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DECLARATION

OF

EASEMENTS, COVENANTS, CONDITIONS AND

RESTRICTIONS

OF

THE OAKS COMMERCIAL 3RD

OWNERS' ASSOCIATION

25/20422

**DECLARATION
OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE OAKS COMMERCIAL 3RD OWNERS' ASSOCIATION**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF THE OAKS COMMERCIAL 3RD OWNERS' ASSOCIATION ("Declaration") is made effective the 23rd day of June, 2015, by Rock Road Commercial, Inc., a Kansas corporation (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of the following described land (hereinafter referred to as the "Property") located in Sedgwick County, Kansas, to-wit:

**Lots 1, 2 and 3, Block A,
Including platted Reserve A
The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas**

such real property being hereinafter referred to as the "Property".

B. It is the purpose and intention of the Declarant and of this Declaration that the Property be maintained, held and/or conveyed subject to the provisions of this Declaration.

C. In order to ensure the proper development of the Property and to provide for the efficient maintenance and governance of the Property and the protection of the value of the Property and the protection of the rights of the Property owners, it is necessary to establish binding covenants, conditions and restrictions applicable to the Property which shall be binding upon any person or entity acquiring an interest therein, their grantees, successors, heirs, legal representatives and assigns.

D. There shall be established the Oaks Commercial 3rd Owners' Association (the "Association"), consisting of the owners of the platted lots located within the Property, and any future lot owners.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held and managed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of promoting the development and protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties having or acquiring any right, title or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of and burden each owner thereof.

ARTICLE I
FORMATION AND POWERS OF ASSOCIATION

1.1 **Formation of the Association.** The Association shall be organized prior to the recording of this Declaration as a non-profit corporation for a perpetual term under the laws of the State of Kansas, and notwithstanding the commercial nature of the Property, the Association shall operate consistent with the requirements of I.R.C. §528. Concurrently with the recording of this Declaration, the Declarant shall convey fee simple title to Reserve A to the Association.

1.2 **Purpose of Association.** The Association has been formed to further the common interests of the Members and Owners (as defined in Article 2.3) and to perform the functions hereinafter required or permitted to be performed by the Association including those dealing with governance.

1.3 **Powers and Duties of the Association.** The Association shall have the rights and powers as set forth in this Declaration, its Articles of Incorporation and the Bylaws of the Association ("Bylaws"), and it shall perform each and every duty required of it by this Declaration, including but not limited to:

1.3.1 provide for the improvement, care and maintenance of certain roadways constructed on the Property as set forth in Article IV;

1.3.2 own, maintain, repair, replace, improve, landscape, mow and keep clean Reserve A (including, without limitation, the Detention Pond and Detention Facilities (both defined below)) in a good order and repair and consistent with good property management in relation to the general standards of the Property. Further, the Association shall be responsible for insuring that Reserve A, the Detention Pond, and the Detention Facilities comply with all applicable laws, ordinances, and codes;

1.3.3 maintain such insurance on Reserve A and all improvements thereon as the Board of Directors may in its reasonable discretion determine;

1.3.4 through its Board of Directors, create and establish reserves for the repair, restoration, or replacement of any improvement it has the duty to repair, restore or replace hereunder; and

1.3.5 such other functions of the Association as set forth in the Declaration.

1.4 **Board of Directors.** The business of the Association shall be managed by its Board of Directors (the "Board") which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by the Bylaws directed or required to be exercised or done by the Members.

1.5 **Operations and Expenses.** The Association may engage third-party managers or officers, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The compensation paid to such individuals shall be limited to commercially reasonable amounts. The reasonable expenses

of such shall be established and paid for by the Association. The Association shall pay for all other reasonable expenses necessary or incidental to the conduct or carrying on of its business concerning the Property.

1.6 **Taxes and Assessments.** Except as may otherwise be provided therein, each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon.

1.7 **Expenditures by the Association.** The Association shall have the authority to expend all monies collected from all annual general assessments, special assessments and such other assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles of Incorporation and Bylaws. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of annual general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its reasonable discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

ARTICLE II ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

2.1 **Membership.** Membership in the Association shall be mandatory for each record title owner of a Lot and all owners, upon becoming such, shall be deemed automatically to have become Members of the Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 **Definition of "Lot".** The term "Lot" shall mean only Lots 1, 2, and 3 of The Oaks Commercial 3rd Addition, Derby, Sedgwick County, Kansas and the term "Lot" shall expressly not include Reserve A of The Oaks Commercial 3rd Addition, Derby, Sedgwick County, Kansas.

2.3 **Definition of "Member or Owner".** The terms Member or Owner shall mean and refer to every person or entity who or which is a record title owner of a fee or undivided fee interest in any Lot, but not including any Owners who have sold their entire interest under an executory contract. During such time as such contract is in force, the contract vendee shall be considered to be the Member or the Owner. When more than one person or entity holds a fee interest in any Lot, all such persons or entities shall be Members and Owners provided, in the event of ownership of a Lot by more than one person or entity, the voting rights allocated to such Lot per Section 2.4 shall be adjusted proportionately in relation to the other Lot Owners but neither increased nor decreased in a manner that would dilute the voting rights of the other Lot Owners.

