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RE: Lots 1 to 4, inclusive, Spring Valley Plaza
Replat 2, a subdivision in Douglas County,
Nebraska, as surveyed, platted and recorded.

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
9/23/2005 08:24:05.46



2005119156

DECLARATION FOR INGRESS AND EGRESS

FIFTY JOINT VENTURE, a Nebraska general partnership, hereby establishes the following easements.

PRELIMINARY STATEMENT

Fifty Joint Venture, a Nebraska general partnership ("Declarant"), as the owner of Lots 1 to 6, Spring Valley Plaza, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, executed a certain Declaration dated May 24, 1991, which was recorded on June 14, 1991, in Book 967, Pages 23 through 39, inclusive, in the Miscellaneous Records of Douglas County, Nebraska (the "Original Declaration") which created certain easements and restrictions affecting Lots 1 to 6 of Spring Valley Plaza, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, including, but not limited to, a nonexclusive permanent driveway easement.

Subsequent to the recordation of the Original Declaration, Lots 2 and 6, Spring Valley Plaza were replatted into two (2) lots known as Lots 1 and 2, Spring Valley Plaza Replat 1, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

Declarant, as the owner of Lot 2, Spring Valley Plaza Replat 1, subdivided Lot 2, Spring Valley Plaza Replat 1 into four (4) lots now known as Lots 1 to 4, inclusive, Spring Valley Plaza Replat 2, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

Declarant desires to create a permanent nonexclusive driveway easement over a portion of Lots 3 and 4, Spring Valley Plaza Replat 2, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded ("Lots 3 and 4"), for the purpose of providing vehicular access, ingress, egress, passage and traffic to and from the Parcels, and both "F" Street and 50th Street.

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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 and covenants.

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

1.1 **Access Drive.** Access Drive shall mean the drive depicted and legally described on Exhibit "A" attached and incorporated herein, including alterations, modifications or adjustments thereof consistent with the terms of this Agreement.

1.2 **Owner.** The term "Owner" shall mean any individual, partnership, joint venture, limited liability company, 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.

1.3 **Parcel.** The term "Parcel" shall mean or refer to any of the following platted lots: Lots 1, 3, 4 and 5, Spring Valley Plaza; Lot 1, Spring Valley Plaza Replat 1; and Lots 1 to 4, Spring Valley Plaza Replat 2, subdivisions in Douglas County, Nebraska, as surveyed, platted and recorded. The term "Parcels" shall mean all of the platted lots identified in this Subsection 1.3 and any administrative subdivision(s), replat(s) or lot combination(s) of such Parcels. From time to time, reference to one or more Parcels will be made in this Declaration by its or their platted lot number(s).

1.4 **Permittees.** The term "Permittees" shall mean (i) the Owners of the Parcels and their respective successors, assigns, heirs, and personal representatives, (ii) such Owners' 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. Persons engaged in political activities or labor disputes shall not be considered Permittees.

2. **Easements and Covenants.** The Declarant hereby grants and establishes the following easements and covenants:

2.1 **Easement Grant.**

- A. The Declarant hereby grants to the Permittees of the Parcels a nonexclusive easement over and upon the Access Drive for vehicular access, egress, ingress, passage and traffic over and upon the Access Drive for the purpose of furnishing vehicular access, ingress, egress, passage and traffic to and from the Parcels and both "F" Street and 50th Street, which easement rights shall be exercised only in connection with the use of the Parcels.

- B. Declarant may, from time to time, at its sole expense, during the term of this Declaration, move, enlarge or adjust the location, contour, width, and grade of one or more portions or all of the Access Drive, at its expense, provided that (i) access, ingress and egress to and from the Parcels and both "F" Street and 50th Street is maintained at all times, and (ii) that the grade of the Access Drive is not materially altered. In the event Declarant or its successors and assigns exercises the rights provided in this Subsection B., temporary access to and from both "F" Street and 50th Street shall be provided to the Owner during the exercise of such Rights.
- C. In no event shall this Agreement be construed as creating parking or other easements benefiting the Permittees except as specifically granted in this Agreement.

