

Re: Lots 2 and 3
Hillsborough Replat I

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GEORGE J. DUBOIS
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

DECLARATION

Maple Joint Venture, a Nebraska General Partnership, hereby establishes the following easements, covenants and restrictions.

PRELIMINARY STATEMENT

Maple Joint Venture, a Nebraska General Partnership ("Declarant"), is the record owner of Lots 2 and 3, Hillsborough Replat I, a subdivision in Douglas County, Nebraska, and as surveyed, platted and recorded.

The Declarant desires to establish certain easements for pedestrian and vehicular ingress, egress, passage and traffic.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby establishes the following easements, covenants, and restrictions.

1. Definitions. The terms in this Section 1 shall have the following meanings:

1.1 Owner. The term "Owner" shall mean any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Parcel.

1.2 Parcel. The term "Parcel" shall mean or refer to any of the following platted lots: Lots 2 and 3, Hillsborough Replat I, a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska. The term "Parcels" shall mean all of the platted lots identified in this subsection 1.2. From time to time reference to one or more of such Parcels will be made in this Declaration by its lot number.

1.3 Permittees. The term "Permittees" shall mean (i) the respective Owners of each Parcel and their respective successors, assigns, heirs, and personal representatives, (ii) such Owners'

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agents, customers, invitees, licensees, employees, servants, and contractors, (iii) such Owners' tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors, and agents, and (iv) such Owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

2. Easements and Restrictions. The Declarant hereby grants and establishes the following easements and restrictions:

2.1 Access to 138th Street for Lot 2. The Permittees of Lot 2 shall not have any direct access to and from 138th Street from Lot 2; access to 138th Street from Lot 2 shall be limited to the Permanent Access Easement Area established under Section 2.2 of this Declaration.

2.2 Permanent Access Easement For Lot 2. The Permittees of Lot 2 are hereby granted a non-exclusive perpetual easement for the purpose of vehicular and pedestrian traffic upon the twenty-five foot wide strip of land situated upon Lot 3 adjoining and situated immediately north of and parallel with the North property line of Lot 2 for access and egress and ingress to and from Lot 2 and 138th Street; such strip of land is hatched-marked on the plat annexed as Exhibit A and shall be improved and maintained by the Owner of Lot 3 unless the respective Owners of Lots 2 and 3 agree otherwise.

Access to the Permanent Access Easement established under this Section 2.2 shall be limited to such entrance-exits at the north property line of Lot 2, in size, location and number as determined by the Owner of Lot 3 in its sole discretion but in no event fewer than two (2).

2.3 Use of Easements. Subject to the reasonable rules and regulations adopted for the use of each Parcel by the Owner thereof, the use of all easements created by this Declaration will be, in each instance, nonexclusive and for the use and benefit of the Permittees to whom such easements were granted. Each Owner specifically reserves the right, at any time and from time to time, to promulgate such rules and regulations applicable to the Owner's Parcel as might be reasonably imposed but in all cases consistently applied and uniformly enforced to promote the health, safety, welfare and security of such Parcel, the improvements located thereon, and the Owner's tenants and subtenants and their customers. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as permitted herein.

Nothing in this Declaration shall be interpreted to permit nor shall the Owner of any Parcel impose any charge or cost for the use of any easement area situated on such Parcel.

2.4 Installation of Permanent Access Drive. The Owner of Lot 3 shall construct and install an asphalt or concrete drive upon the permanent access easement area established under Section 2.2 of this Declaration within five (5) months of the date upon which record title to Lot 2 is conveyed by the Declarant.

2.5 Maintenance in Easement Areas. Except as otherwise specifically provided in this Declaration, the Owner of each Burdened Tract will operate, maintain and replace all of the areas of the Burdened Tract which are subject to the vehicular and pedestrian easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the Burdened Tract. Such repairs, replacements and maintenance shall include, but shall not be limited to:

(a) maintenance, repair and replacement of the surface and subsurface of the drives so as to maintain level, smooth and evenly covered drives with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability; and

(b) removal from such drives of papers, debris, ice, snow, refuse, filth and any hazards to persons using such drives, and washing or thoroughly sweeping paved areas as required to keep the area in a clean and orderly condition.

The Owner of Lot 2 as its share of the cost of maintaining the permanent access drive established in Section 2.2 of this Declaration shall pay the Annual Maintenance Fee established and required under Section 2.6 of the ECR Declaration recorded May 10, 1993 in Book 1071, Page 276 of the records of the Register of Deeds of Douglas County, Nebraska.

3. Eminent Domain. Nothing herein shall be construed to give an Owner of any Parcel any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Owner's Parcel or granting the public or any government any rights in such Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of an easement area, the award attributable to such easement area shall be payable only to the Owner thereof, and no claim thereon shall be made by the Permittees of any other Parcel.

4. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Parcel, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Parcel. Except as set forth in the preceding sentence, however,

any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

5. Release from Liability. Any person acquiring fee or leasehold title to any Parcel shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period for which such person is the fee or leasehold Owner of such Parcel or portion thereof and shall be responsible for all obligations and liabilities which accrue during such period. Although persons may be released under this Section 5, the easements, covenants, and restrictions in this Declaration shall continue to be, as provided herein, benefits to and servitudes upon such Parcel or Parcels, running with the land.

6. Breach. In the event of the breach or threatened breach of this Declaration, either (a) any or all of the Owners of Parcels adversely affected by such breach or threatened breach, and/or (b) the Owner of Lot 3 shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach. The unsuccessful party in any action shall indemnify the prevailing party from all reasonable attorney's fees and other reasonable costs and expenses incurred by the prevailing party.

No breach of this Declaration will entitle any Owner of the Parcels to cancel, rescind or otherwise terminate this Declaration.

7. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to the Parcel to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of each such easement and right, the Benefited Tract will constitute the dominant estate and the Burdened Tract will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of the Parcels to whom easements have been granted in this Declaration; (b) creates equitable servitudes on the Parcels upon which easements have been granted in favor of other Parcels; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in any Parcel; and (e) will inure to the benefit of and be binding upon the Owners of the Parcels and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust.

Upon the conveyance of all or any part of a Parcel, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration and will be deemed to have assumed and agreed to perform each of the obligations of the conveying Owner under this Declaration with respect to the Parcel or portion thereof conveyed to such grantee. Upon recordation of such

conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Parcel so conveyed but will remain responsible for any and all liability which has accrued prior to such recordation.

8. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Parcel to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust and is not intended to constitute any person or entity which are not Permittees of Parcels to whom easements and other rights have been granted in this Declaration a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

9. Duration; Amendment; Termination.

9.1 Duration. Unless otherwise modified, terminated, or extended as permitted in this Section 9 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue in perpetuity.

9.2 Amendment and Termination. Except as provided below, this Declaration and any provision herein contained may be terminated, extended, or amended as to any Parcel only with both (a) the express written consent of all of the Owners of the Parcels thereby affected and (b) the express written consent of the Owner of Lot 3. No amendment, modification, extension or termination of this Declaration will be effective against any mortgagee or beneficiary under a deed of trust subsequent to such mortgagee's or beneficiary's acquiring title to a portion or all of a Parcel by foreclosure, unless such mortgagee or beneficiary has so consented in writing. No tenant, licensee or other person having only a possessory interest in a Parcel is required to join in the execution of or consent to any action of the Owner of such Parcel taken pursuant to this Declaration.

10. Miscellaneous.

10.1 Approvals. Unless provision is made for a specific period of time, the period of time in which approval or disapproval shall be made will be thirty (30) days, and if an Owner neither approves nor disapproves a proposed action within that period, such Owner will be deemed to have given approval.

10.2 Notices. All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid, or by recognized courier service to the Owners of the Parcels affected at the addresses on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to their respective Parcels. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

10.3 Waiver of Default. No waiver of any default by any Owner will be implied from the failure by any other Owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

10.4 No Partnership. Nothing contained in this Declaration and no action by the Owner of any Parcel will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Parcels.

10.5 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

10.6 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

10.7 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect or limit the interpretation or construction of the provisions herein contained.

10.8 Time. Except as otherwise provided in this Declaration, time is of the essence.

10.9 Estoppel Certificates. The Owner of any Parcel shall, from time to time upon not less than twenty (20) days written notice from any other Owner, execute and deliver to such other Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or if modified, indicating the modifications, and stating whether or not, to the best of its knowledge, any Owner is in default under the Declaration and if so, specifying such default.

10.10 Notice of Default to Mortgage. Any Owner serving notice of default under this Declaration shall provide written notice of such default in the manner permitted in this Declaration to any holder of any mortgage or beneficiary under any deed of trust covering the Parcel of the Owner allegedly in default provided such holder or beneficiary shall have provided the Owner responsible for serving such notice of default a written notice informing it of the existence of such mortgage or deed of trust and the address to which notices of default are to be sent.

10.11 Merger. This Declaration and the easements and rights created herein shall not be subject to the doctrine of Merger.

10.12 Binding Effect. The provisions of this Declaration will be binding on the Owners of the Parcels and their respective successors, assigns, heirs, personal representatives, mortgagees, and beneficiaries under deeds of trust to the extent herein provided.

Dated as of September 10, 1993.

MAPLE JOINT VENTURE, a
Nebraska General Partnership

By: Venture-50, Inc., a
Nebraska Corporation

Partner

By Daryl E. Wikoff, V.P.
Daryl E. Wikoff, Vice-President

By: Lerner Maple Partnership, a
Nebraska General Partnership

Partner

By Jay R. Lerner, Partner

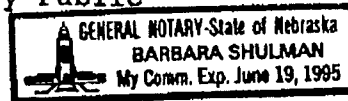
By Salvadore Carta, Partner

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 27th
day of ~~September~~ August, 1993, by Daryl E. Wikoff, Vice-President of
Venture-50, Inc., a Nebraska Corporation, Partner of Maple Joint
Venture, a Nebraska General Partnership, on behalf of such
Partnership.

