

1978

16911

DECLARATION OF EASEMENT AND AGREEMENT

This Declaration of Easement made as of this 20th day of December, 1978, by Sheldon S. Schuman, Trustee, Successor trustee to Fred Burka and David L. Burka in accordance with the terms of an unrecorded trust agreement dated January 2, 1976 (hereinafter referred to as Grantor),

W I T N E S S E T H :

WHEREAS, Grantor is the owner of Lot No. 9 as shown on a subdivision of Square No. 1499, as per plat recorded in the Office of the Surveyor for the District of Columbia in Book 165 at Page 128, which record lot has been divided into two A & T Lots numbered 806 and 807; and

WHEREAS, Grantor has entered into two lease agreements with Burka Limited Partnership dated December 20, 1978, Lease No. 1 granting to the Lessee the property set forth on Exhibit A, being A & T Lot number 807 (Parcel No. 1) and Lease No. 2 granting to the Lessee property set forth on Exhibit B, being A & T Lot number 806 (Parcel No. 2); and

WHEREAS, Lease No. 2 provides a non-exclusive easement for a period of 99 years for vehicular parking of not less than 236 automobiles on the parking areas to be located from time to time upon the demised premises under Lease No. 1 and further provides that the building to be constructed on Parcel 2 shall rely in part on the use of gross floor area (as defined in the Zoning Regulations of the District of Columbia) allowable for Parcel No. 1 and in order to assist in its financing efforts for Parcel No. 2, Grantor desires that said easement and rights be set forth in a separate recorded declaration of easement; and

WHEREAS, Grantor believes it is in the best interest of all parties that the land described above shall remain a single record lot so long as required for building and zoning purposes and compliance (i) to assure proper connection between the existing buildings on Parcel No. 1 with the building to be constructed on Parcel No. 2 as a single building, (ii) to fix development rights (Gross Floor Area) to be allocated to each of the separately described

*Parcel 1
Lease 1 = 807
(grocery store site)
236 parking spaces
for non-exclusive use by 806
Lease 2 = 806
(Art warehouse site)*

LAW OFFICES
WILKES & ARTIS
1610 K STREET, N.W.
WASHINGTON, D. C. 20005

(202) 457-7600

areas above, or (iii) to require that within each of the two (2) described areas all remodeling, additions or replacement construction shall not be in violation of the requirements of the Zoning Regulations for Record Lot 9 in Square 1499.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged by the Grantor, the Grantor does hereby make the following declaration of easement:

1. Grantor hereby grants and conveys to the owners from time to time of Parcel No. 2 (including, but not limited to any noteholder secured by a deed of trust on Parcel No. 2 and any purchaser at any foreclosure sale of any deed of trust now or hereafter placed on any portion of Parcel No. 2, their successors and assigns) and any ground lessee, tenants, occupants, guests and business invitees, a non-exclusive easement for vehicular parking of not less than 236 automobiles on the parking areas located from time to time upon Parcel No. 1. *Grocery store*

2. The owners from time to time of Parcel No. 1 (and, where applicable, any ground lessee) shall, at its expense, maintain the driveways and parking areas located on Parcel No. 1 at its sole expense. The owners of Parcel No. 1 shall have the right to relocate the driveways and parking areas on Parcel No. 1 in its sole discretion, provided that such relocation shall not unreasonably interfere with the rights granted hereunder. The owners of Parcel No. 1 shall have the right to establish uniform and reasonable rules, regulations and conditions governing the use of the driveways and parking areas as may be appropriate for the convenience and safety of the persons making use thereof. *Superfresh*

3. The Grantor hereby covenants:

(a) That there shall be maintained proper connection between the existing building on Parcel No. 1 with the building to be constructed on Parcel No. 2 so as to constitute a single building for building and zoning purposes.

Parcel 1 / Lot 506
grocery store
236 parking spaces
for ↓
non-vehicular use
by Parcel 2 (AU)

(b) That there shall be the following maximum Gross Floor Areas, as defined in the Zoning Regulations of the District of Columbia, for the development of the properties comprising Record Lot 9 in Square 1499:

(i) A & T Lot No. 807 (Parcel No. 1) shall have a maximum GFA of 63,242.

(ii) A & T Lot No. 806 (Parcel No. 2) shall have a maximum GFA of 179,302.

