

AMENDED EASEMENT AND AGREEMENT

THIS AMENDED AGREEMENT made as of the 25th day of August 1969 by and between THE OMAHA NATIONAL BANK, TRUSTEE, of Omaha, Nebraska, hereinafter referred to as "Party of the First Part" and L. J. NEWMAN and JUDITH NEWMAN, his wife, hereinafter referred to as "Party of the Second Part".

W I T N E S S E T H :

WHEREAS, Party of the First Part is the fee owner of certain land situated in the City of Omaha, State of Nebraska, shown as Tract 1 on the plot plan attached hereto and made a part hereof as Exhibit "A", which Tract 1 is more particularly described in Schedule 1 hereof; and

WHEREAS, Party of the Second Part is the fee owner of certain land situated in the City of Omaha, State of Nebraska, shown as Tract 2 on Exhibit "A", which Tract 2 is more particularly described in Schedule 2 hereof; and

WHEREAS, the parties hereto are mutually desirous of creating certain reciprocal rights, easements and restrictions as hereinafter set forth, the same being intended to be covenants running with the land and to bind and inure to the benefit of Tract 1 and Tract 2, which Tracts taken collectively are hereinafter referred to as the "Premises", respectively, and in furtherance of this purpose have heretofore executed an Easement and Agreement dated as of the 3rd day of March 1969 and recorded March 3, 1969, in Book 474 at Page 159 of Miscellaneous Records in the Office of the Register of Deeds for Douglas County, Nebraska, and

WHEREAS, the parties desire to amend, modify, expand, supplement, clarify, reaffirm and further define the reciprocal rights, easements and restrictions created by the Easement and Agreement dated March 3, 1969.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by each to the other, the receipt whereof is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. The parties acknowledge that there is indicated on Exhibit "A" certain areas as parking, driving and service areas, entrance and access ways or routes thereon (all of which said areas are hereinafter collectively called "Common Areas"). It is understood and agreed that all of the aforesaid Common Areas shall be used and enjoyed in common for the respective intended purposes indicated on Exhibit "A", namely, parking, driving, service areas, entrance and access ways, and easements and rights for such purposes are hereby granted from each party to the other, their respective heirs, successors, assigns, lessees and permittees. Neither party shall construct any fence, barriers or other obstructions within or between the aforesaid tract other than may be permitted herein, or as shown on Exhibit "A" which will hinder, deter, restrict or otherwise prevent the unmolested vehicular and pedestrian traffic and passageway and ingress and egress between said Tract 1 and Tract 2 or in any manner interfere with or limit the free use and enjoyment by either party of the rights and easements granted to it hereby by the other party.

2. The parties agree that the premises shall be developed so as to constitute a community unified commercial shopping center

under a general plan or scheme. In furtherance of this intent, purpose, objective and scheme, the parties covenant and agree as follows:

(a) certain buildings have heretofore been constructed on Tract 1 and space therein has been leased to retail tenants who are in occupancy thereof.

It is currently contemplated that additional buildings (including expansion areas) will be constructed on Tract 2 and leased to retail tenants. All buildings, existing and contemplated are as shown on Exhibit "A". Neither party shall construct additional buildings on the tract of which it is the fee simple owner, except in those areas labeled "Future Expansion" on Exhibit "A", without first obtaining the prior written consent of the other and the common areas on the premises shall at all times during the term of this agreement be maintained as shown on Exhibit "A". There is a sixty (60) foot set-back restriction extending from the south right-of-way line of West Center Road and the west right-of-way line of 84th Street. The parties agree that no buildings will extend into these restricted areas. Each of the parties reaffirm that in no event during the term hereof will the parking and other common areas located on the tract of which it is the fee simple owner be segregated for the exclusive use of the owners and occupants thereof and that the parking and common areas as shown on Exhibit "A" will be for the reciprocal non-exclusive use and enjoyment by all owners and occupants of the premises. This restriction shall be binding upon and inure to the benefit of the Lessee of either tract under a ground or land lease.

(b) the parties acknowledge that negotiations are now in progress with W. T. Grant Company and Walgreen Co. who desire to lease and occupy space within buildings for use as a W. T. Grant Company

store and Walgreen store to be constructed on Tract 2. Said W. T. Grant Company and Walgreen Co. require assurance that they as well as their employees, agents, customers, patrons, invitees and licensees will have the right to use and enjoy the easements created hereby throughout the term of their respective leases. In addition, the willingness of said W. T. Grant Company and Walgreen Co. to lease space within said Tract 2 is conditioned upon the exclusive use provisions and restrictive covenants contained in their leases being enforceable throughout the premises.

