



BK 1421 PG 353-354



MISC 2002 02259

RICHARD H. TAKEICH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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BKP 34-16-12 C/O COMP
DEL SCAN Doc# FV

INDEMNIFICATION AND ENCROACHMENT AGREEMENT

WHEREAS the OMAHA PUBLIC POWER DISTRICT, hereinafter referred to as "District", has obtained two (2) easements for the construction, maintenance, operation and inspection of an electric line consisting of poles, wires, equipment and fixtures, with rights to alter, repair and remove the same in whole or in part at any time, in, over and across the following described lands situated in Douglas County, Nebraska, to-wit:

The East 250 feet of the South 250 feet of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska.

Said first easement dated October 17th, 1966 and filed for record November 10th, 1966 in Miscellaneous Book 443 at page 419 in the Register of Deeds Office, Douglas County, Nebraska. Said second easement dated April 22, 1969 and filed for record June 11, 1969 in Miscellaneous Book 477 at page 335 in the Register of Deeds Office, Douglas County, Nebraska.

AND WHEREAS FANTASY'S INC. is the "Owner" of the "Property", which improvements to said property includes a car wash and wooden shed that encroach within the boundaries of said easement area, (see attached exhibit "A" for sketch of encroachment)

AND WHEREAS the District has the right to prohibit said encroachments being placed on or remaining within the boundaries of said easement area, which rights the District wishes to retain, now, therefore, in consideration of the foregoing, Owner and District agree as follows:

- District agrees, subject to the terms and conditions of this agreement, that the encroachment shown on Exhibit "A", may be maintained notwithstanding the prohibition that may exist in the easement agreements referred to above.
- Owner agrees that said encroachment and maintenance thereof are subject to the operations of the District, its successors or assigns and to the risks thereof, which the Owner voluntarily with complete understanding of Owner's risks, rights, obligations and liabilities agrees to assume.
- Owner waives and releases any risks, claim, right or cause of action known or unknown, whether now existing or arising in the future, against the District, and its successors and assigns, with respect to the encroachment on the aforesaid easement area, or injuries or damages related thereto.
- Owner agrees to protect, indemnify and save harmless the District, its directors, officers, agents, employees, and invitees from and against any and all claims, suits, demands, liability and expenses to include but not be limited to litigation costs and attorneys' fees by reason of loss or damage to any property whatsoever, including that of the District, or injury to or death of any person whomsoever, including the District, its officers, agents, employees, and invitees, from any cause whatsoever arising from or related to directly or indirectly, the construction, maintenance, existence, use or removal of said encroachment.
- Owner shall be obligated under this indemnity only as to indemnified events that occur while Owner is the title holder of the encroachment property described on Exhibit "A". Subsequent owners of the property shall likewise be bound upon the indemnity, during the period of time such subsequent owners are owners of said property.
- Neither the Owner nor their successors or assigns shall improve or expand the existing encroachment or construct any other encroachments without the prior written approval of the District or its successors or assigns.
- This agreement shall be publicly recorded against the above described property and the terms and conditions set forth herein shall run with the land and be enforceable against the Owner, and their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have signed their names and caused the execution of this instrument this 29 day of Jan, 2002.

RETURN TO:
OMAHA PUBLIC POWER DISTRICT
% Right of Way 6W/EPI
444 South 16th Street Mail
Omaha, NE 68102-2247

FANTASY'S INC.

[Signature]

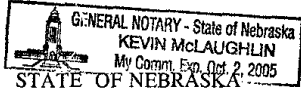
OMAHA PUBLIC POWER DISTRICT

[Signature]

STATE OF *Nebr.*)
) ss.
COUNTY OF *Douglas*)

On this *5* day of *JANUARY*, 2002, before me the undersigned, a Notary Public in and for said county personally came *John T. Szwedat*, *President* of FANTASY'S INC., to me personally known to be the identical persons whose names are affixed to the above instrument and acknowledge the execution thereof to be their voluntary act and deed.

Witness my hand and Notarial Seal in said county the day and year last written above.



Kevin McLaughlin
Notary Public

COUNTY OF DOUGLAS)

On this *28th* day of *January*, 2002, before me the undersigned, a Notary Public in and for said county personally came *William D. Demyer*, Vice President of OMAHA PUBLIC POWER DISTRICT, to me personally known to be the identical persons whose names are affixed to the above instrument and acknowledge the execution thereof to be their voluntary act and deed.

Witness my hand and Notarial Seal in said county the day and year last written above.



Larry J. Hagan
Notary Public

EXHIBIT "A"

