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Recording Date/Time: 02/06/2023 at 03:38:27 PM

Instr #: 2023002481

Book: 9513 Page: 103

Type: SUB

Pages: 2

Fee: \$49.00 N 2023002379

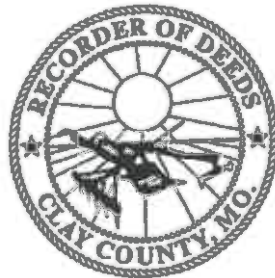


Sandra Brock  
Recorder of Deeds

## RECORDER OF DEEDS CERTIFICATE CLAY COUNTY, MISSOURI

### NON-STANDARD DOCUMENT

This document has been recorded and you have been charged  
the \$25.00 non-standard fee pursuant to RSMO 59.310.3  
and this certificate has been added to your document in compliance  
with the laws of the State of Missouri.



Sandra Brock  
Recorder of Deeds  
Clay County Courthouse  
Liberty, MO 64068

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# Sandra Brock, Recorder of Deeds

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## SUBORDINATION OF DEED OF TRUST (PARTIAL - CORPORATION)

This Subordination of deed of trust Witnesseth, that Equity Bank, a corporation organized and existing under the laws of the State of Kansas, having its principal place of business with an address of Kansas City Loans, 7035 College Boulevard, Overland Park KS 66211 and Jeff Dull whose address is PO Box 51, Windsor, MO 65360 (Trustee) as owner and holder of the note evidencing the debt secured by the Deed of Trust executed by BB North Oak Devco LLC, dated April 7, 2022 and recorded April 11, 2022 in the office of the Recorder of Deeds for Clay County, Missouri, as Instrument Number 2022011904, in Book 9342 at Page 63, for value received does hereby subordinate the lien and effect of said Deed of Trust to the easements and building lines and lot lines as shown on the property therein described on the plat of BB North Oak, recorded as Instrument Number 2022002478 Book J at Page 4. Provided, however, that this subordination shall not prejudice the lien of said Deed of Trust on the remaining property therein described.

IN WITNESS WHEREOF, these presents have been executed under the seal of said corporation, pursuant to due authority, this 22<sup>nd</sup> day of December 2022

(SEAL)

By [Signature]  
(Title) SVP

In the State of KS, County of Johnson, on this 22<sup>nd</sup> day of December 2022, before, the undersigned, a Notary Public, in and for said County and State, personally appeared MICHAEL DOYLE, to me personally known, who being by me duly sworn did say that he/she is SVP of the corporation named in the foregoing deed of release, and that the seal thereto affixed is the corporate seal of the corporation and that said deed of release was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Michael Doyle acknowledged said instrument to be the free act and deed of said corporation. Witness my hand and seal subscribed and affixed in said County and State, the day and year above written.

[Signature]  
NOTARY PUBLIC



Sandra Brock, Recorder of Deeds

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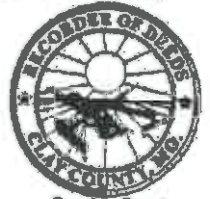
Instr #: 2023002478

Book: 9513 Page: 101

Type: ORD

Pages: 3

Fee: \$27.00 E 2023002373

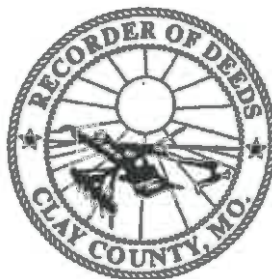


Sandra Brock  
Recorder of Deeds

## RECORDER OF DEEDS CERTIFICATE CLAY COUNTY, MISSOURI

### EXEMPT DOCUMENT

This document has been recorded under exempt status pursuant to RSMO 59.310.4 and this certificate has been added to your document in compliance with the laws of the State of Missouri.



Sandra Brock  
Recorder of Deeds  
Clay County Courthouse  
Liberty, MO 64068

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# Sandra Brock, Recorder of Deeds



Legislation Text

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File #: 220436

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ORDINANCE NO. 220436

Approving the plat of BB North Oak, an addition in Clay County, Missouri, on approximately 7.20 acres generally located at the northwest corner of N. Oak Trafficway and N.E. 97th Street, creating 5 lots and 1 tract for the purpose of a 5 lot commercial subdivision; accepting various easements; authorizing the Director of City Planning and Development to execute and/or accept certain agreements; and directing the City Clerk to record this ordinance and attached documents. (CLD-FnPlat-2022-00019)

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the plat of BB North Oak, a subdivision in Clay County, Missouri, a true and correct copy of which is attached hereto and incorporated herein by reference, is hereby approved.

Section 2. That the plat granting and reserving unto Kansas City an easement and license or right to locate, construct, operate and maintain facilities including, but not limited to, water, gas, sewerage, telephone, cable TV, surface drainage, underground conduits, pad mounted transformers, service pedestals, any and all of them upon, over, under and along the strips of land outlined and designated on the plat by the words utility easement or U/E be and the same are hereby accepted and where other easements are outlined and designated on the plat for a particular purpose, be and the same are hereby accepted for the purpose as therein set out.

Section 3. That the Director of City Planning and Development is hereby authorized to execute a Covenant to Maintain Storm Water Detention and BMP Facilities Agreement, to be in a form substantially as that attached hereto as Exhibit A and incorporated herein by reference.

Section 4. That the Director of City Planning and Development is hereby authorized to execute and/or accept any and all agreements necessary to clear the title of any right of way, utility easements or other public property dedicated on the plat.

Section 5. That the City Clerk is hereby directed to record copies of this ordinance, together with the documents described herein and all other relevant documents, when the Developer has met all of the requirements for the plat to be released for recording, in the Office of the Recorder of Deeds of Clay County, Missouri.

Section 6. That the Council finds that the City Plan Commission has duly recommended its approval of this plat on May 3, 2022.

Approved as to form and legality:

*Eduard Alegre*

Eduard Alegre  
Associate City Attorney



Authenticated as Passed

*Quinton Lucas*

for Quinton Lucas, Mayor

Marilyn Sanders, City Clerk

MAY 19 2022

Date Passed

This is to certify that General Taxes for 2022 and all prior years, as well as special assessments for local improvements currently due if any, on property described have been paid.

