



1150 621 MISC



07108 95 621-627

RECEIVED

JUL 7 10 02 AM '95

GEORGE W. W. W. W.
REGISTERED AGENTS
DOUGLAS COUNTY, NE

7108

35-15-12 ✓

FEE 3550	R	FB 01-6000
DEL	CO	COMP 10P
LEGAL PG	SC 110	FY

30.50
0121493

IMPROVEMENT, ENCROACHMENT AND LICENSE AGREEMENT

THIS IMPROVEMENT, ENCROACHMENT AND LICENSE AGREEMENT (this "Agreement") is made this 30 day of June, 1995, by and between CORT EMERY PROPERTIES, LIMITED PARTNERSHIP, a Nebraska limited partnership f/k/a Cort Emery Properties, Ltd. ("Emery"), and ANTHONY, INC., a Nebraska corporation d/b/a Anthony's Steakhouse ("Anthony").

PRELIMINARY RECITALS

1. Emery is the owner of certain real estate legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Emery Property").

2. Anthony is the owner of certain real property legally described on Exhibit "B" attached hereto and incorporated herein by reference (the "Anthony Property").

3. The true boundary line between the Emery Property and the Anthony Property is more particularly shown on a certain ALTA/ACSM Land Title Survey dated May 11, 1995 and prepared by Ehrhart Griffin & Associates. A copy of a portion of such survey is attached hereto as Exhibit "C" and incorporated herein by reference (the "Plan").

4. Emery or Emery's predecessors-in-interest have constructed a certain 193' x 51' steel warehouse adjoining the eastern boundary of the Emery Property, and by mistake and inadvertence caused certain support columns and eaves, as more particularly shown on the Plan, to encroach upon a portion of the Anthony Property (the "Encroachments"). Anthony has agreed to allow the continuation of the Encroachments and has agreed to grant Emery and its successors in title a license to maintain the Encroachments in consideration of an admission and disclaimer by Emery that Emery claims no right to any portion of the Anthony Property by adverse possession or otherwise.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Admission of No Right. Emery admits that the true boundary line between the Emery Property and the Anthony Property is as shown on the Plan, and that the Encroachments are located upon the Anthony Property; however, Emery acknowledges and agrees that Emery has no right, title or interest to that portion of the Anthony Property upon which the Encroachments are located, and hereby specifically disclaims for itself and its successors in title any interest in Anthony Property upon which the Encroachments are located.

EMERY, C\ENCROACH.LC3
1st Nat'l Bank
Mtg Loan Dept
One First Nat'l Center
Omaha NE 68102

2. License to Use. Anthony agrees that Emery may without further license on its part use and enjoy all of that portion of the Anthony Property upon which the Encroachments are located until this Agreement shall be terminated by agreement of both parties hereto, or their successors or assigns, as the case may be, and prior to such termination may maintain the Encroachments in their existing locations.

3. Covenant to Run with Land. The parties agree that this Agreement shall deem to be a covenant running with the land and binding upon the parties hereto and any successor titleholders of the Emery Property and the Anthony Property.

3. Termination. The parties agree that this Agreement shall terminate without the necessity of either party hereto executing any further documents to effect such termination at such time that the then owner of the Emery Property demolishes, removes or substantially alters the warehouse building on the Emery Property of which the Encroachments are a part to the extent that the Encroachments are temporarily or permanently removed from the Anthony Property.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CORT EMERY PROPERTIES, LIMITED
PARTNERSHIP, a Nebraska limited
partnership f/k/a Cort Emery
Properties, Ltd.

By: Cortland O. Emery
Cortland O. Emery,
General Partner

ANTHONY, INC., a Nebraska corporation

By: Anthony J. Jernico
Title: Presd.

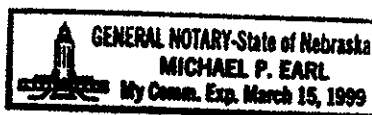
STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of June, 1995, by Cortland O. Emery, General Partner of Cort Emery Properties, Limited Partnership, a Nebraska limited partnership f/k/a Cort Emery Properties, Ltd., on behalf of the limited partnership.

