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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
3/3/2010 14:24:33.09



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FOR RECORDING DATA

AFTER RECORDING, RETURN TO
DAWN MACKINNON, ESQ.
HOLME ROBERTS & OWEN LLP
1700 LINCOLN, SUITE 4100
DENVER, COLORADO 80203

DECLARATION OF ACCESS EASEMENT

THIS DECLARATION OF ACCESS EASEMENT (this "Declaration") is made as of March 2, 2010, by SOUTH 72ND STREET ASSOCIATES, LLC, a Delaware limited liability company ("Declarant").

Recitals

- A. Declarant is the owner of Lot 1 Crown Industrial Park, and Lot 2, Crown Industrial Park Replat 1, each an Addition to the City of Omaha, Douglas County, Nebraska (hereinafter referred to as "Lot 1" and "Lot 2," respectively, and collectively as the "Lots" or individually as a "Lot").
- B. The owner from time to time of Lot 1 is referred to herein as "Lot 1 Owner" and the owner from time to time of Lot 2 is referred to herein as "Lot 2 Owner." Such parties are sometimes referred to herein collectively as the "Owners" or individually as an "Owner."
- C. Declarant desires to establish an easement on the portions of Lot 1 and Lot 2 described on Exhibit A attached hereto (the "Easement Area") for a shared access road for use by Lot 1 Owner, Lot 2 Owner and their respective employees, agents, tenants, licensees, invitees, customers and guests (collectively "Permitees"), on the terms and conditions set forth herein.

Declaration

NOW, THEREFORE, Declarant hereby declares that the Easement Area shall be held, sold and conveyed subject to a perpetual, non-exclusive easement for the benefit of and appurtenant to each of the Lots for a shared access road (the "Shared Road") for use by Lot 1 Owner, Lot 2 Owner and their respective Permitees, upon and subject to the following terms and conditions:

- 1. Widening of Road. Prior to commencing construction of any building on Lot 2, Lot 2 Owner shall, at Lot 2 Owner's sole cost and expense, cause the 30 foot wide paved road located within the Easement Area to be widened to a 40 foot wide paved road for the entire length of the Easement Area (with such additional 10 foot width of road being located within the portion of the Easement Area located on Lot 2) (the "Construction Work"). The Construction

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Work shall be performed in a good and workmanlike manner, and in accordance with all applicable laws, ordinances, rules and regulations, and shall be diligently pursued to completion. The Construction Work shall be performed in such manner as to minimize, to the maximum extent reasonably practicable, any interference with use of the existing road in the Easement Area by Lot 1 Owner and its Permittees. Lot 2 Owner shall promptly pay for all labor and materials relating to or furnished in connection with the Construction Work and shall not cause or permit the Easement Area to be encumbered by any mechanics' or materialmen's liens relating thereto; and if any such lien claim is recorded, Lot 2 Owner shall cause the same to be released of record, by bonding or any other means available, within thirty (30) days of its recordation.

2. Maintenance and Repair.

(a) Except as provided in subsection 2(b) below, each Owner shall pay one-half of all costs and expenses of maintenance, repair and replacement of the Shared Road ("Maintenance and Repair Costs"). Either Owner may order such repair or maintenance work as such Owner reasonably deems necessary to maintain the Shared Road in good condition. In the event that either Owner pays more than such Owner's one-half share of any Maintenance and Repair Costs, such Owner shall be entitled to reimbursement of such excess amount from the other Owner. Such reimbursement shall be due and payable within 30 days after receipt of a request for reimbursement, accompanied by copies of invoices evidencing expenses incurred by such party in connection therewith. To avoid disputes, the Owners should confer with one another prior to incurring expenses in excess of \$10,000, or authorizing repairs or maintenance costing more than \$10,000.

(b) If any Owner, or such Owner's Permittees, damages the Shared Road, such Owner (the "Responsible Owner") shall promptly cause such damage to be repaired at the Responsible Owner's sole cost and expense. If the Responsible Owner fails to promptly complete such repair, then any other owner (the "Performing Owner") shall have the right to cause such repair to be performed and the Responsible Owner shall reimburse the Performing Owner for all costs incurred by the Performing Owner in connection therewith, plus an amount equal to 15% of such costs to compensate the Performing Owner for performing such work. Such reimbursement shall be due and payable within 30 days after receipt of written request for reimbursement, accompanied by copies of invoices evidencing expenses incurred by the Performing Owner in connection therewith.

