

EASEMENT AGREEMENT

This indenture, made and entered into as of this 31st day of MAY, 1984, by and between JOHN E. GIBSON and JOYCE GIBSON, husband and wife, hereinafter referred to as "party of the first part"; and CORT EMERY PROPERTIES, LIMITED PARTNERSHIP, formerly CORT EMERY PROPERTIES, LTD., a Nebraska limited partnership hereinafter referred to as "party of the second part";

W I T N E S S E T H

WHEREAS, the party of the first part is the owner of certain real property in Douglas County, Nebraska as legally described on Exhibit "A" attached to this agreement and incorporated herein by this reference; and

WHEREAS, the party of the second part is the owner of certain real property in Douglas County, Nebraska legally described as set forth in Exhibit "B" attached hereto and incorporated herein by this reference; and

WHEREAS, there are currently in existence, two (2) easement agreements affecting the real property owned by the party of the second part, which allow access for the party of the first part to the property owned by the party of the second part. That the easement agreements are found in Book 569 Page 31 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, and at Book 524 Page 377 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, which second easement agreement was amended on August 19, 1976, and which amendment is found in Book 569 Page 34 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska; and

WHEREAS, the party of the second part desires to change the location of the ingress and egress easement of the party of the first part, so as to move the ingress and egress a substantial distance from existing buildings located on the real property described in Exhibit "B"; and

WHEREAS, the party of the first part has agreed to the relocation of its ingress and egress easement rights; and

WHEREAS, in this Agreement, "party of the first part" shall include all subsequent owners of any land included within the property described in Exhibit "A" and "party of the second part" shall include all subsequent owners of any land included within the property described in Exhibit "B"; and

WHEREAS, the parties have determined that it is mutually beneficial to them, to enter into a new ingress and egress easement agreement and other matters as provided herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. The party of the second part, hereby grants the party of the first part, and their assignees, tenants, subtenants, servants, agents, employees, visitors, invitees, personal representatives, successors and licensees, in common with all others having the like right, at all times hereafter, for pedestrian or vehicular access and ingress and egress, for all purposes connected with the use and enjoyment of the said land of the party of the first part, for whatever purpose said land may be from time to time used and enjoyed, a perpetual non-exclusive right, privilege and easement to pass and repass over, upon, above and along the property owned by the party of the second part, as described on Exhibit "C" attached hereto and by this reference made a part hereof as if fully set forth herein, hereinafter called the "Easement Area", and those portions of the property of the party of the second part described on Exhibit "B" which are immediately adjacent to both the Easement Area and "F" Street for the purpose of providing unimpeded access and ingress and egress to and from the Easement Area and "F" Street.

2. The parties further agree, that upon the execution and filing of this easement Agreement, the party of the first part, shall and hereby does release its' rights under and pursuant to the easement agreements found at Book 569 Page 31 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, and at Book 524 Page 377 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, which second easement agreement was amended as found at Book 569 Page 34 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska.

3. The parties agree and understand that the purpose and intention of this new easement Agreement is to continue to allow party of the first part access to its property hereinabove described, but to have the access be moved a substantial distance from existing buildings, located on the real property described in Exhibit "B".

4. The parties agree and understand that the said perpetual easements are given upon the express understanding and condition that the same may be used by the party of the first part, their heirs, personal representatives, successors, assigns, agents, servants, employees, visitors, invitees, licensees, tenants and subtenants and are intended to constitute an appurtenant easement, which easement shall pass and run with the property of the party of the first part and every portion thereof, and shall not be terminable or may not be amended except by the specific agreement in

writing of all the record title holders of all the property described respectively in Exhibit "A" and Exhibit "B" attached hereto. Any such termination or amendment shall become effective upon recordation with the Register of Deeds of Douglas County, Nebraska.

The easements established by this Agreement shall burden the party of the second part and every portion thereof and shall be binding upon the subsequent owners of such property.

5. The Easement Area shall be kept in such order and repair, as shall be determined by the party of the first part, at the sole expense of the party of the first part.

6. The Party of the second part and the subsequent owners of the property described in Exhibit "B" and their respective heirs, personal representatives, assigns, tenants and subtenants agree not to erect or maintain any barriers or fences of any kind, temporary or permanent, which will in any way impede or preclude the exercise of the easement rights granted by this Agreement.

