

49-219

CROSS-EASEMENT AND COMMON FACILITIES AGREEMENT

AGREEMENT, dated as of the 27<sup>th</sup> day of May, 1976, between MIKE HOGAN REALTY COMPANY, a Nebraska corporation, herein-after referred to as "First Party" and JANE F. HOGAN, hereinafter referred to as "Second Party".

PRELIMINARY STATEMENT

Immediately prior to the execution and delivery of this Agreement, First Party transferred and conveyed to Second Party the improved real estate described on Exhibit A attached hereto and made a part hereof, which improved real estate is hereinafter referred to as "The Shop". The Shop is situated west of and contiguous to the shopping center premises commonly known and hereinafter referred to as "Tara Plaza" which shopping center premises is legally described on Exhibit B attached hereto and made a part hereof. The Shop and Tara Plaza comprise a unified shopping area and shall be referred to hereinafter as the "Entire Premises".

It is the mutual desire of the parties hereto that certain reciprocal rights, easements and restrictions with respect to the Entire Premises be established, the same being intended to be covenants running with the land, binding and inuring to the benefit of the Entire Premises.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration to each of the parties hereto paid by the other, the receipt and sufficiency whereof is acknowledged, the parties covenant and agree as follows:

1. Definitions. The following terms for the purposes of this Agreement shall have the meanings hereinafter specified:

The term "Tara Plaza Parking Areas" shall mean parking and trafficways (including entrances and exits) located upon Tara Plaza.

The term "The Shop Parking Areas" shall mean parking and trafficways (including entrances and exits) located upon The Shop.

The term "Record Owner(s)" and "Owner(s) of Record" shall mean the owner or owners of any land lying within the Entire Premises as shown on the records of the Register of Deeds of Sarpy County, Nebraska, as of the

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date of any action to be taken by such Record Owner or Owners under the provisions of this Agreement.

The term "Entire Premises" shall mean the unified shopping area comprised of The Shop and Tara Plaza.

The term "The Shop" shall mean the parcel of improved land described on Exhibit A.

The term "Tara Plaza" shall mean the parcel of improved land on Exhibit B.

2. Exhibits. Attached hereto and forming a part of this Agreement are the following Exhibits:

Exhibit A - Legal description of The Shop

Exhibit B - Legal description of Tara Plaza

3. Parking Areas. It is understood and agreed that The Shop Parking Areas and the Tara Plaza Parking Areas shall be used and enjoyed in common for parking and trafficways; and easements and rights for such purposes are hereby granted from each party to the other, their respective heirs, successors, assigns, lessees, licensees, invitees and permittees. No party hereto shall construct any fence, barrier, or other obstruction of any nature or kind between The Shop and Tara Plaza, other than as may be expressly permitted herein, which will in any way hinder, deter, restrict or otherwise prevent the unmolested vehicular and pedestrian traffic and passageway and ingress and egress between The Shop and Tara Plaza or in any manner interfere with or limit the free use, accessibility, and enjoyment by either party of the rights and easements granted to it hereby by the other.

3.1. Parking Easements. The Record Owner of Tara Plaza grants to the Record Owner of The Shop, and to its tenants, subtenants, concessionaires, licensees, and invitees, and to the officers, employees, agents, customers, and invitees of each of them, for the term of this Agreement the non-exclusive right, privilege and easement to use the Tara Plaza Parking Areas for the purposes for which such areas were designed, in common with the Record Owner and its tenants, subtenants, concessionaires, licensees, and invitees, and the officers, employees, agents, customers, licensees and invitees of each of them, without payment of any fee or other charge being made therefor. The Record Owner of The Shop hereby grants to the Record Owner of Tara Plaza and to its tenants, subtenants, concessionaires, licensees, and invitees, and to the officers, employees, agents, customers, licensees and invitees of each of them, for the term of this

Agreement the non-exclusive right, privilege and easement to use The Shop Parking Areas for the purpose for which such areas were designed in common with the Record Owner and its tenants, sub-tenants, concessionaires, invitees and licensees and the officers, employees, agents, customers, invitees and licensees of each of them, without payment of any fee or other charge being made therefor. Such parking areas shall not be fenced and shall be kept open at all times; provided, however, that each such Record Owner shall have the right, at least once in each calendar year, to erect barriers or chains for the purpose of blocking off access to its land which is subject to the provisions of this Section in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein.

