

Box
35

RESTRICTIVE COVENANTS

Fifty Joint Venture, a Nebraska general partnership ("Owner"), is the record owner of Lots 1 to 5, inclusive, Spring Valley, an addition to the City of Omaha, Douglas County, Nebraska, filed April 11, 1989 in Book 1847, Page 128, Deed Records, Douglas County, Nebraska (the "Property"). From time to time, one or more of such lots shall be referred to herein by its platted lot number. In consideration of the purchase by Boston Chicken, Inc., a Delaware corporation, of Lot 3, Spring Valley, an addition to the City of Omaha, Douglas County, Nebraska ("Lot 3"), Owner does hereby establish the following restrictive covenants affecting the Property and benefiting Lot 3. On or about May 15, 1991, Owner caused to be recorded at Book 967, Page 23 of the Miscellaneous Records of Douglas County, Nebraska, a Declaration (the "Original Declaration") affecting the Property. It is the intent of the Owner that the restrictive covenants established hereby shall be in addition to, and not in conflict with, those restrictions, covenants and easements contained in the Original Declaration. However, to the extent that any of the provisions hereof conflict with those contained in the Original Declaration, the provisions hereof shall control the extent of the conflict.

*Plaza

1. **Restricted Building Areas.** For a period of twenty (20) years from the date of this Agreement, Owner agrees that it will not construct any buildings within that portion of Lot 1 depicted and hatch-marked on Exhibit A attached hereto and designated "No Build Area"; provided, however, Owner shall have the right to erect, maintain and replace one kiosk or ATM within each of such areas.

2. **Rotisserie Chicken Exclusive.** For as long as Lot 3 is being used (except for periods of reconstruction due to damage or destruction or remodeling) as a restaurant whose primary use is the sale of rotisserie chicken, Owner will not sell, lease or use any outlot parcel (as hereafter defined) for use as a restaurant whose primary use is the sale of rotisserie chicken. Nothing herein shall be interpreted to preclude or restrict the sale of rotisserie chicken on any outlot parcel as an incidental use. "Outlot Parcel," as that term is used herein, shall mean Lot 4, Lot 5 and those portions of Lots 1 and 2 which are depicted and cross-hatched on Exhibit A on which a free-standing building containing 5,000 square feet or less has been erected. Except as specifically provided herein, nothing in this Section 2 of this instrument shall be interpreted to preclude or restrict in any way the sale of rotisserie chicken within Lot 1 and any portion of Lot 2 that at any time is not developed as an Outlot Parcel.

In the event Lot 3 is not used as a restaurant whose primary use is the sale of rotisserie chicken for a period of 90 days (except for periods of reconstruction and remodeling as provided above) and the record owner of Lot 1 shall have filed against Lot 3 an affidavit to that effect with the Register of Deeds of Douglas County, Nebraska and delivered (either personally or by recognized courier service) or mailed (by certified mail, return receipt requested) a copy of the provisions of this Section 2, the right to exclusive use and any covenant or restriction contained in this Section 2 affecting the property or any part thereof shall lapse and be of no further force and effect 30 days after such delivery or mailing. Such mailing shall be deemed delivered three

days after deposit with the U.S. Post Office. Any delivery or mailing shall be made to the record owner of Lot 3 to the address to which real estate tax statements are mailed as reflected in the records of the Assessor of Douglas County, Nebraska.

3. ***Entrances and Interior Drive.*** During the term of this instrument, Owner agrees that, without the prior written consent of the record owner of Lot 3, it (a) will not remove or move the existing entrances situated immediately North of Lot 4 or immediately South of Lot 3 and designated "Permanent Ingress-Egress Easements" on Exhibit A attached; nothing in this subsection (a) shall prevent or restrict Owner from moving such existing entrances to a minor extent, from enlarging such entrances or from building landscaped or other islands or traffic directional devices or controls within or as part of such entrances so long as such move, does not interfere with the intent that such entrances shall remain substantially the same as they exist as of the date hereof; and (b) will not remove or move the interior drive abutting Lots 3 and 4 and depicted and cross-hatched on Exhibit A attached hereto and designated "Lots 3 and 4 Access Drive"; provided, however, nothing herein shall prevent or restrict Owner from enlarging such interior drive or from installing speed bumps or other traffic directional devices or controls.