3. Interest; Lien. Any amounts that are not paid when due hereunder shall accrue interest at a rate of 18 percent per annum, from the date due until paid. If either Owner (the "Delinquent Owner") fails to pay when due any amount owing under this Declaration, the amount owed, together with reasonable costs of collection (including, without limitation, reasonable attorneys' fees) and interest thereon as provided in the preceding sentence, shall be a lien on the Delinquent Owner's Lot. The Owner to whom such payment is owed shall have the right to execute and record a statement of lien ("Statement of Lien") against the Delinquent Owner's Lot. Such lien shall have priority as of the date of recording of this Declaration and be prior to all other liens and encumbrances on such Lot, except for (a) the lien for governmental taxes and assessments which is deemed superior by applicable law, and (b) the lien of any first mortgage or deed of trust encumbering such Lot (the "First Mortgage Holder"). The party to whom payment is owed shall have the right to foreclose such lien in the manner provided by law for the foreclosure of mortgages in Nebraska; provided, however, such party shall provide the

First Mortgage Holder at least 45 days prior written notice (sent to the address of such First Mortgage Holder set forth in its mortgage or deed of trust) and opportunity to cure prior to the commencement of its foreclosure remedy.

4. Liability; Insurance. Each Owner (the “Indemnifying Owner”) hereby agrees to indemnify, defend and hold the other Owner (the “Indemnified Owner”) harmless from and against any and all claims, suits, actions, judgments, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the use of the Easement Area by the Indemnifying Owner or its Permittees. Each Owner shall at all times maintain contractual and comprehensive general liability insurance covering such Owner's liability under this Section 4 with an insurance company reasonably acceptable to the other Owner and in such amounts and on such forms as are reasonable and customary. As of the date of this Declaration, insurance in the amount of \$2,000,000 shall be considered reasonable and customary. Such insurance policy shall name the Indemnified Owner as an additional insured and shall provide that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless 30 days' advance notice is given to the Indemnified Owner. Such insurance shall be primary, and not as contributing with, or in excess of, any insurance carried by the Indemnified Owner. Prior to making any use of the Easement Area, and at least 30 days prior to the expiration of any insurance policy required hereunder, each Owner shall deliver a certificate of insurance to the other Owner evidencing insurance meeting the foregoing requirements. The Indemnified Owner shall have the right to prohibit use of the Easement Area during any time when such insurance is not in full force and effect.

5. Covenants Run With the Land. Each of the covenants, conditions, and provisions contained in this Declaration shall run with the land and shall be for the benefit of and binding upon the Lots; provided, however, that each Owner's obligations under this Declaration shall be limited to those obligations and liabilities arising or accruing under this Declaration during such Owner's ownership of a Lot. By virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in the Lots or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of the Lots or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof.

6. Notices. Any notice, request, demand or other communication required or permitted under this Declaration (collectively, “Notices”) shall be in writing and shall be addressed to the parties at the address listed in the Douglas County Assessor's records for delivery of real property tax statements for such Lot.

7. Remedies. Each Owner shall be entitled to all remedies at law or in equity for any breach of this Declaration, including, without limitation, actions for specific performance, injunctive or mandamus relief. All rights and remedies of the Owners are cumulative and the exercise by an Owner of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies. Without limiting the foregoing, a suit to recover a money judgment for any amounts owing under this Declaration may be pursued with or without foreclosing or waiving the lien rights under Section 3 above. In

any action brought to enforce any provision of this Declaration, or to obtain a declaration of the rights or responsibilities of any party hereunder, the prevailing party shall be awarded all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection therewith.

8. Estoppel Certificates. Each Owner shall provide, within thirty days after written request by the other Owner, verification that to such Owner's knowledge the other Owner is not in default with respect to any obligation pursuant to this Declaration, or a description of any such defaults. If an Owner fails to respond to a written request for verification within thirty days after receipt of such request, such Owner shall be deemed to have waived any claim for lien, damages or any other remedy hereunder with respect to any default that such Owner failed to disclose as required pursuant to the preceding sentence.