5. Term of this Agreement. Unless terminated pursuant to the express provisions hereof or by subsequent written mutual agreement of the parties hereto, this Agreement shall continue, the obligations hereunder shall remain binding, and the easements hereby created shall be perpetual.

6. Estoppel Certificates. Any party to this Agreement shall, from time to time upon not less than twenty days notice from another party, execute and deliver to such other party a certificate in recordable form stating that this Agreement is unmodified and in full force and effect or, if modified, that this Agreement is in full force and effect as modified, indicating the modifications, and stating whether or not, to the best of its knowledge, the party so requesting such certificate is in default hereunder in any respect, and if so, specifying such default.

7. No Termination of Agreement. Except as herein expressly provided, no breach of this Agreement or default by one party shall entitle the other party to terminate or cancel this Agreement.

8. Covenants Running With the Land. All the covenants, agreements, conditions and restrictions set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by all of the parties hereto and all subsequent Record Owners of the Land to which they apply and their respective lessees and sub-lessees.

9. Independent Contractors. Nothing contained in this Agreement shall be construed to make the parties partners or joint venturers or to render any of said parties liable for the debts or obligations of the others.

10. Waivers. No delay or omission by any of the parties hereto

in exercising any right or power accruing upon the noncompliance or failure of performance by any other party under the provisions of this Agreement, shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by any other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, conditions or agreement herein contained.

11. Easements for Utility Lines, etc. In instances where utility lines, wires, pipes, conduits, sewers and drainage lines serving The Shop or Tara Plaza cross one of such sites, an easement is hereby granted by each party to the other for the use, maintenance, repair and replacement thereof.

12. Non-Dedication for Public Use. This Agreement does not constitute a dedicating for public use, and no person other than as specifically set forth herein is intended to be benefited hereby.

13. Remedies Cumulative. All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein or given by law.

14. Modifications. Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument and, in each instance, executed on behalf of each party hereto.

15. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Nebraska.

16. Partial Invalidity. If any provisions of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. Notices. Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon either of the parties hereto shall be in writing and shall be deemed to have been duly served on the day of mailing, and shall be sent by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses stated below:

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To Jane F. Hogan

Jane F. Hogan  
200 E. 6th Street  
Papillion, Nebraska

To Mike Hogan Realty  
Company

Mike Hogan Realty Company  
829 Tara Plaza  
Papillion, Nebraska

Any party may change the place for serving of notice upon it by ten days written notice informing the other parties of the change in the address to which notices shall be sent.

18. Parties Bound Hereunder; Transfer. This Agreement and the easements, covenants, conditions and restrictions herein set forth shall inure to the benefit of and be binding upon the parties hereto and whomsoever may succeed to their interests in the land affected by this instrument. If any Record Owner of land situated within the Entire Premises shall sell a portion or all of such land to which he holds fee title, such Record Owner shall thereupon be released and discharged from any and all further obligations under this Agreement as such owner in connection with the land so sold; and the new Record Owner thereof shall be deemed by reason of having acquired record title to such land to have assumed all covenants and obligations related thereto which this Agreement imposes upon the Record Owner of such land during ownership thereof.

19. Subordination. This Agreement is subject and subordinate to any present or future mortgage, deed of trust or other financing instrument intended as security for debt affecting either The Shop or Tara Plaza, including any and all modifications, extensions, replacements or renewals thereof. This Agreement shall also be subordinate to any and all present and future leases or leasehold interests affecting The Shop or Tara Plaza. This Subordination clause shall be self operative and no further documentation shall be required.

20. Right to Purchase, etc. The Record Owner of The Shop hereby covenants and agrees that prior to any such party's sale or other disposition of all or any part of The Shop, such party shall give notice in writing to the Record Owner of Tara Plaza. Such notice in writing shall specify the proposed terms of the sale. The Record Owner of Tara Plaza shall have thirty (30) days time within which to purchase that part or all of The Shop which is to be sold or disposed of upon the same terms and conditions and for the same price as contained in the Notice. Such option must be

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exercised by such Record Owner within thirty days of the date of receipt of the written Notice hereinabove provided for.

In the event such Record Owner shall elect not to purchase that part or all of The Shop which is to be sold, the Record Owner of The Shop may then transfer and convey that part or all of The Shop which is to be sold or disposed of provided however, the right of purchase granted to the Record Owner of Tara Plaza shall continue with respect to subsequent sales or dispositions and shall be binding upon subsequent purchasers or transferees.

