

AGREEMENT made and entered into as of the 7th day of August, 1984 by and among CENTRAL PARK PLAZA, INC., a Nebraska corporation ("CPP"), MURDOCK OMAHA LIMITED PARTNERSHIP, a California limited partnership ("Murdock"), and PARKFAIR LIMITED PARTNERSHIP, a Nebraska limited partnership ("Parkfair").

RECITALS

A.1. CPP is the owner in fee of certain real estate located in the City of Omaha, Douglas County, Nebraska ("Parcel A") described as follows:

The East 154.45 feet of Block One Hundred Eighteen (118), Original City of Omaha, as surveyed and lithographed, and the East 154.45 feet of the vacated East-West alley in said block,

upon which the structure known as Central Park Plaza (the "Existing Building") has been erected by Murdock. CPP joins in execution of this Agreement solely for the purpose of subjecting its interest in Parcel A and reversionary interest to the Existing Building to the covenants and agreements herein made by Murdock and Parkfair, and agrees to be bound by the terms and conditions of this Agreement in event of termination of the Ground Lease between CPP and Murdock.

A.2. Murdock is the owner in fee of the Existing Building and has the use and benefit of Parcel A pursuant to the terms of a certain Ground Lease between CPP and Murdock.

B. Parkfair is the owner in fee of certain real estate located in the City of Omaha, Douglas County, Nebraska ("Parcel B") adjoining Parcel A on the west thereof and described as follows:

All of Block One Hundred Eighteen (118), Original City of Omaha, as surveyed and lithographed, together with the vacated East-West alley in said block, except the East 154.45 feet of said Block 118 and of said vacated alley.

C. The exterior surface of the west wall of the Existing Building (the "Existing Wall") does not extend to the west boundary line of Parcel A but extends only to a line beginning at a point in the south line of Parcel A approximately 1.47 feet distant easterly from the southwest corner of Parcel A and thence northerly along a straight line to a point in the north line of Parcel A approximately 1.52 feet distant easterly from the northwest corner of Parcel A, that portion of Parcel A lying west of said Existing Wall line being hereinafter sometimes referred to as "Parcel C."

D. Parkfair is desirous of constructing a three-story retail shopping center (the "Proposed Building") on Parcel B with the east wall thereof (the "Proposed Wall") encroaching upon Parcel C to the full extent thereof so that the exterior surface of the Proposed Wall will be contiguous with the exterior surface of the Existing Wall.

E. The parties desire by this agreement to provide for such encroachment and various other matters, all as hereinafter provided.

NOW, THEREFORE, it is mutually agreed as follows:

1. Scope of Work. Subject to and in accordance with the provisions of this agreement, Parkfair shall, at its own expense (except to the extent that expense is paid by third parties), construct:

(a) The Proposed Wall on Parcel C and contiguous with the Existing Wall, provided, however, that the Proposed Building, including without limitation the Proposed Wall, shall be constructed in a good and workmanlike manner in conformity with plans and specifications therefor, which have been approved by Murdock. Copies of such plans and specifications, initialled by the parties for identification, are in the possession of each of the parties and are incorporated herein by this reference. Murdock does hereby grant Parkfair an easement for encroachment of the Proposed Wall.

(b) A 5 foot 4 $\frac{1}{4}$ inch opening in the Proposed Wall between column lines 9 and 10 of the Proposed Building at the first level and a corresponding opening in the Existing Wall in alignment with the corridor in the Existing Building, all as shown on such plans and specifications, so as to provide a passageway at that level between such buildings subject to the limitations of paragraph 8.2 below.

(c) A 7 foot 4 $\frac{1}{4}$ inch opening in the Proposed Wall between column lines 2 and 3 of the Proposed Building at the second level thereof and a corresponding opening in the Existing Wall in alignment with the skywalk corridor on the second level of the Existing Building adjacent to space therein leased to Norwest Bank Omaha, N.A., all as shown on such plans and specifications, so as to provide a passageway at that level between such buildings which will provide the Proposed Building ingress and egress between this opening and the public skywalk pedestrian bridge over Douglas Street, and Murdock does hereby grant Parkfair a non-exclusive easement for such purpose.

