AGREEMENT TO WAIVE REQUIREMENTS IN DECLARATION OF RESTRICTIONS FOR WINGATE CREEK BUSINESS CENTER

WHEREAS, Ziegler/Bence West Bend, LLC ("Ziegler/Bence") is the Developer under that certain Declaration of Restrictions for Wingate Creek Business center dated September 27, 2000, recorded in the Washington County Register of Deeds on September 8, 2000 as Document No. 866465, (the "Original Declaration"), said Original Declaration amended March 19, 2002 and recorded in the Washington County Register of Deeds on April 3, 2002 as Document No. 927815 (the "First Amendment"), further amended July 7, 2004 and recorded in the Washington County Register of Deeds on July 9, 2004 as Document No. 1055649 (the "Second Amendment"), and as further amended April 11, 2005 and recorded in the Washington County Register of Deeds on April 21, 2005 as Document No. 1085292 (the "Third Amendment");

WHEREAS, the Original Declaration, First Amendment, Second Amendment and Third Amendment are hereinafter collectively referred to as the "Declaration";

WHEREAS, Ziegler/Bence is the Developer under the Declaration;

WHEREAS, Ziegler/Bence owns the property known as Lot 2 CSM 6665 Property Tax Key No. 11201810019, West Bend, Wisconsin (the "Property");

WHEREAS, Ziegler/Bence and Forte Bank have entered into that certain Offer to Purchase dated November 13, 2023 (the "Offer") for the Property;

WHEREAS, the Property is subject to the Declaration;

WHEREAS, Ziegler/Bence as Developer and seller under the Offer desires to waive certain provisions of the Declaration as such provisions apply to the Property, and Forte Bank desires that such provisions of the Declaration be waived;

NOW WHEREFORE, in consideration of the mutual promises and covenants set forth herein, in consideration of the Offer, and other valuable consideration, the receipt of which is acknowledged by and between the parties, the parties agree as follows:

1. The Recitals set forth above are made part of and incorporated into this Agreement.

2. Ziegler/ Bence, the Developer under the Declaration, hereby waives all of the provisions of Section 4.6 of the Declaration as it pertains to the Property, including but not limited to the requirement that an Owner begin development of the Building Site within two (2) years of the closing date. Ziegler/Bence hereby grants Forte Bank and any subsequent Owner an indefinite amount of time after the closing date to begin development of the Building Site.

3. Ziegler/Bence hereby waives all of the provisions of Section 4.7 of the Declaration as it pertains to the Property. Ziegler/Bence specifically waives its right of first refusal to purchase the Property.

4. This Agreement shall run with the land and inure to the parties' successors and assigns.

Dated this 28th day of ~~April~~ March, 2023

Ziegler/Bence West Bend, LLC, Developer

____

By: J.J. Ziegler

Its: Manager

Dated this ___ day of April, 2023

Forte Bank

____

By:______________________________

Its:______________________________

DOC#: 927814

Recorded
APR. 03,2002 AT 08:30AM
DOROTHY C. GONNERING
REGISTER OF DEEDS
WASHINGTON COUNTY, WI
Fee Amount: $29.00

Document Number

DECLARATION OF RESTRICTIONS AND EASEMENTS

Recording Area

Name and Return Address

29-10

Brenda J. Stugelmeyer, Esq.
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

T11-0504, T11-0505, T11-0506
Parcel Identification Number (PIN)
1120.181.0003; 1120.181.0004; 1120.181.0005; 1120.181.0006; 1120.181.0007

THIS DECLARATION OF RESTRICTIONS AND EASEMENTS is made this 19th day of March, 2002, by and between **ZIEGLER/BENCE WEST BEND, LLC**, a Wisconsin limited liability company (the "Developer"), and **FRESH BRANDS DISTRIBUTING, INC.** ("Fresh Brands").

WHEREAS, Developer is the owner of certain lands located in the City of West Bend, Washington County, Wisconsin, and described on Exhibit A attached hereto and incorporated herein (the "Retail Area"); and

WHEREAS, Fresh Brands is the tenant on a certain portion of the Retail Area as described on Exhibit B attached hereto and incorporated herein (the "Fresh Brands Parcel"); and

WHEREAS, the Developer and Fresh Brands desire to establish certain restrictions and requirements upon, rights to use, and easements for access over and to the Retail Area.

