

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2000-05690

2000 MR 13 PM 3:54

Shirley J. [Signature]
REGISTER OF DEEDS

Counter [Signature]
Verify [Signature]
D.E. [Signature]
Proof [Signature]
Fee \$ 37.00
Ck Cash Chg ATIC

Stamp
COPY

EASEMENT AGREEMENT

This Easement Agreement is made and entered into this 6 day of March, 2000, by and between MICHAEL J. HOGAN, a single person, individually ("Hogan"), and OMAHA FITNESS, LP, a Nebraska limited partnership ("Fitness").

Preliminary Statement

Hogan owns the real property legally described on Exhibit "A" attached hereto (the "Hogan Property"). Concurrent with the execution of this Easement Agreement, Hogan has transferred, conveyed and deeded to Fitness, the property legally described on Exhibit "B" attached hereto (the "Fitness Property").

The Fitness Property and the Hogan Property have mutual boundaries along the north property line of the Hogan Property and the south property line of the Fitness Property. An entity controlled by Hogan is the owner of property situated immediately to the east of the Fitness Property, legally described as Tax Lot A1A2, Sarpy County, Nebraska (the "Apartment Property"). Hogan and Fitness acknowledge that because of the respective contours of the Apartment Property and the Fitness Property, that there is some surface water drainage from the Apartment Property to the Fitness Property. The parties have agreed to create easements: (i) allowing surface water drainage from the Apartment Property across the Fitness Property; (ii) allowing vehicular and pedestrian ingress to and egress from the Hogan Property across the Fitness Property; and (iii) allowing vehicular and pedestrian ingress to and egress from the Fitness Property across the Hogan Property.

NOW, THEREFORE, in consideration of the purchase and sale of the Fitness Property, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hogan and Fitness do hereby agree as follows:

**ARTICLE I.
Drainage Easement**

A. Fitness grants to Hogan a perpetual non-exclusive easement (the "Drainage Easement") for water and related drainage from the Apartment Property, on, over and under the Fitness Property (the "Drainage Easement Area"). The Drainage Easement created herein shall not create any right or obligation for the owner of the Apartment Property to construct

ref to: ATIC
attn: Carol

chs
ATIC
9925 0471

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improvements over and under the Drainage Easement Area. Fitness and its successors and assigns to the Fitness Property retain the right to construct and make surface and subsurface improvements to the Drainage Easement Area provided, however, that such improvements may not materially affect the drainage from the Apartment Property.

B. Fitness and its successors and assigns to the Fitness property hereby release and discharge Hogan, the owner of the Apartment Property, and their respective employees, agents, and representatives, and each of their successors and assigns, from any and all present or future rights, claims, actions or causes of actions which Fitness or its successors or assigns, or any one claiming through or under Fitness, may have presently or in the future, resulting directly or indirectly from the flow and discharge of water from the Apartment Property on, to or across the Fitness Property; provided, however, that such release and discharge shall only be effective in respect of rights, claims, actions or causes of action which have arisen, or may arise in the future, as a result of the contour of the Apartment Property as such exists on and before the date of this Agreement; and shall not be effective in respect of any right, claim, action, or cause of action which may arise as a result of any material change in the contour of the Apartment Property occurring after the date of this Agreement or which may arise as a result of any material change in drainage structures existing on the Apartment Property subsequent to the date of this Agreement.

ARTICLE II.

Ingress and Egress Easements

A. Fitness grants to Hogan, his tenants, employees, visitors, licensees, and invitees, and his successors and assigns, a perpetual non-exclusive right, privilege and easement (the "Hogan Easement") to come upon and travel across the paved drive areas on the Fitness Property, as such may change from time to time (the "Hogan Easement Area"), for ingress to and egress from the Hogan Property. Notwithstanding anything to the contrary herein, the owner of the Fitness Property shall have no obligation to pave or improve any area of the Fitness Property.

B. Hogan grants to Fitness, and its tenants, employees, visitors, licensees, invitees, and its successors and assigns, a perpetual non-exclusive right, privilege and easement (the "Fitness Easement") to come upon and travel across the paved drive areas on the Hogan Property, as such may change from time to time (the "Fitness Easement Area") for ingress to and egress from the Fitness Property. Notwithstanding anything to the contrary herein, the owner of the Hogan Property shall have no obligation to pave or improve any area of the Hogan Property.

C. The owner of the Fitness Property and the owner of the Hogan Property, and their respective employees, invitees, visitors and licensees shall have free and unimpeded use of the Hogan Easement Area and Fitness Easement Area for vehicular and pedestrian ingress and egress to public rights-of-way. The owner of the Fitness Property and the owner of the Hogan Property shall each prohibit and take reasonable action to prevent parking on and along

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the Hogan Easement Area and Fitness Easement Area which may unreasonably interfere with or block travel along the respective easement areas.

D. The then owner of the Fitness Property agrees to repair and maintain the Hogan Easement Area in a reasonable manner, and the owner of the Hogan Property agrees to repair and maintain the Fitness Easement Area in a reasonable manner. Such repair and maintenance shall include, but not be limited to:

- 1. Maintenance and repair of the surface and subsurface of the easement area so as to maintain reasonably level, smooth and even drives; and
- 2. Remove all ice, snow, refuse, and hazards from the easement areas.

E. The ingress and egress easements created pursuant to Article I of this Easement Agreement, as such relate to vehicular ingress and egress, shall be limited to and be used only for pedestrian, automobile and light truck purposes.

