

TA 6558 Spence Title

BOOK 676 PAGE 225

AGREEMENT

This agreement is entered into this 23<sup>rd</sup> day of AUGUST, 1982, between OLD ORCHARD WEST, a Nebraska partnership, hereinafter referred to as the "Seller", and RICHMAN GORDMAN STORES, INC., a Nebraska corporation, hereinafter referred to as the "Buyer".

\* \* \*

1. This agreement is applicable to the following described real estate:

(a) Lots 1 through 5, inclusive, in Old Orchard West, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded; and

(b) That portion of Lots 1 and 2, in Sherwood Plaza Commercial, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, which lies north of such Old Orchard West subdivision, except that portion of such Lot 2 described in Exhibit A attached hereto.

For purposes of this agreement, the above-described real estate is referred to as the "Shopping Center"; and all references in this agreement to "Old Orchard West" shall mean the Old Orchard West subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

2. Concurrently with the execution of this agreement, Buyer has purchased from Seller Lot Five (5) in Old Orchard West; such Lot Five (5) is referred to in this agreement as the "Premises". As a condition of such transaction, Buyer and Seller have agreed and hereby agree as follows:

(a) Right of Repurchase. In the event that Buyer shall not have commenced construction of a retail department store on the Premises on or before October 12, 1984, or, in the event that Buyer shall have commenced construction of a retail department store on the Premises on or before October 12, 1984, but shall have failed to substantially complete such construction by October 12, 1986, then Seller shall have the right to repurchase the Premises from Buyer at a price equal to the amount which Buyer has paid Seller for the Premises (excluding any interest paid by Buyer) plus the amount of Buyer's actual out-of-pocket expenses paid to third parties for the construction of improvements on the Premises (but excluding any fees or expenses which Buyer may have incurred by way of architect fees, surveying costs, other pre-commencement of construction expenses, and

BOOK 676 PAGE 226

interest). Such purchase price, less any liens or encumbrances placed against the Premises by Buyer or as the result of Buyer's actions, shall be paid in cash at the closing. Seller shall give notice to Buyer of its election to repurchase in writing and such notice shall be sent by certified or registered mail, return receipt requested, or personally delivered to Buyer at the address hereinafter set forth for notices. The closing of such repurchase shall take place at such time as the parties agree but in no event more than sixty (60) days from the date that Seller shall have exercised its election to repurchase. This right of repurchase shall expire upon the earlier of completion of the construction of such department store or October 12, 1989, if not exercised prior thereto. With the prior permission of Seller and provided that the Premises will be used for a retail department store, Buyer may convey the Premises to another financially responsible purchaser provided that all amounts due and owing to Seller are paid upon such conveyance and provided further that any such subsequent purchaser shall take the property subject to Seller's right of repurchase within the time periods set forth hereinabove; the provisions of this sentence shall cease to be applicable after such right of repurchase has expired as provided above.

(b) Agreement to Participate in Merchants' Association. Buyer agrees that it will join in and participate with any Merchants' Association formed by the merchants of the Shopping Center in an effort to promote the interests of all merchants of the Shopping Center and that it will pay dues and other assessments as may be appropriately assessed by such Association; provided, however, that Buyer shall be entitled to one seat on the governing body of such Association and to a veto right with respect to decisions made by such Association.

(c) Limitation on Promotional Displays and Sales. Seller agrees that it will prohibit within the Shopping Center circuses, flea markets, or other merchandising which utilizes parking areas or common areas with the exception that a sidewalk area, if approved by a majority of the members of the Merchants' Association, may be conducted; provided, that any such sidewalk sale shall be limited to not more than three (3) days duration.

(d) Shopping Center Maintenance. Buyer agrees to maintain the parking areas and other improvements situated on the Premises in a condition of cleanliness, safety, and repair consistent with good

BOOK 676 PAGE 227

shopping center operating standards. Buyer and Seller agree that the common areas (except where specifically included, the term "common areas" shall not include parking areas) situated in the remainder of the Shopping Center shall be maintained by Seller in a condition of cleanliness, safety, and repair consistent with good shopping center operating standards and that Seller's cost of such maintenance shall be shared as hereafter stated:

(i) Prior to Substantial Completion of Buyer's Improvements: Prior to the substantial completion of the improvements which Buyer intends to construct upon the Premises, Buyer shall pay a portion of Seller's cost of street lighting, street maintenance and repair, and snow removal from streets computed in the following manner: Seller's total cost of street lighting, street repair and maintenance, and snow removal from streets together with an additional 10% thereof to cover Seller's administrative expenses in providing such services shall be determined. From the amount so determined shall be deducted an amount determined by multiplying (1) the total amount which Seller shall receive as contributions toward common area maintenance from land leases or other leases where the amount of such common area maintenance contribution is fixed by (2) a fraction, the numerator of which is 110% of Seller's total cost of street lighting, street maintenance and repair, and snow removal from streets and the denominator of which is 110% of Seller's total shopping center common area maintenance and repair costs (including parking areas) incurred during the same period of time. The net amount as so determined shall be shared between Buyer and Seller in the following proportions: Seller 72%; Buyer 28%.

Until Buyer has substantially completed the improvements to be constructed upon the Premises, Buyer shall maintain the Premises by cutting weeds not less often than two times each year or more often if required by the regulations of any governmental authority having jurisdiction over the Premises and shall remove debris, mud, and trash on the streets in the Shopping Center resulting from its construction of improvements on the Premises, the same not being the responsibility of Seller.

## BOOK 676 PAGE 228

(ii) After Substantial Completion of Buyer's Improvements: At such time as Buyer has substantially completed the improvements to be constructed on the Premises, or at such time as the occupant of the Premises shall have opened for business on the Premises, whichever shall first occur, Buyer shall pay a portion of Seller's cost of street lighting, street maintenance and repairs, snow removal from streets, and other common area maintenance and repair costs computed in the following manner: Seller's total cost of street lighting, street maintenance and repairs, snow removal from streets, and other common area maintenance and repair costs shall be determined and an additional 10% of such sum as so determined shall be added thereto. From the amount so determined, including the 10% addition, there shall be deducted an amount determined by multiplying (1) the total amount which Seller shall receive as contributions toward common area maintenance from land leases or other leases where the amount of such common area maintenance contribution is fixed by (2) a fraction, the numerator of which is 110% of Seller's total cost of street lighting, street maintenance and repairs, snow removal from streets, and other common area maintenance and repair costs and the denominator of which is 110% of Seller's total shopping center common area maintenance and repair costs (including parking areas) incurred during the same period of time. The net amount as so determined shall be shared between Buyer and Seller in the following proportions: Seller 72%; Buyer 28%.

(iii) Limitation on Capital Improvements: Notwithstanding the provisions of paragraphs (i) and (ii) above, no capital improvements of which Buyer's share will exceed \$3,000 shall be made without Buyer's prior approval except for paving repairs in which event no paving repair of which Buyer's share will exceed \$5,000 shall be made without Buyer's prior approval.

(e) Restrictions on Seller's Further Construction. Seller agrees that any building which it may wish to construct on the east one-half of Lot Four (4) in Old Orchard West shall provide at least four (4) rows of parking between such building and the main north-south roadway easement situated

## BOOK 676 PAGE 229

immediately east of such Lot Four (4). Seller further agrees that any building which Seller wishes to construct in the Shopping Center, other than on the east one-half ( $\frac{1}{2}$ ) of such Lot Four (4), shall provide five (5) parking spaces for each 1,000 square feet of floor area under roof. Seller further agrees that no building constructed in the Shopping Center within the area east of Lot Five (5) in Old Orchard West which lies between the extended north and south building lines of the building constructed by Buyer on such Lot Five (5) shall exceed one (1) story in height. Seller further agrees that any building constructed in the Shopping Center north of such Lot Five (5) shall have a setback from such Lot Five (5) of not less than twenty (20) feet. Seller further agrees that no theatre shall be constructed or operated in the Shopping Center within the area lying west of the permanent north-south sewer easement (Miscellaneous Book 413, Page 365 and Miscellaneous Book 591, Page 574) shown on the original plat of Old Orchard West, as recorded in Douglas County, Nebraska.

(f) Building Location and Size. Buyer agrees that any building which may be constructed on Lot Five (5) in Old Orchard West shall be situated on the westerly portion of such Lot Five (5) and that all buildings which may be constructed on such Lot Five (5) in the aggregate shall have no more than 104,000 square feet of ground area under roof, the computation of such area to be made by measuring from the exterior walls of such buildings.