NOW, THEREFORE, for the purpose of providing for certain restrictions and requirements upon, rights to use, and easements for access over and to the Retail Area for the mutual benefit of the Developer, its successors, assigns, tenants, customers, invitees, employees and mortgagees, and Fresh Brands, and in consideration of other good and valuable consideration, the receipt of which is hereby acknowledged, the Developer does hereby impose, establish and grant the restrictions, requirements, rights, reservations, and easements hereinafter set forth on the Retail Area. Said restrictions, requirements, rights, reservations, and easements shall constitute covenants running with the land to benefit and burden all of the Retail Area irrespective of the manner in which title to the Retail Area may be subsequently divided. Any person or persons, corporation, trust, partnership or other legal entity whatsoever, now or hereafter becoming the owner either directly or indirectly through subsequent transfer or in any manner whatsoever of any portion of the Retail Area and all tenants, customers, invitees, employees, and mortgagees shall take, hold and convey the same subject to the following:

1. Construction of Roadway. Developer shall construct a two-lane roadway (the "Roadway") for the purposes of pedestrian and vehicular ingress, egress, passage and traffic in, upon, over, across and through the Retail Area from and between State Highway 33 and Stockhausen Lane in approximately the location shown on the attached Exhibit C (the "Site Plan"). Developer reserves the right to change the location and dimensions of the Roadway, and the Roadway shall be defined as the Roadway as constructed. Any material changes in the location and dimensions of the Roadway shall be subject to Fresh Brands prior written approval, such approval not to be unreasonably withheld. Developer shall at its sole cost and expense construct the portion of the Roadway from State Highway 33 to the east property line of the Fresh Brands Parcel, and Fresh Brands shall construct the portion of the Roadway from the east property line of the Fresh Brands Parcel to Stockhausen Lane. The construction of the Roadway shall be completed pursuant to reasonable and prudent site planning, in a good and workmanlike manner, and consistent with the requirements of all applicable governmental authorities. If the location of the Roadway is changed after the commencement of the initial construction of the Roadway, then (1) such new construction activity shall not unreasonably interfere with the business operations of Fresh Brands or the use of the Fresh Brands Parcel and shall no

require Fresh Brands to close its business to customers during its hours of operation, (2) the new construction shall not at any time prevent access to the Fresh Brands Parcel, and (3) the new construction shall be at the sole cost and expense of Developer, or its successors and assigns, including without limitation any changes required on the Fresh Brands Parcel.

2. Maintenance.

(a) With respect to the portion of the Roadway on the Fresh Brands Parcel, Fresh Brands shall repair, replace and maintain in good condition and repair the portion of the Roadway on the Fresh Brands Parcel while the Lease is in effect. Upon a termination of the Lease, the owner of the Fresh Brands Parcel shall repair, replace and maintain in good condition and repair the portion of the Roadway on the Fresh Brands Parcel. .

(b) With respect to the portion of the Roadway from State Highway 33 to the east property line of the Fresh Brands Parcel, the owner of any parcel over which the Roadway crosses shall repair, replace and maintain in good condition and repair the portion of the Roadway on such owner's parcel (each a "Maintaining Party" with respect to the portion of the Roadway on its parcel). The Maintaining Party shall pay all of the costs and expenses of maintaining the Roadway on its parcel, including, but not limited to, snow and ice removal, blacktopping, landscaping, sealing, re-surfacing, signage and striping (the "Maintenance Costs"), and shall be permitted to assess all of the owners in the Retail Area, other than the owner of the Fresh Brands Parcel with respect to the Fresh Brands Parcel only, such Maintenance Costs. In the event that any Maintaining Party shall fail to comply in an appropriate and timely manner with the requirements of this paragraph regarding repairing, replacing, and maintaining the Roadway consistent with the use of the Retail Area, then during the term of the Lease, Fresh Brands may, at its election, but not as its obligation, perform such repair, replacement, or maintenance at the cost and expense of the Maintaining Party; provided, however, that before exercising such rights relating to repair, replacement, or maintenance (but not as to snow and ice removal), Fresh Brands shall first give the Maintaining Party thirty (30) days prior written notice and an opportunity to commence cure during such period. Upon a termination of the Lease, the owner of the Fresh Brands Parcel shall have such rights.

