCRIPTION

The East Eight (8) feet of Lot Twenty Five (25) and all of Lots Twenty Six (26) through Thirty Eight (38) in Block Ten (10) of Arlington Heights Addition to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof, together with the South Half (S/2) of the vacated alley adjoining the afore described property to the north.

EXHIBIT "B"

TRACT II

LEGAL DESCRIPTION

All of Lots Seven (7) through Twenty-Three (23), inclusive, and the East Eight (8) feet of Lot Twenty-Four (24) together with the North half of the vacated alley adjacent thereto, and all of Lots Thirty-Nine (39) through Forty-Two (42), inclusive, together with the South half of the vacated alley adjacent thereto, in Block Ten (810) of Arlington Heights addition to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof.

EXHIBIT "C"
PROPOSED ACCESS EASEMENT
SITEPLAN AND LEGAL DESCRIPTION

See attached.



LEGAL DESCRIPTION

**COMMENCING AT THE SOUTHWEST CORNER OF LOT TWENTY FIVE (25) OF SAID BLOCK 10,
THENCE EAST TO A POINT OF THE EAST RIGHT OF WAY LINE OF NORTH KELLY AVENUE, A
DISTANCE OF 17.00 FEET;
THENCE NORTH ALONG SAID EAST RIGHT OF WAY, A DISTANCE OF 122.00 FEET TO THE
POINT OF BEGINNING;
THENCE CONTINUING NORTH ALONG SAID EAST RIGHT OF WAY, A DISTANCE OF 30 FEET;
THENCE EAST, A DISTANCE OF 34.00 FEET;
THENCE SOUTH, A DISTANCE OF 30.00 FEET;
THENCE WEST, A DISTANCE OF 34.00 FEET TO THE POINT OF BEGINNING;**