9. No Implied Waiver. The failure or delay of any Owner to exercise any of its rights under this Declaration shall not constitute a waiver of any such rights. Except as provided in Section 8 above, no Owner shall be deemed to have waived any right under this Declaration unless such waiver is made expressly and in writing, and no waiver made as to any instance or any particular right shall be deemed a waiver as to any other instance or any other right.

10. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska.

EXECUTED as of the day and year first above written.

SOUTH 72ND STREET ASSOCIATES, LLC,
a Delaware limited liability company

By: 72nd Street Partners, LLC
a Colorado limited liability company,
its Managing Member

By: Alliance Real Estate Value Fund III, LLC,
a Delaware limited liability company,
its Manager

By: AVF Management, LLC,
a Colorado limited liability company,
its Managing Member

By: 
Name: David E. Ramsey
Title: Voting Member

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

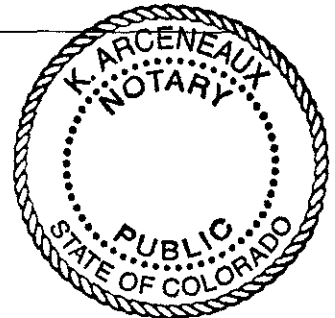
The foregoing instrument was acknowledged before me this 26 of ~~March~~ ^{February}, 2010, by DAVIDE RAMSAY, as Voting Member of AVF Management, LLC, as Managing Member of Alliance Real Estate Value Fund III, LLC, as Manager of 72nd Street Partners, LLC, as Managing Member of South 72ND Street Associates, LLC, a Delaware limited liability company, on behalf of such limited liability company.

Witness my hand and official seal.

(Notarial Seal)

K. Arceneaux
Notary Public

My commission expires: 4/7/10



My Commission Expires 04/07/2010

EXHIBIT A

Legal Description of Easement Area

[see attached]

