

RECORDED BY  
SECURITY LAND TITLE COMPANY  
TA- 17834

AMENDMENT TO  
CROSS EASEMENT AGREEMENT

This AMENDMENT TO CROSS EASEMENT AGREEMENT (the "Amendment") is executed by and among OTR Partnership ("OTR"), Financial Properties Developers, Inc. ("Financial"), McDonald's Corporation ("McDonalds"), Bill Kaltsounis and Stella G. Kaltsounis (together referred to as "Kaltsounis") and Gene E. Phillips, successor nominee for the Board of Trustees of Novus Property Company, a Massachusetts business trust, formerly known as First Wisconsin Mortgage Trust ("Phillips"), and this Amendment is expressly agreed and consented to by K Mart Corporation ("K Mart").

WHEREAS, OTR, Financial, McDonalds, Kaltsounis and Phillips own, in the aggregate, all of the real property situated in Douglas County, Nebraska that is the subject of and is burdened by that certain Cross Easement Agreement (the "Cross Easement") made the 1st day of August 1980 by and between First Wisconsin National Bank of Milwaukee and Financial, which Cross Easement is recorded in Book 637, Page 59 of the Miscellaneous Records of Douglas County, Nebraska; and

WHEREAS, OTR, Financial, McDonalds, Kaltsounis and Phillips desire to amend the Cross Easement by this Amendment and K Mart desires to agree and consent to such amendment.

NOW THEREOFRE, for and in consideration of Ten Dollars and other good and valuable consideration OTR, Financial, McDonalds, Kaltsounis and Phillips hereby agree that from and after the effective date of this Amendment, the Cross Easement is amended as follows:

1. Paragraph one (1) of the Cross Easement shall be replaced in its entirety by the following language:

"FWN grants to FINANCIAL a perpetual easement over, upon and across the Common Areas, as hereinafter defined, of the FWN Premises shown as Outlot 1, for ingress to and egress from the Financial Premises at two designated locations, each being an access opening thirty (30) feet wide along the common boundary lines of the Financial Premises and the FWN Premises shown as Outlot 1, as shown on Exhibit "A". In the event, and only in the event, the property (the "Sale Tract") more particularly described in Exhibits "F-1" and "F-2" is used or developed for NONRESIDENTIAL purposes, FWN grants to Financial a perpetual easement over, upon and across the Common Areas, as hereinafter defined, of the Sale Tract for ingress to and egress from the Financial Premises at two (2) locations each being an access opening thirty (30) feet wide within Common Areas, as hereinafter defined, and along the common boundary line of the Sale Tract and the Financial Premises. The exact location of these two access openings will be approved by FWN and Financial, which approval shall not be unreasonably withheld. In the event the Sale Tract is used or developed for RESIDENTIAL purposes, FWN grants Financial a perpetual easement over, upon and across the Common Areas, as hereinafter defined, of the Sale Tract SOLELY AND EXCLUSIVELY for the purpose of PEDESTRIAN ingress to and egress from the Financial Premises at two (2) designated locations each being a PEDESTRIAN ACCESS OPENING ten (10) feet wide along the common boundary line of the Sale Tract and the Financial Premises. The exact location of these two access openings will be approved by FWN and Financial, which approval shall not be unreasonably withheld. Except as limited in the event of a residential development, the easement for ingress and egress shall include pedestrian and

vehicular traffic and shall be for the benefit of the Financial Premises, and of FINANCIAL, its heirs, legal representatives, successors and assigns, and its tenants, employees, agents, customers, invitees and licensees."

2. Paragraph two (2) of the Cross Easement shall be replaced in its entirety by the following language:

"FINANCIAL grants to FWN a perpetual easement over, upon and across the Common Areas, as hereinafter defined, of the Financial Premises for ingress to and egress from FWN Premises shown as Outlot 1 at two designated locations, each being an access opening thirty (30) feet wide along the common boundary lines of the FWN Premises shown as Outlot 1 and the Financial Premises, as shown on Exhibit "A". In the event, and only in the event, the Sale Tract is used or developed for NONRESIDENTIAL purposes, Financial grants to FWN a perpetual easement over, upon and across the Common Areas, as hereinafter defined, of the Financial Premises for ingress to and egress from the Sale Tract at two (2) locations each being an access opening thirty (30) feet wide within Common Areas, as hereinafter defined, and along the common boundary line of the Financial Properties and the Sale Tract. The exact location of these two access openings will be approved by Financial and FWN, which approval shall not be unreasonably withheld. In the event the Sale Tract is used or developed for RESIDENTIAL purposes, Financial grants FWN a perpetual easement over, under and across the Common Areas, as hereinafter defined, of the Financial Premises SOLELY AND EXCLUSIVELY for the purpose of PEDESTRIAN ingress to and egress from the Sale Tract at two (2) designated locations each being a PEDESTRIAN ACCESS OPENING ten (10) feet wide along the common boundary between the Sale Tract and the Financial Premises. The exact location of these two access openings will be approved by Financial and FWN, which approval shall not be unreasonably withheld. Except as limited in the event of a residential development, the easement for ingress and egress shall include pedestrian and vehicular traffic and shall be for the benefit of the FWN Premises and of FWN, its heirs, legal representatives, successors and assigns, and its tenants, employees, agents, customers, invitees and licensees."

