



MISC 2003103745

RICHARD H TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE



MAY 30 2003 12:53 P 6

RECEIVED

misc
6
1

FEE	<i>30.50</i>	FB	<i>01-60000</i>
BKP	<i>4-14-13</i>	C/O	COMP
DEL		SCAN	FV

Return to: Robert J. Kmiecik, Stinson Morrison Hecker LLP
1299 Farnam Street, Omaha, NE 68102 (402) 342-1700

DECLARATION OF EASEMENT

This Declaration of Easement ("Easement") is made as of this *20th* day of May, 2003, by **Buffalo Building, Inc.**, a Nebraska corporation ("Declarant").

RECITALS:

WHEREAS, Declarant is the owner of certain real estate located at 4949 South 36th Street and 5001 South 36th Street in Omaha, Nebraska, and which is legally described on Exhibit A attached hereto (the "Real Estate"); and

WHEREAS, Declarant intends to subdivide the Real Estate into two (2) tracts, the "Northerly Tract" and the "Southerly Tract", as shown on Exhibit B attached hereto; and

WHEREAS, Declarant desires to establish a perpetual easement for a common driveway for the benefit of the Northerly Tract.

AGREEMENTS:

NOW, THEREFORE, Declarant does hereby make the following grants, declarations, covenants, restrictions and agreements, subject to which the Real Estate shall be used and conveyed:

- Easement For the Benefit of the Northerly Tract: Declarant, as grantor, hereby grants to the owner of the Northerly Tract, for the use of such owner and its tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of the Northerly Tract, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across a twenty-four (24) foot wide strip of land (the "Driveway Easement Area"), as

J 3/72

shown on Exhibit B and more fully described on Exhibit C attached hereto, in order to provide ingress and egress to and from 36th Street to the Northerly Tract.

2. Covenants Run With the Land: The terms and provisions of this Easement shall run with the Northerly Tract and the Southerly Tract.

3. Successors and Assigns: This Easement and the restrictions created hereby shall be binding upon the owners of the Northerly Tract and the Southerly Tract, their heirs, personal representatives, successors and assigns, and upon any person acquiring such land, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

4. Duration: The term of this Easement shall be perpetual.

5. Modification and Termination: This Easement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the owner of the Northerly Tract and the owner of the Southerly Tract, and then only by written instrument duly executed and acknowledged by all of the required owners and recorded in the office of the Register of Deeds of the Douglas County, Nebraska. No modification or termination of this Easement shall affect the rights of any lienholder unless the lienholder consents in writing to the modification or termination.

6. Waiver: The failure of a person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.

7. Severability: If any term or provision of this Easement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term or provision of this Easement shall be valid and shall be enforced to the extent permitted by law.

8. Third Party Beneficiary Rights: This Easement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an owner of the Northerly Tract or the Southerly Tract unless otherwise expressly provided herein.

9. Captions and Headings: The captions and headings in this Easement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

10. Recordation: This Easement shall be recorded in the office of the Register of Deeds of Douglas County, Nebraska.

EXECUTED as of the day and year first above written.

BUFFALO BUILDING, INC., Declarant

By: Earl Berkey
Earl Berkey, President

STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

On this 20 day of May, 2003, before me, a Notary Public in and for said county and state, personally came Earl Berkey, known to me to be the identical personal whose signature is affixed to the foregoing instrument, as President of Buffalo Building, Inc., a Nebraska corporation, and he acknowledged the execution thereof to be his voluntary act and deed.

WITNESS by hand and notarial seal the day above written.

Darbi L. Warden
Notary Public for Nebraska

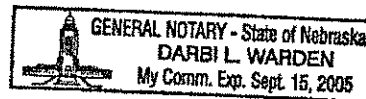


Exhibit A

Legal Description of Real Estate

That part of the SW 1/4 of Section 4, Township 14 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, more fully described as follows: Commencing at the intersection of the East right-of-way of 36th Street with the South right-of-way of Babe Gomez Avenue; thence South 87°31'26" East, (assumed bearings) a distance of 244.51 feet along the South right-of-way line of Babe Gomez Avenue; thence South 02°55'45" West a distance of 640.12 feet, parallel to the East right-of-way of 36th Street; thence North 87°00'45" West a distance of 244.50 feet; thence North 02°55'45" East a distance of 638.26 feet along the East right-of-way line of 36th Street to the Point of Beginning.

Exhibit C

Driveway Easement Area

The Driveway Easement Area shall generally follow the paved road which is currently located upon the southerly and easterly portions of the Southerly Tract, and shall be generally described as follows: Beginning at the existing entrance to the Real Estate from 36th Street onto the Southerly Tract, then heading southerly to the southern border of the Southern Tract, then heading easterly to the eastern border of the Southern Tract, then heading northerly along the eastern border of the Southerly Tract to a point on the southern border of the Northerly Tract.