City Treasurer, Kansas City, MO

By

*Germi Sanchez*

Dated,

*January 19, 2023*

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Instr #: 2023002480

Book: 9513 Page: 102

Type: REST

Pages: 22

Fee: \$67.00 & 2023002373



Sandra Brock  
Recorder of Deeds

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**Title of Document:** Declaration of Easements, Covenants and Restrictions

**Date of Document:** February 1, 2023

**Grantor:** BB North Oak Devco, LLC  
7121 W. 79<sup>th</sup> Street  
Overland Park, Kansas 66204

**Grantee:** BB North Oak Devco, LLC  
7121 W. 79<sup>th</sup> Street  
Overland Park, Kansas 66204

**Legal Description:** See Exhibit A attached hereto and made a part hereof

**Reference No.:** N/A

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**After Recording, Return To:**  
Jay T. Shadwick  
9101 W. 110<sup>th</sup> Street, Suite 200  
Overland Park, Kansas 66210  
(913) 498-3536

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## DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS ("Declaration") is dated as of February 1, 2023 by, **BB North Oak Devco, LLC**, a Missouri limited liability company ("Declarant") whose address is 7121 W. 79<sup>th</sup> Street, Overland Park, Kansas 66204.

WHEREAS, Declarant owns the real property located in Kansas City, Clay County, Missouri, as described on **Exhibit A** attached hereto and incorporated herein by this reference ("Property") and as shown on **Exhibit B** attached hereto and made a part hereof ("Site Plan"); and

WHEREAS, Declarant desires to create reciprocal easements for pedestrian and vehicular ingress and egress over, upon and across the Property and to create such other restrictions, easements, obligations and covenants for the benefit and burden of the Property; and

WHEREAS, Declarant intends to develop the Property for office, retail, restaurant and other commercial uses and purposes ("Development"), and will create separate lots or parcels (each a "Parcel" or "Lot") as initially shown on **Exhibit B**, but Declarant shall be able to change lot lines and development improvements as desired to create the Development for the owners and occupants; and

WHEREAS, the fee simple owner of a Parcel is hereafter referred to as an "Owner." Any tenant, occupant or permitted person occupying a Parcel under a written lease or license with an Owner shall be referred to as an "Occupant"; and

WHEREAS, the "Critical Access Drives" are shown on **Exhibit B**; and.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant hereby establishes, declares, covenants and agrees that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, the Declarant, on its behalf and its successors and assigns, covenants and agrees as follows:

1. **Easements.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby grants, establishes, covenants, reserves for itself, and agrees that the Parcels, and all Owners and Occupants of the Parcels, and their employees, customers, vendors, contractors, invitees and licensees, shall be benefited and burdened by the following non-exclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels and all present and future Owners and Occupants of the Parcels:

(a) **Access – Critical Access Drives.** A non-exclusive, perpetual easement and right in common with others to utilize the "**Critical Access Drives**" as shown on **Exhibit B** on each Parcel, as same may exist from time to time on each Parcel, for the use and benefit of the Owners



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and present and future Occupants, including, without limitation, their employees, agents, customers, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress (but not for vehicular parking, unless such cross-parking rights are granted between certain Parcels pursuant to a separate recorded agreement). Each Parcel is specifically granted a non-exclusive and perpetual easement at all times across and through the "Critical Access Drives" as shown on the Site Plan and at no time may any Parcel prohibit the free flow of vehicular traffic through the Critical Access Drives described on the Site Plan. This Declaration does not provide an easement for cross-parking and each Parcel shall be required to meet the minimum applicable governmental parking requirements on its Parcel (without variance) without relying upon the parking areas on the other Parcel. The employees of an Owner or Occupant must park their vehicles within such Owner's or Occupant's parcel and may not park on another Parcel.

(b) Access – Generally. A non-exclusive, perpetual easement for vehicular and pedestrian access over, through and across the driveways and parking areas (not within the Critical Access Drives) as they exist from time to time for the use and benefit of the Owners and present and future Occupants, including, without limitation, their employees, agents, customers, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress. The foregoing easement does not provide for a cross-parking easement.

(c) Utilities. A non-exclusive, perpetual easement and right under and across those parts of the Parcels upon which there is no building, structure or improvements (other than pavement) on each parcel, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Parcels and each building from time to time located within the Parcels, together with the right to tie into and connect to such utility lines and facilities now or hereafter located on the Parcels; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted therein, (ii) the exact location of any utilities shall be subject to the reasonable approval of the Owner(s) of the burdened Parcel(s), and (iii) except in an emergency, the right of any Owner to enter upon the Parcel of another Owner, if any, for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. Any Owner performing such utility installation or repairs on another Owner's Parcel shall immediately repair and restore any damage to landscaping, paving or other items that were damaged during the performance of such work.

(d) Surface Drainage Easement. A non-exclusive, perpetual easement and right over and across the surface of each Parcel, for the purposes of passing and discharging storm and surface waters from a Parcel as it may be improved from time to time; provided that the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted therein.

The foregoing easements herein above granted shall be used and enjoyed by each Owner and Occupant in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or Occupant at any time conducted on



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its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith. Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Occupants. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with utility easements or easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and Occupants. In such case, no affirmative monetary obligation shall be imposed upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and Occupants from all damages, losses, liens or claims attributable to the performance of such work.

2. **Barriers.** No Owner or Occupant shall unreasonably prevent, hinder or interfere in any way with (nor permit any modification of any portion of the Critical Access Drives within its Parcel that would prevent, hinder or interfere with) the free flow and passage of vehicular and pedestrian traffic to and from each Parcel and to and from the Critical Access Drives shown on the Site Plan. Once constructed, no Owner or Occupant of any Parcel may change, alter or relocate the location of the Critical Access Drives on its Parcel without the prior written approval of all Owners. The parties hereto acknowledge that the flow and passage of vehicular and pedestrian traffic to and from and between each Parcel may be reasonably disrupted for limited periods of time for periods of repair, restoration, reconstruction, deliveries in the course of its use of the Parcel, or to prevent a public taking through condemnation or other means of public acquisition. Any disruption of pedestrian and vehicular ingress and egress shall be for the shortest time practicable, and any Owner upon whose Parcel such restrictions are occurring shall provide convenient alternative access (both ingress and egress) to and from the other Parcels. In no event may the Critical Access Drives or convenient access be closed temporarily or permanently unless sufficient accommodation and alternative access is made available to the Owner and Occupants of all Parcels. For the purpose of this Declaration, "convenient access" shall mean the most direct route to an Owner's Parcel across the driveways of another Parcel from a Critical Access Drive.

