

**Memorandum in Support of Motion of Plaintiff
216 Jamaica Avenue LLC for Summary Judgment**

Exhibit A

EXTRA COPY

RE 3

Parcel 3

*Ground
Lease
Halle
Building
Cleveland, Ohio*

600422 The Realty Investment Co. To Salmon P. Halle et. al.

This indenture of lease made and entered into this 15 day of March A.D. 1912 by and between The Realty Investment Company a corporation of Ohio, hereinafter called the "lessor" party of the first part, and Salmon P. Halle and Samuel H. Halle jointly, hereinafter called the "lessees" parties of the second part. Witnesseth; That the said lessor hath demised and leased, and doth by these presents demise and lease, unto the said lessees, their heirs and assigns, the following described premises, situate in the City of Cleveland, County of Cuyahoga and State of Ohio, to wit: known as that part of two acre lots numbers 157 and 158 which is bounded and described as follows: to wit: Beginning at the intersection of the easterly line of Short Alley with the southerly line of Euclid Avenue; thence easterly along the southerly line of Euclid Avenue one hundred (100) feet to the westerly line of property of Alfred A. Pope thence southerly parallel with the easterly line of said Short Alley and along the westerly line of said Popes property to a point in the northerly line of Huron Road (formerly Huron Street) which point is one hundred (100) feet westerly measured along said northerly line of Huron Road from the intersection of the northerly line of Huron Road and the easterly line of Short Alley; thence westerly along the northerly line of Huron Road forty eight (48) feet to the westerly line of premises conveyed by Joel W. Tyler and wife to J. M. Henderson by deed recorded in volume 513 page 37 of Cuyahoga County Records of Deeds; thence northerly parallel with the easterly line of Short Alley eighty (80) feet and along the easterly line of the premises conveyed to the said Henderson as aforesaid to the northeasterly corner thereof; thence westerly along the northerly line of the premises conveyed to the said Henderson as aforesaid 52.24 feet to a point in the easterly line of Short Alley, which point is eighty

*See Specimen
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five (85) feet northerly, measured along said line of said Alley from the northerly line of Huron Road; thence northerly along the easterly line of Short Alley to the place of beginning. Being all the premises owned by The Realty Investment Company situated between Euclid Avenue on the north, Short Alley on the west, Huron Road on the south, and said premises of Alfred A. Pope on the east. Which premises shall at all times remain upon the tax duplicate in the name of the lessor, its successors or assigns. To have and to hold the above leased and demised premises, together with the privileges and appurtenances thereunto belonging, unto the said lessees, their heirs and assigns, for and during the term of ninety nine (99) years, beginning on the first day of April A. D. 1912, and ending on the thirty first day of March, A. D. 2011, at and upon the following terms and subject to the covenants, conditions and stipulations hereinafter expressed and declared of and concerning the same; that is to say; 1. The lessees shall pay or cause to be paid unto the lessor, its successors and assigns, during the continuance of this lease, rental as follows; For the first two (2) years ending on the 31st. day of March, 1914, the sum of ten thousand dollars (\$10,000.00) per year, payable in advance, in quarterly installments of twenty five hundred dollars (\$2500.00) each upon the first day of April, July, October and January in each year. For the next succeeding two years, ending on the 31st. day of March, 1916 the sum of twenty thousand dollars (\$20,000.00) per year, payable in advance, in quarterly installments of five thousand dollars (\$5,000.00) each upon the first day of April, July, October and January in each year. For the next succeeding three (3) years, ending on the 31st. day of March, 1919, the sum of twenty five thousand dollars (\$25,000.) per year, payable in advance in quarterly installments of six thousand two hundred and fifty dollars (\$6,250.00) each upon the first day of April, July, October and January in each year. For the next succeeding three (3) years, ending on the 31st. day of March 1922, the sum of thirty thousand dollars (\$30,000.00) per year, payable in advance in quarterly installments of seven thousand five hundred dollars (\$7,500.00) each upon the first day of April, July, October and January in each year. For the remainder of said term, to wit: eighty nine (89) years the sum of thirty five thousand dollars (\$35,000.00) per year, payable in advance in quarterly installments of eight thousand seven hundred and fifty dollars (\$8,750.00) each upon the first day of April, July, October and January in each year. All of said rents shall be paid in gold coin of the United States of the present standard of weight and fineness by depositing it to the credit of the lessor, its successors or assigns, with The Citizens Savings & Trust Company of Cleveland, Ohio, or at such other place in the City of Cleveland as the said lessor, its successors and assigns, may from time to time designate. As a part of the consideration for this lease and in addition to the rentals hereinbefore provided, the lessees hereby covenant and agree to indemnify and save harmless the lessor, its successors and assigns, from any and all taxes, assessments or levies on or against this lease (excepting, however, any income tax that may be levied against the lessor by reason of this lease) the lessees estate hereunder and the premises hereby leased and all improvements thereon, for the full term of this lease and of any and all extensions thereof, beginning with the taxes, assessments and levies due and payable in December 1912; and free from all charges, liens, penalties and claims for damages chargeable to or payable for or in respect of said leased premises and all improvements thereon and the estate of the lessees hereunder, during the said term and any and all extensions thereof; and to punctually pay, in addition to the rents above provided for, all such taxes, assessments, levies and other charges as aforesaid, and upon application of the lessor, its successors and assigns, in writing, to

