

Omaha, Nebraska

**SIGN EASEMENT AGREEMENT**

THIS SIGN EASEMENT AGREEMENT (the "Agreement") is entered into by and between THE ANN K. TRIMBLE TRUST, WILBUR M. FULLAWAY, JR., and ELIZABETH F. JACOBSEN (hereinafter collectively referred to as the "Seller"), and SHONEY'S, INC. ("Shoney's"), a Tennessee corporation, this 1 day of JULY, 1993.

**W I T N E S S E T H:**

WHEREAS, Seller is the Owner of a certain tract of land described on Exhibit A hereto (the "Seller's Tract"); and

WHEREAS, Shoney's is the Owner of a certain tract of land described on Exhibit B hereto (the "Shoney's Tract"); and

WHEREAS, the respective Owners wish to enter into this Agreement by which Shoney's shall grant to Seller an easement upon, across, and under a 5' x 17' area described on Exhibit C hereto (the "Sign Easement Area") for the purpose of using, constructing, maintaining, repairing, and replacing a sign thereon advertising the business conducted on the Seller's Tract, along with the right to install, maintain, repair, and replace the underground electrical utility lines necessary for the illumination of the sign, subject to the terms of this Agreement; and

WHEREAS, under and pursuant to a variance granted by the City of Omaha, Nebraska, the Owners have the right to use of a total of 540 square feet of signage on the each side of the Pylon, 240 square feet of which may be utilized by the Owner of the Shoney's Tract and 300 square feet of which may be utilized by the Owner of the Seller's Tract;

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

1. Definitions. The following terms shall have the meanings specified below:

(a) Owner. The term "Owner" shall mean each individual, partnership, joint venture, corporation, trust, unincorporated association, government agency, or other business entity now or hereafter holding an ownership interest in fee in all or any portion of either of the Tracts, and their respective grantees and successors-in-interest.

b. Tract or Tracts. The term "Tract" singularly shall mean either the Seller's Tract or the Shoney's Tract and "Tracts" collectively shall mean both Tracts.

2. Easement. Shoney's hereby grants to Seller, for the benefit of the Owner of the Seller's Tract and its tenants, a non-exclusive, perpetual easement over, upon, and across the Sign Easement Area (the "Easement"), including the existing pylon sign advertising Seller's business, for the purpose of using, maintaining, repairing, and replacing an existing signage pylon (the "Pylon") and three (3) sign panels thereon (the "Sign") advertising the business conducted on the Seller's Tract, along with the right to maintain, repair, and replace underground electrical utility lines necessary for the illumination of such Sign under and through the Sign Easement Area, provided, however, that the Owner of the Seller's Tract hereby agrees to restore any damage to the Shoney's Tract resulting from the exercise of its rights hereunder to substantially the same condition as existed prior to such damage. The Pylon shall not exceed 40 feet in height and the Sign located thereon shall not exceed three hundred (300) square feet on each side of such Sign. The Owner of the Seller's Tract shall indemnify, defend, and agree to hold the Owner of the Shoney's Tract harmless from all costs, expenses (including legal costs of defense), and liabilities resulting from the exercise of the Easement and rights hereunder by the Owner of the Seller's Tract. The Owner of the Seller's Tract shall obtain and maintain general liability insurance relating to Seller's use of the Sign Easement Area with a liability limit of Two Million Dollars (\$2,000,000), and shall furnish to the Owner of the Shoney's Tract evidence of such insurance policy prior to the date of this Agreement and annually thereafter. The insurance policy evidencing the insurance coverages required hereby shall name the Owner of the Shoney's Tract as an additional insured thereunder and shall further provide that it may not be cancelled or modified without at least ten (10) days prior written notice to the Owner of the Shoney's Tract.

3. Construction and Maintenance. The Owner of the Seller's Tract shall maintain, repair, and replace the Pylon and the Sign, and shall be responsible for paying all utility charges relating to the Sign.

4. Covenants Run With the Land. Each covenant and undertaking as to the Sign Easement Area shall be a burden thereon for the benefit of the Seller's Tract and shall run with the land. Each covenant and undertaking as to the Seller's Tract shall be a burden thereon for the benefit of the Shoney's Tract and shall run with the land.

5. Inurement. This Agreement and the easements, covenants, benefits, and obligations created hereby shall inure to the benefit of and be binding upon each Owner and its respective assigns and successors-in-interest to such Tract.