3. **Maintenance.** (a) Except as provided in subparagraph (f) below with respect to maintenance, repair and replacement of the Critical Access Drives and the Monument Sign, each Owner shall, maintain and repair its Parcel, at its own cost, in good, clean and safe condition and repair as is customary for similarly situated commercial developments in Kansas City, Clay County, Missouri. Following the construction of improvements thereon, maintenance of each Parcel shall include, without limitation, maintaining and repairing all parking areas, sidewalks, driveways, access, curb cuts and roadway areas; removing all papers, debris, and refuse from and periodically sweeping all Parcels to the extent necessary to maintain the same in a clean, safe and orderly condition; ice and snow removal from its Parcel seven (7) days per week at any time as

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the Parcels have received two (2) or more inches of accumulating snow or ice; maintaining appropriate lighting fixtures for its common areas and common area roadways; maintaining marking, directional signs, lines and parking lot striping as needed; maintaining landscaping; and performing any and all such other duties as are necessary to maintain each Parcel in a clean, safe and orderly condition. Except as otherwise expressly provided in this Declaration, once constructed, each Parcel Owner shall be entitled from time to time to alter the interior layout of parking spaces and interior access lanes so long as there is no material adverse impact on the other Owners' or Occupants' ability to access and use the Critical Access Drives described below.

(b) Each Owner covenants and agrees at all times during the term hereof to maintain or cause to be maintained at its expense all buildings and improvements located on its Parcel in good order, condition and repair. Following the construction of improvements thereon, maintenance of buildings and improvements shall include, without limitation, maintaining and repairing all exterior walls, building signage, roofs, painting, and all such other duties as are necessary to maintain the buildings and improvements in a clean, safe and orderly condition.

(c) Each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in good order, condition and repair, at its sole expense, any utility or other installations serving the Parcel of such Owner and from time to time existing on the Parcel of another Owner pursuant to an easement described herein.

(d) The Owners shall be solely responsible at their own cost, without reimbursement from any other Owners or Occupants, for the maintenance of any detention areas located on their respective Parcels.

(e) As long as the Declarant continues to own any Parcel and until the Association is formed (as described below), the Declarant (or its designated agent) shall be responsible, subject to reimbursement as provided in this Declaration, for the maintenance and repair of the Critical Access Drives as shown on the Site Plan, in a good, clean, well-paved and safe condition free of debris, ice, snow, and potholes. Provided, however, at any time in its sole discretion, Declarant may nominate and designate in writing the Owner of Lot 1 to assume and be responsible for all obligations for maintenance and repair of the Critical Access Drives, billing the "Maintenance Costs" described below, and any costs associated with maintaining, repairing and operating a lift station for sanitary sewer, if any ("Lift Station Costs"). The Owner of Lot 1 hereby accepts such designation upon receipt of written notice from Declarant.

(f) The Owner of each Parcel shall reimburse the Declarant (or its designee or Association) for its pro rata share of the reasonable costs, expenses, fees, and charges incurred by Declarant in performing all maintenance, repair, and replacement of the Critical Access Drives, and for the costs of any utilities, lighting, or other costs associated with the Critical Access Drives, Lift Station Costs, and liability insurance coverage maintained by Declarant in the performance of its duties (collectively the "Maintenance Costs"). Each Parcel's pro rata share of Maintenance Costs shall be a percentage equal to a fraction the numerator of which is the square footage of the land within such Parcel and the denominator is the total square footage of the land within the Property subject to this Declaration. The Declarant may charge an

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administrative fee equal to ten percent (10%) of the Maintenance Costs and may also maintain a reserve for future replacement costs. The "Assessments" levied against a Parcel as described in Section 17 below shall not be greater than the amount set forth in this paragraph. The Declarant (or its designee or Association) may invoice the Owners for Maintenance Costs quarterly, semi-annually or annually in the sole discretion of the Declarant (or of its designee or the Association). Payment shall be made to the Declarant (or its designee or Association) within thirty (30) days after receiving an invoice for such Maintenance Costs, together with reasonable supporting documentation substantiating the Maintenance Costs.

(g) Any failure of an Owner to timely reimburse the Declarant (or Association) for its share of the Maintenance Costs beyond any applicable notice and cure period provided herein, shall allow the Declarant (or its designee or Association) to exercise all rights and remedies allowed at law or in equity to collect such amounts owed from the defaulting Owner, including, without limitation, the filing of a lien against such defaulting Parcel but only after the Declarant (or its designee or Association) provides the defaulting Owner written notice of its intent to file a lien and provides the defaulting Owner an additional ten (10) days after receipt of such notice to cure the non-payment. Provided, however, the Declarant (or its designee or Association) may not prohibit the use by the defaulting Owner or its Occupant of ingress and egress to and from its Parcel and the Critical Access Drives. Any reimbursement that is not paid within thirty (30) days after receipt of such invoice shall also accrue interest at the rate of ten percent (10%) per annum.

(h) Declarant hereby grants and reserves for itself (and its designee, employees, vendors, and contractors and, if formed, the Association) a perpetual and non-exclusive easement to enter a Parcel for the purpose of constructing and installing the Critical Access Drives and Lift Station, and for performing its maintenance and repair obligations to the Critical Access Drives and Lift Station as provided in this Declaration, but only such areas of a Parcel as necessary to perform such maintenance and repair obligations.