3. Paragraphs four (4), thirteen (13), fifteen (15) and seventeen (17) shall each and all be deleted from the Cross Easement in their entirety, and each and all of said paragraphs shall be of no further force and effect.
4. Except as hereinafter provided in the next sentence, paragraph five (5) of the Cross Easement shall be unchanged and shall remain in full force and effect. The parties hereto understand, acknowledge and agree that said paragraph five (5) is not intended to apply to or burden and shall not apply to or burden the Sale Tract and should any question as to the applicability of said paragraph five (5) to the Sale Tract ever be raised for any reason whatsoever, the parties hereto hereby completely and irrevocably release the Sale Tract from any and all of the provisions of said paragraph five (5).
5. Paragraphs three (3), seven (7), eight (8), ten (10), eleven (11), twelve (12), sixteen (16), nineteen (19), twenty (20) and twenty-one (21) of the Cross Easement shall be unchanged and shall remain in full force and effect.

6. Paragraph six (6) of the Cross Easement shall be replaced in its entirety by the following language:

"FWN agrees that as to those portions of the FWN Premises shown as Outlot 1 on Exhibit "A", that no building (including any parapet or tower of any building) shall be erected which shall extend more than twenty (20) feet in height above the ground, and no sign (freestanding or building sign) may extend more than twenty (20) feet in height above the ground. Notwithstanding the foregoing and as an exception thereto, any store operated by or under franchise from and under one of the nationally or regionally known names of a national or regional chain store organization may have such parapet, tower or identification sign of said chain store organization as is being used for all stores opened by said chain store organization at or about the time of the erection of such parapet, tower or sign, provided that the highest point of such parapet, tower or sign shall not be higher than thirty (30) feet above the ground."

The parties hereto understand, acknowledge and agree that the purpose of the replacement language is to delete from the original language the reference to "Outlot 2" because "Outlot 2" is a portion of the Sale Tract. The parties hereto further understand, acknowledge and agree that the replacement language does not apply to or burden the Sale Tract, and should any question as to the applicability of the replacement language to the Sale Tract ever be raised for any reason whatsoever, the parties hereto hereby completely and irrevocably release the Sale Tract from any and all of the provisions of the replacement language.

7. Paragraph nine (9) of the Cross Easement shall be replaced in its entirety by the following language:

"FWN covenants and agrees to maintain on that portion of the FWN Premises shown as Outlot 1 on Exhibit "A" a ratio of parking space of not less than 5.5 automobile parking spaces for each 1,000 square feet of gross leasable area of improvements on Outlot 1." FWN covenants and agrees that if the Sale Tract is developed for residential purposes, FWN shall provide parking in accordance with any requirements imposed by the City of Omaha, Nebraska. FWN further covenants and agrees that in the event, but only in the event, the Sale Tract shall be developed or used for nonresidential purposes, FWN shall maintain on the Sale Tract a ratio of parking space not less than 5.5 automobile spaces for each 1,000 square feet of gross leasable area of improvements on the Sale Tract. "Improvements" is intended to mean structures finished out or to be finished for occupancy (e.g., heated and/or cooled space) and shall not include structures the primary purpose of which is to store or shelter personal property. Notwithstanding the immediately preceding sentence, "Improvements" shall include any structures rented to the general public as storage units.

The parties hereto understand, acknowledge and agree that the purpose of the replacement language is to limit the applicability of the parking space requirement to "Outlot 1" unless and until the Sale Tract is developed or used for nonresidential purposes. The parties hereto further understand, acknowledge and agree that should any question as to the applicability of the parking requirement to the Sale Tract ever be raised for any reason whatsoever so long as the Sale Tract is developed or used for residential purposes, the parties hereto completely and irrevocably release the Sale Tract from any and all parking requirements.