(d) An expansion joint connection between the Proposed Wall and the Existing Wall along the entire length of the second level roof of the Proposed

Building to keep water from penetrating between the two walls, all as shown on such plans and specifications.

(e) Openings in the Proposed Wall and the Existing Wall to bring Energy Systems Company's piping from the lowest level ceiling of the Existing Building into the Proposed Building, all as shown on such plans and specifications. Murdock has heretofore granted an easement for such purpose to InterNorth, Inc., a corporation operating as Energy Systems Company.

(f) A duct in the Proposed Building appurtenant to and for the benefit of the Existing Building to provide exhaust therefrom, all as shown on such plans and specifications. Parkfair does hereby grant Murdock an easement for use, operation, maintenance, repair and replacement of such exhaust duct and a non-exclusive easement affecting such portions of Parcel B as necessary for ingress and egress in order to perform maintenance, repair and replacement of such exhaust duct; provided, however, that except in emergency conditions such maintenance, repair and replacement shall be scheduled reasonably in advance with Parkfair at times which will not unreasonably interfere with business operations in the Proposed Building. Murdock, at its expense, shall restore any damage to the Proposed Building caused by maintenance, repair or replacement of the exhaust duct.

2. Changes in Proposed Wall. Parkfair shall have the right to make changes in the Proposed Wall if they are practicable and structurally sound and do not unreasonably interfere with the interests of Murdock. Before any such changes are made Parkfair shall furnish Murdock with plans and specifications therefor. The entire cost of all work involved in such changes shall be borne by Parkfair.

3. No Fee Title Conveyed. This agreement shall not have the effect of conveying fee title to any part of Parcel C, the sole purpose of this agreement being to grant the easements herein set forth and to grant to Parkfair the right and authority to perform construction work as above provided.

4. Performance of Work. (a) All work to be performed by Parkfair hereunder shall be undertaken and completed in a good and workmanlike manner and in full compliance with all laws, ordinances and regulations of any and all governmental agencies having jurisdiction. The work, when completed by Parkfair, will be in full conformity with such plans and specifications, with any changes therein agreed upon by the parties in writing.

(b) In fulfilling obligations and exercising rights under this agreement, Parkfair shall use its best efforts to keep interference with the property and operations of Murdock and its tenants and subtenants to a minimum and for that

purpose shall give reasonable advance notice of work which may interfere with such property or operations and will arrange with Murdock for the performance of such work at reasonable times and under reasonable conditions.

(c) Parkfair shall use its best efforts to perform all such work in such manner and with such precautions as not to cause damage to Murdock or its tenants and subtenants or to disturb them unduly. In the event of any such damage caused by the work Parkfair shall promptly report the damage to Murdock and shall at Parkfair's sole expense make all repairs or replacements required to restore the damaged property to the condition thereof prior to such damage. However, no consequential damages shall be recoverable.

(d) Except as otherwise provided in subparagraph (c) of this paragraph, Parkfair shall have no obligation to make repairs or replacements to the Existing Building after the completion of the work to be performed under paragraph 1 above, it being understood and agreed by the parties that each of them shall, at its expense, keep and maintain in good order, condition and repair all improvements and facilities constructed or installed in or upon its own building with the sole exception of the duct referred to in paragraph 1(f) above. This duct shall be kept and maintained in good order, condition and repair by Murdock at its expense. For the purposes of this subparagraph, the expansion joint connection referred to in paragraph 1(d) above shall be deemed to be part of the Proposed Building.

5. Access. Murdock shall give Parkfair reasonable access to the Existing Building for the work which is required by the provisions of paragraph 1 above or for which Parkfair may otherwise be responsible hereunder so as to enable Parkfair to exercise its rights and to fulfill its obligations hereunder.