(c) The Maintenance Costs shall be allocated and prorated among the owners in the Retail Area, other than the owner of the Fresh Brands Parcel with respect to the Fresh Brands Parcel only, by multiplying the Maintenance Costs by a fraction where the numerator is the acreage in the parcel owned by a particular owner and the denominator is the acreage in the Retail Area, excluding the Fresh Brands Parcel. The assessed Maintenance Costs shall be paid within thirty (30) days after written notice from the Maintaining Party.

(d) The Maintaining Party shall have the right to collect or enforce the collection of any Maintenance Costs specified hereunder. Each owner subject to assessment hereunder shall be obligated to pay such Maintenance Costs when due, and such Maintenance Costs shall also be and constitute a lien until paid against the parcel to which charged. All Maintenance Costs levied hereunder, which are unpaid when due, shall bear interest from the due date at a rate equal to two percent (2%) per annum above the Prime Interest Rate as reported from time to time in The Wall Street Journal with the interest rate changing on the date the Prime Rate changes, or if The Wall Street Journal is unavailable, the Prime Interest Rate in a similar publication, until paid in full provided, however, that the interest rate shall not be less than twelve percent (12%) ("Interest"). Such Interest, together with the underlying Maintenance Costs, shall from such time as the assessment as the Maintenance Costs are unpaid when due become and remain a part of the lien upon the parcel until paid.

(e) In the event that any Maintenance Costs against any parcel hereunder remains unpaid for a period of sixty (60) days from the due date, the Maintaining Party, at its discretion, may file an action at law. Any lien upon a parcel securing unpaid charges arising hereunder shall be subject to and subordinate to the lien of any first mortgage upon such parcel whether the mortgage is executed or recorded prior to or after the creation of such lien. Nothing herein contained shall prevent or impede the collection of lawful charges, assessments and taxes by the City of West Bend.

3. Cross Access Easement. The Developer and Fresh Brands grant to each other and to their successors, assigns, tenants, subtenants, occupants, customers, invitees, or permitees, a non-exclusive easement over and upon those portions of the Retail Area which, from time to time, are developed, constructed or maintained as roadways or driveways, including, but not limited to, the Roadway, for the purpose of pedestrian and vehicular ingress, egress, passage and traffic in, upon, over, across and through the Retail Area in order to provide access to, from and between portions of the Retail Area and the public streets, including, without limitation, S.T.H. "33" (the "Cross Access Easement"). The Cross Access Easement does not grant unto any party any rights related to parking within the Retail Area, and the owners and their tenants of each parcel in the Retail Area are prohibited from using the parking areas on another parcel. No party shall utilize the Roadway in such a manner as to jeopardize or limit another party's free and unobstructed use of said area for ingress or egress purposes, excluding normal and reasonable traffic control measures. Any obstructions or impediments may be removed, without notice, by any party with rights under this Cross Access Easement and the cost of such removal shall be borne by the party causing or responsible for the obstruction.

4. Retail Area Sign. Developer shall construct at the S.T.H. "33" intersection with the Roadway a sign to serve the Retail Area ("Retail Area Sign"). Fresh Brands shall have the top twenty-five percent (25%) of the sign area. Other tenants or occupants in the Retail Area shall be entitled to place a sign panel on the remaining sign area on the Retail Area Sign, which panel shall be proportionately sized based upon the Rentable Square Feet of the tenant or occupant's premises in proportion to the buildings built or to be built in the Retail Area, as determined by Developer, excluding the Fresh Brands Parcel. Each tenant or occupant having a sign panel on the Retail Area Sign shall pay the cost of installing its sign panel and shall pay a proportionate cost of maintaining the Retail Area Sign based on its proportionate share of the sign area. The owner or owners of the portion of the Retail Area on which the Retail Area Sign is located shall maintain the Retail Area Sign and shall invoice each party using the Retail Area Sign for its share of the maintenance costs and such costs shall be paid by the party invoiced within ten (10) days after invoice. Until other buildings are located in the Retail Area and the occupants or tenants thereof have placed a sign panel on the Retail Area Sign, Fresh Brands shall maintain the Retail Area Sign, and the owner or owners of the portion of the Retail Area on which the Retail Area Sign is located hereby grant in favor of Fresh Brands an easement for construction, repair, replacement and maintenance of the Retail Area Sign. During the time that Fresh Brands maintains the Retail Area Sign, Developer shall reimburse Fresh Brands for seventy-five (75%) of the reasonable cost of maintaining the Retail Area Sign.