2.4 **Voting Rights.** All Members of the Association shall be entitled to vote on each matter submitted to a vote at a meeting of its Members. Each Member of the Association shall be entitled to one (1) vote for each square foot of property owned within the Lots comprising the Property subject to the following exceptions and conditions:

2.4.1 Any Member who is in material violation of the Bylaws and this Declaration, as reasonably determined by the Board, (after a reasonable notice and cure period), 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 shall not be entitled to vote during any period in which any such assessments are due and unpaid.

2.4.2 The Board shall adopt such rules, consistent with the terms hereof, the Articles of Incorporation and Bylaws, and the laws of the State of Kansas, as amended, as deemed advisable with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

2.5 **Annual Meeting.** The annual meeting of the Members of the Association shall be held on such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At such annual meeting, the Members shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

2.6 **Special Meetings.** Special meetings of the Members may be called at any time by the President or Board of Directors. Such a special meeting of the Members must be called within ten (10) days by the President or Board of Directors of a request for a meeting by Members holding a minimum of fifty percent (50%) of the voting rights.

2.7 **Notice of Meeting.** Written notice stating the place, day, and hour of any meeting of the Members shall be delivered either personally or by mail to each Member entitled to vote at such meeting, not less than five (5) days before the date of such meeting, or at the direction of the Secretary.

2.8 **Quorum.** The Members holding over fifty-one percent (51%) of the votes that may be cast at any meeting shall constitute a quorum at any meeting of the Members. In the absence of a quorum, a majority of the Members present may adjourn the meeting from time to time without further notice. Notwithstanding the foregoing provisions of this Section 2.8, if, during any calendar year, the Association has spent funds in excess of \$50,000.00, then all future decisions to spend funds during that same calendar year shall require one hundred (100%) of the votes that may be cast to constitute a quorum.

2.9 **Action at Meetings.** In order for the Association or Board to take any action at any meeting, the Members holding over fifty-one percent (51%) of the votes that may be cast must vote in favor of the proposed action. Notwithstanding the foregoing provisions of this Section 2.9, if, during any calendar year, the Association has spent funds in excess of \$50,000.00, then all future decisions to spend funds during that same calendar year shall require

one hundred (100%) of the votes that may be cast must vote in favor of the proposed action.

2.10 **Proxies.** Every Member entitled to vote who is not a natural person shall have the right to do so through a duly authorized representative of the Member. All Members shall also have the right to vote through or by one or more agents authorized by written proxy, executed by the Member or its duly authorized agent and filed with the Secretary of the Association. However, no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specified therein the length of time for which such proxy is to continue in force.

2.11 **Action by Written Consent.** Unless otherwise provided in the Articles of Incorporation, any action required to be taken at any annual or special meeting of Members of the Association, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by all the Members.

ARTICLE III COVENANTS CONCERNING ASSESSMENTS AND LIENS

3.1 **Annual General Assessments.** In order to provide funds for the payment of taxes and special assessments assessed on property owned by the Association and for operations of the Association, and to afford the Association the means and resources necessary to carry out its duties and functions, the Board shall have the right to establish and assess against each Lot a general and/or special assessment.

3.2 **Determination of Annual General Assessments.** Each year, the Association, shall determine the total amount needed to be raised by its annual general assessment for the next succeeding calendar year and such annual general assessment shall be levied upon each Lot Owner pro-rata in an amount equal to the total number of square feet of the Owner's Lot divided by the total number of square feet of Lots 1, 2 and 3 of the Property combined, multiplied by the total annual general assessment. Should the Association at any time determine, in its sole discretion, that the annual general assessment levied is or may prove to be insufficient to pay the costs of operation and management of the Association or in the event of emergencies, the Association shall have authority to levy such additional assessment or assessments as shall be deemed necessary.

3.3 **Special Assessments.** In addition to annual general assessments, the Board of Directors of the Association may, from time to time, establish a special assessment for such other purpose as the Board may deem proper, to be levied in the same manner as the annual general assessment for the purpose of providing additional funds not available through the annual general assessments, to carry out its duties and other functions and purposes contemplated hereunder. All special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month following the date that the same shall be established by the assessing Association.

3.4 **Special Assessments For Curing Breach of Declaration.** The Association is hereby granted the authority to establish and levy a special assessment against any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach has resulted in an expenditure by the Association for repair, remedy or cure of such breach. Any such special assessment shall be due and payable upon assessment.

3.5 **Proration of Assessments.** All annual general assessments and special assessments shall accrue against each Lot, in proration to the number of square feet of the Property within such lot.