6. Modification. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the written consent of all Owners.

7. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Sign Easement Area to the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

8. Breach Shall Not Permit Termination. No breach of this Agreement shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

9. Attorneys' Fees. In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other person with an interest in a Tract, the prevailing party in such action shall be entitled to receive, and shall receive from the defaulting Owner, a reasonable sum as attorneys' fees and costs, to the extent permitted by applicable law.

10. No Partnership. Nothing contained in this Agreement and no action by the Owners will be deemed or construed by the Owners or any third person to create a relationship of principal and agent or partnership or joint venture or any association between the Owners.

11. Time. Time is the essence of this Agreement.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute but one and the same instrument and shall become effective only upon execution of one or more of such counterparts by each of the parties.

13. Notices. Any notice or demand given or served by one Owner to the other shall not be deemed to have been duly given or served unless in writing and forwarded by certified mail, postage prepaid, addressed as follows:

Owner of Seller's Tract: West Omaha Motel, Inc.  
7833 Dodge Street  
Omaha, Nebraska 68114  
Attn: Wilbur M. Fullaway, Jr.

and

The Ann K. Trimble Trust  
c/o Robert V. Ginn  
BRASHEAR & GINN  
800 Metropolitan Federal Plaza  
1623 Farnam  
Omaha, Nebraska 68102-2106

Owner of Shoney's Tract: Shoney's, Inc.  
1727 Elm Hill Pike  
Nashville, Tennessee 37210  
Attn: Property Management

Notices and demands shall be deemed effective upon receipt thereof. The person and place to which notices are to be mailed may be changed by a party upon written notice to the other.

14. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

15. Severability. In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

16. Pronouns. When required by context, the singular shall include the plural and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

17. Effectiveness. This Agreement shall be effective upon the recordation hereof in the land records of Douglas County, Nebraska.

IN WITNESS WHEREOF, this Agreement has been executed on the date first above written.

SHONEY'S, INC.

By: 

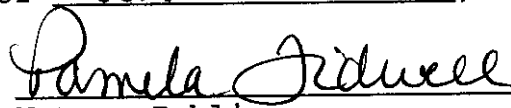
Name: \_\_\_\_\_

Title: CHARLES VAUGHN, VICE PRESIDENT OF REAL ESTATE

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

ss.

BEFORE ME personally appeared Charles Vaughn, the  
aforementioned officer of Shoney's, Inc., and acknowledge the  
foregoing instrument to be the free act and deed of said  
corporation on this 30<sup>th</sup> day of June, 1993.

  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

[SIGNATURES CONTINUED ON NEXT PAGE]

ANN K. TRIMBLE TRUST

By Kathryn Weaver Grubb  
Kathryn Weaver Grubb,  
Successor Co-Trustee and  
Federal ID#: 65-601-9086

By Elizabeth Ann Weaver Stansbury  
Elizabeth Ann Weaver Stansbury  
Successor Co-Trustee  
Federal ID#: 65-601-9086

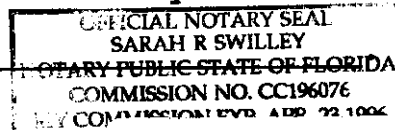
STATE OF Florida)  
COUNTY OF Sarasota) ss.

On this 26<sup>th</sup> day of June, 1993, before me, the undersigned, a Notary Public duly commissioned and qualified in and for the said State of Florida, personally came KATHRYN WEAVER GRUBB, Successor Co-Trustee of the ANN K. TRIMBLE TRUST, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

WITNESS my hand and seal the day and year last written.

Sarah R. Swilley  
Notary Public

My Commission expires: \_\_\_\_\_  
STATE OF Florida)  
COUNTY OF Brevard) ss.



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

On this 28 day of June, 1993, before me, the undersigned, a Notary Public duly commissioned and qualified in and for the said State of Florida, personally came ELIZABETH ANN WEAVER STANSBURY, Successor Co-Trustee, ANN K. TRIMBLE TRUST, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

WITNESS my hand and seal the day and year last written.

Jo Ann B. Zizzo  
Notary Public

My Commission expires: \_\_\_\_\_  
NOTARY PUBLIC - STATE OF FLORIDA  
MY COMMISSION EXPIRES AUGUST 24, 1994  
COMMISSION # CC035097

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

[SIGNATURES CONTINUED ON NEXT PAGE]

Wilbur M. Fullaway, Jr.  
Wilbur M. Fullaway, Jr.

