SK55

SP-20488

EASEMENT AGREEMENT

1899316

THIS AGREEMENT, made as of the 5th day of November 1974, between NORMAN B. MEARS, hereinafter referred to as "Mears", party of the first part, and CUSTOM PROPERTIES, INC., a Minnesota Corporation, hereinafter referred to as "CPI", party of the second part;

DEED TAX

W I T N E S S E T H: STATE DEED TAX: 2.20

DEC 31 3 02 PM '74

WHEREAS, CPI owns that certain parcel of land situated in the County of Ramsey and State of Minnesota, as follows:

Lot three (3) and the Northerly 50 feet of Lots four (4) and five (5), Block Seven (7), Whitney and Smith's Addition to St. Paul,

as well as the building erected thereon, hereinafter referred to as the "CPI property"; and

WHEREAS, Mears owns that certain parcel of land situated in the County of Ramsey and State of Minnesota, as follows:

Lot Six (6), Block Seven (7), Whitney and Smith's Addition to St. Paul,

as well as the building erected thereon, hereinafter referred to as the "Mears property", immediately adjoining the above described parcel of land of CPI; and

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WHEREAS, it is the intention of CPI to construct and maintain a bridge, hereinafter called the "Bridge", connecting the CPI property and the Mears property.

WHEREAS, the CPI property is subject to a mortgage to Twin City Federal Savings and Loan Association, dated February 10, 1963 and filed February 13, 1963, in the office of the Register of Deeds of Ramsey County, Minnesota as document No. 1611527; and

ENTERED IN TRANSFER RECORD
Dec. 31 1974
LOU McKENNA
Auditor, Ramsey County, Minnesota
By

NO DELINQUENT TAXES AND TRANSFER ENTERED
DEC 3 1 1974
LOU McKENNA, DIRECTOR

WHEREAS, it is the desire of CPI and Mears through this Agreement to establish certain terms, covenants and restrictions pertaining to the construction, maintenance, and eventual removal of the Bridge;

NOW THEREFORE, in consideration of the presents hereinabove recited, and the payment of One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed that the CPI property and the Mears property shall be subject to the following terms, covenants, and restrictions:

1. CPI and Mears grant, bargain, quitclaim and convey to the other, and to their respective heirs, successors, and assigns a perpetual and reciprocal easement for the construction, maintenance and use of the Bridge between the CPI property and the Mears property, so long as said Bridge or any reconstruction thereof shall stand, being situated a minimum of 22.3 feet and a maximum of 38.3 feet over and above grade, in the following described property:

> commencing at the Southwesterly corner of Lot three (3), Block seven (7) Whitney and Smith's Addition, then proceeding Easterly along the Southerly line of said Lot three (3), thirty feet to the point of beginning of the easement to be described, thence proceeding Southerly parallel to the Westerly line of the said Lot seven (7) twenty four feet (24'), thence Easterly parallel to the Southerly line of said lot three(3) four feet six inches(4'6"), thence Northerly parallel to the Westerly line of the said Lot seven (7) twenty four feet (24'), thence Northerly along the Southerly line of the said Lot three (3) four feet six inches (4'6") to the point of beginning and there terminating.

2. CPI grants, bargains, quitclaims, and conveys to Mears and his respective heirs, successors, and assigns, all right, title and interest in the Bridge to be constructed between the CPI property and the Mears property.

3. (a) Mears grants, bargains, quitclaims and conveys to CPI, its successors and assigns, during the term of that certain Lease Agreement between Mears as Lessor and CPI as Lessee, which Lease Agreement

is dated November 1, 1974 and covers a building on the Mears property, or during the term of any extension thereof, an exclusive license and right, without the right of sublicense, to use the Bridge.

(b) For the duration of the aforesaid license, CPI, its successors and assigns agree to assume and pay all costs of maintenance, including heating and lighting, and repair of the Bridge.

(c) Provided that ninety (90) days written notice is given by Mears to CPI prior to the termination of the aforesaid license, CPI its successors and assigns agree at their sole cost and expense to wreck, remove, and tear down the Bridge, including the repair, reconstruction, or other work necessary to prepare substitute columns, trusses, walls, or to close up, remodel, or repair any damage caused by said removal or tearing down.

4. In the event that, for whatever reason a party shall wreck, remove or tear down either the building on the CPI property or on the Mears property, this Agreement shall lapse; <u>provided</u>, <u>however</u>, that no such wrecking, removal or tearing down may commence until the party whose building remains has been held harmless for all expenses reasonably required in the removal of the Bridge, and the repair, reconstruction, or other work necessary to prepare substitute columns, trusses, walls, or to close up, remodel, or repair any damage caused by said removal or tearing down.