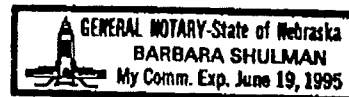
Barbara Shulman
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 9th
day of September, 1993, by Jay R. Lerner, Partner of Lerner
Maple Partnership a Nebraska General Partnership, Partner of Maple
Joint Venture, a Nebraska General Partnership, on behalf of such
Partnership.

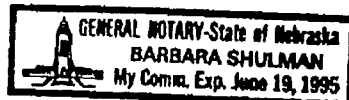
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Notary Public

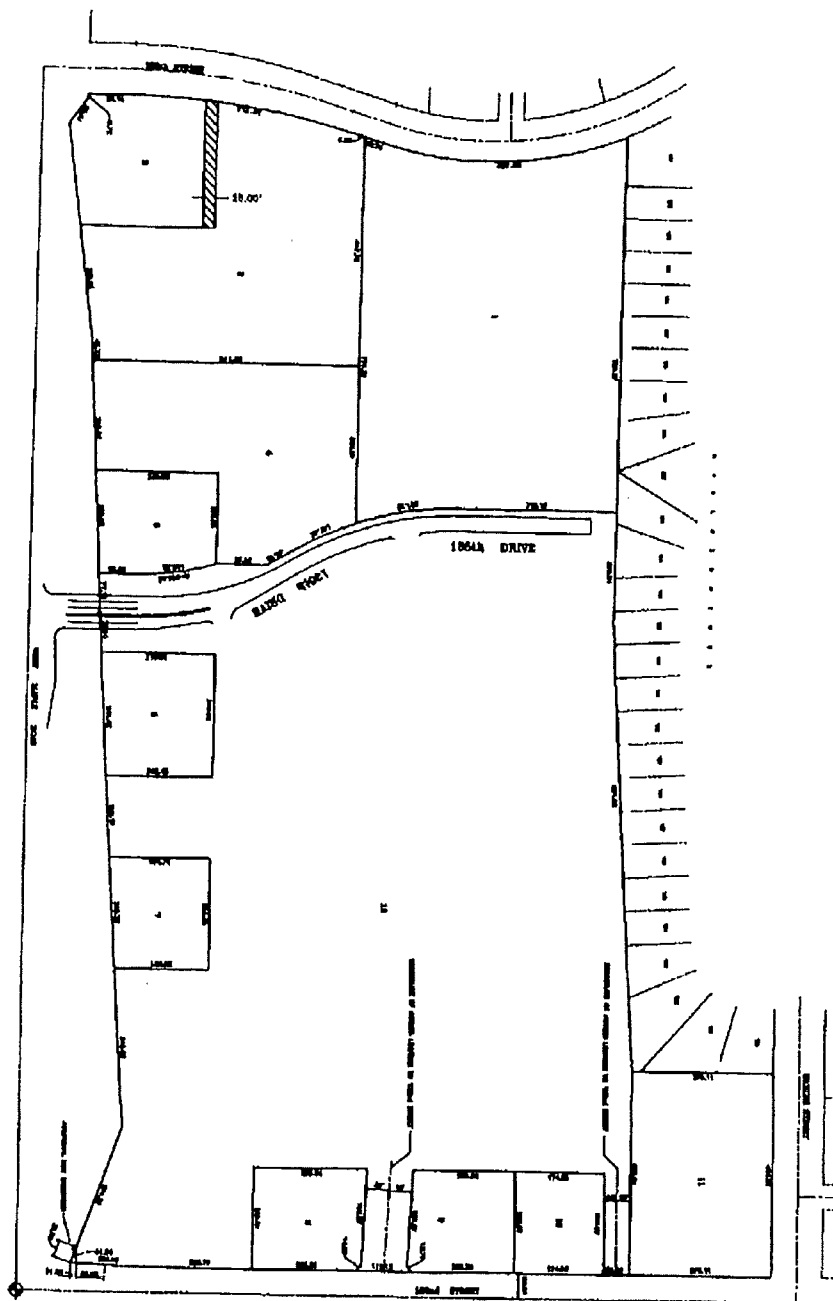
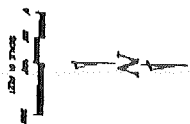


STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 9th
day of September, 1993, by Salvadore Carta, Partner of Lerner
Maple Partnership, a Nebraska General Partnership, Partner of Maple
Joint Venture, a Nebraska General Partnership, on behalf of such
Partnership.

Barbara Shulman
Notary Public





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EXHIBIT DING



2 THOMPSON, DRESSEN & DORNIER
Consulting Engineers & Land Surveyors
1000 OLD MILL ROAD
BETHESDA, MD 20814
(410) 351-1000

EXHIBIT "A"

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