5. No Handbilling. No owner of any portion of the Retail Area shall permit, and promptly upon notice from other owners or tenants on the Retail Area, shall use all reasonable efforts to prevent the parking lots, driveways, approaches, roadways, sidewalks, malls, and other areas of the Retail Area from being used for solicitation, picketing, petitioning, handbilling or for any other purpose which would create a disturbance, deter customers, threaten safety, impede or interfere with the business operations of the owners or tenants of the Retail Area or the smooth flow and free passage of customers, employees and business invitees to the Retail Area.

6. Parking Requirements. Upon construction of any additional buildings in the Retail Area, the owner of the parcel on which such construction takes place shall also construct or have constructed additional parking on such parcel for such additional buildings. The parking area ratio used for the buildings in the Retail Area, other than on the Fresh Brands Parcel, shall not be less than the City of West Bend requirements in effect as of the date of this Declaration.

7. Exclusive Right. During the term of that certain lease between Developer and Fresh Brands dated October 23, 2001 (the "Lease"), Fresh Brands, and its successors and assigns, shall have the exclusive rights to operate a grocery store and/or supermarket within the Retail Area, and no other local or national food chain or convenient-type food store (including by way of example and not limitation, Sentry, Kohls, Pic N Save, Kroger, Albertson's, Park & Save, Woodman's, Copps, Super Kmart, Greatlands, Walmart, Rainbow Foods and Jewel) will be permitted in the Retail Area, and each and every existing and future tenant, licensee, mortgagee, owner, purchaser, trustee, or other party holding any legal interest whatsoever in all or any portion of the Retail Area during the term of the Lease and any additional option periods under the Lease shall be precluded from operating all or any part of the Retail Area as a

grocery or supermarket. In addition to the foregoing, the terms "grocery" and "supermarket" shall be given the broadest definition possible to also exclude any business operation selling at retail for off-premises consumption the following food products: meats, produce, frozen foods, dairy products, fruit, bakery goods, and delicatessen items, and during such time that a liquor store department is operated at the premises leased under the Lease, then also liquor, beer, wine and soda (the "Exclusive Items"). The restriction on the sale of Exclusive Items shall not apply to: (i) any store with a primary use as a drug store, provided not more than five percent (5%) of the gross square footage of said store is devoted to the sale of Exclusive Items, (ii) other tenants or parcel owners, including restaurants, who sell food and/or alcoholic beverages to be consumed primarily within their premises, or (iii) any other business operation selling small quantities of Exclusive Items incidental to the general business conducted by such party at a location within the Retail Area. The terms "small quantities" and "incidental" in the foregoing sentence shall be strictly construed to give Fresh Brands the greatest protection possible and shall be determined by each of the following tests, the failure of any one of which shall constitute a breach of this restriction: (i) display of Exclusive Items as a percentage of allocated floor space, (ii) sales of Exclusive Items as a percentage of total sales, (iii) total dollar amount of sales of Exclusive Items, and (iv) display of Exclusive Items in an area more than 3,000 square feet. Food sales which are deemed noncompetitive include a delicatessen counter in a restaurant, health food store, a gourmet or imported specialty foods store, and liquor stores selling certain kinds of accessory food items provided such area does not occupy more than 3,000 square feet within any one store and such uses are specifically permitted.

8. Insurance. The owner of each portion of the Retail Area shall maintain or cause to be maintained public liability insurance, covering the Cross Access Easement on their portion of the Retail Area, issued by a company qualified to transact business in the State of Wisconsin, in the minimum amounts of Three Hundred Thousand Dollars ($300,000) for property damage, Three Million Dollars ($3,000,000) for injury to or death of one person, and Three Million Dollars ($3,000,000) for injuries or a death arising out of or resulting from any one accident. Each owner shall, upon request of any other owner, furnish certificates of such insurance at any time during the term hereof.

9. Taxes. The owner of each portion of the Retail Area shall pay prior to the due date all real property taxes and assessments, the payment of which would be secured by a lien upon any portion of the Retail Area owned by such owner, and shall promptly, upon request of the owner of any other parcel affected hereby, furnish to such owner tax receipts evidencing such payment.

10. No Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Retail Area to the general public or for any public use or purpose whatsoever.