In addition to the right or purchase granted above, the First Party, Michael Hogan, or any entity or association in which Michael Hogan owns controlling interest shall have the right to purchase The Shop at such time as the First Party or the then Record Owner of Tara Plaza receives a bona fide offer to purchase Tara Plaza. Upon receipt of such offer First Party or the then Record Owner ("Offeree") shall notify the Record Owner of The Shop in writing of the existence of such offer; after the delivery of such notice the Offeree and the Record Owner of The Shop shall agree on a recognized real estate appraiser whose appraised value multiplied by 105% shall equal the purchase price of The Shop. Closing shall be held at a mutually agreeable date but in no event later than sixty days after receipt of the appraisal. The Record Owner of The Shop shall convey The Shop by general warranty deed free and clear of all liens and encumbrances except the easements contained in the Agreement, utility easements and the current lien of real estate taxes. Special assessments of record are to be paid by the Record Owner of The Shop with the real estate taxes the payments of which become delinquent in the year of closing to be prorated.

In the event the respective Record Owners are unable to agree upon an appraiser, then each shall select an appraiser and such appraiser shall select a third. The collective judgment of the three appraisers shall prevail.

At the closing referred to above the respective Record Owners will exchange a lease agreement having a term of ten (10) years and requiring an annual rental equal to 95% of the average square foot rental value of all net leaseable space in Tara Plaza Shopping Center on the date of the notice by the Offeree as described above. Such lease agreement shall be a triple net shopping center lease of a type customarily used in large neighborhood shopping centers and shall require the Tenant, among other things, to pay real estate taxes, common area maintenance, and insurance costs for fire insurance and all risks coverage for replacement value and public liability and property damage insurance in a mutually agreeable amount not less than \$500,000 single

limit. In the event the respective Record Owners are unable to agree upon the terms of the shopping center lease agreement then the items of disagreement shall be submitted to a neutral arbiter who shall have expertise in shopping center leases and who shall determine finally the terms which will be used.

21. Common Area Charge. The Record Owner of The Shop shall pay to the Record Owner of Tara Plaza a common area maintenance charge equal to \$.10 per square foot per year for all of the land area of The Shop which common area charge will be paid in semi-annual installments upon receipt of an invoice therefor from the Record Owner of Tara Plaza. The first such semi-annual payment shall not be due until six months from the date hereof. The obligations of the Record Owner of The Shop hereunder shall continue during the term of this Agreement.

22. Merchants' Association. The Record Owner of The Shop shall pay to the Tara Plaza Shopping Center Merchants' Association upon invoice from such Merchants' Association the annual membership dues which prevail from time to time and which on the date hereof equal \$.03 per square foot of gross leaseable space of the building or buildings situated within The Shop. The obligation of the owner of The Shop hereunder shall continue as long as there shall exist a Tara Plaza Shopping Center Merchants' Association.

23. Use Restrictions. The Record Owner of The Shop hereby agrees that The Shop or any part thereof shall not be used in any way for (a) residential or commercial real estate sales or rentals, (b) insurance sales (excluding only life insurance sales), (c) the promotion or operation of a residential or commercial construction business. The Record Owner of The Shop further agrees not to lease The Shop or any part thereof for any use which would in any way conflict or compete with any then existing Tenant of Tara Plaza Shopping Center without the written consent of the Record Owner of Tara Plaza which consent will not be unreasonably withheld.

24. Section Headings. The section headings of the Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.





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EXHIBIT A

Commencing at said NW corner of the SW $\frac{1}{4}$ ; thence N 89°52'30" E on said North line of the SW $\frac{1}{4}$ , 41.80 feet; thence S 00°12'30" E on said Easterly R.O.W. line of State Highway No. 85 and a Northerly Extension thereof, 539.26 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, 201.35 feet to the point of beginning; thence continuing S 00°11'00" E on said Easterly R.O.W. line, 70.00 feet to a point; thence E 80.00 feet to a point; thence N and parallel to said Easterly R.O.W. of State Highway No. 85, a distance of 70.00 feet to a point; thence 80.00 feet West to the point of beginning, said lot part of Tax Lot A1B Sec. 23 R 12 E T 14 N, Papillion, Sarpy County, Nebraska.

EXHIBIT B

Legal Description:

A Tract of land located in part of the SW $\frac{1}{4}$  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 SW $\frac{1}{4}$  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 Hights, 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, 546.14 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 SW $\frac{1}{4}$ , 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 SW $\frac{1}{4}$ , 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).