7. The Party of the second part hereby grants to the party of the first part a permanent non-exclusive easement over, under and upon the property described in Exhibit "B", at the sole expense of the party of the first part, (i) for the maintenance and replacement of existing telephone systems, utilities of every type and sewers (both sanitary and storm); (ii) for the purpose of installing telephone systems, utilities of every type and sewers (both sanitary and storm) over, under and upon the property described in Exhibit "B", and (iii) for the purpose of using, maintaining and replacing (a) the existing water lines serving the property described in Exhibit "A", and located within the property described in Exhibit "B", and (b) using or connecting to any septic tanks or equivalent located within the property described in Exhibit "B". Subject to the restrictions contained in this Paragraph 7. relating to entering structures located upon the property and relating to materially affecting the reasonable use of the property described in Exhibit "B", the construction of any extensions of such telephone systems, utilities or sewers to the property described in Exhibit "A", from the existing locations of the existing telephone systems and utilities of every type and sewers, if any, at the existing office and warehouse buildings located on the property described in Exhibit "B", shall proceed directly as nearly as may be practicable, from an engineering and economic standpoint, at a right angle from the property described in Exhibit "B", to such telephone systems, utilities and sewers.

With respect to telephone systems, utilities and sewers (both sanitary and storm) not presently existing on the property described in Exhibit "B", but constructed, erected or placed thereon after the date hereof, the party of the first part shall have a permanent non-exclusive easement over, under and upon the property described in Exhibit "B", for the purpose of extending such telephone systems, utilities and sewers from their locations upon the property described in Exhibit "B" to the property described in Exhibit "A", at the sole expense of the party of the first part, provided that the extension to such locations does not materially affect the reasonable use of the property described in Exhibit "B".

The parties hereto mutually agree to the separate metering of such existing or future telephone systems, utilities and sewers and agree to do all things reasonably necessary to accomplish the same. In the event that separate metering is unavailable or has not been installed, the parties agree to equitably share all charges and fees on the basis of usage by the parties. The party of the first part shall bear all of the costs of any such extensions of the telephone systems, utilities or sewers (both sanitary and storm) and agrees to repair or restore such portions of the property described on Exhibit "B", as may be reasonably required by any such extensions.

The party of the first part agrees to repair, replace and maintain any telephone systems, utilities and sewers (both sanitary and storm) and facilities constructed by the party of the first part or his predecessors upon the property described in Exhibit "B" for such purposes, including the repair, maintenance and replacement thereof. The party of the second part hereby grants a non-exclusive easement over, under and upon the property described in Exhibit "B" to the extent reasonably necessary to accomplish the same. The party of the first part agrees that he will not drain or allow to be drained gasoline or petroleum products of any kind across the property described in Exhibit "B".

Notwithstanding any other language contained in this Paragraph 7., no structures located on the property described in Exhibit "B" shall be entered in connection with the construction of any extensions or maintenance of existing telephone systems, utilities and sewers without the written permission of the party of the second part being first obtained.

8. The parties hereto acknowledge the existence of certain railroad trackage upon both the property described in Exhibit "A" and upon the property described in Exhibit "B". The party of the second part hereby grants to the party of the first part and to its tenants and subtenants the

non-exclusive right, privilege and easement to use the railroad trackage located and situated upon the property described in Exhibit "B" and for such purpose the party of the first part and his tenants and subtenants are hereby granted an easement over and upon that portion of the property described in Exhibit "B" reasonably necessary for such purpose. The party of the first part hereby grants to the party of the second part and its tenants and subtenants the non-exclusive right, privilege and easement to use the railroad trackage located and situated upon the property described in Exhibit "A" and for such purposes the party of the second part and its tenants and subtenants are hereby granted an easement over and upon that portion of the property described in Exhibit "A" reasonably necessary for such purpose.

The parties hereto further agree to repair, maintain and replace the trackage situated upon their respective properties. In this regard, the parties hereto agree to do all things reasonably necessary to comply with the terms and provisions of any and all trackage agreements involving the Union Pacific Railroad Company.

