



1030 446 MISC



23430 92 446-457

THIS PAGE INCLUDED FOR  
INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

0

AGREEMENT FOR TENANCY IN COMMON, PARTY WALL AND  
PARKING LOT, AND FIRST RIGHT OF REFUSAL

This Agreement is made and entered into this 21 day  
of August, 1992, by and between Donald E. Fey and Dena Marie Fey  
(hereinafter "Fey"), and Ronald L. Stazzoni and Dominic W.  
Stazzoni (hereinafter "Stazzoni").

WHEREAS, Fey and Stazzoni are desirous of acquiring an  
interest in commercial real estate currently owned by Richard G.  
Andersen and Barbara K. Johnson, as heirs or successors in  
interest to Shirley G. Anderson, as Trustee of a Revocable Trust  
Agreement dated April 9, 1979 (hereinafter "Sellers"), as  
tenants in common; and

WHEREAS, Fey and Stazzoni are desirous of setting  
forth the respective interests of each as tenants-in-common in  
the subject property; and

WHEREAS, the parties are desirous of securing an  
agreement for the maintenance of a party wall currently in  
existence and incorporated into the commercial building now  
owned by Sellers situated on commercial real estate located at  
3326-36 South 66th Avenue, Omaha, Nebraska, which is legally  
described as follows:

LOT NINE (9), GROVER INDUSTRIAL PARK, AN ADDITION TO  
THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA.

Said party wall currently in existence separates the commercial  
building into two separate and distinct sections as indicated by

Misc # 23430

Return to:  
Box 16 Spence  
Janet Clark  
Ta - 25322

FWP/agred&r.jac08.1992.4

BK 1030 N 2369 C/O          FEE 60.50  
PG 446-457 N          DEL OK MC           
OF Miss COMP          P/B 55-14530

GEORGE J. MUELENBACH  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

SEP 10 9 49 AM '92

RECEIVED

the floor plan attached hereto, marked Exhibit "A", and by this reference made a part hereof; and

WHEREAS, the parties are desirous of entering into an agreement to provide for the right of each party to continue the exclusive use of the separate and distinct sections in which Fey and Stazzoni currently conduct their separate businesses known as Aircraft Specialties, Inc. and D & R Automotive Paint & Supply of Omaha, Inc., respectively; and

WHEREAS, the portion of the commercial building currently utilized exclusively by Fey consists of approximately 4,500 square feet and is marked in blue on the floor plan, Exhibit "A" (hereinafter referred to as Parcel 1), and the property to be acquired by Stazzoni consists of approximately 3,000 square feet and is marked in yellow on the attached floor plan, Exhibit "A" (hereinafter referred to as Parcel 2); and

WHEREAS, the parties are desirous of establishing a parking lot easement to address the rights of Fey and Stazzoni as to the real estate and appurtenances adjoining the commercial building which shall apply in perpetuity and run with the land should a portion of the real property as set forth on the attached Exhibit "A", be conveyed to other parties, either by direct conveyance, foreclosure or power of sale.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

1. Exclusive Rights of Each Party in the Property.

The total purchase price to be paid for the property in the amount of \$160,000.00 shall be allocated as follows: \$96,000.00 to be paid by Fey and \$64,000.00 to be paid by Stazzoni. Fey shall have the exclusive right of ownership, use and quiet enjoyment of the portion of the building, including the air above and the land below, described as Parcel 1 on the attached Exhibit "A". Stazzoni shall have the exclusive right of ownership, use and quiet enjoyment of the portion of the building, including the air above and the land below, described as Parcel 2 on the attached Exhibit "A". The parking lot shall remain in the name of the parties as tenants-in-common, subject to the rights of ingress and egress described herein. Each party shall have the right to assign, sell, transfer, convey, mortgage and/or encumber each party's separate interest in the building, including the air above and the land below, subject to the First Right of Refusal provided for in paragraph 11 of this Agreement.

2. Ownership Interests. Fey and Stazzoni shall acquire the property as tenants in common by Deed from Sellers. However, the Stazzoni interest in their portion of the commercial building and real estate shall be held as follows: Dominic W. Stazzoni, an undivided 3/5ths interest, and Ronald L. Stazzoni, an undivided 2/5ths interest, as tenants-in-common; and the Fey interest in their portion of the commercial building

and real estate shall be held in Donald E. Fey and Dena Marie Fey, as joint tenants with full rights of survivorship and not as tenants-in-common.

3. Hold Harmless. Neither party shall be in any way responsible or liable for the other party's interest in the building, including the air above and the ground below. Fey will protect, indemnify and save harmless Stazzoni from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about Parcel 1 as shown on the attached Exhibit "A", or due directly or indirectly to the ownership, use or occupancy thereof, or any part thereof by Fey or any person claiming through or under Fey. Stazzoni will protect, indemnify and save harmless Fey from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about Parcel 2 as shown on the attached Exhibit "A", or due directly or indirectly to the ownership, use or occupancy thereof, or any part thereof by Stazzoni or any person claiming through or under Stazzoni.