6. Indemnification. Parkfair shall indemnify CPP and Murdock and hold them harmless from and against all liabilities, claims and demands for the injury or death of any person or damage to any property arising out of or caused by any negligent act or omission on the part of Parkfair or its contractors, agents or employees and shall reimburse CPP and Murdock for their reasonable expenses in investigating and defending any such liability, claim or demand; provided, however, that CPP and Murdock shall give Parkfair written notice of any such liability, claim or demand promptly upon obtaining knowledge thereof, and Parkfair shall have the right to defend against the same at its sole expense, retaining counsel reasonably satisfactory to CPP and Murdock.

7. Taxes. Parkfair shall pay or cause to be paid all real estate taxes levied and assessed against the Proposed Wall or other improvements within Parcel C lying within the height limit of the Proposed Wall.

8.1. Duration of Agreement. This agreement and the right and authority hereby granted shall continue in full force and effect as long as the Existing Building and the Proposed Wall shall remain standing. Upon the removal or destruction of the Proposed Wall all right and authority granted to Parkfair hereunder shall terminate unless within 60 days after such removal or destruction Parkfair notifies Murdock and CPP in writing of the intention to restore such wall within a period of 12 months from the date of such notice and completes such restoration before the expiration of that period. If such restoration is completed within that period, this agreement and all right and authority hereby granted to Parkfair shall continue in full force and effect as if the Proposed Wall had not been removed or destroyed but had remained standing. Notwithstanding termination of Parkfair's rights pursuant to this Agreement by reason of removal or destruction of the Proposed Wall, the easement to Murdock set forth in paragraph 1(f) shall remain in full force and effect subject to the right of Parkfair to such reasonable alteration or relocation thereof as will provide the exhaust necessary for the benefit of the Existing Building yet be appropriate to the design of any substitute future improvements on Parcel B. Upon removal of or substantial damage to the Existing Building, all right and authority granted to either party hereunder shall terminate unless Murdock shall elect within 12 months from the date of such removal or damage to commence reconstruction thereof for substantially the same use and purposes as existed prior to such removal or damage and shall complete same within 36 months of such removal or damage subject to delays caused by force majeure conditions; provided, however, that Parkfair's rights for the encroachment of the Proposed Wall on Parcel C as set forth in subparagraph 1(a) above shall continue in effect until terminated pursuant to the second and third sentences of this paragraph 8.1. Any rights of Parkfair pursuant to subparagraph 1(e) above following completion of initial construction of the Proposed Wall are limited to the terms and conditions set forth in the easement heretofore granted by Murdock to InterNorth, Inc.

8.2. Murdock and Parkfair hereby grant to each other for themselves, and for such of each party's tenants, subtenants and customers or invitees thereof to which such party may grant such right, a right to passageway between the Existing Building and the Proposed Building through the opening described in paragraph 1(b) during those hours which both buildings are customarily open for business and otherwise only subject to the security precautions of Murdock and Parkfair. Murdock and Parkfair each recognize that (i) the customary business hours of the Existing Building and the Proposed Building may not be identical,

(ii) the security precautions of each of the buildings may change from time to time, (iii) fire regulations may prevent the locking of the doors at the opening for this passageway, and (iv) neither party intends to create through its building a required fire exit for the benefit of the other building that cannot at any time be closed off and secured against entry to its building. Murdock and Parkfair each reserve the right at its sole cost and expense, upon not less than sixty (60) days prior written notice to the other party, to remove the doors therefrom and to close the wall opening between the buildings described in paragraph 1(b) above.

9. Equitable Remedies. Since a breach of the provisions of this agreement could not be adequately compensated by money damages, either party may obtain, in addition to any other remedy available to it, an injunction restraining such breach and specific performance of any provision of this agreement.

10. Covenants Running with the Land. Each right and authority hereby granted to CPP, Murdock and Parkfair and all covenants and agreements herein contained shall constitute covenants and easements running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns including, but not limited to, all subsequent owners of Parcel A and Parcel B or any interest therein and all persons claiming under them.