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furnish The Citizens Savings & Trust Company with written evidence, duly certified, that any and all such charges, claims, et cetera, are duly paid and satisfied; and the lessees do hereby agree to pay the rents, taxes, assessments, levies and other charges as hereinbefore provided. But the lessees shall at all times have the right to contest in good faith in any proper proceeding and in the name of the lessor, if necessary, the payment or satisfaction of any such taxes, assessments, charges, liens, penalties or claims so agreed to be paid by the lessees, if the validity thereof or the right to assess or levy the same against or collect the same from the said premises or improvements or estate of the lessees be disputed by the lessees; but the lessees shall in any and all such proceedings, protect and save harmless the lessor from all cost, loss or damage resulting from any such proceeding or from the failure of the lessees to make any such payment. The lessees hereby agree to promptly and fully obey and comply with all requirements, rules, regulations, laws and ordinances of all legally constituted authorities in any way affecting said premises, the buildings and improvements on or about the same or the use of the same, existing at any time during the continuance of this lease (with the right however, to contest the validity thereof in the manner and under the conditions above provided with respect to taxes, assessments and other public charges) and to permit no unlawful occupation to be carried on upon said premises and no use to be made of any part thereof contrary to any law or ordinance governing the same.

IV. The lessees agree to erect upon said premises within five (5) years from the commencement of the term of this lease, a building which shall cost not less than one hundred thousand dollars (\$100,000.00).

V. From and after the erection and completion of the building provided for in Article IV hereof the lessees agree to keep the buildings and improvements on said premises insured against loss by fire for an amount equal to the full insurable value thereof or, if such insurable value exceeds one hundred thousand dollars (\$100,000.00) then for an amount not less than one hundred thousand dollars (\$100,000.00) in responsible insurance companies authorized to do business in the State of Ohio or in such companies as may from time to time approved by the lessor; all such policies representing such insurance to contain clauses providing that the loss, if any, shall be payable to The Citizens Savings & Trust Company of Cleveland, Ohio, and all amounts that shall be paid under such insurance policies may be used by the lessees in the erection of a new building or buildings upon said premises or in repairing the building standing thereon, or in such manner as will fully protect the rights of the lessees and lessor hereunder, and whenever any new building shall be erected upon the premises it shall be kept insured by the lessees for the amount and in the manner before specified, all amounts becoming payable under such policies to be paid and used as above provided.

All of the policies for the insurance herein provided for shall be deposited with and retained by said Trust Company. It is further mutually agreed that in case the building or buildings and improvements upon said premises shall be at any time damaged or destroyed this lease shall not be terminated, the laws of the State of Ohio to the contrary notwithstanding, and that neither of the parties hereto shall be released by reason of any such damage or destruction from any obligation created or imposed by virtue of this instrument. In the event lessees fail to insure said buildings and improvements as hereinbefore provided the lessor or The Citizens Savings & Trust Company or its successor may insure the same in the manner and to the extent hereinbefore stated, and collect from the lessees the premium or premiums paid therefor, the same as is herein provided for the payment of rent, taxes and assessments. In the event that said The Citizens Savings & Trust Company shall at any time rescind the transaction