It is further agreed that neither party, while using the trackage of such other party, will park or allow railroad cars or equipment to remain at a standstill any longer than is necessary for the movement or switching of railroad cars or equipment upon such trackage.

The parties agree with respect to the trackage located upon their respective properties not to prevent or block the access of the other to the main line track of the Union Pacific Railroad except as may be reasonably required from time to time in the switching or moving of railroad cars or equipment.

9. The party of the second part shall have the right to enter upon the property described in Exhibit "A" or any part thereof, without being obligated to do so, to perform repairs and maintenance and make replacements required to be performed or made by the party of the first part in the event the party of the first part shall fail to perform such work after written notice thereof as hereinafter provided. The party of the first part shall likewise have the right to enter upon the property described in Exhibit "B", or any part thereof, without being obligated to do so, to perform repairs, maintenance and replacements required to be performed by the party of the second part in the event that the party of the second part shall fail to perform such work after written notice thereof as hereinafter provided.

Nothing herein contained shall authorize either party to enter any structures located on property not owned by such party without the written consent of the owner of the property first obtained, which consent shall not be unreasonably withheld, nor shall either party do anything which materially affects the reasonable use of any property not owned by such party, without the prior written consent of the owner of the property, which consent shall not be unreasonably withheld.

Pursuant to the foregoing provisions of this Agreement, the party intending to perform such work shall first give to the other party written notice of its intent to do so, specifying the work to be performed. Such notice shall be given not less than thirty (30) days prior to the commencement of such work during which time the other party shall have the right to perform such work. If the work is not performed by the party required to do so during such thirty (30) day period, the other party after completion of the work to be done, shall submit an itemized statement of the reasonable costs thereof and the amount thereof shall be immediately due and payable by the party required to perform such work, with interest thereon at the legal rate from the date of disbursement, such interest to be paid only in the event that a disbursement was made.

10. If any of the property described in Exhibit "A", or in Exhibit "B", shall be taken by condemnation or eminent domain (including a taking by voluntary deed), the party of the first part shall be entitled to any and all sums awarded to such party by reason of such condemnation or eminent domain with regard to any of the property described in Exhibit "A", and the party of the second part shall be entitled to any and all sums awarded to such party by reason of such condemnation or eminent domain in regard to any of the property described in Exhibit "B", and this Agreement shall remain in full force and effect.

11. The party of the first part and the party of the second party hereby indemnify and agree to save harmless each other from and against all claims, actions, damages, liability and expense in connection with bodily injury, death or property damage arising out of accidents happening on any part of the property described in Exhibit "A" or the property described in Exhibit "B" owned either party and occasioned wholly or in part by any act or omission of the other party or any employee, agent or contractor of the other party.

12. If any provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable.

13. Every notice, demand, consent, approval, or other documents or instruments required or permitted to be served upon either of the parties hereto shall be in writing and shall be deemed to have been duly served on the day of mailing and shall be sent by certified United States mail, postage prepaid, return receipt requested, addressed to the respective parties at their respective business addresses or personal residence addresses.

14. Nothing contained in this Agreement shall be construed to make the parties partners of joint venturers or render either of the parties liable for the debts or obligations of the other party.


15. No delay or omission by either of the parties hereto in exercising any right or power occurring upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained. All rights, privileges and remedies awarded the parties in this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein or given by law.

16. This Agreement and the easements, covenants, and restrictions herein set forth shall inure to the benefit of and be binding upon the parties hereto and whosoever may succeed to their interest in the land affected by this instrument. If either of the parties hereto shall transfer record ownership of the land to which it holds fee title, it shall be released of any further liability hereunder, excluding only any liability which has been incurred or accrued prior to such transfer. The transferee of such property shall be deemed to have assumed all of the covenants and obligations which this Agreement imposes upon the record owner of the property so transferred.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.



 John E. Gibson




 Joyce Gibson

CORT EMERY PROPERTIES LIMITED
PARTNERSHIP,

By: *Cort Emery*
General Partner

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS.


The foregoing instrument was acknowledged before me
this 31st day of May, 1984 by John E. Gibson and
Joyce Gibson, husband and wife.

 GENERAL NOTARY - State of Nebraska
LARRY B. GOOD
My Comm. Exp. March 2, 1987

Larry B. Good
Notary Public

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS.