STATE OF Nebraska  
COUNTY OF Douglas } ss.

On this 1 day of July, 1993, before me, the undersigned, a Notary Public duly commissioned and qualified in and for the said State of NEBRASKA, personally came WILBUR M. FULLAWAY, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

WITNESS my hand and seal the day and year last written.

John C. Foley  
Notary Public

My Commission expires: 12/22/95.



[SIGNATURES CONTINUED ON NEXT PAGE]

Elizabeth Fullaway Jacobsen  
ELIZABETH FULLAWAY JACOBSEN

By Wilbur M. Fullaway, Jr.  
Wilbur M. Fullaway, Jr.,  
Power of Attorney

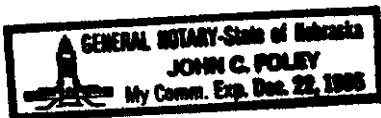
STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

On this 1 day of July, 1993, before me, the undersigned, a Notary Public duly commissioned and qualified in and for the said State of Nebraska, personally came WILBUR M. FULLAWAY, Power of Attorney for ELIZABETH FULLAWAY JACOBSEN, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

WITNESS my hand and seal the day and year last written.

John C. Foley  
Notary Public

My Commission expires: 12/22/95.





SCHEDULE OF EXHIBITS

EXHIBIT A - SELLER'S TRACT  
EXHIBIT B - SHONEY'S TRACT  
EXHIBIT C - SIGN EASEMENT AREA

EXHIBIT A

SELLER'S TRACT

Lots 4, 5 and the West 10.00 feet of Lot 1 and the west 10 feet of the North 150 feet of Lot 2, Block 3, Beverly Hills, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, except the north 189 feet thereof, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 5, thence North 00° 00' 00" East, along the West line of said Lot 5, a distance of 170.19 feet; thence North 89° 40' 41" East along a line lying 189.00 feet South of and parallel to the North line of said Lots 1, 4 and 5, a distance of 227.37 feet; thence South 00° 02' 58" East a distance of 161.07 feet; thence North 88° 38' 39" West, a distance of 9.37 feet; thence South 00° 17' 32" West, along the East line of said Lot 4, a distance of 127.95 feet; thence North 61° 39' 13" West, along the South line of Lots 4 and 5, a distance of 247.12 feet to the point of beginning, containing 1.183 acres, more or less.

EXHIBIT B

SHONEY'S TRACT

A tract of land being the North 189.00 feet of Lots 4, 5, and the West 10.00 feet of Lot 1, Block 3, Beverly Hills, An Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 5, thence North  $89^{\circ} 40' 41''$  East, a distance of 227.21 feet; thence South  $00^{\circ} 02' 58''$  East, a distance of 189.00 feet; thence South  $89^{\circ} 40' 41''$  West along a line lying 189.00 feet South of and parallel to the North line of said Lots 1, 4, and 5, a distance of 227.37 feet, to a point on the West line of said Lot 5; thence North  $00^{\circ} 00' 00''$  East, a distance of 189.00 feet to the point of beginning, containing 0.986 acres, more or less.

EXHIBIT C

SIGN EASEMENT AREA

A tract of land lying within the West 10.00 feet of Lot 1, Block 3, Beverly Hills, An Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska and being more particularly described as follows:

Commencing at the Northwest corner of Lot 5, Block 3 of said Beverly Hills, thence North 89° 40' 41" East, a distance of 227.21 feet; thence South 00° 02' 58" East, a distance of 12.50 feet to the point of beginning; thence continuing South 00° 02' 58" East, a distance of 17.00 feet; thence South 89° 57' 02" West, a distance of 5.00 feet; thence North 00° 02' 58" West, a distance of 17.00 feet; thence North 89° 57' 02" East, a distance of 5.00 feet to the point of beginning, containing 85.00 square feet.

20120  
 UM ~~1084~~ 1084 15-35  
 CASH ~~1084~~ BK ~~1084~~ R 30-A-304 FB 49-03620  
 TYPE misc PG 701-712 C/O COMP UP SCAN 41  
 FEE 6200 OF misc LEGAL FEE MC FV

RECEIVED  
 JUL 19 4 16 PM '93  
 GEORGE J. BUGLEWICZ  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NE