(g) Agreement to Execute Further Documents. Each party agrees to execute such further documents as may be necessary or appropriate to evidence the covenants contained in this Paragraph 2.

3. Buyer and Seller acknowledge that violation by either of them of the covenants set forth in Paragraph 2 of this agreement may cause irreparable harm to the other of them. Accordingly, in the event of either of the actual violation of any of such covenants or the threat of a violation of any of such covenants, Buyer and Seller agree that the party claiming such violation or threatened violation shall be entitled to injunctive relief in addition to such other remedies at law or in equity as the laws of the State of Nebraska may provide. In the event that either Buyer or Seller shall seek injunctive relief from the violation of any of such covenants or the threat of a violation of any of such covenants, then the other party hereby waives any requirement which may be imposed under the laws of the State of Nebraska for the posting of a bond by the party seeking injunctive relief.

BOOK 676 PAGE 230

4. Whenever either party desires to give notice to the other party pursuant to the provisions of this agreement, such notice shall be in writing and shall be personally delivered or sent by prepaid United States registered or certified mail, return receipt requested, to the following address or to such other address as either party may designate by written notice pursuant to this paragraph:

To Seller: Farmland Enterprises, Inc.  
c/o Old Orchard West  
13232 Arbor Plaza  
Omaha, Nebraska 68144

To Buyer: Richman Gordman Stores, Inc.  
12100 West Center Road  
Omaha, Nebraska 68144  
Attn: Nelson T. Gordman

5. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The covenants contained in Paragraph 2 of this agreement are covenants running with the land respectively benefited and burdened thereby.


IN WITNESS WHEREOF, Buyer and Seller have executed this agreement the day and year first above written.

OLD ORCHARD WEST, a Nebraska  
partnership

By: FARMLAND ENTERPRISES, INC.,  
a Nebraska corporation,  
Partner

By:   
Frank R. West, President

RICHMAN GORDMAN STORES, INC.,  
a Nebraska corporation

By:   
Nelson T. Gordman, Senior  
Vice President


BOOK 676 PAGE 231

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 23rd day of AUGUST, 1982, by Frank R. West, president of Farmland Enterprises, Inc., a Nebraska corporation, partner in Old Orchard West, a Nebraska partnership, on behalf of the partnership.

William H Coates  
Notary Public

My commission expires:


 GENERAL NOTARY - State of Nebraska  
WILLIAM H. COATES  
My Comm. Exp. May 2, 1984  
STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 23rd day of AUGUST, 1982, by Nelson T. Gordman, senior vice president of Richman Gordman Stores, Inc., a Nebraska corporation, on behalf of the corporation.

Howard J. Kasion  
Notary Public

My commission expires:

7-27-86

 HOWARD J. KASION  
GENERAL NOTARY  
State of Nebraska  
My Commission Expires  
JULY 27, 1986

A part of Lot 2, Sherwood Plaza Commercial, a subdivision located in the SE 1/4 of Section 25, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the point of intersection of the South right-of-way line of Cryer Avenue and the East right-of-way line of 135th Street, said point also being the Northwest corner of said Lot 2, Sherwood Plaza Commercial; thence N69°49'20"E (assumed bearing), along said South right-of-way line of Cryer Avenue, a distance of 60.00 feet to the Point of Beginning; thence continuing N69°49'20"E, along said South right-of-way line of Cryer Avenue, a distance of 80.00 feet; thence Northeasterly, along said South right-of-way line of Cryer Avenue, on a curve to the right with a radius of 555.00 feet, a distance of 156.51 feet, said curve having a long chord which bears N77°54'03"E, a distance of 155.99 feet; thence S00°10'40"E, a distance of 269.70 feet; thence S89°49'20"W, a distance of 151.69 feet; thence N20°10'40"W, a distance of 222.54 feet to the Point of Beginning.

Said tract of land contains an area of 1.100 acres, more or less.

**EXHIBIT A**

18 Misc

RECEIVED  
AUG 25 PM 12:44  
REGISTERED DEEDS  
DUGLAS COUNTY, NEBRASKA

Book 676  
Page 232  
of Misc

Fee 25.75  
Index [Signature]  
Comped 76A-534 or  
88-530c  
88-53  
76A-534