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of business or for any reason shall cease to perform the duties and trusts herein sought to be imposed upon it, all such duties and trusts may be discharged and performed by such other trust Company in the City of Cleveland, Ohio, as may from time to time be designated by the lessor. VI. The lessees further covenant and agree not to assign or transfer this lease at any time without the consent of the lessor in writing, unless the rents and all charges, assessments, liens and penalties then payable and covenants thereof at that time required to be performed have been paid, satisfied and performed; and unless the assignee shall expressly assume the lessees engagements hereunder; and unless the lessees shall have placed in the hands of the lessor for inspection during a period of ten (10) days a legal and sufficient instrument of assignment and acceptance, and unless by instrument recorded at or about the time of delivery in the proper recorders office; provided, however, that the lessees, their heirs and assigns, may at any time directly or by conveyance in trust for that purpose, mortgage their estate in the premises to secure any actual debt, and may make all of the insurance payable, in case of loss, to the trustee or mortgagee after caring for the interests of the lessor. All personal liability of the lessees upon this lease and for the performance of the covenants herein contained shall cease and determine upon an assignment hereof when and after a building shall have been erected upon said premises in accordance with the provisions contained in Article IV hereof. VII. It is agreed that the whole amount of the rent agreed to be paid hereunder and all monies due hereunder by reason of any engagement of this lease are and always shall be a valid and first lien upon the buildings and improvements upon said premises and upon all of the interest of the lessees in said premises and in this lease. The lessees covenant and agree to pay and indemnify the lessor, its successors and assigns, from all costs and charges lawfully and reasonably incurred in and about the premises in the defense of any suit in discharging the premises or any part thereof, from any liens, judgments or encumbrances placed or suffered to be placed thereon by said lessees or by any person or persons claiming under them or in obtaining possession after any default of the lessees or expiration of the term hereof; and the lessees further agree to and do hereby indemnify and save harmless the lessor from all loss, cost or damage in any manner arising from the erection of a building or buildings upon said premises and in excavating for the same or in the removal of any building from said premises. VIII. This lease is made upon the condition that the lessees shall punctually perform all the covenants and conditions herein set forth to be performed by the lessees, and that if at any time the rent, taxes, assessments, levies and other charges and payments aforesaid, or any of them or any part thereof, shall become in arrears and unpaid for the period of four (4) months after becoming due, or if any of the remaining covenants or agreements aforesaid shall not be performed as hereinbefore stipulated and agreed to be performed by the lessees, and such default shall continue for a period of four months, the lessor, its successors and assigns, shall, after such four (4) months period and after first giving to the lessees and to any one mortgagee of the lessees (if there be such mortgagee) sixty (60) days written notice of the lessors intention to enter upon said premises and forfeit this lease, have the right at the expiration of said sixty (60) day period or at any time thereafter such default being not cured, to enter upon said premises and receive possession thereof and bring suit for and collect all rents, taxes, assessments, levies payments or other charges which shall have accrued up to the time of such entry, and thenceforth from the time of such entry this lease shall become void to all intents and purposes whatsoever, and the said leasehold on-