Party of the Second Part has been informed of exclusive use provisions of a W. T. Grant Company store and a Walgreen store requiring the presence of a registered pharmacist and restrictive covenants which the aforesaid W. T. Grant Company and Walgreen Co. will require in their leases. Said restrictive covenants in the leases demising premises for use as a W. T. Grant Company store and Walgreen store will be substantially the following:

1. W. T. Grant Company store:

The Landlord agrees that it will not occupy or use or permit to be occupied or used any store premises in the Shopping Center for any department store, junior department store, 5 and 10 cent store, 5 cent to \$1.00 store, 25 cent to \$1.00 store, variety store (whether limited priced or not) or discount store without the Tenant's written consent in each instance except the store premises herein demised.

2. Walgreen store:

Landlord covenants and agrees that, during the continuance of this lease, no other portion of the entire property shown on said attached plan will be used for the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist nor for the operation of a business, the principal portion of which is the sale of so-called health and beauty aids and drug sundries. This provision shall also apply to any additional property which Landlord, directly or indirectly, may now or hereafter own or control, and which may be adjacent to said Shopping Center, or which may be added to or used in conjunction therewith.

It is understood that the restrictive covenant contained in the W. T. Grant Company store Lease Agreement will be modified to state that the

use of premises within the Shopping Center by Walgreen Co. for a Walgreen store will not be a violation thereof. The term "discount store" in the restrictive covenant of the W. T. Grant Company store Lease Agreement will be defined therein to mean a store of the type now operated by K-Mart, Millers, Arlans, etc. Anything contained in the restrictive covenant of the Walgreen store lease to the contrary notwithstanding, it is understood and agreed that not more than seven thousand (7,000) square feet of building space on Tract 1 may be used for the operation of a drug store or a so-called prescription pharmacy. The restrictive covenant in the Walgreen store lease shall be modified to state this permitted use and occupancy. The present drug store located within Tract 1 is now, and any future expansion thereof will be, in compliance with the aforesaid restriction. Any other store hereafter constructed within the building area on said Tract for use as a drug store or so-called prescription pharmacy in substitution for the present drug store and operated by the present drug store occupant or any other suitable and qualified future tenant or occupant shall not be in violation of the above restriction. Party of the First Part will not lease or permit to be used all or any portion of Tract 1 for a purpose which is in violation of the exclusive use or restrictive covenant to be incorporated in the W. T. Grant Company store lease or Walgreen store lease during the term of said leases and any renewals or extensions thereof.

Nothing contained herein shall prevent or prohibit the use for the entire term of this agreement of those portions of said Tract 1 for the purposes which are now permitted by tenant leases

heretofore executed demising storeroom space within said tract.

(c) in instances where utility lines, wires, pipes, conduits, sewers and drainage lines serving one of the two tracts comprising the premises cross the other tract or where certain construction on one tract is extended on to the other (i.e. canopies and party walls) an easement is hereby granted by each party to the other for the use, maintenance, repair and replacement thereof and one party entering the tract owned in fee simple by the other shall not be deemed to have committed a trespass thereby.

3. The parties covenant and agree, each with the other, that they will use their best efforts to prohibit the parking of their employees, and the employees of any Lessee or occupier of their respective premises, from parking upon the real estate owned by the other.

4. This instrument does not constitute a dedication for public use, and no person other than as specifically set forth herein is intended to be benefited hereby.

5. Each fee owner of any portion of the premises shall be obligated to construct, operate, maintain and repair all portions of the common areas located on the portion of the premises owned in fee by it, in such manner that such common areas shall be useable for their respective intended purposes and in accordance with good and generally accepted standards of operation of similar real estate developments. Without limiting the generality thereof the obligations stated herein shall include keeping the Common Areas clean and free of all dirt, rubbish, trash and debris, the prompt removal of snow and ice accumulations therefrom and keeping said Common Areas properly and adequately lighted during

hours of dusk and darkness when any portion of the Premises is open to the general public for the conduct of business and for a reasonable time thereafter. The obligation of either party to keep the premises owned in fee by it adequately lighted as aforesaid shall continue to exist even though no portion of said premises is open to the general public for the conduct of business so long as any portion of the premises owned in fee by the other party, in the sole discretion of said other party, is so open.

