

**FIRST AMENDMENT TO  
PARKING AGREEMENT**

This First Amendment to Parking Agreement (the "**Amendment**"), is made this 30<sup>th</sup> day of April, 2004 (the "**Effective Date**"), by and between 8<sup>th</sup> & New Hampshire, L.L.C., a Kansas limited liability company ("**8<sup>th</sup> & New Hampshire**"), Winter, Inc., a Kansas corporation ("**Winter**"), Lawrence Store No. 203 L.L.C., a Delaware limited liability company ("**Lawrence Store**"), Borders, Inc., a Colorado corporation ("**Borders**"), and the City of Lawrence, Kansas, a municipal corporation (the "**City**"). For purposes of the Parking Agreement and this Amendment, 8<sup>th</sup> & New Hampshire, Winter, Lawrence Store and Borders shall be referred to collectively as the "**Owners**."

**WHEREAS**, a parking Agreement dated March 25, 1997 (the "**Parking Agreement**"), was recorded on April 28, 1997, in Book 577, beginning at Page 233, in the Office of the Register of Deeds of Douglas County, Kansas, which Parking Agreement covers two tracts of real estate located in the City of Lawrence, Douglas County, Kansas, described as follows:

Lot 1, in The Winter Block Addition, in the City of Lawrence, Douglas County, Kansas, as shown by the plat thereof recorded April 28, 1997, in Book P15, at page 867 (referred to in the Parking Agreement as the "**Borders Development**" or "**Phase I**");  
and

Lot 2, in The Winter Block Addition, in the City of Lawrence, Douglas County, Kansas, as shown by the plat thereof recorded April 28, 1997, in Book P15, at page 867 (referred to in the Parking Agreement as the "**Winter Development**" or "**Phase II**").

**WHEREAS**, 8<sup>th</sup> & New Hampshire purchased the Winter Development from Winter, and 8<sup>th</sup> & New Hampshire is now the Owner of the Winter Development.

**WHEREAS**, the Lawrence Store entered into a ground lease with Winter for the Borders Development, a memorandum of which lease was recorded in the Office of the Register of Deeds of Douglas County, Kansas, on April 28, 1997, in Book 577, beginning at Page 267, which ground lease is set to expire on January 31, 2018, unless extended by the Lawrence Store, and the Lawrence Store subleased the Borders Development to Borders a memorandum of which sublease was recorded in the Office of the Register of Deeds of Douglas County, Kansas, in Book 771, beginning at page 306. By reason of such ground lease and sublease, the Lawrence Store and Borders are Owners of the Borders Development.

**WHEREAS**, Winter is the legal owner of the Borders Development, subject to the ground lease with the Lawrence Store, and Winter is an Owner of the Borders Development, all as defined in the Parking Agreement.

**WHEREAS**, paragraph 8 of the Parking Agreement provides that the Parking Agreement may be amended by a written agreement signed by all of the Owners, which shall only be effective upon recordation in the Office of the Register of Deeds of Douglas County, Kansas.

**WHEREAS**, in order to induce the Owners of the Borders Development to enter into an amendment of an Operation and Easement Agreement dated April 10, 1997, recorded on April 28, 1997, in Book 577, beginning at Page 243 in the Office of the Register of Deeds of Douglas County, Kansas, in connection with 8<sup>th</sup> & New Hampshire's development of the Winter Development, 8<sup>th</sup> & New Hampshire has agreed to construct and maintain the sixty-seven (67) Public Parking Spaces, as defined in the Parking Agreement, all on the Winter Development, all in accordance with the terms and provisions of this Amendment.

**THE PARKING AGREEMENT** is, therefore, hereby amended and modified as follows:

1. **Paragraph 2.** Paragraph 2 of the Parking Agreement is hereby deleted and the following shall be inserted in lieu thereof:

In connection with the Borders Development, the Owners of the Borders Development will construct 118 parking stalls in Phase I, consistent with City standards, as shown on the site plan attached to the Parking Agreement. At the time of construction of the improvements to the Winter Development, the Owner of the Winter Development agrees to construct at least ninety-six (96) parking stalls in Phase II, consistent with City standards, as shown on the site plan attached to this Amendment as Exhibit A and, by reference, made a part of this Amendment. Sixty-seven (67) of the parking stalls shown on the attached site plan shall be designated as and referred to in the Parking Agreement and this Amendment as "**Public Parking Spaces.**" Forty-eight (48) of the Public Parking Spaces are to be located along the east portion of the Phase II site, ten (10) of the Public Parking Spaces are to be located north of the footprint of the building shown on the site plan, and the final nine (9) of the Public Parking Spaces are to be located along the north half of the west portion of the Phase II site, all as shown on the attached site plan. Upon issuance of a building permit by the City of Lawrence for the construction of the improvements to the Winter Development as shown in the site plan attached to this Amendment as Exhibit A, the Borders Development shall be relieved of all obligation to provide sixty-seven (67) Public Parking Spaces pursuant to the 1997 Parking Agreement, and the sixty-seven (67) Public Parking Spaces on the Winter Development shall be completed and available for public use at the earlier of (i) the date of the issuance of a temporary certificate of occupancy for the improvements on the Winter Development, or (ii) twelve (12) months from the issuance of the building permit for the improvements to the Winter Development.

2. **Paragraph 3.** The third sentence of paragraph 3 of the Parking Agreement is hereby deleted and the following sentence shall be inserted in lieu thereof:

The City shall have authority to place small informational signs at the Public Parking Spaces which indicate that each space is for "Public Parking," and the City may, but shall not be obligated to, place parking meters or signage on the Public Parking Spaces, in accordance with the following: The forty-eight (48) parking stalls on the east portion of the Winter Development shall be metered or signed for long-term parking, and the remainder of the Public Parking Spaces shall be metered or signed for two-hour parking only.

3. **Paragraph 4.** Paragraph 4 is hereby amended by deleting the word "Owners" each time it appears and in lieu thereof inserting the words "the Owner of the Winter Development."

4. **Term of this Amendment.** The term of this Amendment shall be perpetual; provided, however, that if Phase II, as shown in the site plan attached to this Amendment, is not under construction on the date which is two years after the recording of this Amendment, or if the City fails to approve the site plan substantially in the form attached to this Amendment, then this Amendment shall be void and automatically of no force and effect and the Parking Agreement as recorded shall control as if this Amendment had not been executed or recorded.

5. **Owners.** The undersigned hereby represent and warrant each to the other that to the best of their knowledge, the parties to this Amendment are the only Owners, as that term is defined in the Parking Agreement, and that no other person is required to consent to this Amendment to make it effective after recording the same in the Office of the Register of Deeds of Douglas County, Kansas.

6. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute together one and the same agreement.

7. **Integration of Terms.** Unless otherwise defined in this Amendment, all of the terms and phrases defined in the Parking Agreement that are used in this Amendment will have the same meaning in this Amendment as they have in the Parking Agreement. In the event of any ambiguity or conflict between provisions of the Parking Agreement and provisions of this Amendment, the provisions of this Amendment will control.

8. **Ratification.** The Parking Agreement is hereby amended as aforesaid, and except as amended and modified herein, is hereby ratified, affirmed and adopted.

*[The Remainder of this Page Left Intentionally Blank.]*

**IN WITNESS WHEREOF**, this Amendment has been duly authorized and executed the year first written above.

**8<sup>TH</sup> & NEW HAMPSHIRE, L.L.C.,  
a Kansas limited liability company**

By: \_\_\_\_\_  
Roger N. Harris, Manager

**WINTER, INC.,  
a Kansas corporation**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**LAWRENCE STORE NO. 203 L.L.C.,  
a Delaware limited liability company**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BORDERS, INC.,  
a Colorado corporation**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**THE CITY OF LAWRENCE,  
a municipal corporation**

By: \_\_\_\_\_  
Mike Rundle, Mayor

ATTEST:

By: \_\_\_\_\_  
Frank Reeb, City Clerk

**STATE OF KANSAS, COUNTY OF DOUGLAS ) ss:**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by Roger N. Harris, Manager of 8<sup>th</sup> & New Hampshire, L.L.C., a Kansas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My appointment expires:

**STATE OF KANSAS, COUNTY OF DOUGLAS ) ss:**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, \_\_\_\_\_ of Winter, Inc., a Kansas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My appointment expires:

**STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ ) ss:**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, \_\_\_\_\_ of Lawrence Store No. 203 L.L.C., a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My appointment expires:

**STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ ) ss:**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, \_\_\_\_\_ of Borders, Inc., a Colorado corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My appointment expires:

**STATE OF KANSAS, COUNTY OF DOUGLAS ) ss:**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by Mike Rundle, Mayor of the City of Lawrence, Kansas, a municipal corporation.

\_\_\_\_\_  
Notary Public

My appointment expires:

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**EXHIBIT A**

[Attach Copy of Site Plan]