11. Termination and Amendment. The restrictions hereby imposed cannot be terminated, amended or changed in any manner without the express written consent of: (1) all of the record owners of the Retail Area, (ii) all mortgagees holding mortgages of record affecting any portion of the Retail Area, and (iii) Fresh Brands, provided that, if at any time Fresh Brands, its respective successors and assigns shall no longer be a tenant under the Lease, its consent to a termination or modification of this Agreement shall no longer be required.

12. No Partnership or Joint Venture. No partnership or joint venture is created by this instrument; the Developer is imposing the easements and restrictions contained herein on the Retail Area for the purposes set forth above to benefit Developer, its successors, assigns, tenants, customers, invitees, employees and mortgagees which may now or hereafter hold liens on the Retail Area or any part hereof.

13. Condemnation. In the event any portion of the Retail Area is taken by condemnation proceedings or by deed in lieu thereof, the entire award or payment for such taking shall be the property of the owner, mortgagees and tenants of the tract so taken, as they may be so entitled by law; and the owners, mortgagees and tenants of the balance of the Retail Area shall have no claim or right to participate in any such award or payment by virtue of this Agreement, except to the extent such party may be entitled to a separate award related to the taking of a portion of the Roadway or the Cross Access Easement.

14. Severability. This Agreement shall be construed according to the laws of the State of Wisconsin. If any clause or provision of this Agreement is illegal, invalid or unenforceable then, and in that event, it is the intention of the Developer that the remainder of this Agreement shall not be affected thereby and it is also the intention of the Developer that in lieu of each clause or provision that is illegal, invalid or unenforceable there shall be added as part of this instrument a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

15. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties. Each counterpart shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year set forth above.

DEVELOPER:

ZIEGLER/BENCE WEST BEND, LLC

By: ____________________
Print Name: J.J. ZIEGLER
Title: MANAGER

STATE OF WISCONSIN)
) ss.
COUNTY OF WASHINGTON)

Personally came before me this 19th day of MARCH, 2002, the above-named JJ Ziegler, the MANAGER of Ziegler/Bence West Bend, LLC, known to me to be the person who executed the foregoing instrument and acknowledged the same on behalf of said limited liability company.

____
Print Name: KAY J GIESE
Notary Public
WASHINGTON, County, Wisconsin
My Commission: 10-2-05

(Notary Seal)

FRESH BRANDS DISTRIBUTING, INC.

By: ______________________
Print Name: Wayne A. Wiertzema
Title: Vice President Store Engineering / Real Estate

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

Personally came before me this 18th day of March, 2002, the above-named Wayne A. Wiertzema, the Vice President Store Engineering / Real Estate of Fresh Brands Distributing, Inc., known to me to be the person who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

____
Print Name: Kathryn A. Grams
Notary Public
Sheboygan County, Wisconsin
My Commission: expires 3/24/02

(Notary Seal)

NOTARY PUBLIC
KATHRYN A. GRAMS
STATE OF WISCONSIN

This instrument was drafted by
and should be returned to:

Brenda J. Stugelmeyer, Esq.
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

The foregoing Declaration is hereby consented to by the undersigned.

FIRSTAR BANK, N.A.

By: James D. Newgard

Print Name: James S. Newgard

Title: Vice President

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 28th day of March, 2002, the above-named James S. Newgard, to me known to be the Vice President of FIRSTAR BANK, N.A. who executed the foregoing instrument by its authority and on its behalf and acknowledged the same.

Margaret Straka
Print Name: Margaret Straka
Notary Public, State of Wisconsin
My Commission expires: 6-12-05

[Notary Seal]

NOTARY PUBLIC
MARGARET STRAKA
STATE OF WISCONSIN

EXHIBIT A

RETAIL AREA

Lots 1 and 2 of Block 1 of the Plat of Wingate Creek Business Center recorded on March 22, 2002 at Mapbook 39, Pages 33 & 34, Document Number 926442 in the Washington County Register of Deeds Office.

EXHIBIT B

FRESH BRANDS PARCEL

Lot 1 of Block 1 of the Plat of Wingate Creek Business Center recorded on March 22, 2002 at Mapbook 39, Pages 33 & 34, Document Number 926442 in the Washington County Register of Deeds Office.

EXHIBIT C

SITE PLAN

DOC#: 927814