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Register of Deeds, Douglas County, NE  
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OR RECORDING DATA]



2010018623

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

**DECLARATION  
OF  
DRAINAGE AND WATER DETENTION EASEMENT**

THIS DECLARATION OF DRAINAGE AND WATER DETENTION EASEMENT (this "Declaration") is made as of March 2, 2010, by SOUTH 72<sup>ND</sup> STREET ASSOCIATES, LLC, a Delaware limited liability company ("Declarant").

Recitals

A. Declarant is the owner of Lot 1, Crown Industrial Park ("Original Lot 1"), and Lots 1 and 2, Crown Industrial Park Replat 1 ("Lot 1" and "Lot 2"), each an addition to the City of Omaha, Douglas County, Nebraska (collectively the "Lots" or individually a "Lot").

B. The owner from time to time of Lot 1 is referred to herein as "Lot 1 Owner," the owner from time to time of Lot 2 is referred to herein as "Lot 2 Owner" and the owner from time to time of Original Lot 1 is referred to herein as "Original Lot 1 Owner." Such parties are sometimes referred to herein collectively as the "Owners" or individually as an "Owner."

C. The portions of the Lots described on Exhibit A attached hereto is referred to herein as the "Easement Area".

D. Declarant has constructed a detention pond and related facilities within the Easement Area, and desires to (i) establish an easement on the Easement Area for the use of the Detention Pond for stormwater runoff from all of the Lots, and for access by the City of Omaha for purposes of inspection of the Detention Pond, and (ii) impose upon the Lots covenants, conditions and restrictions to establish a plan for the maintenance, use and operation of the Detention Pond, 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 stormwater runoff and detention, and for access by the City of Omaha for purposes of inspection of the Detention Pond, upon and subject to the following terms and conditions:

*Refs C 932761*

1. Maintenance and Repair. Lot 1 Owner shall be responsible for performing such maintenance and repair of the Detention Pond as required to maintain it in good working condition, and in compliance with all applicable laws, ordinances and regulations, and any applicable agreements with the City of Omaha or other governmental entity (including, without limitation, any Post Construction Stormwater Management Plan and Maintenance Agreement and Easement or similar agreement required by the City).

2. Sharing of Costs. Except as provided in Section 3 below, Original Lot 1 Owner and Lot 2 Owner shall each reimburse Lot 1 Owner for their respective share of (a) all costs incurred by Lot 1 Owner relating to the Detention Pond and Easement Area, including all costs of ownership, operation, maintenance, repair and replacement of the Detention Pond (including costs of routine mowing, weed control and cleanup of the Easement Area), real property taxes and assessments with respect to the Easement Area, and insurance relating to the Detention Pond, all as reasonably determined by Lot 1 Owner, plus (b) an amount equal to 15% of such costs (other than real estate taxes, assessments and any pond repair exceeding \$10,000, with respect to which the 15% shall not be added), as a management fee to compensate Lot 1 Owner for performing its obligations hereunder. For purposes of the foregoing, Original Lot 1 Owner's share shall be 38.0% and Lot 2 Owner's share shall be 29.6%. Such reimbursement shall be due and payable within 30 days after written request by Lot 1 Owner, which request shall be accompanied by copies of invoices evidencing the costs incurred by Lot 1 Owner.

3. Liability for Damages. If the runoff from any Lot contains any toxic, hazardous or other materials or substances of any kind that results in any fines, penalties, liabilities or increased costs of any kind ("Damages"), the Owner of such Lot shall be solely responsible for all such Damages and shall indemnify, defend and hold the other Owners harmless from and against any such Damages and all costs and expenses (including, without limitation, reasonable attorneys' fees) relating thereto.

4. 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 any 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 party 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.

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 party's obligations under this Declaration shall be

limited to those obligations and liabilities arising or accruing under this Declaration during such party's ownership of any Lot(s). 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. Notices shall be (a) delivered by courier service, in which case they shall be deemed delivered on the first business day after deposit thereof with the courier service, (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) days after deposit in the United States mail, (c) transmitted by facsimile transmission, in which case they shall be deemed delivered when delivery has been electronically confirmed by the recipient's facsimile machine, as evidenced by the written confirmation produced by the sender's facsimile machine, or (d) by personal delivery, in which case they shall be deemed delivered when so delivered.

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 4 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 another 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 any 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: David E Ramsay  
Name: David E Ramsay  
Title: Voting Member

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

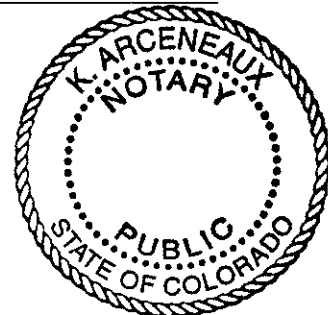
The foregoing instrument was acknowledged before me this 26 <sup>February</sup> ~~March~~, 2010, by DAVID E. RAMSAY, as Voting Member of AVF Management, LLC, as Managing Member of Alliance Real Estate Value Fund III, LLC, as Manager of 72nd Street Partners, LLC, as Managing Member of South 72<sup>ND</sup> 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

