

BK 1375 PG 683-686

MISC 2001 04436

RICHARD K. JARLEN  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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Return to: Resource Property Group, Inc.  
PO Box 1567  
Council Bluffs IA 51502

**CROSS EASEMENT FOR INGRESS/EGRESS**

KNOWN BY ALL MEN THESE PRESENTS:

This Agreement is dated this 30 day of January, 2001, by and between John T. Spaustat hereinafter referred to as "Fantasy's", for and Southwestern Plaza Shopping Center, L.L.C., a Nebraska limited liability company, hereinafter referred to as "SWP".

WHEREAS,

SWP is the owner of certain real property described as: Lot 5 Southwestern Plaza, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, (hereinafter referred to as "Lot 5"); and

SWP, its successors, assigns and Authorized Users require the use of the drive, being an access opening thirty feet wide, or as otherwise determined in size, along the common boundary lines of SWP and Fantasy's, further described on Exhibit "A" attached hereto (the "Drive"), to access Lot 5 and SWP's business located thereon; and Drive to access Lot 6 and Fantasy's business located thereon; and

As used in this easement agreement, Authorized Users refers to the owners, tenants and other occupants of Lot 5, and Lot 6, their employees, agents, representatives, guests and invitees; and

Fantasy's is the owner of certain real property described as: Lot 6, Southwestern Plaza, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, (hereinafter referred to as "Lot 6"); and

Fantasy's, its successors, assigns and Authorized Users require the use of the

The parties hereto mutually desire to grant the easement hereinafter set forth; and

Responsibility for the maintenance of the Drive and all costs, including installation, survey and other associated costs for such Drive shall be shared equally between SWP and Fantasy's. For purposes of this easement, maintenance shall mean and refer to all maintenance, repair, refurbishing or replacements necessary or appropriate to keep said Drive in aesthetic, sound structural and operating condition; and

SWP and Fantasy's, its successors or assigns, shall have the right to alter or improve the Drive by first giving prior written notice to the other party with the cost share estimate, so long as such alteration or improvement does not unreasonably limit access to Lot 5 or Lot 6 by Authorized Users; and

If SWP or Fantasy's, determine that the Drive is not acceptable and no longer in the best interest of SWP or Fantasy's, the party that determines the Drive is not acceptable ("Noticing Party") shall give 30 day written notice to the other party, ("Non-Noticing Party") and the Noticing Party shall have the right to demolish the Drive and return the Drive area, as shown on the Site Plan attached, to its original location, replacing the original landscaping and berm areas, in a manner consistent to the landscaping in the area, and in such a manner that is acceptable to the Non-Noticing Party. Such expenses for demolition, replacement, repair and landscaping shall be at the sole cost and expense of the Noticing Party; and furthermore,

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NOW THEREFORE, Fantasy's and SWP hereby agree as follows:

The above recitals are hereby incorporated as statements of fact, and are not to be construed as mere recitals.

Fantasy's hereby grants to SWP, its successors, assigns and Authorized Users, a perpetual easement over, upon and across Lot 6, for ingress and egress from Lot 6 for the purpose of pedestrian and vehicular ingress and egress to Lot 5.

SWP hereby grants to Fantasy's, its successors, assigns and Authorized Users, a perpetual easement over, upon and across Lot 5, for ingress and egress from Lot 5 for the purpose of pedestrian and vehicular ingress and egress to Lot 6.

Run With The Land. The easement granted herein shall each run with the land and shall be binding upon, and inure to the benefit of Fantasy's and SWP and their successors and assigns, including, but not limited to, all subsequent owners of Lot 6 or Lot 5 or any portion thereof and all other persons claiming by, through or under any of them.

Permanent. The easement granted herein shall continue in perpetuity from the date hereof and not merge with title upon any future merger of the ownership of Lot 6 and Lot 5, nor shall such easement be revoked or denied by any future division of Property into two (2) or more lots.