The foregoing instrument was acknowledged before me
this 31st day of May, 1984 by CORT EMERY
General, Partner on behalf of Cort Emery Properties
Limited Partnership, a limited partnership.

 GENERAL NOTARY - State of Nebraska
ALAN J. MACKIEWICZ
My Comm. Exp. Sept. 29, 1986

Alan J. Mackiewicz
Notary Public

That part of the SE $\frac{1}{4}$ of Section 35, T15N, R12E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the Southeast corner of said Section 35; thence N 90^o00'00"W (assumed bearing) on the South line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section, 425.00 feet; thence N 00^o21'40"W, 33.00 feet to the point of beginning; thence N 90^o00'00"W on a line 33.00 feet North of and parallel to said South line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, 42.50 feet; thence N 00^o19'00"W, 530.06 feet to a point on the South R.O.W. line of the Union Pacific Railroad; thence N 89^o52'29"E on the said South R.O.W. line, 367.45 feet to a point 100.00 feet West of the East line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; thence S 00^o21'40"E on a line 100.00 feet West of and parallel to said East line, 130.80 feet; thence N 90^o00'00"W on a line 433.00 feet North of and parallel to said South line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, 325.00 feet; thence S 00^o21'40"E on a line 425.00 feet West of and parallel to said East line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, 400.00 feet to the point of beginning. (Said tract containing 64,880 square feet more or less).

EXCEPT that part thereof deeded to Cort Emery Properties, Ltd. by deed recorded at Book 1551 at Page 254.

Exhibit "A"

A tract of land in the SE $\frac{1}{4}$ of Section 35, T15N, R12E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the S.E. corner of said SE $\frac{1}{4}$; thence N 90°00'00"W (assumed bearing) on the South line of said SE $\frac{1}{4}$, 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 R.O.W. line of the Union Pacific Railroad; thence N 89°52'29" E on the South R.O.W. 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 SE $\frac{1}{4}$, 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 SE $\frac{1}{4}$, 42.50 feet to the Point of Beginning. (Containing 22,516 square feet more or less).

and

Part of the SE $\frac{1}{4}$ of Section 35, T15N, R12E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the Southeast corner of said Section 35; thence N 90° 00, W (assumed bearing) on the South line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ 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 SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, 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 SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, 529.30 feet to a point on the South R.O.W. 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. (Containing 167,342 square feet more or less).

Exhibit "B"

A 24.00 foot wide parcel of land in the Southeast 1/4 of Section 35, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, the center line of said 24.00 foot wide parcel of land being more particularly described as follows: Commencing at the Southeast corner of said Southeast 1/4; thence N90°00'00"W (assumed bearing) on the South line of said Southeast 1/4, 425.00 feet; thence N00°21'40"W on a line 425.00 feet West of and parallel to the East line of said Southeast 1/4, 33.00 feet to the Southeast corner of a tract of land as described in Deed Book 1551 at Page 254 and hereinafter called Tract "A"; thence continuing N00°21'40"W on a line 425.00 feet West of and parallel to the East line of said Southeast 1/4 and on the East line of said Tract "A", 443.14 feet to the point of beginning; thence S89°38'45"W, 173.09 feet to a point of curve; thence Southwesterly on a 40.00 foot radius curve to the left, chord bearing S44°38'45"W, chord distance 56.56 feet, an arc distance of 62.83 feet to a point of tangency; thence S00°21'15"E, 265.00 feet to a point of curve; thence Southwesterly on an 11.93 foot radius curve to the right, chord bearing S44°49'22"W, chord distance 16.92 feet, an arc distance of 18.81 feet to a point of reverse curve; thence Southwesterly on a 37.30 foot radius curve to the left, chord bearing S45°00'00"W, chord distance 52.75 feet, an arc distance of 58.59 feet to a point of tangency; thence S00°00'00"E, 87.53 feet to the point of termination of this easement, said point of termination also being on the North R.O.W. line of "F" Street. Subject to the terms and provisions contained in said Easement.

Exhibit "C"

1 Misc

RECEIVED
 1934 JUN -8 PM 3:38
 C. HAROLD OSLER
 REGISTER OF DEEDS
 DOUGLAS COUNTY, NEBR.

Book 711
 Page 681
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