4. Right of Continuing Placement of Party Wall. Fey and Stazzoni shall be entitled to the continuing existence of a wall currently constructed and a part of the commercial building

located on the attached Exhibit "A" which separates Parcels 1 and 2 as designated by the blue and yellow shaded portions of the commercial building as indicated on the floor plan. If any portion of the commercial building shall be conveyed by either party, either by direct conveyance, foreclosure or power of sale proceedings, said wall shall remain a party wall subject to the terms of this agreement for the convenience of the parties then holding title to any portion of the premises.

5. Costs for Wall. Costs of the party wall shall be borne by Fey and Stazzoni on an equal basis.

6. Repairs and Rebuilding. If at any time after conveyance by the parties of any portion of the commercial real estate, it shall become necessary to repair or rebuild the party wall or any part thereof, the costs thereof shall be borne and paid by the record titleholders of the premises in proportion to their respective square foot ownership of the premises.

7. Maintenance. Each party shall bear the cost of maintenance and repair of that portion of the commercial building to which they have the exclusive right of use and enjoyment, as described on Exhibit "A". The cost of the maintenance and repair of the commercial real estate and appurtenances adjoining the commercial building shall be shared by the parties in proportion to their respective square footage ownership of the premises, i.e., currently 60% by Feys and 40% by Stazzonis.

8. Taxes. All real estate taxes shall be paid by the record titleholders of the premises in proportion to their respective square foot ownership of the premises; i.e., currently 60% by Fey and 40% by Stazzoni.

9. Insurance. Fey and Stazzoni covenant and agree that they will, each at their own separate expense, procure and maintain separate casualty and liability insurance policies from responsible companies authorized to do business in the State of Nebraska, in amounts not less than \$300,000.00 for any one person injured, and \$1,000,000.00 for any one accident, and with the limits of \$100,000.00 for property damage, protecting Fey and Stazzoni against such claim, damages, costs or expenses on account of injury to any person or persons, or to any property belonging to any person or persons, by reason of such casualty, accident or other happening on their respective Parcels 1 and 2, during the term thereof. Fey and Stazzoni will carry fire and extended coverage on their respective portions of the commercial building in amounts not less than 80% of the replacement value of said properties.

10. Covenants to Run With the Land. The covenants and agreements herein contained, including the covenants and agreements in respect to the party wall or for the use of said wall or any extension thereof as hereinbefore provided, shall run with the land, and the liability to perform and the right to enforce performance of the same shall pass to the heirs and

assigns of the respective parties hereto; provided that no person shall be personally liable for the breach of any covenants and agreements herein contained unless such breach was committed during its ownership of the land.

11. Parking Lot Easement. In the event that the commercial real estate is conveyed by either of the parties as set forth in paragraph 2, the record titleholder entitled to the exclusive right of use and enjoyment of a portion of the premises denominated as Parcel 1 and Parcel 2 as set forth on the attached Exhibit "A" shall be entitled to use the parking spaces as set forth on the attached Exhibit "B". Said easement shall entitle the titleholder, its heirs and assigns, an easement and right-of-way together with full and free right for it, its successors, tenants, servants, visitors and licensees, in common with all others having the like right, at all times hereafter with or without automobile or other vehicles or on foot, for the purpose of ingress and egress to and from any portion of the parking lot facilities contained on the premises. Stazzoni shall have the exclusive right to use the four parking spaces designated as "Stazzoni's Exclusive Parking Spaces" on Exhibit "B"; and Fey shall have the exclusive right to use the four parking spaces designated as "Fey's Exclusive Parking Spaces" on Exhibit "B".

12. First Right of Refusal. Each party shall have a first right of refusal to purchase from the other its portion of



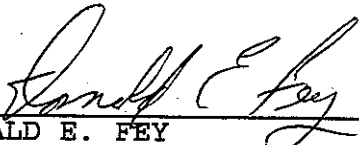
the property upon the same terms and conditions as a bona fide sale to a third party. If either Fey or Stazzoni desire to transfer their interests, other than to members of their immediate family or to a trust for their benefit, said party shall first give the other party written notice of the proposed transfer, the name of the proposed transferee, and the terms of that proposed transfer. The other party shall then have thirty (30) days to agree in writing to purchase said interest on the same terms and conditions. Any such purchase must close within a reasonable period of time, and in any such event not more than ninety (90) days subsequent to the party's agreement in writing to purchase said interest on the same terms and conditions. If said other party shall fail to exercise its right to purchase, or fail to close as provided herein, the selling party shall then be free to transfer to the proposed transferee on the same terms and conditions contained in the notice.


13. Property Split. Both parties agree to sign all necessary documents and take all necessary steps to proceed to request the City of Omaha, Nebraska zoning authorities to allow a split by Deed of the property such that Fey has a Deed for Parcel 1 and Stazzoni has a Deed for Parcel 2, the legal descriptions to be determined by survey. Should such split by Deed be approved by the necessary authorities, the parties agree to amend this Agreement accordingly.