Enforcement. The provisions of this document may be enforced by an action for injunctive relief as well as by an action for damages. No breach of any provision contained herein by any party who is bound hereby shall give any other party the right to cancel, rescind, or otherwise terminate all or any portion of the rights granted herein, but the foregoing limitation shall not affect any other rights or remedies which such other party may have by reason of such breach.

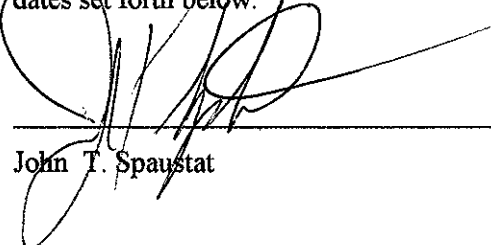
No Dedication to the Public. Notwithstanding anything to the contrary contained herein, the grant of easement, shall not be deemed a gift or dedication of any portion of the relevant properties to the general public, or for use by the general public or for any public purpose whatsoever, but instead is declared for the benefit of only those persons or entities specified herein, for the purposes specified herein.

Authority to Grant: Fantasy's for itself and its successors and assigns does confirm that Fantasy's is well seized in fee of Lot 6 and has the right to grant and convey the easement in the manner and form aforesaid. Fantasy's, its successors and assigns, shall warrant and defend same to said SWP and its assigns against the lawful claims and demands of all persons.

SWP for itself and its successors and assigns does confirm that SWP is well seized in fee of Lot 5 and the Drive and has the right to grant and convey the easement in the manner and form aforesaid. SWP, its successors and assigns shall warrant and defend same to said Fantasy's and its assigns against the lawful claims and demands of all persons.

This instrument contains the entire agreement of the parties. There are no other agreements or understandings, oral or written, express or implied, between Fantasy's and SWP or their agents. The Parties to this Agreement, in executing and delivering this instrument, have not relied upon any promises, inducements, or representations of the other Party or its agents or employees, except as are set forth.

IN WITNESS WHEREOF said Fantasy's and SWP have executed this instrument respectively as of the dates set forth below.



John T. Spaustat

Southwestern Plaza Shopping Center, L.L.C., a Nebraska limited liability company  
By: JJJ Investments, L.L.C., a Nebraska limited liability company, Member

Jerry M. Slusky  
By: Jerry M. Slusky, Manager Member

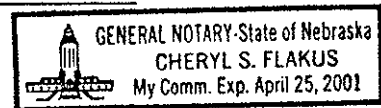
By: AHA Equities, L.L.C., a Nebraska limited liability company, Member

John L. Hoich  
By: John L. Hoich, Member

STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

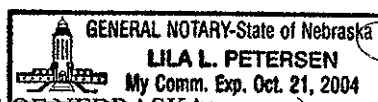
The foregoing instrument was acknowledged before me on the 30 day of January, 2001. Witness my hand and notarial seal the day aforesaid.

Cheryl S. Flakus  
Notary Public



STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

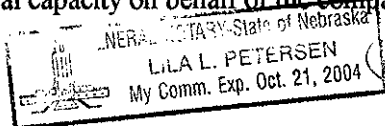
On this 14<sup>th</sup> day of February, 2001, before me, the undersigned, a notary public in and for said state, personally came Jerry M. Slusky, Manager Member of JJJ Investments, L.L.C., Member of Southwestern Plaza Shopping Center, L.L.C., known to me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his authorized and voluntary act and deed in his official capacity on behalf of the company. Witness my hand and notarial seal the day aforesaid.



Lila L. Petersen  
Notary Public

STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

On this 8<sup>th</sup> day of March, 2001, before me, the undersigned, a notary public in and for said state, personally came John L. Hoich, Member of AHA Equities, L.L.C., Member of Southwestern Plaza Shopping Center, L.L.C., known to me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his authorized and voluntary act and deed in his official capacity on behalf of the company. Witness my hand and notarial seal the day aforesaid.



Lila L. Petersen  
Notary Public

SCALE: 1" = 20'-0"