SCHEMMER

ARCHITECTS | ENGINEERS | PLANNERS

PROJECT: CROWN INDUSTRIAL PARK REPLAT 1

JOB NO: 05362.011

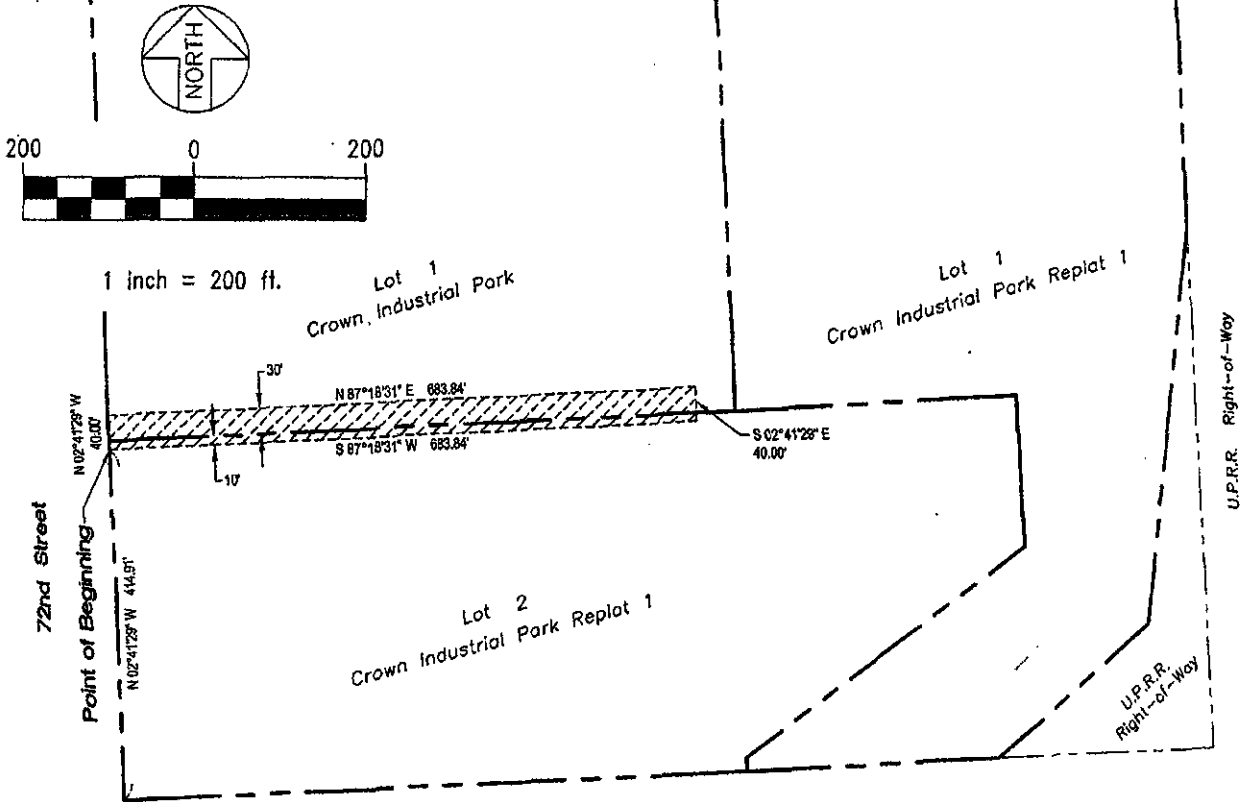
DATE: 01-22-2010

REVISED: --

DRAWN: CJG

SHEET NO: 1 OF 1

SHEET TITLE: ACCESS EASEMENT



LEGAL DESCRIPTION: ACCESS EASEMENT

A 40.00 FOOT WIDE ACCESS EASEMENT OVER LOT 1, CROWN INDUSTRIAL PARK AND LOT 2, CROWN INDUSTRIAL PARK REPLAT 1, LOCATED IN THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., DOUGLAS COUNTY, NEBRASKA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE SOUTHWEST CORNER OF SAID CROWN INDUSTRIAL PARK REPLAT 1, THENCE NORTH 02°41'29" WEST (ASSUMED BEARING) FOR 414.91 FEET ALONG THE WEST LINE OF SAID CROWN INDUSTRIAL PARK REPLAT 1 TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 02°41'29" WEST FOR 40.00 FEET ALONG THE WEST LINE OF SAID CROWN INDUSTRIAL PARK REPLAT 1 AND CROWN INDUSTRIAL PARK; THENCE NORTH 87°18'31" EAST FOR 683.84 FEET ALONG A LINE 30.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 02°41'29" EAST FOR 40.00 FEET; THENCE SOUTH 87°18'31" WEST FOR 683.84 FEET ALONG A LINE 10.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH OF SAID LOT 2 TO THE POINT OF BEGINNING. ABOVE DESCRIBED EASEMENT CONTAINS 0.63 ACRES, MORE OR LESS.

Prepared by: The Schemmer Associates
 1044 North 115th Street, Suite 300
 Omaha, NE 68154-4436
 402.493.4800

LENDER CONSENT AND SUBORDINATION

The undersigned, as the current beneficiary of the Deed of Trust, Security Agreement and Financing Statement (With Assignment of Rents) dated June 20, 2007, from SOUTH 72ND STREET ASSOCIATES, LLC, a Delaware limited liability company, to Fidelity National Title Insurance Company, for the benefit of PNC BANK, NATIONAL ASSOCIATION, successor to National City Bank recorded in the real property records of Douglas County, Nebraska on July 10, 2007, Instrument No. 2007077417 (the "Deed of Trust"), hereby consents to the foregoing Declaration and agrees that the lien of the Deed of Trust shall be subject and subordinate thereto as if the Declaration had been executed and recorded prior to the Deed of Trust (provided, however, that the undersigned is not subordinating the lien of its Deed of Trust to any Statement of Lien that may hereafter be recorded pursuant to the Declaration).

PNC BANK, NATIONAL ASSOCIATION

By: James A. Harman
Name: James A. Harman
Title: Vice President

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 22nd of February, 2010 by James A. Harman, as Vice President of PNC Bank, National Association.

Witness my hand and official seal.

(Notarial Seal)

Susan M. Mouch
Notary Public

My commission expires: 6-3-2011

SUSAN M. MOUCH
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-03-11



NOTARIAL SEAL
REGISTER OF DEEDS