14. Nebraska Law. This Agreement shall be construed and governed by the laws of the State of Nebraska.


15. Binding Effect. This Agreement shall be binding on the parties, their successors-in-interest, assigns and heirs, and shall pass with the land until this Agreement is nullified by written consent of all the parties hereto and/or their assigns or heirs.

FEY:

  
\_\_\_\_\_  
DONALD E. FEY

  
\_\_\_\_\_  
DENA MARIE FEY

STAZZONI:

  
\_\_\_\_\_  
RONALD L. STAZZONI

  
\_\_\_\_\_  
DOMINIC W. STAZZONI

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

On this 21<sup>st</sup> day of August, 1992, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Donald E. Fey and Dena Marie Fey, to me known to be the persons named in and who executed the foregoing

instrument, and acknowledged that they executed the same as their voluntary act and deed.

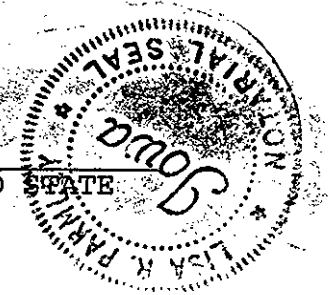


*Deborah T. Wallace*  
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA )  
 ) ss.  
COUNTY OF POTTAWATTAMIE )

On this 21 day of August, 1992, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ronald L. Stazzoni, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

*Lisa R. Parrish*  
NOTARY PUBLIC IN AND FOR SAID STATE



STATE OF IOWA )  
 ) ss.  
COUNTY OF POTTAWATTAMIE )

On this 21 day of August, 1992, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dominic W. Stazzoni, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

*Lisa R. Parrish*  
NOTARY PUBLIC IN AND FOR SAID STATE



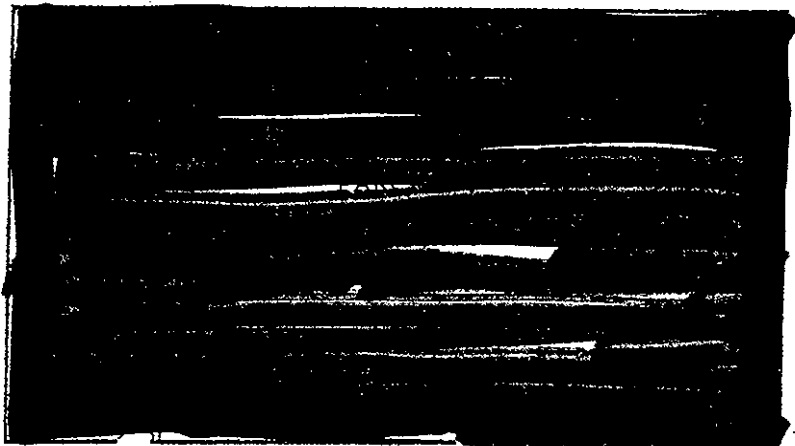
**Floor Plan**

EXHIBIT "A"

3326 S. 56 Ave

BOOK 1030 PAGE 456

90'



51'

56'

PARCEL 2

100'

30'

# Floor Plan

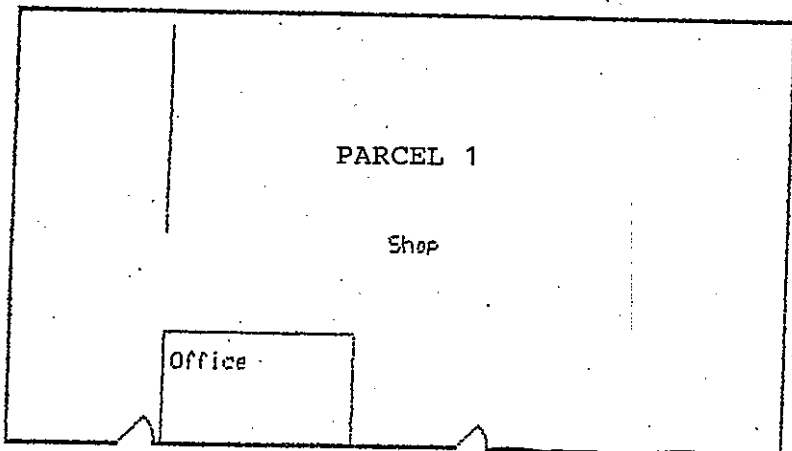
EXHIBIT "B"

## DIAGRAM OF PARKING SPACES

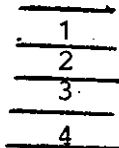
3326 S. 56 Ave

BOOK 1030 PAGE 457

90'



Fey's Exclusive  
Parking Spaces



PARCEL 2

Storage

100'

Display

RR

OFF

Stazzoni's Exclusive  
Parking Spaces