2.2 Use of Access Drive. The Permittees (i) shall use the Access Drive with due regard to the rights of other Permittees; (ii) shall not use the Access Drive in any manner which will impair or impede the rights of other Permittees; (iii) shall not obstruct passage on the Access Drive; (iv) shall not construct or place any obstacles or other type of barrier or obstruction on the Access Drive. Declarant and the Owner of any portion of Lots 3 and 4 on which the Access Drive is located shall have the right to temporarily close, not to exceed twenty-four (24) hours in any calendar year, excluding the months of May, June, July, October, November and December, the Access Drive but only if legally necessary to preclude the creation of a prescriptive easement or public dedication of the Access Drive or any portion thereof.

Subject to Section 3 of this Agreement, in no event shall the Owner(s) of the Access Drive, either alone or collectively, impose a charge or toll for the use of the Access Drive.

2.3 Maintenance of Access Drive. Except as otherwise specifically provided in this Declaration, the Declarant shall operate, maintain and replace all of the areas of the Access Drive in a good condition and repair at the sole expense of the Owner of the Access Drive. Such repairs, replacements and maintenance shall include, but shall not be limited to:

- (a) maintenance, repair and replacements of the surface and subsurface of the Access Drive so as to maintain a level, smooth and evenly covered drive with the type of material originally installed or used thereon or such substitutes as will in all material respects be equal to or better than such materials in quality and durability; and
- (b) removal from the Access Drive of papers, debris, objects, hazards, ice, and snow as required to keep the Access Drive in a clean and orderly condition; and
- (c) installation, maintenance, replacement of speed bumps and traffic and directional signs or controls as determined by the Declarant or its designee in its sole discretion.

Declarant may assign its responsibility to maintain the Access Drive as set forth in this Section 2.3 to the Owner(s) of the Parcel upon which the Access Drive is located, at Declarant's sole discretion, upon written notice to the Owners of Lots 1 to 4, inclusive, Spring Valley Plaza Replat 2. Upon receipt of such Notice, the Owners of Lots 1 to 4 inclusive shall be deemed to have accepted such assignment and assumed all of Declarant's maintenance responsibilities under this Declaration.

3. **Maintenance Fee.** Beginning on February 1, 2006 and on February 1 of each succeeding calendar year, the Owners of Lots 1 to 4, inclusive, Spring Valley Plaza Replat 2 shall each pay Declarant the yearly maintenance fee equal to Five Hundred and No/100 Dollars (\$500.00) as their reimbursements of Declarant's cost and expense of maintaining, repairing and replacing (i) the Access Drive including the driveway easement created by the Original Declaration. The yearly sum shall be adjusted annually thereafter by the increase, if any, in the Consumer Price Index (U.S. average; all-items index; All Urban Consumers; 1982-84=100; published by the U.S. Department of Labor) (herein "CPI-U"); the adjusted annual amount shall be determined by multiplying Five Hundred and No/100 Dollars (\$500.00) by a fraction, the numerator of which is the CPI-U for the calendar month immediately preceding the next payment date in question and the denominator of which is the CPI-U for the calendar year in the month in which the first payment was made. In the event the CPI-U is discontinued or not available, an equivalent index or measure shall be substituted. The yearly sum shall be due and payable thirty (30) days after invoice from Declarant, and if unpaid beyond thirty (30) days of the due date, shall accrue interest at the rate of sixteen percent (16%) per annum from such date to the date paid and shall constitute a lien against the Parcel in respect of which such yearly sum has not been paid from the date of filing notice in the public records on the Parcel.

4. **Eminent Domain.** Nothing herein shall be construed to give an Owner 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 granted the public or any governmental entity 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 Owner or Permittees of any other Parcel.