4. Construction of Improvements. All buildings and improvements now or in the future constructed on a Parcel, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements. The Parcels are subject to the following additional restrictions and covenants:

(a) Unless otherwise agreed to in writing by Declarant, until the date that BB North Oak Devco, LLC (or an entity under common control) no longer owns or has any interest in any of the Parcels (the "Release Date"), then any other Owner, Occupant, or any future tenant or other person, successor or assign, shall not be permitted to construct any improvements on a Parcel until it has first obtained Declarant's prior written approval of the following which shall not be unreasonably withheld, delayed or conditioned: (1) preliminary site plan, (2) elevations and exterior materials, (3) parking plan, drive through plans, and traffic movement plan, (4) landscape and lighting plan, (5) grading and utility plan, and (6) signage plans ("Review Elements"). The constructing Owner or Occupant shall not submit any applications or plans to the government body, board or agency responsible by statute for issuing permits and building approvals until Declarant has provided its written approval of the Review Elements to the constructing Owner or Occupant, such approval not to be unreasonably withheld, delayed or

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conditioned. In the event Declarant does not reject or approve any submissions within fifteen (15) calendar days after delivery by the constructing Owner or Occupant, Declarant shall be deemed to have approved the submittal and the plans described above must be delivered in reasonable detail with full size drawings so as to show clearly the Review Elements. From and after the Release Date, an Owner shall not be required to obtain the foregoing consents or approvals from Declarant.

(b) The staging area for construction materials, vehicles, and equipment for improvements on a Parcel shall be limited to a construction staging area located solely on such constructing Owner or Occupant's Parcel and may not interfere with the free and open use of the Critical Access Drives for the purposes stated herein. During any construction on a Parcel, such constructing Owner or Occupant shall erect such fences or barricades as may be appropriate or required to ensure the safety of the other Owners and Occupants, and their employees, customers, and invitees, and such constructing Owner or Occupant shall remove such fences and barricades promptly upon completion thereof. No construction workers performing construction on any Parcel shall be permitted to park on another Parcel, nor shall any equipment or materials associated with a Parcel under construction be permitted to be parked, staged or stored within another Parcel.

(c) Unless agreed to separately in writing by Declarant for the benefit of any Owner or Occupant, the following restrictions apply to both initial construction and future material alterations of the buildings and improvements on the Parcels: (i) the building footprint size may not be increased so as to reduce parking on the Parcel below the level legally required for the use on such Parcel; (ii) the construction shall not materially interfere with the operation of the businesses of other Owners or Occupants; (iii) the construction shall not materially interfere with or damage any other Parcel, and (iv) the construction shall not materially interfere with safe, unobstructed and convenient traffic flow over and through the Critical Access Drives. Provided, however, the foregoing does not prevent an Owner, without the prior approval of Declarant hereunder, from: (i) razing the building improvements and constructing a building in substantially the same building area and the same height as the prior approved structure, subject to all other terms and conditions of this Declaration; (ii) making non-material alterations of the building and improvements on the Parcels; and (iii) making any interior modifications to the buildings.

(d) All garbage collection facilities, dumpsters, and satellite dish or communication equipment of any kind, located on a Parcel shall be screened or fenced from view as determined by Declarant.

5. **Use Restrictions.** No Owner or Occupant of any Parcel shall conduct, permit or allow any portion of its Parcel to be used for any of the "**Prohibited Uses**" described on **Exhibit C** attached hereto and made a part hereof. Any drive-thru or customer pick-up area on a Parcel, in which the stopping or standing of motor vehicles in line is intended, (as, for example, at a drive-through restaurant, car wash or bank), shall not be constructed, used or operated in any manner such that motor vehicles in line shall be permitted to, or caused to, stop or stand onto the Critical Access Drives or within another Parcel, and such stacking lane shall not be permitted to



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interfere with parking, or with the normal pattern and flow of pedestrian or vehicular traffic on and across the burdened Parcel and/or the Critical Access Drives.

6. **Indemnification.** Except to the extent caused by the negligence or willful misconduct of an Indemnified Owner (as defined below), each Owner (an "**Indemnifying Owner**") shall indemnify and hold the other Owners, and their tenants (collectively, the "**Indemnified Owner**") harmless for, from and against any damages, liabilities, actions, claims, liens, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses actually incurred) in connection with the loss of life, personal injury and/or damage to property suffered or incurred by the Indemnified Owner within the Indemnifying Owner's Parcel (but excluding any such loss, injury or damage to the extent resulting from the negligent or more culpable conduct of such Indemnified Owner) which arises out of any negligent act or omission or willful misconduct of the Indemnifying Owner, its tenants, employees, agents or contractors.

7. **Liability Insurance.** Each Owner shall maintain or cause to be maintained by its Occupants a commercial general liability (commonly referred to as "**CGL**") insurance policy covering (1) such Owner's liability with respect to any construction that such Owner may perform in connection with such Owner's Parcel, (2) such Owner's liability for ownership, maintenance and use of the Owner's Parcel and use of its Parcel described herein by Owner and its agents, employees and contractors, and (3) such Owner's contractual liability for indemnification obligations in this Declaration. The insurance required hereunder shall be carried by a reputable insurance company or companies qualified to do business in the State of Missouri with minimum coverage of a combined single limit of not less than Two Million Dollars (\$2,000,000) (a portion of this requirement may be satisfied by umbrella coverage) on an occurrence basis and, as long as Declarant is the Owner of any Parcel, shall name Declarant as an additional insured. Each Owner shall, upon request from any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this paragraph. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, employees, agents and tenants and occupants for any damage or consequential loss covered by said policies, against which such Owner is protected by insurance, to the extent of the proceeds payable under such policies or which would have been payable had the required insurance coverage hereunder been maintained, whether or not such damage or loss shall have been caused by any acts or omissions of the other Owner or its directors, officers, employees, agents, tenants or Occupants.

8. **Casualty Insurance.** Each Owner shall carry all risk property insurance coverage, including builder's risk insurance coverage, in an amount at least equal to the full replacement cost of all improvements on the Parcel above the slab, without deduction for depreciation, insuring against all risks (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all-risk" policy). Such insurance shall be carried with a financially responsible insurance company or companies authorized to do business in Missouri. Such insurance may be carried in whole or in part under a policy or policies covering other liabilities and locations of the Owner, or a subsidiary, successor, affiliate or controlling corporation of such

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Owner; provided, however, that (A) such policy or policies shall insure the risks and full amount required under this Declaration, and (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies.