**ARTICLE III.
Miscellaneous**

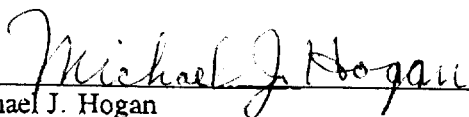
A. The Drainage Easement, Hogan Easement and Fitness Easement shall each run with the land, and inure to the benefit of, and be binding upon, the parties and their respective heirs, personal representatives, successors and assigns.

B. No waiver of any breach of any of the easements or agreements contained in this Easement Agreement shall be construed as or constitute a waiver of any other breach, or a waiver, acquiescence or consent to any future or succeeding breach of the same, or any other easement or agreement.

C. If any term or provision of this Easement Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Easement Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permit by law.

D. This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year first above written.



Michael J. Hogan

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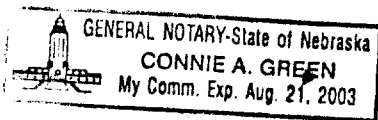
OMAHA FITNESS, LP, a Nebraska limited partnership

By: TITUS UNITED NEBRASKA, LLC, a Nebraska limited liability company

By: [Signature]
Michael Moore, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

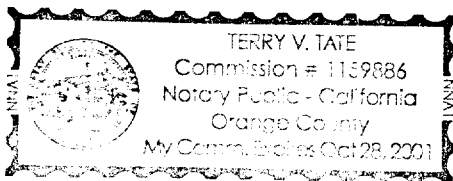
The foregoing instrument was acknowledged before me this 9th day of March, 2000, by MICHAEL J. HOGAN, a single person.



[Signature]
Notary Public

STATE OF CALIF.)
) ss.
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 6 day of March, 2000, by J. Michael Moore, Managing Member of TITUS UNITED NEBRASKA, LLC, a Nebraska limited liability company, general partner of OMAHA FITNESS, LP, a Nebraska limited partnership, on behalf of the limited partnership.



[Signature]
Notary Public

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EXHIBIT "A"

A Tract of Land located in part of the SW1/4 of Section 23, T14N, R12E of the 6th P.M., Sarpy County, Nebraska described as follows: Commencing at the Northwest corner of said SW1/4; thence N 89° 52' 30" E (assumed bearing) on the North line of said SW1/4, 41.80 feet; thence S 00° 12' 30" E, 66.00 feet to a point on the Easterly R.O.W. line of State Highway No. 85, said point also being the point of beginning, thence continuing S 00° 12' 30" E on said Easterly R.O.W. line, 173.26 feet; thence S 07° 35' 30" E on said Easterly R.O.W. Line, 100.84 feet; thence S 00° 11' 00" E on said Easterly R.O.W. line, 151.35 feet; thence N 89° 49' 00" E, 80.00 feet; thence N 00° 11' 00" W on a line 135.00 feet East of and parallel to the West line of said SW1/4, 225.07 feet; thence N 09° 52' 30" E on a line 565.47 feet South of and parallel to said North line of the SW1/4, 391.29 feet; thence N 00° 07' 30" W, 499.47 feet; thence S 89° 52' 30" W on a line 66.00 feet South of and parallel to said North line of the SW1/4, 401.90 feet to the point of beginning, except that portion of the above described property now known as Lots 438 and 439, Tara Heights, an addition to the City of Papillion, as surveyed, platted and recorded in Sarpy County, Nebraska.

and

A Tract of land located in part of the SW¼ of Section 23, T14N, R12E of the 6th P.M., Sarpy County, Nebraska described as follows: Commencing at the SW corner of said Section 23; thence N 0° 11' 00" W on the West line of said SW¼ of Section 23, 1170.00 feet; thence N 89° 49' 00" E, 42.36 feet to a point on the East R.O.W. Line of State Highway No. 85 (84th Street); thence N 0° 13' 00" W on said East R.O.W. Line, 105.00 feet to the point of beginning; thence N 54° 19' 50" E, 77.58 feet; thence N 89° 47' 20" E, 111.81 feet; thence S 0° 12' 40" E, 97.11 feet to a point on the North R.O.W. Line of Hogan Drive; thence N 60° 49' 00" E on said North R.O.W. Line, 34.29 feet; thence N 0° 12' 40" W, 172.70 feet; thence N 67° 22' 50" E, 301.25 feet to the Southwest Corner of Lot 237, Tara Heights, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; thence N 0° 07' 30" W on the West Line of said Lot 237 and 238 and a Northerly Extension thereof, 346.14 feet; thence S 89° 52' 30" W, 391.29 feet; thence S 0° 11' 00" E on a line 135.00 feet East of and parallel to said West Line of the SW¼, 225.07 feet; thence S 89° 49' 00" W, 80.00 feet to a point on said East R.O.W. Line of State Highway No. 85; thence S 0° 11' 00" E on said East R.O.W. Line, 50.00 feet; thence N 89° 49' 00" E, 80.00 feet; thence S 0° 11' 00" E on a line 135.00 feet East of and parallel to said West Line of the SW¼, 410.00 feet; thence S 54° 19' 50" W, 109.98 feet to a point on said East R.O.W. Line of State Highway No. 85; thence S 7° 03' 20" W on said East R.O.W. Line, 25.00 feet; thence S 0° 12' 40" E on said East R.O.W. Line, 25.00 feet to the point of beginning. (Containing 6.07 acres more or less).

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EXHIBIT "B"

Lot 439 Tara Heights, an addition to the City of Papillion, as surveyed, platted and recorded in Sarpy County, Nebraska.