5. **Breach.** The breach of this Declaration will not entitle any Owner of a Parcel to cancel, rescind or otherwise terminate this Declaration.

6. **Legal Effect.** Except as provided in Section 3 of this Declaration, each of the easements and rights created by this Declaration are appurtenant to each of the Parcels and may not be transferred, assigned or encumbered except as an appurtenance to a Parcel. For the purpose of each such easement and right, the Benefited Parcel will constitute the dominant estate and the Burdened Parcel 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 which easements have been granted in this Declaration; (b) creates an equitable servitude on the Access Drive upon which easements have been granted in favor of the Parcels; (c) constitutes a covenant running with the land; (d) binds every owner now having or hereafter acquiring an interest in a

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, as evidenced by the recordation of the deed of conveyance to such Parcel, 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 Property 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 liability which has accrued prior to such recordation, if any.

7. **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 a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

8. **Duration; Amendment; Termination.**

8.1 **Duration.** Unless otherwise modified, terminated or extended as permitted in this Section 8 or in this Declaration, the easements, rights, obligations and covenants contained in this Declaration shall continue in perpetuity unless terminated by the Owners of the Parcels.

8.2 **Amendment and Termination.** Except as otherwise provided in this Agreement, this Declaration and any provision herein contained may be terminated, extended or amended only with the express written consent of the Owners of the Access Drive and the Declarant. 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 any Parcel taken pursuant to this Declaration.

9. **Miscellaneous.**

9.1 **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 a national 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 property tax statements relating to their respective Parcels. All such notices which are mailed shall be deemed delivered on the third day after postmark. All such notices delivered by a national courier service shall be deemed delivered the next regular business day following the date of deposit with such service.

9.2 **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

or 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 provisions. The consent to or approval of any act or request by an 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 to 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.

9.3 No Partnership. Nothing contained in this Declaration and no action by the Owner of a Parcel will be deemed or construed by an Owner or 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.

9.4 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 be valid and enforceable to the fullest extent permitted by law.

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

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

9.7 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.

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

9.9 Force Majeure. Whenever performance is required under this Declaration, the person or entity required to perform shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay


actually so caused. The provisions of this Section shall not operate to excuse any person or entity from the prompt payment of any monies required by this Declaration and lack of funds shall not be deemed to be a cause beyond the control of such person or entity.

9.10 Ratification. This Declaration is intended to ratify the driveway easement created by the Original Declaration and shall not be construed to amend, contradict, or supersede the Original Declaration.

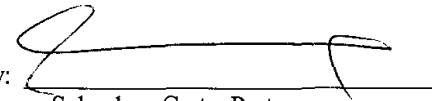
Dated as of September 2, 2005.

FIFTY JOINT VENTURE, a Nebraska general partnership

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

By: 
Jeffrey M. Keating, Vice President

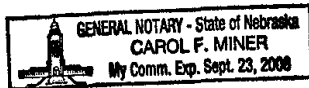
By: Lerner Fifty Partnership, a Nebraska general partnership, General Partner

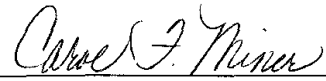
By: 
Salvadore Carta, Partner

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1st day of SEPTEMBER, 2005, by Jeffrey M. Keating, Vice President of Venture-50, Inc., a Nebraska corporation, General Partner of Fifty Joint Venture, a Nebraska general partnership, on behalf of the partnership.





