

9370
AGREEMENT CONCERNING USE OF LAND
GATEWAY SHOPPING CENTER
LINCOLN, NEBRASKA

STATE OF NEBRASKA X

COUNTY OF LANCASTER X

THIS AGREEMENT made this 27th day of June, 1971, by and between SEARS, ROEBUCK AND CO., a New York corporation (hereinafter called "Sears") and BANKERS LIFE INSURANCE COMPANY OF NEBRASKA, a Nebraska corporation, acting herein by and through its duly authorized officers (hereinafter called "Bankers"):

W I T N E S S E T H:

THAT, WHEREAS, Sears owns the following described property (hereinafter called the "Restricted Use Property");

A part of Lot 188 of irregular tracts in the Southeast Quarter of Section 21, T 10 N, R 7 E of the 6th P. M., Lancaster County, Nebraska, and more particularly described, by metes and bounds as follows: Beginning at a point 33 feet west of and 492.5 feet north of the intersection of the centerlines of 66th and O Streets, thence northerly along the west line of 66th Street a distance of 538.18 feet to the south line of Q Street; thence westerly along the south line of Q Street a distance of 427.52 feet; thence southerly along a line parallel to the center line of 66th Street a distance of 687.71 feet; thence easterly along a line parallel to the center line of O Street a distance of 208.52 feet; thence northerly along a line parallel to the center line of 66th Street a distance of 150.0 feet; thence easterly along a line parallel to the center line of O Street a distance of 219.0 feet to the point of beginning, containing 6.002 acres; and

All of Lots One Hundred Thirty-Two (132) and Two Hundred One (201), irregular tracts in the Southeast Quarter of Section Twenty-One (21), Township Ten (10) North, Range Seven (7) East of the Sixth P.M., Lincoln, Lancaster County, Nebraska; and

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WHEREAS, the said Restricted Use Property is adjacent and contiguous to a tract of land (owned by Bankers and Sears in separate tracts) upon which Gateway Shopping Center is situated within the City of Lincoln, County of Lancaster and State of Nebraska; and

WHEREAS, Bankers and Sears have this date entered into a Construction, Operation and Reciprocal Easement Agreement, covering the improvements on and the use of the tract of land upon which the said Gateway Shopping Center is situated; and

WHEREAS, Bankers and Sears desire to control and to restrict the use of the said Restricted Use Property described hereinabove during the term of the said Construction, Operation and Reciprocal Easement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the sum of Ten Dollars (\$10.00) to each of the undersigned parties paid by the other and for other good and valuable consideration, the receipt and sufficiency whereof are hereby mutually acknowledged, it is mutually agreed that:

1. The term of this Agreement shall be identical to the term of the said Construction, Operation and Reciprocal Easement Agreement, that is, for a period of thirty (30) years, subject to the conditions contained in said Agreement, commencing upon the date that the Sears store, to be constructed in the said Gateway Shopping Center, shall be open for business.

2. Sears, its successors or assigns, shall not use the said Restricted Use Property, or any portion thereof, for retail business purposes without first having obtained the written consent of Bankers; provided that Sears, its successors or assigns shall have the right to use said Restricted Use Property for any of the following business purposes without restriction and without the necessity of first obtaining the consent of Bankers: Office buildings, doctors' clinics, motels, theaters, retirement or nursing homes, apartments or other business purposes of the same or similar nature.

3. Sears, its successors or assigns shall provide appropriate parking spaces or areas, as may be necessary, or as may be required by law, for any business use of the said Restricted Use Property.

4. At all times during the term of this Agreement, Sears, its successors or assigns, shall provide access across the Restricted Use Property to the tract of land upon which the Gateway Shopping Center is situated from 66th Street; said access to be located between "O" and "Q" Streets, in approximately the location shown on "EXHIBIT B", attached to the said Construction, Operation and Reciprocal Easement Agreement, or such other location as may be mutually agreed upon by the parties hereto.

5. In the event that Sears shall, during the first ten (10) years of the term of this Agreement, offer the said Restricted Use Property, or any portion thereof, for sale, Bankers shall have the right to first refuse to purchase said property, in the same manner that Bankers may exercise a similar right in Article XVIII of the said Construction, Operation and Reciprocal Easement Agreement.

6. In the event Sears shall sell, transfer or lease the said Restricted Use Property, or any portion thereof, Sears shall include in its deed, or deeds, or leases a covenant restricting the use of said property against retail business use, in the same manner as set out in this Agreement, including the right of access as set forth in Paragraph 4, for a period of time from the date of said deed, or deeds, or leases to the termination date of the term hereof.

7. All covenants, conditions and agreements contained herein, affecting the use of the said Restricted Use Property, shall be covenants running with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written, both corporate parties affixing each of their seals hereto, all pursuant to authority therefor from the respective boards of directors.

ATTEST:

[Signature]
Secretary

BANKERS LIFE INSURANCE COMPANY
OF NEBRASKA

By [Signature]
President

ATTEST:

[Signature]
Assistant Secretary

SEARS, ROEBUCK AND CO.

By [Signature]
Vice President

STATE OF NEBRASKA

COUNTY OF LANCASTER

LEGAL
APPROVAL
766 SW

BEFORE ME, the undersigned authority, on this day personally appeared Don H. Knott, Vice President of BANKERS LIFE INSURANCE COMPANY OF NEBRASKA, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said BANKERS LIFE INSURANCE COMPANY OF NEBRASKA, a corporation, and that he executed the same as the act of such corporation for

the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of June, 1971.

Ruby V. Sullivan
Notary Public, Lancaster County
Nebraska

My Commission expires:
Ruby V. Sullivan; Notary Public
State of Nebraska
My commission expires Sept. 30, 1972

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared A. I. DAVIES, Vice President of Sears, Roebuck and Co., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said SEARS, ROEBUCK AND CO., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of June, 1971.

Wanda C. ...
Notary Public, Dallas County
Texas

My Commission expires:
June 30, 1972

INDEXED 72-604
MICRO-FILED
GENERAL ...

LANCASTER COUNTY NEBR.
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NOTARY PUBLIC

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NUMERICAL INDEX.
FILED FOR RECORD AS:

INDEXED
MICROFILM NO. 71- 9378
GENERAL

\$12.25