9.1.1

Paragraph eighteen (18) shall also be amended to add the following name and address: OTR  
275 East Broad Street  
Columbus, Ohio 43215

8. Paragraph fourteen (14) of the Cross Easement shall be replaced in its entirety by the following language:

"FWN and Financial covenant and agree to use the temporary construction easements granted in Paragraphs 11 and 12 in such a manner so as not to cause damage to the adjacent premises and so as not to interfere with the intended use of the adjacent premises. Such easements shall expire on May 31, 1986."

9. Paragraph eighteen (18) of the Cross Easement <sup>shall</sup> ~~should~~ be amended to delete First Wisconsin National Bank of Milwaukee (and its address) and insert in its place Novus Property Co., P. O. Box 105, Norcross, Georgia 30091 and to change the street address only of Financial Properties Developers, Inc., to 5775-A Glenridge Drive, N.E., Suite 203. ↑

10. ~~Except as hereinafter provided in this paragraph, no part of the the Sale Tract shall be leased, rented, used or occupied for the operation or conduct of a "variety store," "junior department store," "cut-rate store," "discount store" or "food store" or "supermarket".~~

The terms "variety store" and "junior department store" as used herein shall be any store similar to the type operated by K-Mart Corporation and shall include by manner of

illustration and not by manner of limitation stores operated by F. W. Woolworth Company, Neisner Brothers, Inc., W. T. Grant Company, J. J. Newberry Company, G. S. Murphy Company, H. L. Green Co., Inc., S. H. Kresge & Company, Rowe's 5, 10 and 25¢ Stores, Scott Furr Stores Corporation, Butler Brothers, Spouse Rights Corporation, Inc., Hester Stores Company and McCrory McLellan Stores Corporation.

The terms "cut-rate store" and "discount store" as used herein shall be any store similar to the type operated by K-Mart Corporation and shall include by manner of illustration and not by manner of limitation stores operated under any of the following names: WalMart, Arlan Department Store, Atlantic Mills, Atlas Shoppers World, Bargain City (U.S.A.), Clark Family Fair, Fashion Fair, J. M. Field, Giant Tiger, Grant Store, Grant Department Store, Grand Way Stores, GMS Stores, Jubilee City, King Department Stores, Mason, Maxim, Miracle Mart, Shoppers City, Shoppers Fair, Shoppers World Stores, Jupiter (S. S. Kresge Company) and Spartan Discount Department Stores or any store of similar operation regardless of the size thereof.

The terms "food store" and "supermarket" as used herein shall be any store in excess of 9,000 square feet of gross useable area intended primarily for the sale of food products for off-site consumption and shall include by manner of illustration and not by manner of limitation, stores operated under any of the following names: Albertson's Food Centers, ~~Waker's Supermarkets and Food City.~~

OKS  
5-30-85

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came \_\_\_\_\_, to me known to be the \_\_\_\_\_ of OTR Partnership, whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed and the act and deed of said partnership.

Witness my hand and seal the day and year above written.

My Commission Expires:

STATE OF Georgia )  
 ) SS  
COUNTY OF Fulton )

On this 22<sup>nd</sup> day of May, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came E. M. Abrams, to me known to be the President of Financial Properties Developers, Inc., whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed and the act and deed of said corporation.

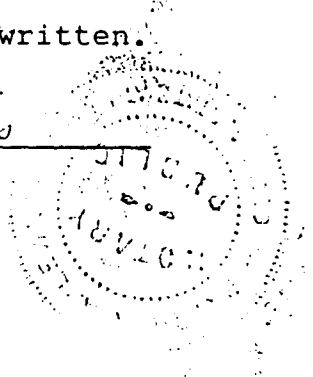
Witness my hand and seal the day and year above written.

x Patricia A. Lewis

My Commission Expires:

July 23, 1988

Notary Public, Georgia, State at Large  
My Commission Expires July 23, 1988



STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came \_\_\_\_\_, to me known to be the \_\_\_\_\_ of McDonald's Corporation, whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed and the act and deed of said corporation.

Witness my hand and seal the day and year above written.

My Commission Expires:

\_\_\_\_\_

Gene E. Phillips, successor nominee for the Board  
of Trustees of Novus Property Company, a  
Massachusetts business trust, formerly known as  
First Wisconsin Mortgage Trust

\_\_\_\_\_  
Gene E. Phillips

Date: \_\_\_\_\_

\_\_\_\_\_  
Bill Kaltsounis

Date: \_\_\_\_\_

\_\_\_\_\_  
Stella G. Kaltsounis

Date: \_\_\_\_\_

Agreed and Accepted:

K Mart Corporation

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "F-1"

