



1262 509 MISC



12644 98 509-513

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

98 SEP -9 PM 12: 32

RECEIVED

12644 49-03620
 FEE 27.00 FB
 BKA/307 BK 15:35 3/0 COMP VP
 DEL SCAN FV

[Space Above This Line For Recording Data]

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") is entered into this 9th day of September, 1998, by and between O'Daniel Motor Center, Inc., a Nebraska corporation ("O'Daniel") and 7833 West Dodge, Inc., a Nebraska corporation ("WDI").

RECITALS:

A. WDI is the record titleholder of the property identified on Exhibit "A" attached hereto (the "WDI Property").

B. O'Daniel is the record titleholder of the property identified on Exhibit "B" attached hereto (the "O'Daniel Property").

C. The WDI Property and the O'Daniel Property adjoin and abut each other along the east boundary of the WDI Property and a wall (the "Wall") consisting partially of a concrete wall and partially of a flat rock wall is located along such common boundary and appears to exist on portions of the east boundary of the WDI Property and the west boundary of the O'Daniel Property.

D. WDI is the owner of a flat rock planter (the "Planter") and a private sign (the "Sign") which are located along an extension of the Wall to the north pursuant to a Sign Easement Agreement dated July 1, 1993, between WDI, as successor in interest to the Ann K. Trimble Trust, Wilbur M. Fullaway, Jr., and Elizabeth F. Jacobsen (collectively the predecessors in interest to WDI) and Shoney's, Inc. The Planter appears to encroach onto the northwest corner of the O'Daniel Property. The parties agree that the Sign does not encroach on the O'Daniel Property.

E. Neither WDI nor O'Daniel wish to claim any ownership interest, by adverse possession or otherwise, of the real property of each other as a result of the Wall or the Planter. O'Daniel does not wish to relinquish any of its right, title and interest to the real property within the boundaries of the O'Daniel Property, but wishes to permit the encroachment, if any, of the Planter upon the O'Daniel Property and to such end desires to grant WDI and all subsequent owners of the WDI Property a license permitting the continuance of such encroachment. WDI does not wish to relinquish any of its right, title and interest to the real property within the boundaries of the WDI

41

Property, but wishes to permit the encroachment, if any, of the Wall upon the WDI Property and to such end desires to grant O'Daniel and all subsequent owners of the O'Daniel Property a license permitting the continuance of such encroachment.

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

1. WDI does not claim any ownership interest or adverse possession of any portion of the O'Daniel Property and, except as provided in Paragraph 2 of this Agreement, WDI and the successor owners of the WDI Property shall have no present or future claim, right, title and interest in and to that portion of the O'Daniel Property upon which the Wall exists. O'Daniel does not claim any ownership interest or adverse possession of the WDI Property and, except as provided in Paragraph 2 of this Agreement, O'Daniel and the successor owners of the O'Daniel Property shall have no present or future claim, right, title and interest in and to that portion of the WDI Property upon which the Wall exists.

2. O'Daniel hereby grants to WDI and all subsequent owners of the WDI Property, a license to continue the encroachment, if any, of the Planter upon the O'Daniel Property in its present state and dimensions. Subject to the license granted in the preceding sentence, WDI and the successors owners of the WDI Property shall have no present or future claim, right, title and interest in and to that portion of the O'Daniel Property upon which the Planter encroaches. In the event that O'Daniel so elects it may relocate, at its sole cost and expense, so much of the Planter as encroaches onto the O'Daniel Property to the nearest point on the WDI Property without causing damage to the integrity of the Planter or Sign whereupon the license shall terminate and be of no further force and effect.

3. WDI hereby grants to O'Daniel and all subsequent owners of the O'Daniel Property, a license to continue the encroachment, if any, of the Wall upon the WDI Property in its present state and dimensions. Subject to the license granted in the preceding sentence, O'Daniel and the successors owners of the O'Daniel Property shall have no present or future claim, right, title and interest in and to that portion of the WDI Property upon which the Wall encroaches. In the event that WDI so elects it may relocate, at its sole cost and expense, so much of the Wall as encroaches onto the WDI Property to the nearest point on the O'Daniel Property without causing damage to the integrity of the Wall whereupon the license 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 WDI and O'Daniel and their respective assigns and successors in interest to the WDI Property and the O'Daniel Property and shall run with the land.

5. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the written consent of all titleholders of the WDI Property and the O'Daniel Property.

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

O'DANIEL MOTOR CENTER, INC., a Nebraska corporation


By: Michael F. O'Daniel, Sr.
Michael F. O'Daniel, Sr., President

7833 WEST DODGE, INC., a Nebraska corporation

By: Scott R. Makinster
Scott R. Makinster, Secretary

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

1st The above and foregoing Encroachment Agreement was acknowledged before me on this day of September, 1998, by Michael F. O'Daniel, Sr., President of O'Daniel Motor Center, Inc., a Nebraska corporation, on behalf of such corporation.

 GENERAL NOTARY-State of Nebraska
CAROL J. WHITE
My Comm. Exp. July 18, 2002

Carol J. White
Notary Public

My Commission Expires:

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

1st The above and foregoing Encroachment Agreement was acknowledged before me on this day of September, 1998, by Scott R. Makinster, Secretary of 7833 West Dodge, Inc., a Nebraska corporation, on behalf of such corporation.

Dianna M. Elder
Notary Public

My Commission Expires:


 GENERAL NOTARY-State of Nebraska
DIANNA M. ELDER
My Comm. Exp. Aug. 30, 2000

EXHIBIT "A"

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"

Lot 1, except that part taken for the widening of Dodge Street and except the west 10 feet thereof, and except a triangular parcel of land being more particularly described as follows: Beginning at the northeast corner of said Lot 1; Thence south 23 feet along the east property line of Lot 1; Thence northwesterly 25.72 feet to a point on the north property line of Lot 1; Thence east 14 feet along the north property line of Lot 1 to the Point of Beginning; and

Lot 2, except the west 10 feet thereof;

Lot 3, except that portion dedicated for street purposes which is the easterly 5 feet of said Lot 3 except the north 33 feet thereof;

all in Block 3, Beverly Hills, an Addition to the City of Omaha, in Douglas County, Nebraska.

Legal as provided by Security Land Title & Escrow Company's Commitment No. C97-5635 effective date August 27, 1997 at 8:00 A.M.

Contains 176,479 square feet or 4.05 acres as field measured