6. Either party or the owner of a leasehold estate in and to either tract under a ground or land lease shall have the right to cure any default on the part of the other with respect to the maintenance of its common areas with the right of reasonable access for such purposes upon the property of such defaulting party and with the right to demand and collect reimbursement from such defaulting party of any amount so advanced together with interest from the date of such advance at the highest legal rate. Neither party shall have the right to cure any such default by the other without giving such other party thirty (30) days prior written notice within which to cure the specified default.

7. This agreement is declared to and does inure to the benefit of and shall be binding upon the successors and assigns of any fee interest in the land constituting the premises, any ground lessees thereof, as well as the present occupants of any portion of the premises, their successors, assigns and sublessees, for the periods hereinafter expressed, it being expressly intended that the respective easements and rights and obligations hereunder shall run with the entire premises and any and all portions thereof, and that each person, firm or corporation succeeding to the interest of the par-

ties hereto, as the case may be, at any time and from time to time, shall be deemed, by taking such interest in the fee of the premises, to have covenanted to comply with all the obligations hereof, respectively, on the part of the party hereto to be performed hereunder.

8. The term of this agreement and the duration of the rights, restrictions and obligations created hereby, shall be fifty-five (55) years from the date of execution hereof, and at the expiration of said period, the rights and obligations of the parties hereto, and their delegates and successors shall cease and determine.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first above written.

PARTY OF THE FIRST PART:

THE OMAHA NATIONAL BANK, TRUSTEE

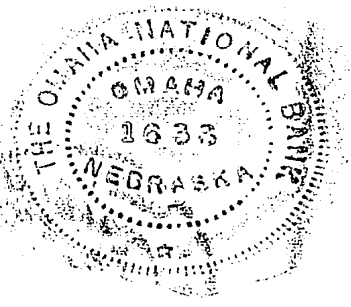
By: *D. J. Brown*

Attest: *Richard Miller*

PARTY OF THE SECOND PART:

L. J. Newman
L. J. Newman

Judith Newman
Judith Newman



STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN FRANCISCO)

On this 13th day of October, 1969, before me,
the undersigned, a Notary Public duly commissioned and qualified
for in said County, personally came L. J. Newman and Judith Newman,
his wife, to me known to be the identical persons whose names
are affixed to the foregoing instrument, and acknowledged the
execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last
above written.



Josephine Hulsmann
Notary Public

JOSEPHINE HULSMAN
My Commission Expires Nov. 4, 1971

My Commission Expires:

SUBORDINATION

The undersigned, as owner and holder of a mortgage dated February 13, 1964 and filed for record on February 13, 1964 in Mortgage Book 1544 at page 69 in the Office of the Register of Deeds of Douglas County, Nebraska, encumbering the premises described as Tract 1 in the within Amended Easement and Agreement by and between The Omaha National Bank, Trustee, Party of the First Part, and L. J. Newman and Judith Newman, his wife, Party of the Second Part, hereby consents to said Agreement and agree that the lien of its mortgage and its enforcement of any rights thereunder is subject and subordinate to said Agreement.

The undersigned hereby further agree that it will execute and deliver an instrument subordinating the lien of its mortgage as aforesaid in a form which may be filed for record in the office of the Register of Deeds of Douglas County, Nebraska.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 16th day of January, 1970.

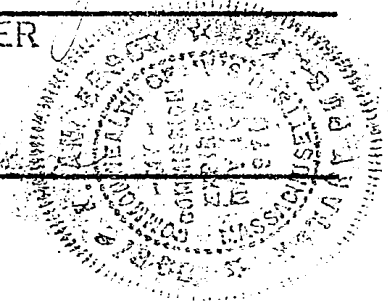
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY
Mortgagee

By

Charles C. M...

Attest. INVESTMENT OFFICER

James H. Anderson



STATE OF

COUNTY OF

On this _____ day of _____, 1969, before me,
 a Notary Public, in and for said county, personally came the
 above named _____, _____
 NAME TITLE
 of _____, who is personally known
 CORPORATION
 to me to be the identical person whose name is affixed to the
 above instrument as _____ of said corporation
 and acknowledged the instrument to be his voluntary act and deed
 and the voluntary act and deed of said corporation.

Witness my hand and notarial seal the date last aforesaid.

My commission expires on the _____ day of _____, 19__.