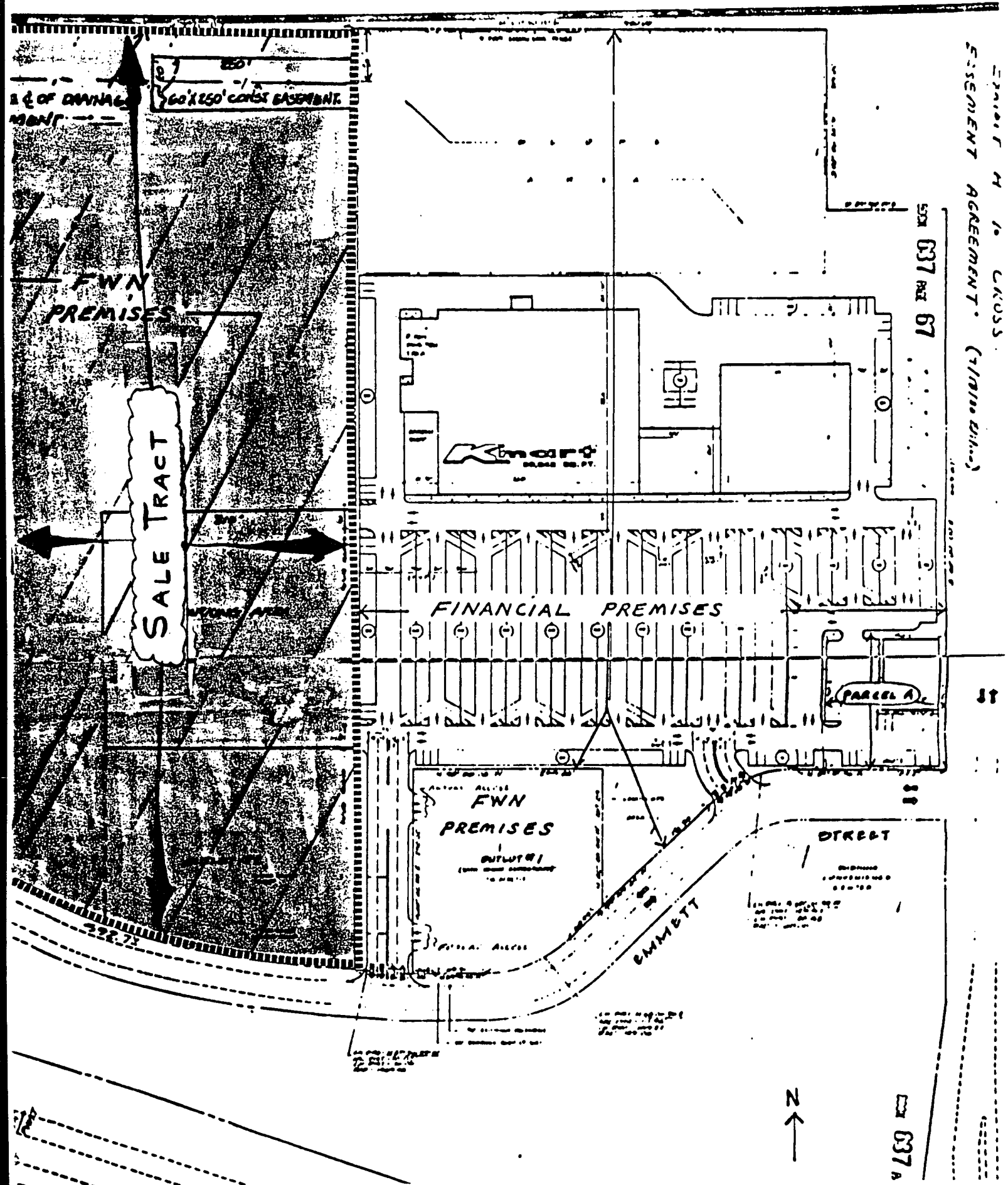
LEGAL DESCRIPTION

OF SALE TRACT

A TRACT OF LAND LYING IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NE $\frac{1}{4}$  NE $\frac{1}{4}$  OF SECTION 8-15-12; THENCE EASTERLY ALONG THE NORTH LINE OF THE SAID NE $\frac{1}{4}$  NE $\frac{1}{4}$  A DISTANCE OF 547.01 FEET TO THE NORTHWEST CORNER OF LOT 4, TREMEL HEIGHTS; THENCE SOUTHERLY ALONG THE WEST LINE OF LOTS 4 AND 1, TREMEL HEIGHTS A DISTANCE OF 1127.52 FEET TO THE SOUTHWEST CORNER OF LOT 1, TREMEL HEIGHTS; THENCE NORTHWESTERLY ON A 1565.00 FOOT RADIUS CURVE TO THE RIGHT AN ARC DISTANCE OF 312.89 FEET (CH=312.40 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE CONTINUING NORTHWESTERLY ON A 475.00 FOOT RADIUS CURVE TO THE RIGHT AN ARC DISTANCE OF 208.25 FEET (CH=206.06 FEET) TO A POINT OF REVERSE CURVE; THENCE WESTERLY ON A 236.00 FOOT RADIUS CURVE TO THE LEFT AN ARC DISTANCE OF 71.41 FEET (CH=71.15 FEET) TO THE WEST LINE OF THE NE $\frac{1}{4}$  NE $\frac{1}{4}$  OF SECTION 8-15-12; THENCE NORTH ALONG SAID WEST LINE A DISTANCE OF 935.64 FEET TO THE POINT OF BEGINNING.