11. Further Assurances. All parties shall hereafter from time to time, as and when requested by any other party, execute, acknowledge and deliver all such instruments and documents and take such further or other action as may be reasonably necessary or appropriate in order to vest or perfect in, or confirm of record or otherwise to, any party hereto the full right and authority acquired by such party hereunder and otherwise to carry out the intent and purposes of this agreement; provided, however, that nothing herein shall require any party to obtain the written consent to this Agreement of any holder of any existing encumbrance of Parcel A or Parcel B, and this Agreement is subject to the rights of any such holder.

12. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be sufficiently given if sent by certified mail, postage prepaid, addressed, if to CPP or Murdock, to Murdock Omaha Limited Partnership, c/o Murdock Development Company, 10900 Wilshire Blvd., Suite 1600, Los Angeles, California 90024, Attention: Lilymae Penton, and if to Parkfair, to Parkfair Limited Partnership, c/o Greater Omaha Chamber of Commerce, 1301 Harney Street, Omaha, Nebraska 68102, Attention: Mr. R. Steven Thompson, Vice President, or to such other address as shall be furnished

in writing by either party to the other. Any such notice or communication shall be deemed to have been given as of the date so mailed.

13. Headings. The paragraph headings in this agreement are for convenience only and shall not affect the construction or interpretation of this agreement.

14. Entire Agreement. This instrument contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other understandings and agreements, oral or written, relating to that subject matter. No modification, alteration or amendment of this agreement nor any waiver of any provision hereof shall be valid or effective unless in writing executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first above written.

CENTRAL PARK PLAZA, INC.

By [Signature]
Vice President

Witness:

[Signature]

MURDOCK OMAHA LIMITED PARTNERSHIP

By: Westwood Plaza No. 10, Inc.,
General Partner

By [Signature]
Vice President

Witness:

[Signature]

PARKFAIR LIMITED PARTNERSHIP

By: Metro Center Realvest, Inc.

By [Signature]
Vice President

Witness:

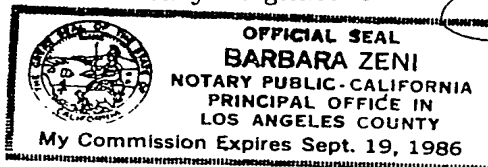
[Signature]

STATE OF CALIFORNIA)
) SS.
County of Los Angeles)

On this the 3rd day of October, 1984, before me, Barbara Zeni, the undersigned Notary Public, personally appeared Lily Mae Denton, personally known to me to be the person who executed the within instrument as Vice President of Central Park Plaza, Inc., a Nebraska corporation, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Barbara Zeni
Notary's Signature

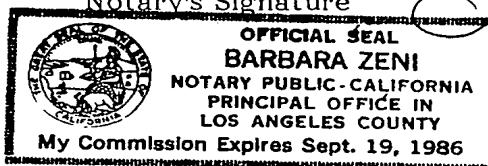


STATE OF CALIFORNIA)
) SS.
County of Los Angeles)

On this the 3rd day of October, 1984, before me, Barbara Zeni, the undersigned Notary Public, personally appeared Roberta Wieman, personally known to me to be the person who executed the within instrument as Vice President of Westwood Plaza No. 10, Inc., on behalf of Murdock Omaha Limited Partnership as the general partner thereof, and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

Barbara Zeni
Notary's Signature



STATE OF NEBRASKA)
) SS.
County of Douglas)

The foregoing instrument was acknowledged before me on Oct. 2, 1984 by R. Steven Thompson, Vice President of Metro Center Realvest, Inc., a Nebraska corporation, on behalf of the corporation as the sole general partner of Parkfair Limited Partnership, a Nebraska limited partnership.

Diane M. Micek
Notary Public

My commission expires:

June 20, 1985



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PAGE 606
NOT. MICEK

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