(c) That within each of the two (2) described areas all remodeling, additions, or replacement construction shall not be in violation of the requirements of the Zoning Regulations for Record Lot 9 in Square 1499.

4. Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, or partnership, or a joint venture between the parties hereto, it being expressly understood and agreed that the driveways and parking areas on Parcel No. 1 shall at all times be under the exclusive control of the owners of Parcel No. 1, their heirs, personal representatives and successors and assigns.

5. The obligations of any party hereunder shall apply only with respect to the period during which such party owns or has an interest in the parcel with respect to which such obligation applies. Should such party cease to own an interest therein, the obligations thereafter accruing shall be the obligation of its successor in such ownership or interest. If the owners of Parcel No. 1 or their successor shall fail to maintain and keep in repair the driveways and parking areas thereon, then the owner of Parcel No. 2, to whom this Easement of use has been granted, shall have the right of entry and access upon Parcel No. 1 to make the necessary repairs and maintain the same. In any such case, the cost of maintenance and repair shall immediately be due and payable from the owners of Parcel No. 1.

6. This Agreement may be enforced by the owners of Parcel No. 2 and by any present and future owner thereof, their successors and assigns,

*No principal/agent
relationship/
partnership
FORMED*

*Successors etc/
obligations*

including, but not limited to any purchaser at any foreclosure sale under any mortgage or deed of trust covering Parcel No. 2; provided, however, that no suit, action or other proceedings to enforce or attempt to enforce the provisions hereof may be brought by any tenant, occupant, guest or business invitee on Parcel No. 2.

7. With regard to the easement described in paragraph 1 hereof, the same shall cease December 20, 2077 unless sooner terminated by consent of the owners of Parcels No. 1 and 2 and the noteholders secured by mortgages or deeds of trust on Parcel No. 2; and with regard to the rights granted in paragraph 3 hereof, the same shall terminate at such time as (i) the gross floor areas are no longer required under the Zoning Regulations of the District of Columbia, or (ii) December 20, 2077, unless sooner terminated by consent of the owners of Parcels No. 1 and 2 and the noteholders secured by mortgages or deeds of trust on Parcel No. 2.

parking easement

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal as of the day and year first hereinabove written.

Sheldon P. Schuman (SEAL)
Sheldon P. Schuman, Trustee

STATE OF *Maryland*)
COUNTY OF *Montgomery*) ss:

The undersigned, a notary public in and for the State and County aforesaid, does hereby certify that Sheldon P. Schuman, Trustee, party to the hereunto annexed Declaration of Easement and Agreement bearing date as of the 20th day of December, 1978, personally appeared before me, being personally well known to me as the person who executed the said Declaration and acknowledged the same to be his act and deed.

Given under my hand and seal this *24th* day of *May*, 1979.

Robert L. Lewis
Notary Public

My commission expires: *7/1/82*

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, Frederick Burka and David L. Burka, as General Partners of Burka Limited Partnership, Lessee under two Ground Leases referred to in the recitals hereof, said Leases being dated as of December 20, 1978, Lease No. 1 granting to the Lessee the property set forth in Exhibit A, being A & T Lot No. 807 (Parcel No. 1) and Lease No. 2 granting to Lessee the property set forth in Exhibit B, being A & T Lot No. 806 (Parcel No. 2), agree that the aforesaid Leases and its interest therein shall be subordinate, inferior and secondary to the terms of this Declaration of Easement and agreement.

IN WITNESS WHEREOF, the Lessee has caused this Declaration of Easement and Agreement to be executed by its General Partners as of the day and year first above written.

BURKA LIMITED PARTNERSHIP

By Frederick Burka (SGL)
Frederick Burka, General Partner

By David L. Burka (SGL)
David L. Burka, General Partner

All its General Partners

The undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Frederick Burka and David L. Burka, General Partners of Burka Limited Partnership, party to a certain Declaration of Easement and Agreement being due as of the 20th day of December, 1978 and hereto annexed, personally appeared before me, being a person I well know

WILLIAMS & ASSOCIATES
WILLIAMS & ASSOCIATES
1000 P STREET, N.W.
WASHINGTON, D.C. 20004
(202) 537-7800

to me as the persons who executed the said Declaration of Easement and Agreement and acknowledged the same to be their act and deed.

Given under my hand and seal this 23rd day of MAY, 1979.