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5. In the event of the total or partial destruction of the Bridge, and the partial destruction of either the building on the CPI property or the building on the Mears property during the term of that certain Lease between Mears, as Lessor and CPI as Lessee, which lease is dated November 1, 1974 and covers a building on the Mears property, or during the term of any extension thereof, and in the event said building is fully restored, then CPI agrees to restore said Bridge at its sole cost and expense.

6. All maintenance, repair, extensions, alterations, additions, or additional construction to the Bridge undertaken by either party shall conform in all respects to the laws and ordinances regulating the construction of buildings, in force at the time. All workmanship and materials will be at least of like quality as with the original.

7. All claims, disputes, and other matters in question arising out of or relating to Paragraphs (1) through (6) of this Agreement, or the breach thereof, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association then obtaining. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

8. It is further agreed between the said parties, their heirs, assigns, successors or grantees, that this Agreement shall at all times be construed as an easement and covenant running with the land so long as the buildings on the CPI property or on the Mears property, or any reconstruction thereof, shall stand.

9. The provisions and covenants contained herein shall not have the effect of conveying to either party the fee to any part of the land underlying the Bridge, the creation of the terms, covenants and conditions herein contained being the sole purpose hereof.

10. None of the terms, covenants, conditions and restrictions contained in this Agreement shall vest any right or interest in the public or in the owners or occupiers of other property in the vicinity of Block Seven (7), Whitney and Smith's Addition to St. Paul. The parties to this Agreement, for themselves and their successors and assigns, reserve the right, at any time hereafter and from time to time to amend, terminate or extend the terms, covenants, conditions and restrictions contained in this Agreement by further written agreement.

All of the terms, covenants, conditions and restrictions contained in this Agreement shall be specifically enforceable and violations thereof may be enjoined by any Court of competent jurisdiction.

11. Twin City Federal Savings & Loan Association, as the Mortgagee of the CPI property, joins in the execution of this Agreement solely for the purpose of subordinating, and does hereby subordinate to this Agreement its rights as mortgagee in the mortgage referred to hereinabove; said Twin City Federal Savings & Loan Association also acknowledges that the right and obligations of CPI to under Paragraphs (1) through (5) of this Agreement constitute consideration for the subordination of its mortgage. The parties hereto further agree that the benefits under this Agreement which shall accrue to CPI are appurtenant to the CPI property.

12. The execution and delivery of the foregoing Agreement shall in no way affect that particular passageway agreement dated October 11, 1899, and filed for record December 16, 1899 in Book 41 of Miscellaneous Records page 352, as amended by an agreement dated November 29, 1929, and filed for record June 6, 1930 in Book 128 of Miscellaneous Records, page 506, said agreements being between the predecessors in title of the parties hereto.

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13. Hella Mears, wife of Norman B. Mears, joins in the execution of this Agreement solely to bind her marital interest in the Mears property to the terms hereof.

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

In Presence of:

CUSTOM PROPERTIES, INC.

By Robert T. Buril

By Robert W. Peterson

Norman B. Mears
Norman B. Mears

Hella L. Mears
Hella Mears

TWIN CITY FEDERAL SAVINGS & LOAN ASSOCIATION

By [illegible signature]

By Gordon [illegible]

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STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this 23 day of October, 1974, before me appeared Robert T. Buril and Robert W. Peterson, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary of Custom Properties, Inc., and that the instrument was executed in behalf of the corporation by authority of its board of directors; and said Robert T. Buril and Robert W. Peterson acknowledged the instrument to be the free act and deed of the corporation.

[illegible signature]
Notary Public

HERMAN L. RATELLE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Jan. [illegible], 1977

STATE OF MINNESOTA)
) SS.
COUNTY OF Ramsey)

On this 5th day of November 1974, before me personally appeared NORMAN B. MEARS and HELLA MEARS, husband and wife, to me known to be the persons described in, and who executed, the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Leo J. Harris

Notary Public

LEO J. HARRIS
Notary Public, Ramsey County, Minn.
My Commission Expires Feb. 4, 1975.

STATE OF MINNESOTA)
) SS.
COUNTY OF Ramsey)

On this 30th day of September 1974, before me appeared R. J. Polander and Gordon G. Ruecker to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President of Twin City Federal Savings & Loan Association, and that the instrument was executed in behalf of the corporation by authority of its board of directors; and said R. J. Polander and Gordon G. Ruecker acknowledged the instrument to be the free act and deed of the corporation.

Notary Public

ROBERT E. JONES
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Mar. 28, 1980

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Drafted by:
Oppenheimer, Wolff, Foster, Shepard + Donnelly
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Mpls. MN 55402