Notary Public

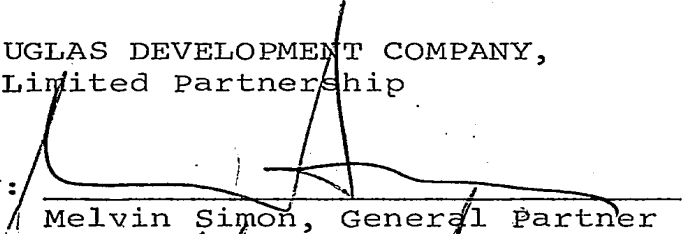
CONSENT BY GROUND LESSEE

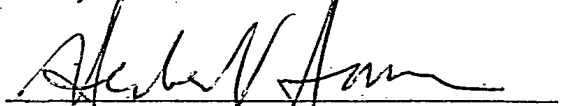
The undersigned is the owner by assignment of the right, title and interest of the Lessee in and to the premises shown as Tract 2 on Exhibit "A" attached to and made part of the within Amended Easement and Agreement and more particularly described in Schedule 2 thereof as created by that certain lease dated the 1st day of September 1968 by and between L. J. Newman and Judith Newman, his wife, as Lessor and Omaha Development, Inc., as Lessee; a short form of said lease of even date therewith being recorded May 26, 1969, in Book 476 at Page 615 of Miscellaneous Records in the Office of the Register of Deeds for Douglas County, Nebraska; the Lessee's interest in said lease being assigned to the undersigned by instrument dated May 1, 1969, and filed May 26, 1969, in Book 476 of Miscellaneous Records at Page 619 in the aforesaid Register of Deeds Office.

The undersigned hereby approves and consents to the within Amended Easement and Agreement and agrees to be bound by all of the terms, covenants and provisions thereof and agrees to perform the obligations stated therein to be performed by Party of the Second Part to the same extent and in the same manner as if it was, in fact, designated as said Party of the Second Part therein.

Dated this 25th day of August 1969.

DOUGLAS DEVELOPMENT COMPANY,
a Limited Partnership

By: 
Melvin Simon, General Partner

Attest: 
Herbert Simon, General Partner

84th & Center StreetsLegal Description of Tract Retained by Omaha National Bank Trustee

A portion of Lots 36, 37 and 38, Marshall and Pahl Addition to the City of Omaha, Douglas County, Nebraska, bounded and described as follows:

Beginning at the NE corner of said Lot 37, being a point 50 feet South and 50 feet West of the NE corner of the NE $\frac{1}{4}$ of Section 34, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska and the SW corner of the Intersection of 84th Street and West Center Road; thence South along the West line of 84th Street 317 feet to a point; thence West 343 feet to a point; thence North 317 feet more or less to a point on the South line of West Center Road; thence East along said South line of West Center Road 343 feet more or less to the point of beginning.

Schedule 1

All of Lots 1 to 6 inclusive and Lots 28 to 38 inclusive, Marshall and Pahl Addition to the City of Omaha, Douglas County, Nebraska, but excepting therefrom the following portions of said Lots 36, 37 and 38:

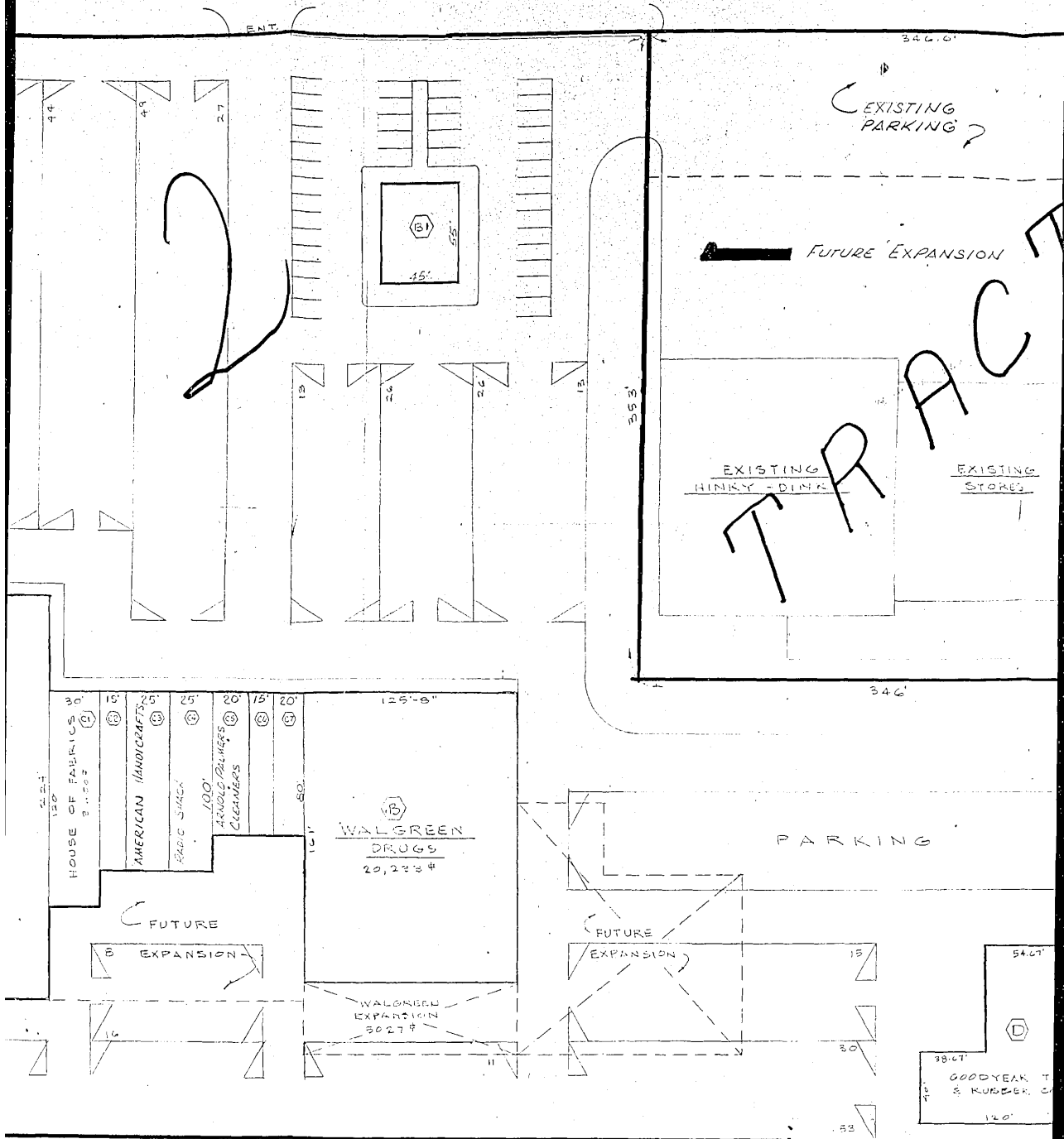
Beginning at the NE corner of said Lot 37, being a point 50 feet South and 50 feet West of the NE corner of the NE $\frac{1}{4}$ of Section 34, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, and the SW corner of the Intersection of 84th Street and West Center Road; thence South along the West line of 84th Street 317 feet to a point; thence West 343 feet to a point; thence North 317 feet more or less to a point on the South line of West Center Road; thence East along the said South line of West Center Road 343 feet more or less to the point of beginning.

A tract of land located in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 15 North, Range 12 East of the 6th P.M., bounded and described as follows:

Beginning at the SW corner of Lot 6, Marshall and Pahl Addition to the City of Omaha, Douglas County, Nebraska; thence South along a line which is the East line of Lot 7, Rainbow Replat II, an Addition to the City of Omaha, Douglas County, Nebraska, a distance of 37.2 feet to a point; thence East along a line parallel to the South line of said Lot 6, Marshall and Pahl Addition, a distance of 200 feet to a point which is the SW corner of Lot 28, Marshall and Pahl Addition; thence North along the West line of said Lot 28, Marshall and Pahl Addition, a distance of 37.2 feet to a point; thence West along a line which is the South line of said Lot 6, Marshall and Pahl Addition, a distance of 200 feet to the point of beginning.

Said tracts are subject to a corporation easement dated May 19, 1965 and recorded July 19, 1965 in Book 427 at Page 553, Misc. Recordings, Douglas County, Nebraska and two easements for ingress and egress over and across certain portions of Lots 37 and 38, Marshall and Pahl Addition, which easement are more particularly described in warranty deed dated April 3, 1969 and recorded April 10, 1969 in Book 1379 at Page 19 of the Conveyance Records of Douglas County, Nebraska.