Michael P. Earl
Notary Public

My Commission Expires:

MARCH 15, 1999



STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of June, 1995, by Anthony J. Tucinovsky, PRESIDENT of Anthony, Inc., a Nebraska corporation, on behalf of the corporation.

Michael P. Earl
Notary Public

My Commission Expires:

MARCH 15, 1999



EXHIBIT "A"

PART OF THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 35; THENCE NORTH 90° 00' W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION, 467.50 FEET; THENCE N 0° 19' 00" W, 33.00 FEET TO THE POINT OF BEGINNING; THENCE N 90° 00' 00" W ON A LINE 33.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, 316.41 FEET; THENCE N 0° 14' 45" W ON A LINE 540.00 FEET, EAST OF AND PARALLEL TO THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, 529.30 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE N 89° 52' 29" E, 315.38 FEET; THENCE S 0° 19' 00" E, 530.06 FEET TO THE POINT OF BEGINNING.

AND

A TRACT OF LAND IN THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST 1/4; THENCE N 90° 00' 00" W (ASSUMED BEARING) ON THE SOUTH LINE OF SAID SOUTHEAST 1/4, 467.50 FEET; THENCE N 0° 19' 00" W, 33.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N 0° 19' 00" W, 530.06 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE N 89° 52' 29" E ON THE SOUTH RIGHT OF WAY LINE OF SAID UNION PACIFIC RAILROAD, 42.45 FEET; THENCE S 00° 19' 19" E ON A LINE 425.00 FEET WEST FROM AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST 1/4, 530.15 FEET; THENCE N 90° 00' 00" W ON A LINE 33.00 FEET NORTH FROM AND PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST 1/4 42.50 FEET TO THE POINT OF BEGINNING.

SE
SE

EXHIBIT "B"