EXHIBIT "F-2"





1085  
5-30-85

~~Notwithstanding the foregoing limitations, the following uses of the Sale Tract are permitted: bakery; dry cleaning and laundry; medical clinic; laundromat; medical office; veterinary clinic (indoor pens); child care center; household appliance service and repair; arcade; bank; savings and loan or credit union; commercial amusement (indoor); gymnastic or dance studio; motel or hotel; printing shop; studios for photographer, musician, artist, radio or television; tool rental shop; car wash; automobile service station; automobile sales and leasing; auto leasing and rental; new car dealer; used car dealer; motorcycle sales and service; office, professional and general administrative; scientific and research laboratories; office center; fraternal organization, lodge or civic club; park, playground or community center; trade and commercial school; private recreation facility; recreation center; antique shop; building materials, supplies and hardware (outside storage); private club; furniture, home furnishings and equipment stores; paint shop; pawn shop; pet shop; or florist shop. The foregoing list of permitted uses shall not be deemed to be inclusive or exhaustive or limit the uses of the Sale Tract which do not otherwise violate the above limitation.~~

Notwithstanding the foregoing permitted uses, the Sale Tract shall not be used for a massage parlor, topless or "go-go" bar or tavern, nude modeling studio or any other purpose that the parties to this Amendment would consider obscene, lewd, sexually explicit or otherwise morally offensive.

11. Nothing contained herein shall obligate FWN to maintain any portion of the Financial Premises or obligate Financial to maintain any portion of the FWN Premises.
12. The effective date of this Amendment shall be the date when all of the following have occurred: (i) this Amendment has been duly executed and acknowledged by OTR, Financial, McDonalds, Kaltsounis and Phillips; and (ii) this Amendment has been agreed and consented to by K Mart as conclusively evidenced by its duly executed and acknowledged signature hereon.
13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

#### OTR Partnership

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Financial Properties Developers, Inc.

By: [Signature]

Title: PRESIDENT

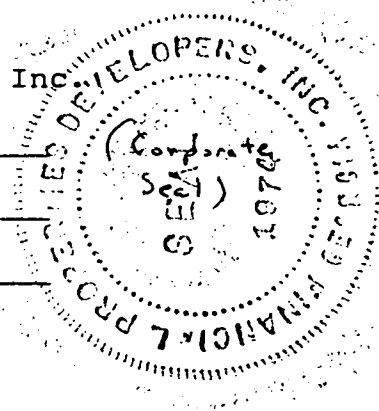
Date: May 22, 1985

McDonald's Corporation

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Gene E. Phillips, to me known to be successor nominee for the Board of Trustees of Novus Property Company, a Massachusetts business trust, formerly known as First Wisconsin Mortgage Trust, whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed and the act and deed of said trust.

Witness my hand and seal the day and year above written.

My Commission Expires:

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Bill Kaltsounis, whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed.

Witness my hand and seal the day and year above written.

My Commission Expires:

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Stella G. Kaltsounis, whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be her voluntary act and deed.

Witness my hand and seal the day and year above written.

My Commission Expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me,  
the undersigned, a Notary Public duly commissioned and qualified  
for said county, personally came \_\_\_\_\_  
\_\_\_\_\_ to me known to be the \_\_\_\_\_  
\_\_\_\_\_ of K Mart Corporation, whose name is  
affixed to the foregoing instrument in that capacity and who  
acknowledged the same to be his voluntary act and deed and the act  
and deed of said corporation.

Witness my hand and seal the day and year above written.

My Commission Expires:  
\_\_\_\_\_

RETURN TO: FIRST AMERICAN TITLE COMPANY OF DALLAS  
12655 N. CENTRAL EXWPK., SUITE 115  
DALLAS, TEXAS 75243  
ATTN: CHARLENE B. GODFREY

RECEIVED

1985 JUN -6 AM 10:24

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

Book 741  
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MC \_\_\_\_\_

10 B Mead

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