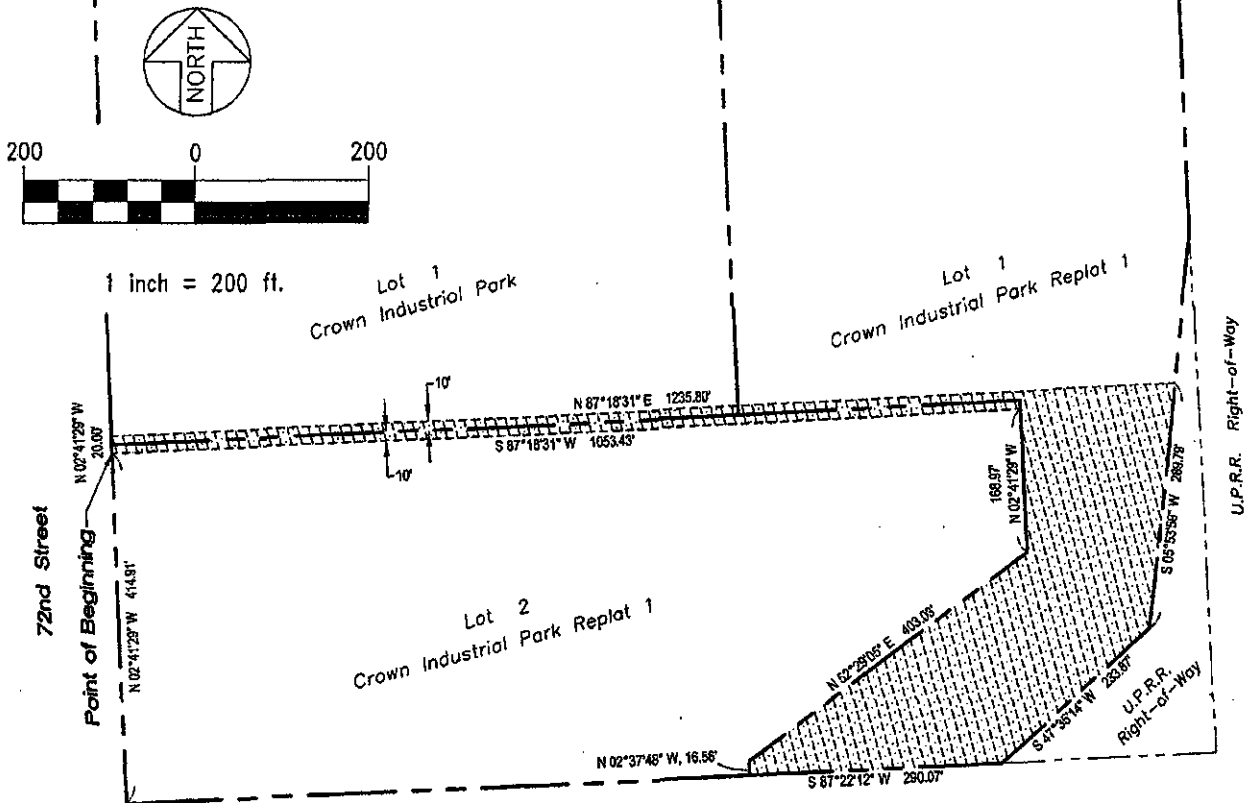
DATE: 01-22-2010

REVISED: --

DRAWN: CJG

SHEET NO: 1 OF 1

SHEET TITLE: DETENTION BASIN ACCESS AND MAINTENANCE EASEMENT



## LEGAL DESCRIPTION: DETENTION BASIN ACCESS AND MAINTENANCE EASEMENT

A DETENTION BASIN ACCESS AND MAINTENANCE EASEMENT OVER LOT 1, CROWN INDUSTRIAL PARK AND LOTS 1 AND 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 20.00 FEET ALONG THE WEST LINE OF SAID CROWN INDUSTRIAL PARK REPLAT 1 AND CROWN INDUSTRIAL PARK; THENCE NORTH 87°18'31" EAST FOR 1235.80 FEET ALONG A LINE 10.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 2; THENCE THE FOLLOWING TWO (2) COURSES ALONG THE EAST LINE OF SAID CROWN INDUSTRIAL PARK REPLAT 1: (1) SOUTH 05°53'59" WEST FOR 289.79 FEET (2) SOUTH 47°35'14" WEST FOR 233.87 FEET; THENCE SOUTH 87°22'12" WEST FOR 290.07 FEET ALONG THE SOUTH LINE OF SAID CROWN INDUSTRIAL PARK REPLAT 1; THENCE THE FOLLOWING THREE (3) COURSES ALONG THE EAST LINE OF SAID LOT 2: (1) NORTH 02°37'48" WEST FOR 16.56 FEET (2) NORTH 52°29'05" EAST FOR 403.03 FEET (3) NORTH 02°41'29" WEST FOR 168.97 FEET; THENCE SOUTH 87°18'31" WEST FOR 1053.43 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 2.71 ACRES, MORE OR LESS.

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