4. ***Access to "F" Street.*** During the term of this Agreement, the record owner of Lot 2 agrees that it will not eliminate the Access Drive depicted and crosshatched on Exhibit B attached and designated the "F Street Access Drive" providing access to "F" Street for as long as such "F" Street Access Drive is required by any anchor tenant lease on Lot 1; provided however, nothing in this Section 4 shall prevent or restrict, in any manner, the record owner of Lot 2 from moving, reconfiguring, enlarging or narrowing, changing the directions, contour, or grade of the "F" Street Access Drive, closing the "F" Street Access Drive temporarily due to construction on Lot 2, or from building landscaped or other islands or traffic directional devices or controls, or speed control devices, the intent being that as long as access to "F" Street over Lot 2 is provided, the location and all other aspects of the ownership, construction, placement, maintenance, replacement and use of the "F" Street Access Drive shall be within the sole control of the record owner of Lot 2.

5. ***Term.*** Except as otherwise specifically provided in this instrument and unless the record owners of Lot 3 and Lot 1 otherwise agree, the term of this instrument shall terminate on the date the Original Declaration terminates.

6. ***Dominant and Servient Estates.*** Each and all of the easements and rights granted or created here are appurtenances to the applicable portions of the Property and none of the easements and rights may be transferred, assigned, or encumbered except as an appurtenance to such portions. For the purposes of the easements and rights, the property benefited will constitute the dominant estate, and the particular area of the Property that is burdened by such easements and rights will constitute the servient estate.

7. ***Covenants Run With Land.*** Each and all of the covenants, restrictions, and provisions contained in these Restrictive Covenants (whether affirmative or negative in nature) (a) are made for the direct, mutual, and reciprocal benefit of each parcel of land constituting the Property; (b) will create mutual equitable servitudes upon each parcel of land constituting the Property in favor of the land benefited; (c) will bind every person having any fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the covenant, restriction, or provision in question, or that the covenant, restriction, or provision is to be performed on such portion; and (d) will inure to the benefit of the parties and their respective successors and assigns as to their respective parcels of land.

8. ***Binding Effect.*** This instrument shall be binding upon and inure to the benefit of the successors, assigns, grantees, personal representatives and heirs of Owner and the record owner of Lot 3 and shall run with the land.

9. ***Breach and Remedies.***

(a) ***Injunctive Relief.*** In the event of any violation or threatened violation of any of the terms, restrictions, or covenants provided herein, any person entitled to enforce these Restrictive Covenants will have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

(b) ***Excuse for Nonperformance.*** If performance of any act or obligation of any party is prevented or delayed by act of God, war, labor, disputes, or other cause or causes beyond the reasonable control of such party, the time for the performance of the act or obligation will be extended for the period that such act or performance is delayed or prevented by any such cause.

(c) ***Breach Will Not Permit Termination.*** It is expressly agreed that no breach or violation hereof will terminate these Restrictive Covenants, but this limitation will not affect, in any manner, any other rights or remedies for any breach hereof.

(d) ***Remedies Cumulative.*** The specified remedies to which any person entitled to enforce these Restrictive Covenants may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedies or means of redress available at law or in equity. Failure to insist in any one or more cases upon the strict performance of any of the covenants hereof or to exercise any remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

10. ***Miscellaneous.*** This instrument shall be interpreted according to Nebraska law and may be modified or terminated only with the written consent of the record owner of Lot 1 and the record owner of Lot 3.

Dated as of November 8, 1993.

FIFTY JOINT VENTURE, a Nebraska
general partnership

By Venture-50, Inc., a Nebraska
corporation, Partner

By 
Jack W. Baker, President

By ~~LERNER FIFTY PARTNERSHIP~~, a Nebraska
general partnership, Partner

By 
Jay R. Lerner, Managing Partner

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 8th day of November, 1993, by Jack W. Baker, President of Venture-50, Inc., a Nebraska corporation, on behalf of the Corporation, general partner of Fifty Joint Venture, a Nebraska general partnership, on behalf of the Partnership.

Andrea L. Hoogensen

Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 5th day of November, 1993, by Jay R. Lerner, Managing Partner of Lerner Fifty Partnership, a Nebraska corporation, on behalf of the Partnership, general partner of Fifty Joint Venture, a Nebraska general partnership, on behalf of Fifty Joint Venture.