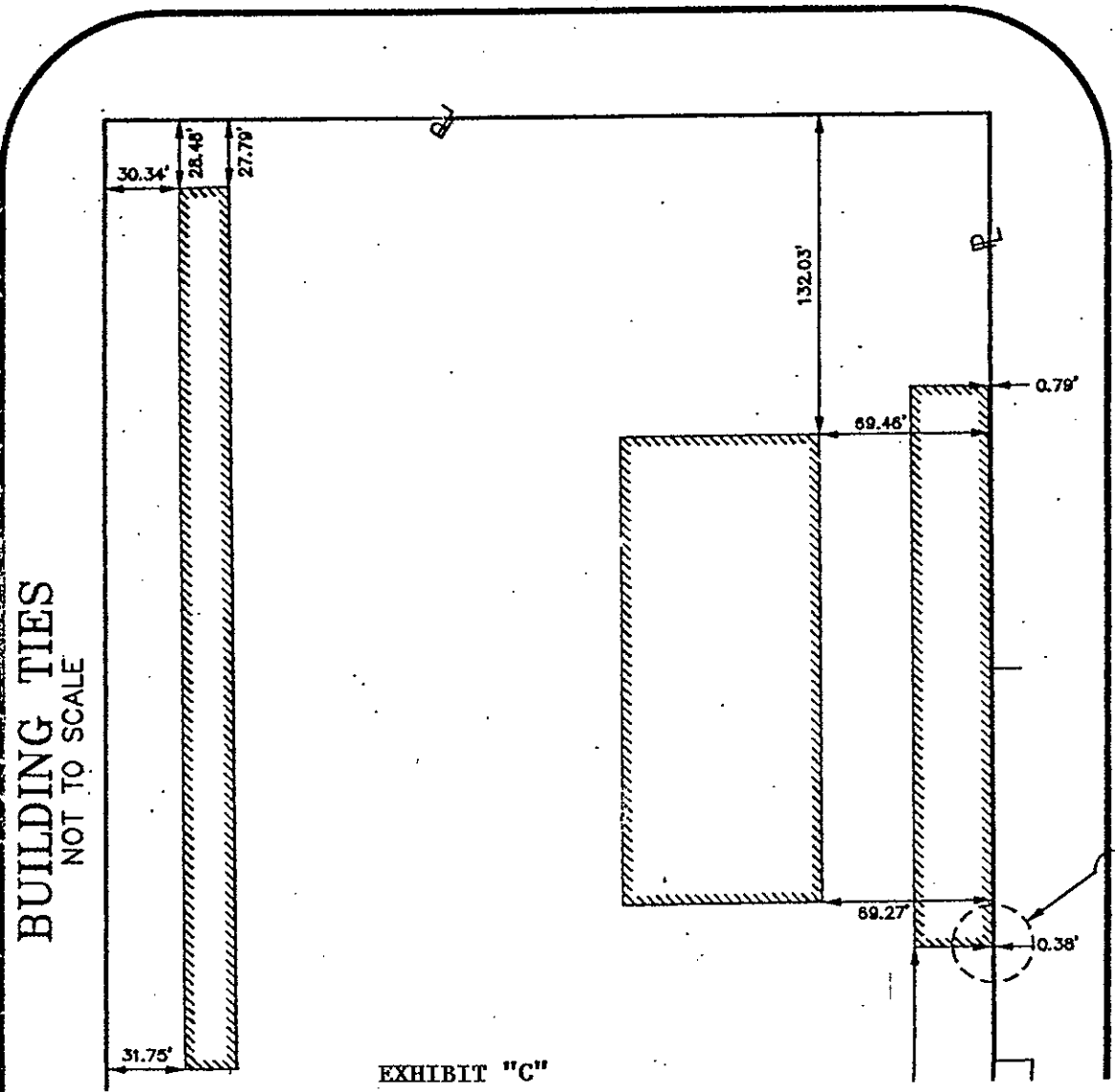
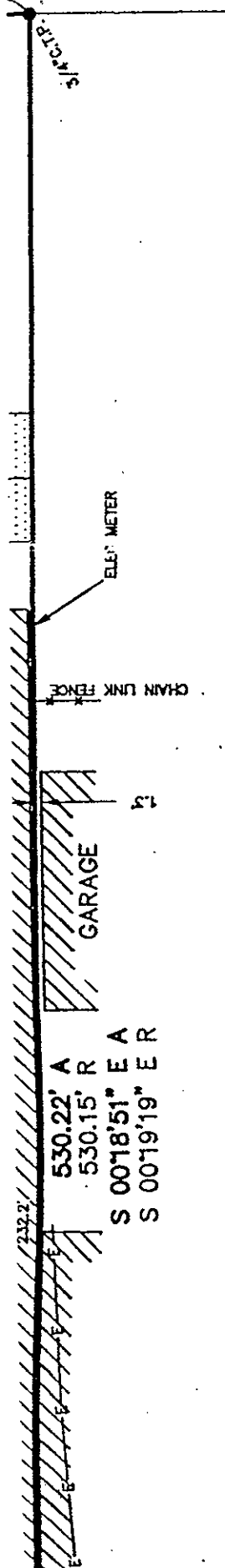
That part of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 35, Township 15 North, Range 12 East of the 6th P.M., described as follows: Beginning at a point 270.0' West and 33.0' North of the SE corner of Section 35, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska; thence North $0^{\circ}21'40''$ West on a line parallel to the West R.O.W. of 72nd Street a distance of 150.0'; thence North $90^{\circ}00'00''$ East along a line parallel to F Street, a distance of 170.0'; thence North $0^{\circ}21'40''$ West along the West R.O.W. line of 72nd Street, (Misc. Bk. 347, P. 577) a distance of 250.0'; thence North $90^{\circ}00'00''$ West along a line parallel with F Street, a distance of 325.0'; thence South $0^{\circ}21'40''$ E along a line parallel with West R.O.W. of 72nd Street, a distance of 400.0'; thence N $90^{\circ}00'00''$ E along the North R.O.W. line of F Street, a distance of 155.0' to the point of beginning, containing 2.399 acres, more or less, except rights of ingress and egress acquired by the State of Nebraska by condemnation pursuant to proceedings at Docket 509, Page 61 of the records of the Clerk of the District Court of Douglas County, Nebraska.

SE
SE

250' R

LEGEND

- △
-
- C.T.P.
- O.T.P.
- S.D.H.
- *X
- P
- A
- R
- C
- RAD
- TBM
- SMH
- DMH
- C.E.
- I.E.
- S
- D
- OHE
- E
- Q
- OHT
- OHT
- TD
- WMH
- W
- X
- G
- IDI
- CABT
- PL
- 1"=300'
- FFE
- LS.



NOT TO SCALE