Edmond J. Skowron
Notary Public

My commission expires: July 11 1979

In consideration of Ten Dollars (10 00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, American Security Bank, N.A., Substitute Trustee under a Deed of Trust dated February 2, 1965 and recorded February 11, 1965 in Liber 12361, folio 241 among the Land Records of the District of Columbia, securing a Note in the original principal amount of \$500,000.00, which Note is now held by Union First National Bank of Washington, agrees that the aforesaid Deed of Trust shall be subordinate, inferior and secondary to the terms of this Declaration of Easement and Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Declaration of Easement and Agreement to be executed as of the day and year first above written by Edmond J. Skowron its Notary Public and its corporate seal to be hereunto affixed, attested by Edmond J. Skowron its Notary Public, and has appointed and does hereby appoint said Edmond J. Skowron its attorney-in-fact to acknowledge and deliver these presents in its behalf, all done as of the 20th day of December, 1978.

AMERICAN SECURITY BANK, N.A.

By Edmond J. Skowron

SUPERVISOR HERRY CONSENTS:

UNION FIRST NATIONAL BANK OF WASHINGTON

By Donald S. ...
Vice President

LAW OFFICE
WILLIAMS & ASSOCIATES
1000 P STREET, N.W.
WASHINGTON, D.C. 20004
(202) 537-7800

DISTRICT OF COLUMBIA, ss:

I, Betty A. White, a notary public in and for the District of Columbia, do hereby certify that Stephen G. Boyd who is named as attorney-in-fact for American Security Bank, N.A. the corporate party in the foregoing and attached Declaration of Easement and Agreement bearing date as of the 20th day of December, 1978, personally appeared before me in said District, the said Stephen G. Boyd being personally well known to me as the person named as attorney-in-fact in said deed for the said American Security Bank, N.A. and acknowledged said Declaration of Easement and Agreement to be the act and deed of said corporation, and that he delivered the same as such.

Given under my hand and official seal this 25th day of May, 1979.

Betty A. White
Notary Public, D.C.

My commission expires: _____



EXHIBIT A

Parcel No. 1
(A & T Lot 807)

Being part of Lot 9, Square 1499, District of Columbia as shown on a plat recorded among the records of the Office of the Surveyor for the District of Columbia in Book 165 at Page 128 and being more particularly described as follows:

Beginning at the point of intersection of the southerly line of Yuma Street on the westerly line of Forty-eighth Street and running thence with said westerly line

- (1) South 376.23 feet, thence leaving said line and running through and to include a portion of said Lot 9
- (2) North $46^{\circ} 57' 00''$ West 188.54 feet to a point in the northerly line of a twenty foot public alley, thence with same and also the outlines of said Lot 9
- (3) North $46^{\circ} 57' 00''$ West 51.59 feet, thence
- (4) West 127.17 feet, thence
- (5) North $45^{\circ} 00' 00''$ West 7.07 feet, thence
- (6) North 207.99 feet to the southerly line of Yuma Street, thence with same
- (7) East 306.92 feet to the place of beginning, containing 79,622 square feet or 1.828 acres of land.

EXHIBIT B

Parcel No. 2
(A & T Lot 806)

Being part of Lot 9, Square 1422, District of Columbia as shown on a plat recorded among the records of the Office of the Surveyor for the District of Columbia in Book 165 at Page 128 and being more particularly described as follows:

Beginning at the point of intersection of the northerly line of Massachusetts Avenue and the westerly line of Forty-eighth Street and running with said northerly line

(1) North $46^{\circ} 57' 00''$ West 261.98 feet to the front common corner of said Lot 9 and Lot 6, thence with the line common to said Lot 9 and 6

(2) North $43^{\circ} 03' 00''$ East 170.00 feet to a point in the northerly line of a twenty foot public alley, thence with an extension of said line, through and to include a portion of said Lot 9

(3) South $46^{\circ} 57' 00''$ East 188.54 feet to a point in the westerly line of Forty-eighth Street, then with same the following two courses and distances

(4) South 107.57 feet, thence

(5) South $43^{\circ} 03' 00''$ West 91.40 feet to the place of beginning, containing 41,650 square feet or 0.956 acres of land.

585

11391

11-13-11

11-13-11

Handwritten signature

Handwritten text

APRIL 11

CHICAGO TITLE INSURANCE COMPANY
1120 Conn. Ave., N.W., Suite 840
Washington, D.C. 20036
202/785/4633

20702 DC

STAMP

Vertical line of markings