Barbara E. Peterson

Notary Public



NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT "A"
NO BUILD, ACCESS DRIVE &
50th STREET ACCESS

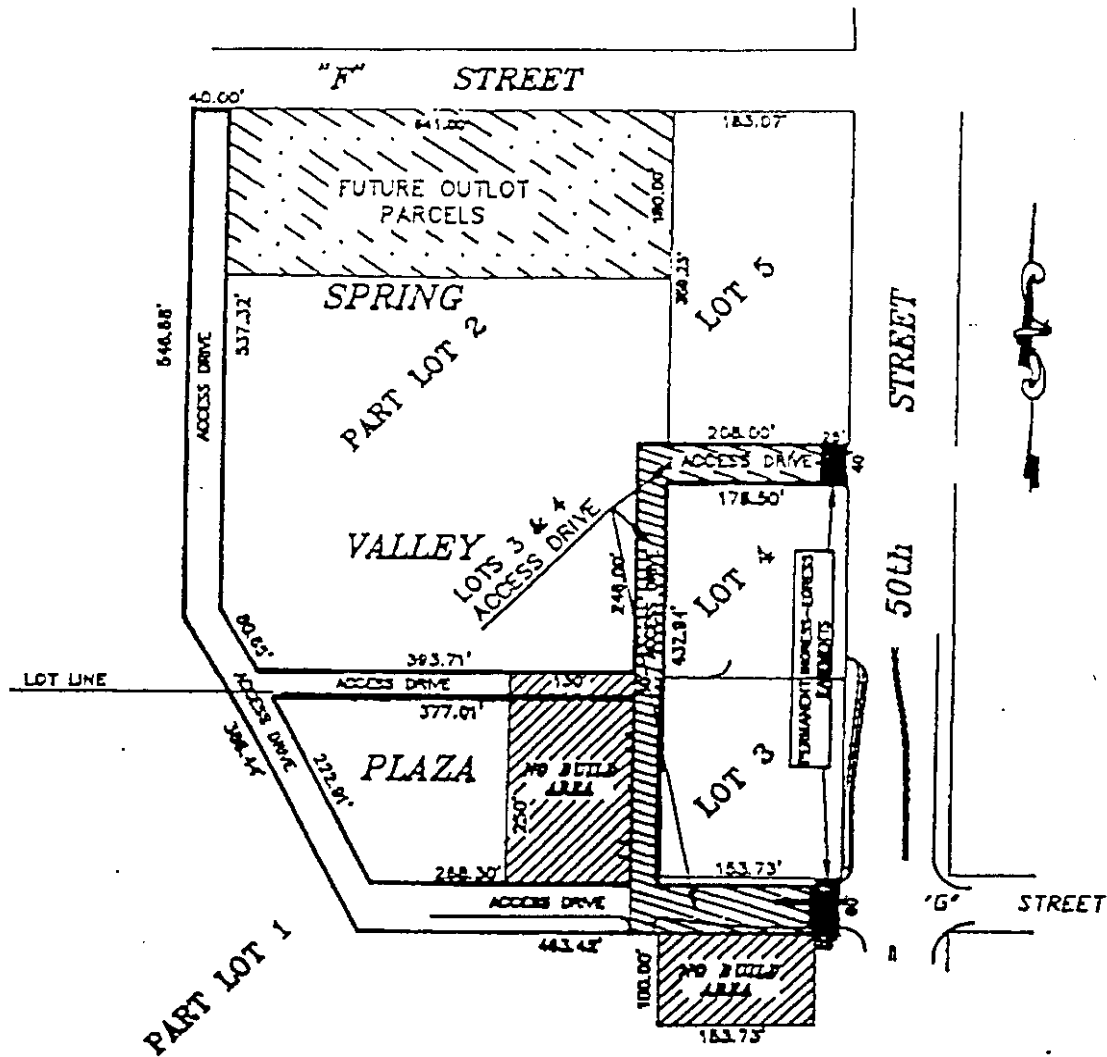
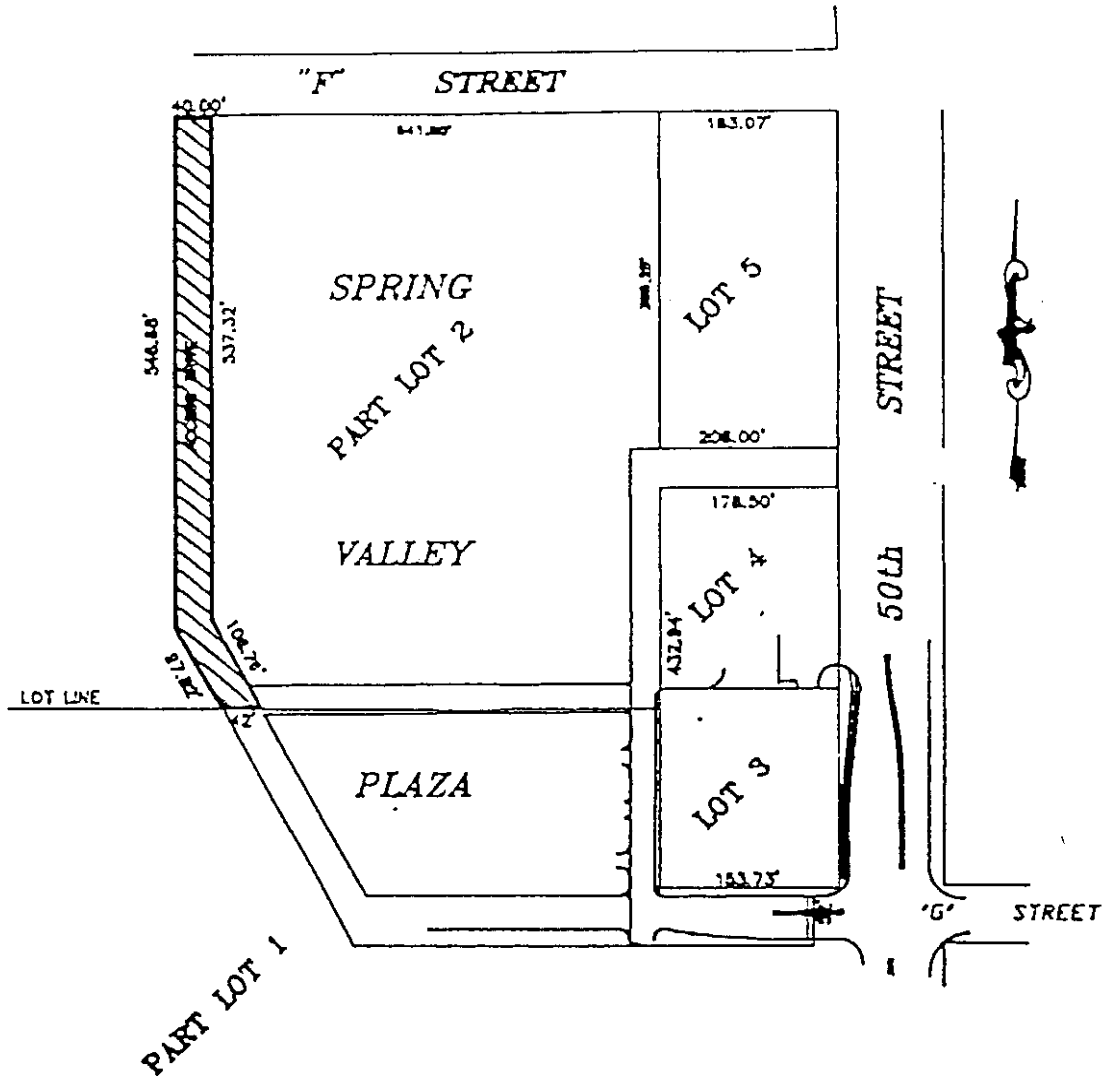


