

BK 1378 PG 443-446

MISC 2001 05697

REGISTERED & FILED IN
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

01 APR 20 PM 3:03

RECEIVED

misc $\frac{4}{2}$ FEE 21.00 FB 51-09302
BKP _____ C/O _____ COMP *Be*
DEL _____ SCAN *dc* FV _____

[Space Above This Line For Recording Data]

ENCROACHMENT AGREEMENT

Rush

THIS ENCROACHMENT AGREEMENT (this "Agreement") is entered into this 20th day of April, 2001, by and between N.P. Dodge Investments, Inc., Nebraska corporation ("Dodge") and Nebraska Methodist Health System, Inc., a Nebraska non-profit corporation ("Methodist").

RECITALS:

A. Dodge Investments, Limited Partnership 8001, a Nebraska limited partnership (the "Partnership") is the record titleholder of Lot 1 and Lot 2, Dodge Plaza, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska. Such lots are referred to in this Agreement as "Lot 1" and "Lot 2", respectively.

B. Contemporaneous with the execution and delivery of this Agreement, Dodge has acquired Lot 1 from the Partnership and Methodist has acquired Lot 2 from the Partnership.

C. Lot 1 and Lot 2 adjoin and abut each other along the west boundary of Lot 2. A series of retaining and landscaping walls (the "Walls") consisting partially of concrete and partially of stone are located at the southwest corner of Lot 2 and the east boundary of Lot 1 and run between the west end of the office building on Lot 2 to the northeast corner of the office building on Lot 1. Portions of the Walls exist on both Lot 1 and Lot 2.

D. Neither Methodist nor Dodge wish to claim any ownership interest, by adverse possession or otherwise, of the real property of each other as a result of the Walls. Dodge does not wish to relinquish any of its right, title and interest to the real property within the boundaries of Lot 1, but wishes to permit the encroachment of the Walls upon Lot 1 and to such end desires to grant Methodist and all subsequent owners of the Lot 2 a license permitting the continuance of such encroachment subject to the terms and conditions hereof. Methodist does not wish to relinquish any of its right, title and interest to the real property within the boundaries of Lot 2, but wishes to permit the encroachment of the Walls upon Lot 2 and to such end desires to grant Dodge and all subsequent owners of the Lot 1 a license permitting the continuance of such encroachment subject to the terms and conditions hereof.

[Handwritten signature/initials]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Methodist does not claim any ownership interest or adverse possession of any portion of Lot 1 and Methodist and the successor owners of Lot 2 shall have no present or future claim, right, title and interest in and to that portion of Lot 1 because of the existence of such Walls. Dodge does not claim any ownership interest or adverse possession of Lot 2 and Dodge and the successor owners of Lot 1 shall have no present or future claim, right, title and interest in and to that portion of Lot 2 because of the existence of such Walls.

2. Dodge hereby grants to Methodist and all subsequent owners of Lot 2, a license to continue the encroachment of the Walls upon Lot 1 in their present state and dimensions. Subject to the license granted in the preceding sentence, Methodist and the successor owners of Lot 2 shall have no present or future claim, right, title and interest in and to that portion of Lot 1 upon which the Walls encroach. In the event that Dodge so elects it may relocate, at its sole cost and expense, so much of the Walls as encroach onto Lot 1 to the nearest point on Lot 2 without causing damage to the integrity of the Walls or of any existing structure on such Lot 2, and upon completion of such relocation, the license granted by Dodge in this Agreement shall terminate and be of no further force and effect.

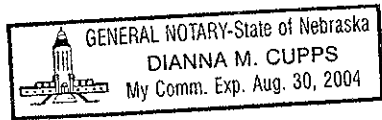
3. Methodist hereby grants to Dodge and all subsequent owners of Lot 1, a license to continue the encroachment of the Walls upon Lot 2 in their present state and dimensions. Subject to the license granted in the preceding sentence, Dodge and the successor owners of Lot 1 shall have no present or future claim, right, title and interest in and to that portion of Lot 2 upon which the Walls encroach. In the event that Methodist so elects it may relocate, at its sole cost and expense, so much of the Walls as encroach onto Lot 2 to the nearest point on Lot 1 without causing damage to the integrity of the Walls or of any existing structure on such Lot 1, and upon completion of such relocation, the license granted by Methodist in this Agreement shall terminate and be of no further force and effect.

4. This Agreement and the licenses, covenants, benefits, and obligations created hereby shall inure to the benefit of and be binding upon Dodge and Methodist and their respective assigns and successors in interest to Lot 1 and Lot 2 and shall run with the land, provided, however, that in the event that any portion of the Walls are permanently removed from either Lot 1 or Lot 2 and are not replaced, the license for the portion of the Wall that is permanently removed shall thereupon terminate without further act of the parties hereto.

5. In the event that either party hereto wishes to maintain, repair or replace any portion of the Walls that are situated on the property of the other party hereto, the party wishing to perform such work shall be entitled to enter upon the property of the other party hereto for such purpose. The party entering the property of the other party shall be responsible for the repair of any damage caused by such entry or caused by such maintenance, repair and replacement work, and such entering party shall not unreasonably interfere with the other party's use and enjoyment of its property.

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The above and foregoing Encroachment Agreement was acknowledged before me on this 20th day of April, 2001, by Stephen D. Long, President of Nebraska Methodist Health System, Inc., a Nebraska non-profit corporation, on behalf of such non-profit corporation.



Dianna M. Cupps
Notary Public

DOCS/450565.2