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tate and all improvements made on said premises shall be forfeited to the lessor without compensation therefor to the said lessees; provided, however, that for rents due and non-performance of any other conditions, covenants, agreements or stipulations hereof, the lessor may, at its election sue for and collect all amounts due and enforce all other obligations of the lessees hereunder without such entry or forfeiture. X. It is further mutually agreed that every demand for rent made after the same falls due shall have the same force and effect in law as if made at the time the same falls due, and that the waiver by the lessor, its successors or assigns, of any covenant, agreement, stipulation or condition herein contained shall not be construed as a waiver of any subsequent breach of such covenant, agreement, stipulation or condition. XI. The lessees hereby covenant and agree at all times to keep in good condition and repair, at their own expense, the buildings and improvements on said premises, and that no waste either actual or permissive shall be permitted thereon but the removal of buildings or portions thereof, for the purposes of reconstruction or of erecting new buildings shall not be deemed to be waste. XI. The lessor for itself, its successors and assigns, hereby covenants to and with the lessees that if the rent, taxes, assessments, levied and other charges aforesaid, shall be paid as hereinbefore provided, and all other of the aforesaid agreements, covenants, conditions and stipulations, shall be performed by the lessees as is in this lease provided, the lessees shall have the peaceable possession and enjoyment of the premises above described without the let, hindrance or disturbance of any person whatsoever, to the end of said term and of any and all extensions thereof. XII. The lessor, for itself, its successors and assigns, further expressly agrees that the lessees shall have the right and option, which is hereby granted, to extend and renew this lease for a further period of twenty five (25) years or of fifty (50) years or of ninety nine (99) years, from and after the expiration of the said term herein granted if the lessees shall desire an extension thereof for either of said additional periods. In the event that the lessees shall elect to exercise such option for any such extension of this lease, the lessees shall, within the year commencing on the first day of April, A. D. 2009, and ending on the 31st day of March, A. D. 2010, notify the lessor in writing of the lessees election and intention to have and acquire such extension and renewal for one of the periods of time above mentioned, and shall indicate in such notice whether such extension or renewal shall be for the period of twenty five (25) years or for fifty (50) years or for ninety nine (9) years; and after the service of said notice upon the lessor, such extension and renewal shall become effectual for all purposes, and the lessor and the lessees shall thereupon execute such further instruments or agreements as may at such time be proper or necessary for the full protection of the respective rights of the said parties during such extension of the original term thereof. In the event of any such renewal of the original term of this lease, the rental to be paid by the lessees hereunder during the renewal period so specified by the lessees shall be the sum of thirty five thousand dollars (\$35,000.00) per year, payable quarterly in advance in the manner and upon the terms and conditions hereinbefore set forth, and all of the remaining conditions covenants and stipulations of this lease shall be and remain in full force and effect during such entire additional term hereof. XIII. Whenever this lease or any renewal thereof shall expire without election on the part of lessees to renew, then the lessees shall vacate said premises at the termination of this lease or any renewal thereof, as the case may be, and surrender possession thereof to the lessor, its successors and assigns. XIV. It is further agreed that all the covenants, agreements

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stipulations, conditions, engagements and obligations of this lease shall accrue to and be binding upon the successors and assigns of the said original lessor and upon the heirs, personal representatives and assigns, of the said original lessees, provided, as to their assigns, that they shall become such in accordance with the terms and conditions hereof, with like force and effect in all respects as the same accrue to and are binding upon said original lessor and lessees respectively. In witness whereof, the said The Realty Investment Company had caused its corporate name and seal to be affixed to duplicate originals hereof by its President and Secretary, thereunto duly authorized by its Board of Directors; and the said Salmon P. Halle and Samuel H. Halle have set their names to such duplicate originals hereof, the day and year first above written.

Signed, Sealed and Acknowledged in the presence of) The Realty Investment Company
 Andrew Squire Charles C. Owens. By Ralph King President
 G. B. Siddall L. S. Lomasson Attest E. S. Sanderson Secretary
 (The Realty Investment)
 (Company Corporate Seal Salmon P. Halle
 (Cleveland Ohio) Samuel H. Halle

The State of Ohio ss) Before me, a Notary Public within and for said County, per-
 Cuyahoga County) sonally appeared the above named Ralph King and E. S. Sanderson to me known and known to me to be the President and Secretary respectively of The Realty Investment Company the corporation which executed the within instrument as lessor and acknowledged that they did sign and seal said instrument for and in behalf of said corporation; that the same is their free act and deed as such officials respectively and the free and corporate act and deed of said The Realty Investment Company. In testimony whereof, I have herunto set my hand and official seal at Cleveland, Ohio, this 23rd. day of March A. D. 1912.

Charles C. Owens (Notarial Seal)
 Ohio
 Notary Public (Cuyahoga County)

The State of Ohio ss) Before me, a Notary Public within and for said County, per-
 Cuyahoga County) sonally appeared the above named Salmon P. Halle and Samuel H. Halle, the lessees above named, who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed. In testimony whereof, I have herunto set my hand and official seal at Cleveland, Ohio this 15th day of March A.D. 1912.

Rec'd Apr. 3, 1912 at 3:10 P. M.) E. S. Lomasson (Notarial Seal)
 Ohio
 Recorded Apr. 4, 1912) Notary Public (Cuyahoga County)
 Fee for Record \$4.00) Paul Schreiner Recorder

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