

FIRST AMENDMENT TO AMENDED EASEMENT AND AGREEMENT

THIS AGREEMENT, made as of the 12th day of Dec, 1969, by and between THE OMAHA NATIONAL BANK, TRUSTEE, a national banking association 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, hereinafter referred to as "Tract 1", situated in the City of Omaha, County of Douglas and State of Nebraska, a legal description of said Tract being set forth in Schedule 1, attached hereto and hereby made a part hereof, and

WHEREAS, Party of the Second Part is the fee owner of certain land, hereinafter referred to as "Tract 2", situated in the City of Omaha, County of Douglas and State of Nebraska, a legal description of said Tract 2 being set forth in Schedule 2, attached hereto and hereby made a part hereof, and

WHEREAS, for the purpose of creating certain reciprocal rights, easements and restrictions, 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, the parties 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, for the purpose of more definitely stating and describing said intended reciprocal rights, easements and restrictions, the

Parties executed and delivered in replacement of and in substitution for the aforesaid Easement and Agreement dated as of the 3rd day of March, 1969, an Amendment Easement And Agreement dated as of the 25th day of August, 1969, which instrument was recorded

January 22, 19 70, in Book 485 at Page 447 of Miscellaneous Records of the aforesaid Register of Deeds' Office, and

WHEREAS, the Parties have determined that it is necessary and desirable to amend and modify certain of the terms and provisions of the aforesaid Amended Easement and Agreement dated as of the 25th day of August, 1969,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and in the instrument amended hereby and 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 hereby amend and modify the Amended Easement and Agreement dated as of the 25th day of August, 1969, as follows:

- 1. The first sentence of the first full paragraph of Section 2(b), commencing on page 4, which is set forth below is deleted:

"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."

The following is substituted as the first sentence of the first full paragraph of Section 2(b), commencing on Page 4 in lieu of the above quoted sentence deleted hereby:

"Party of the First Part has been informed by Party of the Second Part 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."

2. The first full sentence of Section 2(b), commencing near the top of page 5 as set forth below is deleted:

"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."

The following is substituted as the first full sentence of Section 2(b), commencing near the top of page 5 in lieu of the above sentence deleted hereby:

"The term 'discount store' in the W. T. Grant Company store Lease Agreement will not apply to any store containing less than ten thousand (10,000) square feet of floor space or to the operation of a Hinky Dinky food supermarket located on Tract 1 as shown on the plot plan attached as Exhibit "A" to the instrument amended hereby".

3. The fourth full sentence of Section 2(b), appearing on page 5 is as follows:

"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".

The following words are hereby added at the end of the above quoted sentence:

"provided, as aforesaid, that in no event shall more than seven thousand (7,000) square feet on said Tract 1 be used for the operation of a drug store or so-called prescription pharmacy".

All other terms and conditions appearing in said Amended Easement and Agreement and any former modifications thereunto except those which are hereby modified are to remain in full force and effect and are

hereby reaffirmed by the parties hereunto.

IN WITNESS WHEREOF, the parties hereunto have executed this First Amendment to Amended Easement and Agreement as of the day and year first above written.

PARTY OF THE FIRST PART:

THE OMAHA NATIONAL BANK, TRUSTEE

BY Richard A. Miller

~~Attest~~

PARTY OF THE SECOND PART:

I. J. Newman
I. J. Newman

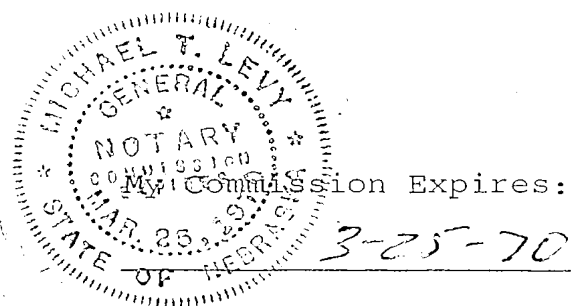
Judith Newman
Judith Newman

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

On this 22nd day of January, 19 70, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said County, personally came Richard H. Heller, Trust Officer, of THE OMAHA NATIONAL BANK, Trustee, a national banking association, to me personally known to be the Trust Officer and the identical person whose name is affixed to the above and foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such Trust Officer and the voluntary act and deed of said association and the corporate seal of said association was thereto affixed by its authority.

WITNESS MY HAND and notarial seal the day and year last above written at Omaha in said County.

Michael T. Levy
Notary Public



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

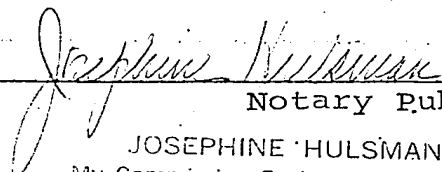
On this 19th day of January, 19 70, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said County, personally came L. J. NEWMAN and JUDITH NEWMAN, his wife, to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the execution

thereof to be their voluntary act and deed.

WITNESS MY HAND and notarial seal the day and year last above written.



My Commission Expires:
JOSEPHINE HULSMAN
My Commission Expires Nov. 4, 1971



Notary Public
JOSEPHINE HULSMAN
My Commission Expires Nov. 4, 1971

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 described as Tract 2 in Schedule 2, attached to and made part of the within First Amendment to Amended Easement and Agreement, as created by that certain Lease dated the 1st day of September, 1968, by and between J. L. 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 First Amendment to 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 extend and in the same manner as if it was, in fact, designated as said Party of the Second Part therein.

Dated this 12th day of Dec, 1969.

DOUGLAS DEVELOPMENT COMPANY,
a Limited Partnership

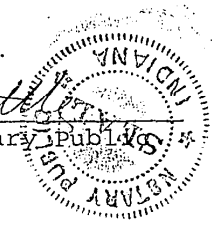
By [Signature]
Melvin Simon, General Partner

Attest [Signature]
Herbert Simon, General Partner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, Eileen Little, a Notary Public, do hereby certify that MELVIN SIMON and HERBERT SIMON, personally known to me to be the same persons whose names are subscribed to the foregoing instrument and also known to me to be General Partners of DOUGLAS DEVELOPMENT COMPANY, a limited partnership, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their free and voluntary act and as the free and voluntary act of the aforesaid DOUGLAS DEVELOPMENT COMPANY, for the uses and purposes therein set forth.

Given under my hand and official seal this 12th day of Dec, 1969.

Eileen Little
Eileen Little, Notary Public


My Commission Expires:
8-22-70

Tract 1

84th & Center Streets

Legal 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.

Legal Description - 84th & Center - Owned By Newman-Leased To Simon

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.

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Mrs. R

RECEIVED

1970 JAN 22 PM 10 07

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

for records in the Office of the Register of
Deeds of said County and recorded in

Book H85 of Misc
Page H67

C. Harold Ostler

Register of Deeds

By Garnis - Speller Deputy
MAIL 1028 City Hall Bldg
N. 34-15-12 25
Compared 10-10-1968