9. **Builder's Risk and Workers Compensation Insurance.** At all times during the period of construction on any Parcel, the Owner thereof shall maintain, or cause to be maintained, casualty insurance in builder's risk form covering Declarant (if Declarant is at such time an Owner of any Parcel) and such Owner, and its contractors, as their interests may appear, against loss or damage by fire, vandalism and malicious mischief and other such risks as are customarily covered by the so-called "extended coverage" endorsement upon Owner's work in place and all materials stored on the Parcel and all materials, equipment, supplies and temporary structures of all kinds incident to the Owner's construction and builder's machinery, tools and equipment, all while forming a part of, or contained in, such improvements or temporary structures while on the Parcel or when adjacent thereto, while on drives, sidewalks, streets or alleys, all to the full insurable value thereof at all times. If Declarant is at such time an Owner of any Parcel, said builder's risk insurance shall contain an express waiver of any right of subrogation by the insurance company against Declarant, its agents, employees and contractors and shall name Declarant as an additional insured. At all times during the period of construction on any Parcel, Owner's contractors and subcontractors shall maintain in effect statutory worker's compensation and occupational disease insurance as required in Missouri.

10. **Damage.** In the event of any damage to or destruction of any building or improvement on a Parcel, the Owner of such Parcel shall either repair any such damage or destruction and reconstruct the improvements in accordance with the provisions of this Declaration, or shall cause the building to be torn down and the Parcel placed back into level, clean and safe condition, pending reconstruction at a later date. In the event such Owner elects to repair or restore, such Owner shall commence restoration and reconstruction promptly after obtaining permits for same and shall continuously pursue the same to completion with all due diligence.

11. **Taxes and Assessments.** Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.

12. **Hazardous Material.** Each Owner shall indemnify the other Owners and Occupants from and against all claims, including, but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Owner, whether or not in the ordinary course of business. "**Hazardous Materials**" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all laws which relate to or deal with human health or the environment, all as may be amended from time to time.

13. **No Rights in Public.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of any Parcel.



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## 14. Remedies and Enforcement.

(a) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or Occupant of any of the terms, covenants, restrictions or conditions hereof, any other Owner (and/or the Occupants, including, without limitation, any ground lessee of a Parcel) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

(b) Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30)-day period, the defaulting Owner commences such cure within such thirty (30)-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the rate of five percent (5%). Notwithstanding the foregoing, in the event of (i) an emergency, and/or (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost.

(c) Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the proper governmental office of the County in which the Parcels are located provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the proper governmental office of the County in which the Parcels are located, prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

(d) Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

(e) No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions

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and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

15. Term. The easements granted herein shall be perpetual and effective as of the date of recordation of this Declaration in the proper governmental office. All other covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the proper governmental office for real estate instruments in the County in which the Parcels are located and shall remain in full force and effect thereafter for fifty (50) years after the date this Declaration is recorded and the same shall automatically renew for successive ten (10) year periods until this Declaration is terminated in writing by all Owners.

16. Miscellaneous.

(a) Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the substantially prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees actually incurred in the preparation and prosecution of such action or proceeding.

(b) Amendment. This Declaration (including, without limitation, the Site Plan and size and boundaries of each Parcel owned by Declarant) may be modified or amended, in whole or in part, or terminated, only by the written consent of Declarant as long as Declarant owns at least fifty percent (50%) of the land area encumbered by this Declaration, and thereafter only by the written consent of all record Owners of all Parcels. Provided, however, any amendment of this Declaration that would either (i) increase an Owner's (or its Occupant's) obligations under this Declaration, or (ii) decrease an Owner's (or its Occupant's) rights under this Declaration, or (iii) adversely interfere with an Owner's (or its Occupant's) use of, operations within, and/or access to its Parcel, shall require the prior written consent of and execution by such affected Owner.

(c) Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing, but if such Owner does not provide its consent or rejection within ten (10) business days after receipt of written notice from the requesting Owner, such Owner shall be deemed to have consented to such request. Notwithstanding the foregoing, the immediately prior sentence shall not apply to a request provided to Declarant whose approval or consent shall always be required to be in writing.

(d) No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

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(e) Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

(f) Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

(g) Time of Essence. Time is of the essence of this Declaration.

(h) Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

(i) Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. Any time fee title to a Parcel is transferred, the transferee shall notify Declarant in writing that such transferee is the Owner of such Parcel and shall provide Declarant with a copy of the recorded conveyance document (i.e., Deed) transferring title to such transferee. Upon the Release Date, Declarant shall deliver written notice to each Owner listing the name and addresses of the Owner of each Parcel as reflected in Declarant's records as of such date.

(j) Governing Law. The laws of the State of Missouri shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any lawsuit or dispute involving the Owners or Occupants shall have its exclusive venue and jurisdiction in Circuit Court of Clay County, Missouri.

(k) Successor Declarant. At such time as BB North Oak Devco, LLC no longer owns any Parcel subject to this Declaration (i.e., the "Release Date" as defined above), the then Owner of Lot 1 shall be the successor Declarant and BB North Oak Devco, LLC shall execute an Assignment of Declarant's Right ("Assignment") and record the same in the real estate records. Thereafter, BB North Oak Devco, LLC shall be released of all obligations and liabilities hereunder from the date such Assignment is delivered to the Owner of Lot 1 and the Owner of Lot 1 shall be deemed to have assumed all obligations of Declarant hereunder until such time as an owner's association is properly formed under Section 17 below.

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17. **Association.** After the Release Date and at such time as each of the Parcels are developed with improvements and the Critical Access Drives are installed, the successor Declarant may, at its option, create an Owner's Association, as a Missouri not for profit corporation ("**Association**"). At such time, the Association shall assume the obligations of Declarant hereunder with respect to its obligations to and for the Critical Access Drives and billing of Maintenance Costs and Assessments and the then Declarant shall be relieved of such obligations. The Declarant shall notify each Owner of the formation of the Association and shall deliver a copy of the Articles of Incorporation and Bylaws to each Owner. Membership in the Association shall be mandatory for each Owner of a Parcel. The following rules, terms and provisions shall apply with respect to the Association and its duties as further set forth in the Bylaws of the Association:

(a) **Duties and Powers.** The duties and powers of the Association are those set forth in this Declaration, together with the general and implied powers of a not-for-profit corporation to do any and all things that a not-for-profit corporation organized under the laws of the State of Missouri may lawfully do which are necessary and proper for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration and set forth in the Articles of Incorporation, and Bylaws of the Association, as amended from time to time. If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

(b) **Membership.** Every Owner shall automatically, upon acquiring ownership of a Parcel, be a Member of the Association, and shall remain a Member thereof until such time as its ownership ceases for any reason, at which time its Membership in the Association shall automatically cease. Ownership of a Parcel shall be the sole qualification for Membership in the Association. All Memberships shall be appurtenant to the Owner's Parcel, and with the exception of the Association, a person or entity shall be deemed an Owner of a Parcel only upon recordation of a deed to such portion of the Property. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members shall be as set forth in this Declaration, the Articles and Bylaws, and the rules and regulations of the Association adopted in accordance with the Bylaws.