ER ROAD



1 71.3

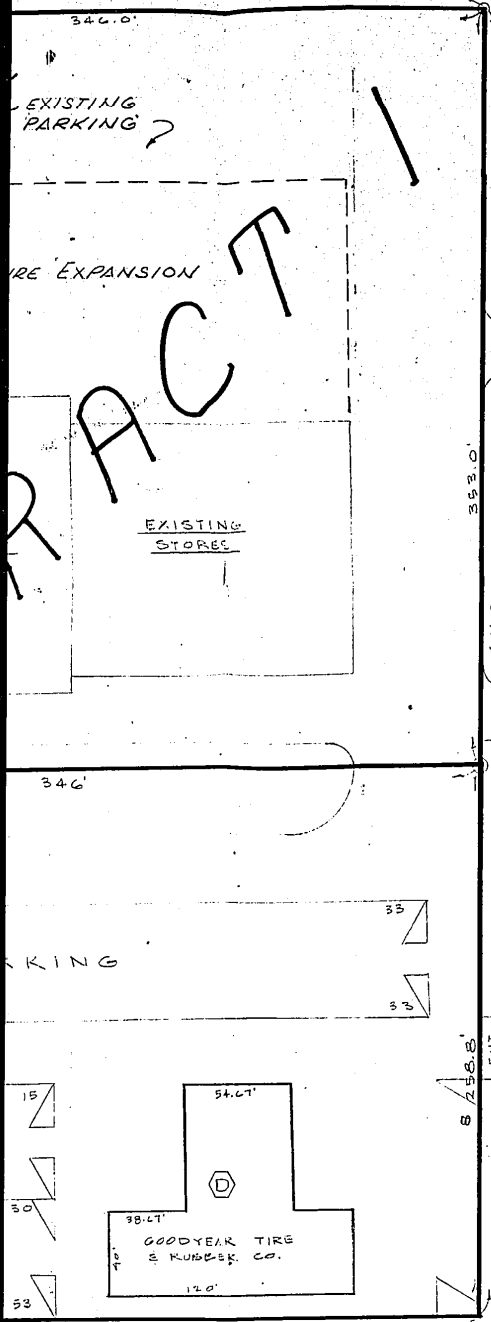
LOT PLAN

SCALE 1" = 50'



NOTE:

ALL ENTRANCES & EXITS
TO STATE HIGHWAY & CITY
BORO APPROVAL.



BUILDING AREA

"A" W.T. GRANT CO.	87,352 #
"B" WALGREEN DRUGS	20,233 #
"B1" 1 STORY BUILDING	2,475 #
"C" MISC. STORES	14,500 #
"D" GOODYEAR TIRES & RUBBER CO.	8,026 #
TOTAL BUILDING AREA	134,589 #

PARKING

NO. OF PARKING SPACES 951 CARS

E 84TH STREET

OMAHA PLAZA

OMAHA, NEBRASKA
W. CENTER RD. & 84TH ST.

NOTE:
ALL ENTRANCES & EXITS ARE SUBJECT TO STATE HIGHWAY & OTHER GOVERNING BODIES APPROVAL.

NO.	DATE	DESCRIP.
10	7-31-69	B1
9	5-2-69	PARKING
REVISIONS		

PROJECT NO. 527 CERTIFIED BY	MELVIN SIMON & ASSOC. DEVELOPER 1712 N. MERIDIAN STREET INDIANAPOLIS, INDIANA AREA CODE 317-426-6621	4-27-69 Misc. Stores 4-16-69 GOODYEAR 4-2-69 MISC STORES 3-12-69 GOODYEAR 1-6-69 WALGREEN 12-26-68 1 STORY BLDG. 12-9-68 MISC.
R. RUBUS & ASSOCIATES, INC. CONSULTING ENGINEERS 1716 N. MERIDIAN STREET INDIANAPOLIS, INDIANA 46202 AREA CODE 317-546-8713		REVISIONS DRAWING NUMBER
SCALE 1"=50'	DESIGNED BY T.S.	DRAWN BY C.M.
DATE 9-9-68		PROJECT NO.

RECEIVED

1970 JAN 22 AM 10 04

C. HAROLD OSTLER
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

ALL STATE OF NEBRASKA
Deeds of Record
Entered in this office of the
for Record in the office of the
Deeds of said County and recorded in
Book H85 of mas
Page 447

C. Harold Ostler

Register of Deeds

By Garnes Deputy Spittler, Hal
MAIL 1028 City Paris, BR Beay

N 34-15-12 G.P.N. # 5925
Compared 70-101 Etc

3
mas