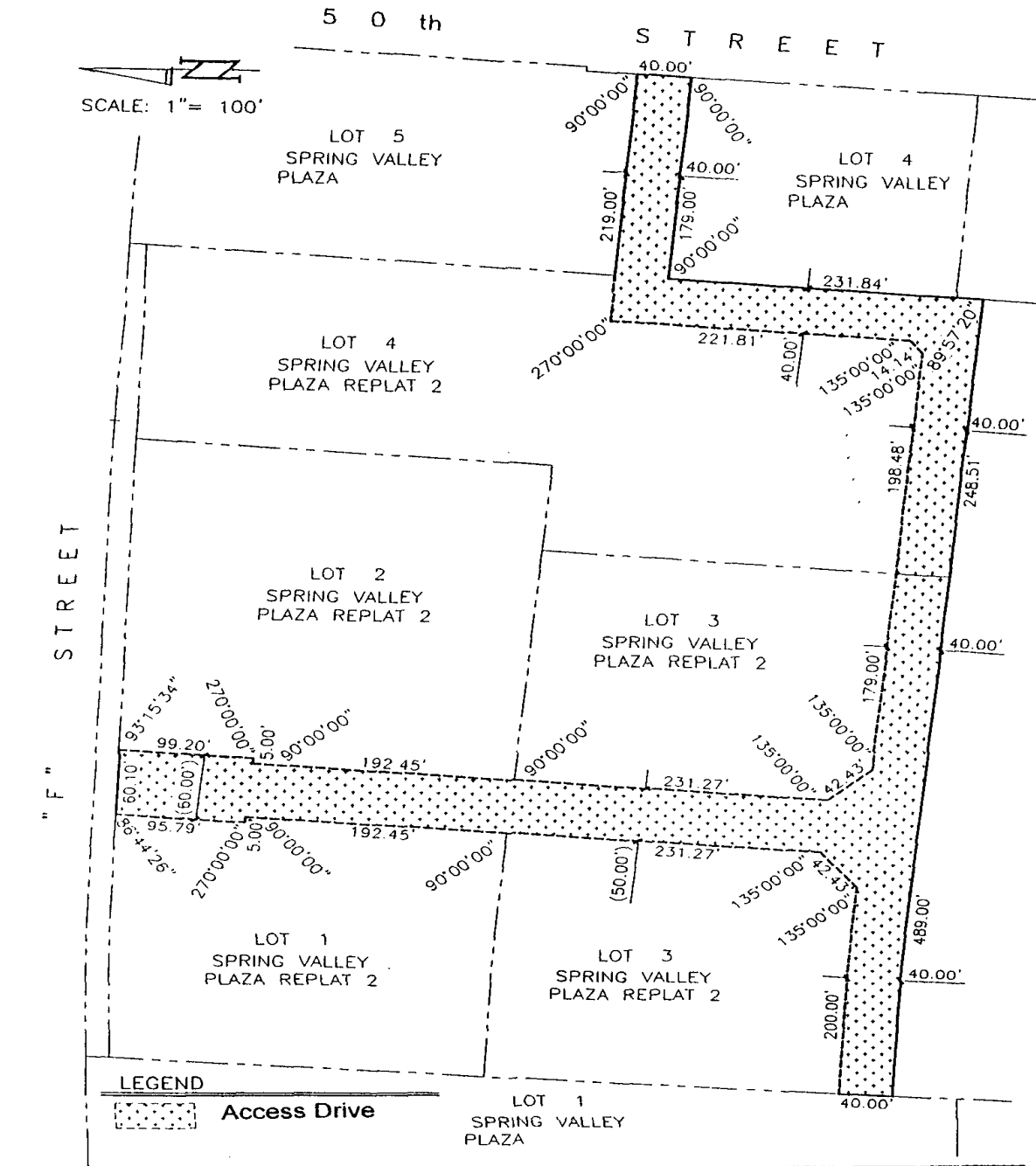
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 2nd day of September, 2005, by Salvadore Carta, Partner of Lerner Fifty Partnership, a Nebraska general partnership, General Partner of Fifty Joint Venture, a Nebraska general partnership, on behalf of Fifty Joint Venture.

Barbara Widman
Notary Public





LEGAL DESCRIPTION
 PART OF LOTS 3 AND 4, SPRING VALLEY PLAZA REPLAT 2, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

EXHIBIT "A"

PDM, INC. TD2 FILE NO.: 825-141-EX DATE: MAY 1, 2005
 THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860