EXHIBIT B

"F" STREET ACCESS



CONSENT AND SUBORDINATION

THIS CONSENT AND SUBORDINATION (this "Agreement") is executed and delivered by Lutheran Brotherhood, a Minnesota corporation ("Lender") to Fifty Joint Venture, a Nebraska General Partnership ("Owner") covering the premises legally described as Lot 1 and Lot 4 Spring Valley, an addition to the City of Omaha, Douglas County, Nebraska.

Lender herewith consents to the execution of the foregoing Restrictive Covenants by Owner. Further, Lender hereby subordinates the priority and superiority of its combination Deed of Trust, Security Agreement and Fixture Financing Statement dated August 29, 1991 and recorded August 30, 1991, in Mortgage Records, Book 3662, Pages 138-181, Douglas County, Nebraska to the foregoing Restrictive Covenants.

This Consent and Subordination is executed this 11th day of November, 1993.

LUTHERAN BROTHERHOOD

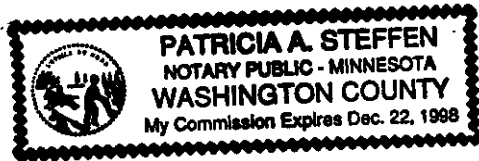
IMPRINTED CORPORATE SEAL REGISTER OF DEEDS

By Betty M. Keohokalole

ACKNOWLEDGMENTS

STATE OF MINNESOTA)) ss. COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 11th day of October, 1993, by Betty M. Keohokalole, Assistant Vice President, on behalf of Lutheran Brotherhood, a Minnesota Corporation.



Patricia A. Steffen Notary Public

NOTARIAL SEAL AFFIXED REGISTER OF DEEDS

Handwritten notes: 30568#, 1103, RC Comp FB 47-15440, TYPE Mue PG 158-165 C/O COMP SCAN MRO, FEE 4250 OF Mue LEGL PG MC FV

RECEIVED NOV 18 3 16 PM '93 GEORGE J. BUGLEWICZ REGISTER OF DEEDS DOUGLAS COUNTY, NEB.