(c) **Transfer.** The Membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale and lease or encumbrance of the Parcel owned by such Owner, and then only to the purchaser/ground lessee or first mortgagee of such Parcel. Any sale, transfer or conveyance of a Parcel, including a foreclosure sale, shall operate to transfer the Membership held by such Owner without the requirement of any express reference thereto.

(d) **Voting Rights.** Each Member shall be entitled to one (1) vote. There shall only be one Member per Parcel. Any Member who is in violation of this Declaration as determined by the Board of Directors of the Association and has not cured such violation within forty-five (45) days after receipt of written notice thereof shall not be entitled to vote during any period in which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof and has not cured such violation within forty-five (45) days after



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receipt of written notice thereof, shall not be entitled to vote during any period in which any such assessments are due and unpaid.

(e) Board of Directors. The Board shall consist of one (1) person per Owner of each Parcel subject to this Declaration when the Association is formed, who shall hold office until a successor has been elected or until death or resignation. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members. The Board shall not, except with the vote or written assent of 100% of the voting power of the Members of the Association, pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a member or officer to be reimbursed for his actual expenses incurred in carrying on the business of the Association, and nothing herein contained shall preclude any member of the Board or officer of the Association from serving the Association in some other capacity and receiving compensation therefore.

(f) Engagement of Manager. The Board may engage a property manager (the "Manager") to serve as the sole and exclusive property manager of the Critical Access Drives. Subject to the terms of this Declaration, the Manager will have full control over the duties for the maintenance, repair, insurance and replacement of the Critical Access Drives.

(g) Regular and Special Meetings of the Board. Regular and special meetings of the Board shall be open to all Members of the Association and Members who are not on the Board may participate in any deliberation or discussion. The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, the suspension or conditioning of an Owner's rights and/or Member's privileges hereunder, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Bylaws shall described the rules pertaining to regular meetings and special meetings.

(h) Annual and Special Association Meetings. The Bylaws of the Association shall describe the requirements for regular meetings, special meetings, quorum requirements, place of meetings and notice requirements for such meetings as may be consistent with Missouri statutes.

(i) Assessments. Each Owner has heretofore and does hereby continue to covenant and agree to pay to the Association all Assessments due hereunder in the manner set forth in Section 3(g) above. All Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Owner at the time the Assessment falls due, shall be a continuing lien upon the Parcel against which such Assessment has been levied, together with interest, costs and reasonable attorneys' fees, and shall bind each Owner's heirs, successors in interest, devisees, personal representatives and assigns. Upon the foreclosure of the lien of any particular charge on a Parcel, any such sale of such Parcel pursuant to such foreclosure will be made subject to all liens securing the charges on such Parcel for preceding periods of time. This personal obligation of each Owner cannot be avoided by abandonment of each Owner's Parcel or by an offer to waive use of the Critical Access Drives.

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(j) Purpose of Assessments. The Assessments shall be limited to the amounts shown in Section 3(g) above plus any actual and reasonable administrative costs of maintaining and operating the Association. Once the Association is formed, the Owners shall pay the Association as described in Section 3(g) and the Association shall have the same rights of collection to collect unpaid Assessments as granted to the Declarant under Section 3(g) above.



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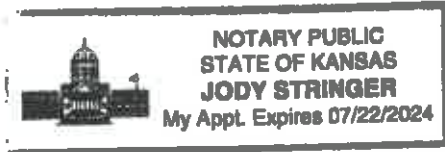
IN WITNESS WHEREOF, Declarant has set its hand as of the date shown above.

**BB North Oak Devco,**  
a Missouri limited liability company

By [Signature]  
Name Jeffrey Berg  
Title Managing Member

STATE OF Kansas    §  
   §  
COUNTY OF Johnson    §

BEFORE ME, the undersigned authority, on this 2nd day of February, 2023, did personally appear Jeffrey Berg, a Manager of BB North Oak Devco, LLC, a Missouri limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.



[Signature]  
Notary Public, State of Kansas

Print Name: Jody M. Stringer

My Commission Expires:  
07/22/24

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## SUBORDINATION AND CONSENT OF LENDER

On this 31<sup>st</sup> day of January, 2023, the undersigned, Equity Bank, states that it is the owner and holder of a deed of trust lien on the real property described herein pursuant to a Deed of Trust dated April 7, 2022 and recorded April 11, 2022, as Instrument No. 2022011904 in Book 9342 at Page 63, in the Office of the Clay County, Missouri Recorder of Deeds ("Deed of Trust").

The undersigned, hereby consents to the foregoing Declaration and subordinates the lien of the Deed of Trust to the lien of the foregoing Declaration so that the Declaration shall not be disturbed in the event of a foreclosure of the Deed of Trust. The foregoing subordination and consent shall not apply to any further modification or amendment without the prior written consent of the undersigned.

IN WITNESS WHEREOF, the undersigned as set its hand on the date shown above.

