



BK 0983 PG 569-572



MISC 1991 22196

THIS PAGE INCLUDED FOR
INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

THIS AGREEMENT executed as of October 11, 1991, by and between OMEGA FOODS, INC., a Nebraska corporation ("Omega"), and STANLEY J. WIERZBICKI and PATRICIA M. WIERZBICKI, husband and wife ("Grantors").

W I T N E S S E T H:

WHEREAS, Omega is the lessee of certain premises located at 3706 North 90th Street, Omaha, Nebraska, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Wendy's Property"), upon which it operates a Wendy's Old Fashioned Hamburger Restaurant; and

WHEREAS, Grantors are the fee title owners of the retail shopping center located immediately to the South of the Wendy's Property, more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein (the "Shopping Center"); and

WHEREAS, Omega desires to secure from Grantors a right-of-way and easement across the driveway areas of the Grantors' Property ("Easement Area") to be used by Omega, its employees and invitees, for access to and from the Wendys' Property, 90th Street and Maplewood; and

WHEREAS, Grantors have agreed to grant such right-of-way and easement across Grantors' Property for such purposes under the terms, conditions and provisions hereinafter set forth.

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

1. Right-of-Way and Easement. In consideration of the payments to be made by Omega to Grantors as set forth below in paragraph 4, Grantors hereby grant to Omega, its successors and assigns, as an appurtenance to the Wendys' Property, a nonexclusive right-of-way and easement across the Easement Area for driveway purposes for ingress and egress to and from Wendys' Property, 90th Street and Maplewood.

2. Common Boundary Access. During the term of this Agreement, Grantors agree that the present 20-foot wide opening between parking bumpers along the easterly 40 feet of the common boundary line between Wendys' Property and the Shopping Center shall remain open to permit the free flow of motor vehicles to and from the property of the parties hereto, via the 20-foot wide opening.

3. Parking. Grantors shall not permit the parking of motor vehicles upon the Easement Area.

4. Monthly Payment. As consideration for this Agreement, Omega agrees to pay Grantors the sum of \$135.00 per month, in advance, on the 1st day of each month, commencing October 1, 1991, and continuing on the 1st day of each month thereafter until the "Termination Date," as hereinafter defined.

5. Termination Date. Subject to the rights of cancellation hereinafter set forth, the term of this Agreement shall be from October 1, 1991, until August 31, 2003.

a. Grantors will have the right to terminate this Agreement at any time prior to August 31, 2003, provided that:

- (1) Grantors have executed a bonafide contract to sell the Shopping Center to an unrelated third person who does not wish to continue this Agreement;

- (2) At least 30 days prior to the date of such termination, Grantors serve a written notice upon Omega that this Agreement will be cancelled;
- (3) The termination date be not more than 15 days prior to the scheduled date of closing of the purchase of the Shopping Center;
- (4) The written cancellation notice sets forth the identity of the proposed purchaser of the Shopping Center and the proposed termination date of this Agreement, which may be any date designated by Grantors after the effective date of the sale to such third person and the recording of the Deed from Grantors in the Office of the Register of Deeds of Douglas County, Nebraska. Omega agrees to keep the identity of the proposed purchaser confidential, except to the extent necessary to enforce this Agreement.

b. Grantors shall also have the right to terminate this Agreement upon 15 days prior written notice to Omega for failure to make the monthly payments set forth in paragraph 4 above, provided that such default is not cured following the 15-day notice.

6. Maintenance of Easement Area. During the term of this Agreement, Grantors agree to maintain the easement area at their expense.

7. Quiet Enjoyment. Grantors covenant that so long as Omega pays the monthly payment set forth in Paragraph 4 above, Omega's rights under this Agreement will not be disturbed by Grantors or anyone claiming by, through, or under Grantors, or by the holders of any mortgage or deed of trust on Grantors property.

8. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, and successors, personal representatives of the parties hereto.

9. Notices. Any notices herein provided for shall be given by sending the same by postage prepaid, certified mail, return receipt requested, as follows:

(a) If to Omega:

Omega Foods, Inc.
Suite 1101, State Bank Center
Freeport, Illinois 61032

with a copy to:

Wendy's Old Fashioned Hamburger Restaurant
3706 North 90th Street
Omaha, Nebraska 68134

If to Grantors:

Stanley J. Wierzbicki
Patricia M. Wierzbicki
2518 South 31st Street
Omaha, Nebraska 68105

with a copy to:

Property Management Department
N.P. Dodge Company
8701 West Dodge Road
Suite 300
Omaha, Nebraska 68114

or to such other address as shall be provided by either party to the other from time to time by similar notice.

IN WITNESS WHEREOF, this Agreement has been executed as the date first set forth above.

OMEGA FOODS, INC., a Nebraska corporation

By *Lyle King*
Lyle King, President

Stanley J. Wierzbicki
Stanley J. Wierzbicki

Patricia M. Wierzbicki
Patricia M. Wierzbicki

STATE OF ILLINOIS)
COUNTY OF STEPHENSON) ss.

The foregoing instrument was acknowledged before me this 3rd day of October, 1991, by Lyle King, President of OMEGA FOODS, INC., a Nebraska corporation, on behalf of the corporation.



Jodi R. Townsend
Notary Public

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this 11th day of October, 1991, by Stanley J. Wierzbicki and Patricia M. Wierzbicki, husband and wife.



Lori Ethofer
Notary Public

EXHIBIT "A"

63-29320

Lot 7 and that part of Lots 6 and 5, Block 4, Palomino Hills, an Addition to the City of Omaha, in Douglas County, Nebraska more particularly described as follows: Beginning at the Northwest corner of said Lot 7, thence Easterly along the North line of said Lot 7, (the South line of Manderson Street) extended, for 248.52 feet to the Easterly line of said Lot 5; thence southerly along the Easterly line of said Lots 5 and 6; (the Westerly line of 90th Street) along a curve to the left for an arc distance of 151.20 feet to the Southeasterly corner of said Lot 6; thence Westerly along the South line of Lots 6 and 7 for 230.00 feet (229.73) feet actual) to the Southwest corner of said Lot 7; thence Northerly along the West line of said Lot 7 for 150.00 feet (149.90 feet actual) to the point of beginning.

EXHIBIT "B"

63-07110

Lot Two (2) Commercial Plaza, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska.

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22196
 misc #
 BK 983 N _____ C/O _____ FEE 2200
 PG 572-572 DEL MC _____
 # OF Plat COMP _____ F/B _____

RECORDED
 Oct 31 2 03 PM '91
 CLERK OF RECORDS
 DOUGLAS COUNTY, NE