Equity Bank

By [Signature]  
Name Justin Kelly  
Title Vice President

STATE OF Kansas )  
  ) ss.  
COUNTY OF Johnson )

On this 31<sup>st</sup> day of January, 2023, before me appeared Justin Kelly, to me personally known, who being by me duly sworn, did say that (s)he is the Vice President of Equity Bank, and that the foregoing instrument was signed in behalf of said bank by authority of its Board of Directors, and said Justin Kelly acknowledged said instrument to be the free act and deed of said bank.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

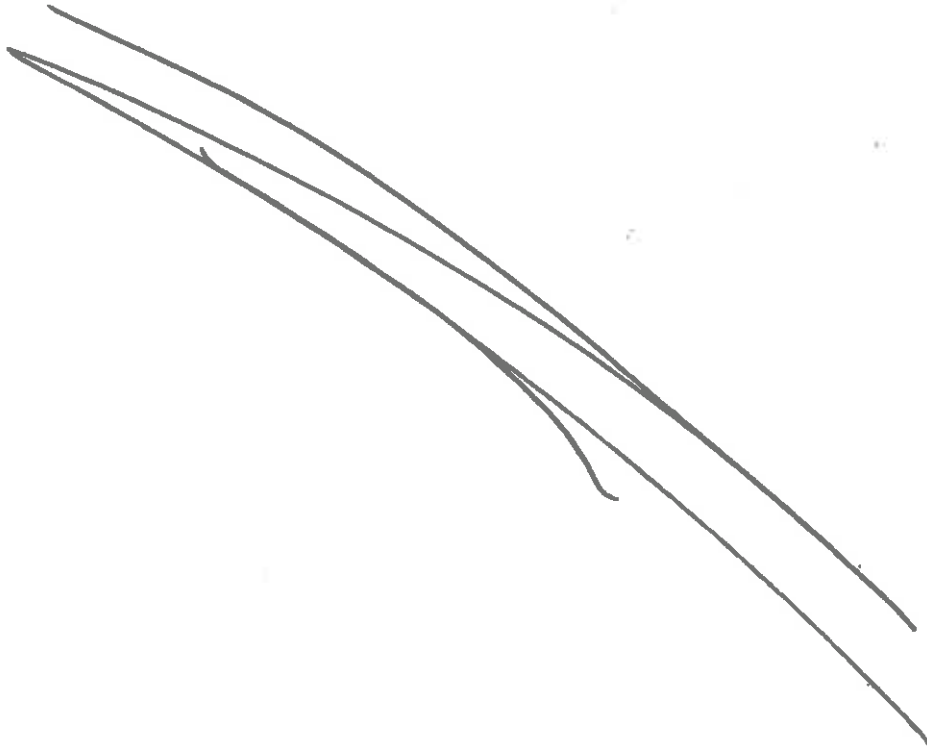


[Signature]  
Notary Public

Ann Soosengdao  
Print Name

My commission expires:

9/3/2025



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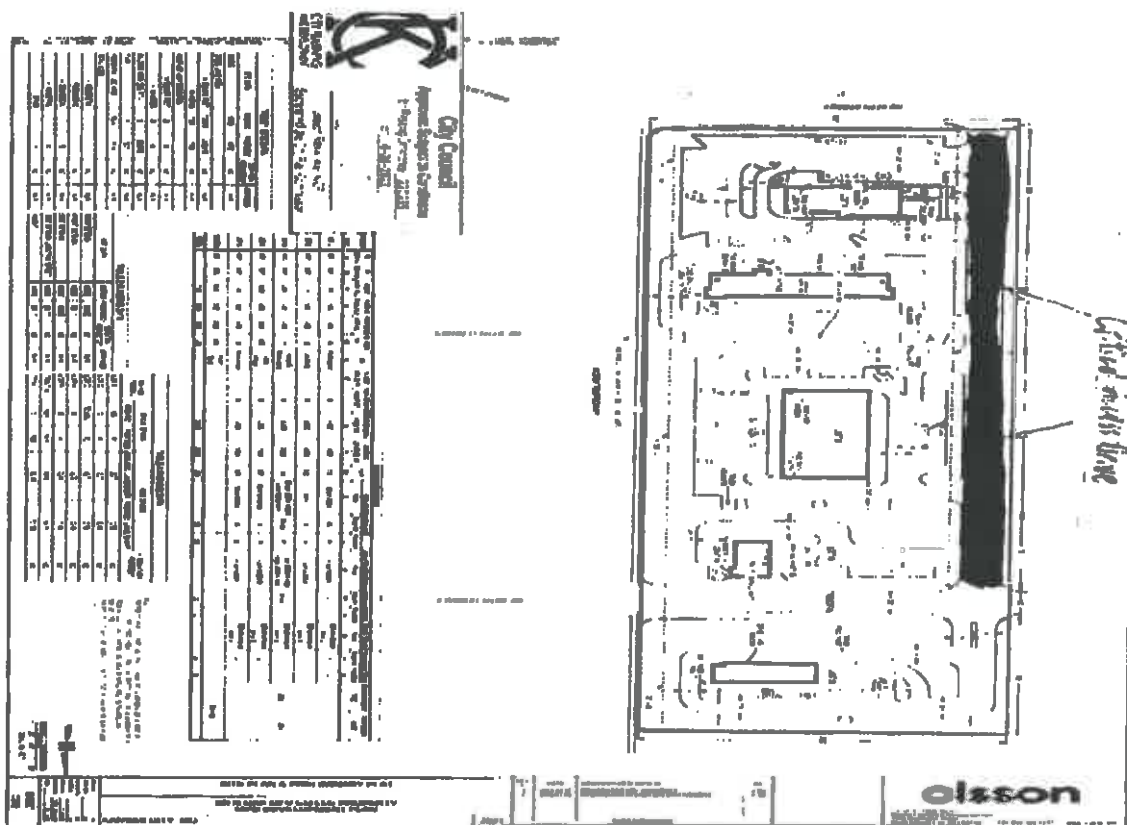
## **EXHIBIT A (Legal Descriptions)**

A tract of land in the Southwest Quarter of Section 35, Township 52 North, Range 33 West of the 5th Principal Meridian in Kansas City, Clay County, Missouri being bounded and described by or under the direct supervision of Jason S. Roudebush, P.L.S. 2002014092 as follows: Commencing at the Southeast corner of said Southwest Quarter; thence North 00°19'32" East, on the East line of said Southwest Quarter, 831.13 feet; thence leaving said East line, North 89°40'28" West, 50.00 feet a point on the Existing Westerly right-of-way line of North Oak Trafficway, as now established, also being the Northeast corner of QUIKTRIP STORE 221R, a subdivision of land in said Kansas City, recorded as Instrument Number 2017031605 in Book I at Page 8.1 in Clay County Recorder of Deeds Office, also being the Point of Beginning of the tract of land to be herein described: thence leaving said Existing Westerly right-of-way line, Southwesterly on the Existing Northerly right-of-way line of N.E. 97th Street, as established by said QUIKTRIP STORE 221R, along a curve to the right having an initial tangent bearing of South 00°19'32" West with a radius of 15.00 feet, a central angle of 89°59'55" and an arc distance of 23.56 feet; thence North 89°40'33" West, on said Existing Northerly right-of-way line, 287.67 feet to a point on the Easterly line of 97 AT NORTH OAK, a subdivision of land in said Kansas City recorded as Instrument Number 2021024642 in Book I at Page 136.4 in said Clay County Recorder of Deeds Office; thence North 00°19'49" East, on said Easterly line, 1,039.16 feet to the Northeast corner of said 97 AT NORTH OAK, also being a point on the Easterly line of NORTHLAND CATHEDRAL, a subdivision of land in said Kansas City recorded as Instrument Number R42190 in Cabinet F at Sleeve 36 in said Clay County Recorder of Deeds Office; thence South 88°54'51" East, on said Easterly line, 302.61 feet to a point on said Existing Westerly right-of-way line; thence leaving said Easterly line, South 00°19'32" West, on said Existing Westerly right-of-way line, 1,020.14 feet to the Point of Beginning. Containing 313,818 square feet or 7.20 acres, more or less.

**To be platted as Lots 1, 2, 3, 4, 5, and Tract A, BB North Oak, a subdivision in the City of Kansas City, Clay County, Missouri**

EXHIBIT B

(Site Plan)



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## EXHIBIT C

### **No Parcel shall be used for any of the following purposes:**

(1) bar, pub, nightclub, strip club, topless club, music hall or disco; (2) billiard or bingo parlor; (3) flea market, (4) massage parlor, (5) funeral home, (6) facility for the sale of paraphernalia for use with illicit drugs, (7) facility for the sale or display of pornographic material (as determined by community standards for the area in which the Property is located), (8) off-track betting parlor, (9) carnival, amusement park or circus, (10) facility for any use which is illegal or dangerous or constitutes a nuisance, (11) arcade, pinball or computer game or amusement room (except in connection with a restaurant), (12) facility with on premises dry cleaning, (13) utility trailer display or storage, (14) Adult book store, adult video store (an adult video store is a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration), "adult" business activities, including without limitation any massage parlor, escort service, facility with nude (or partially nude, bathing suit-clad or lingerie-clad) models or dancers or any establishment selling or exhibiting sexually explicit materials; or (15) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana or any synthetic substance containing tetrahydrocannabinol, any psychoactive metabolite thereof, or any substance chemically similar to any of the foregoing, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant; (16) any use prohibited by the ECR, (17) oil, tune and lube service business operation, (18) intentionally deleted, (19) retail convenience grocery store, (20) drug store, (21) donut shop, (22) coffee shop, (23) McDonald's restaurant, (24) Sonic drive-in restaurant, (25) smoke shop or other retail outlet selling tobacco products, electronic cigarettes, vapor devices or nicotine-based products as one of its primary uses, (26) retail sale of marijuana/cannabis products or drug paraphernalia, (27) retail sale of package or carry out beer, wine, liquor or spirits, (28) retail sale of motor fuel, (29) sale of items commonly sold in a convenience store including, but not limited to, candy, chips, donuts, sandwiches, pizza, snacks, coffee, soda, and other carbonated beverages; provided, however, that this foregoing restriction in this subsection 29 shall not apply to businesses which sell the items listed in this subsection 29 as an ancillary part of their business (meaning 10% or less of overall sales), or during the normal operation of a restaurant.

The only manner in which oil, gas, or other minerals in, on or under the Property may be mined, drilled, operated, explored, developed, removed, stored, treated, transported, tested, processed, handled or otherwise dealt with is from the surface location on other lands which are not within the boundaries of the development provided, however, that any horizontal drilling or similar exploration of the oil, gas or other minerals in, on or under the Property shall not be permitted from the surface of any other premises unless they are at a depth of one thousand feet (1,000') beneath the surface of the Property. Additionally, no holder of rights in oil, gas, or other minerals in, on, or under the Property is allowed to negatively impact the operation of any business on the surface of the Property in any way without the express written permission of the owner of the surface land at issue.

As long as Parcel 5 is owned or leased for the purpose of operating a Popeye's Louisiana Kitchen, no other Parcel shall be used or operated as a business whose "primary business" is the sale of chicken, fried chicken, chicken sandwiches and similar chicken and shrimp menu items found in a Popeye's Louisiana Kitchen or similar restaurant for a period of ten (10) years after Parcel 5 is acquired for the purpose of selling chicken, or until Parcel 5 is no longer used as a Popeye's Louisiana Kitchen restaurant, whichever is shorter. The term "primary business" means that 30% or more of menu items are the sale of chicken,



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but this exclusive use shall not apply to incidental sales that are less than twenty percent (20%) of sales from such businesses as a quick-service or fast-casual restaurant that also sells hamburgers or roast beef sandwiches (e.g., Culvers, Wendy's, Arby's, McDonald's, etc.), deli-sandwiches or wraps (e.g., Subway), tacos, burritos, or other Tex-Mex or Mexican-themed food (e.g., Chipotle, Taco Bell, etc.), a Chinese-themed food restaurant (e.g., Panda Express, etc.), or a sit-down restaurant with table service. By way of example and not limitation, the exclusive use is intended to prohibit restaurants such as KFC, Church's, Zaxby's, Chick Fil A, Pollo Campero, El Pollo Loco, Layne's Chicken, Slim Chickens, SuperChix, Chicken Express, Golden Chick, Williams Chicken, and Hatz Chicken Buffet or other similar restaurants.

As long as Parcel 1 is owned or leased for the purpose of operating a Culver's, no other Parcel shall be used or operated as a business whose "primary business" is the sale of hamburgers or frozen dairy treats ("Permitted Use") for a period of twenty (20) years after Parcel 1 is acquired for the purpose of selling hamburgers or frozen dairy treats, or until Parcel 1 is no longer used as a Culver's restaurant, whichever is shorter. The term "primary business" means that 30% or more of menu items are the sale of hamburgers or frozen dairy treats.