3.6 **Collection of Assessments.** The Association shall have the right, power and obligation to collect and enforce the collection of all annual general assessments and all special assessments levied or assessed by the Association and may, in addition to such assessments, charge and assess costs and expenses incurred in the collection of all such assessments, including reasonable attorneys' fees, and may assess penalties and interest for the late payment or nonpayment thereof.

3.7 **Delinquency, Assessments and Liens.** Any annual general assessment or special assessment which is not paid within thirty (30) days of its due date shall be deemed delinquent and a lien shall automatically be imposed against the Lot to secure the payment of the delinquent assessment.

3.8 **Notice of Delinquency.** At any time after any annual general assessment or special assessment against any Lot has become delinquent and has become a lien against a Lot, the Association may record a Notice of Delinquency as to such Lot in the office of the Sedgwick County Register of Deeds, which Notice shall state the amount of such delinquency and that it is a lien upon the Lot, and the interest, costs, and attorneys' fees which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof. Such Notice shall be signed by an officer or a Member of the Board of the Association. Upon payment of the unpaid assessment, interest, costs, and attorneys' fees in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

3.9 **Enforcement of Liens.** A lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency filed as provided in Section 5.8 may be foreclosed in the same manner as a mortgage on real property as provided by the laws of Kansas. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Association.

3.10 **Subordination to Mortgages.** Each and every assessment and lien, together with any interest, costs, and attorneys' fees provided for in this Declaration, shall be subordinate to the lien of any valid bona fide mortgage which has been, or may hereafter be given in good faith and for value on the interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at a foreclosure sale shall be bound by the assessments and liens set out in

this Declaration, except for assessments and liens arising prior to the foreclosure sale.

3.11 **Personal Liability.** Each Owner of each Lot, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general or special assessment levied against such Lot during the Owner's period of ownership.

3.12 **Interest on Delinquent Assessments.** All assessments (general and special) which remain due and unpaid thirty (30) days after the same are due shall thereafter accrue interest at the rate of fifteen (15%) percent per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

ARTICLE IV ROADWAY MAINTENANCE AND REPAIRS/TAXES AND SPECIAL ASSESSMENTS

4.1 **Maintenance of Critical Access Drive.** Subject to the reimbursement obligation set forth below, the Owner of Lot 3, and any successor-in-interest, shall be responsible for performing the future maintenance, repair, and/or replacement (including, without limitation, removal of snow, ice, debris, sweeping, repairing, sealing as appropriate and repaving when necessary) of the "Critical Access Drive", as generally depicted on **Exhibit A**, attached hereto and made a part hereof (the "Critical Access Drive Maintenance"). **Exhibit A** is intended to only be a general depiction of the Critical Access Drive and the legal description below shall control if there is any discrepancy between **Exhibit A** and the legal description set forth below. The Critical Access Drive is situated on Lot 2, Block A, as legally described below:

See **Exhibit C**, attached hereto and made a part hereof.

4.2 The Owners of Lots 1 and 2 shall each be responsible for a pro-rata portion of the total annual expense of the Critical Access Drive Maintenance in an amount equal to the total number of square feet of Lot 1 and Lot 2, respectively of the Property divided by the total number of square feet of Lots 1, 2 and 3 of the Property combined, multiplied by the total annual expense of the Critical Access Drive Maintenance. The Owners of Lots 1 and 2 shall, no later 30 days after written request therefore, reimburse the Owner of Lot 3 for their respective pro-rata share of the Critical Access Drive Maintenance. These obligations shall run with the land and shall be binding upon all successors and assigns of the Lot Owners and shall survive any later transfer of ownership of the Property on which the Critical Access Drive is situated.

4.3 **Maintenance of Joint Access Easement.** With respect to their respective Lots, the Owners of Lots 1 and 2, and any successor-in-interest, shall be individually responsible for all maintenance, repairs and improvements, which shall include removal of snow, ice, debris, sweeping, repairing, sealing as appropriate and repaving when necessary ("Access Maintenance") of and to the particular portion of roadways located on their individual Lots:

For the Owner(s) of Lot 1, Block A, The Oaks Commercial 3rd, Derby, Sedgwick County, Kansas described as follows:

See **Exhibit D**, attached hereto and made a part hereof.

And

For the Owner(s) of Lot 2, Block A, The Oaks Commercial 3rd,
Derby, Sedgwick County, Kansas described as follows:

See **Exhibit E**, attached hereto and made a part hereof.

such specifically described real property being hereinafter referred to as the "Joint Access Easement". The Owner of Lot 3, Block A of the Property shall be responsible for a pro-rata portion of the future total annual expense of Joint Access Maintenance in an amount equal to the total number of square feet of Lot 3 of the Property divided by the total number of square feet of Lots 1, 2 and 3 of the Property combined, multiplied by the total annual expense of the Joint Access Maintenance. The Owner of Lot 3 shall only be responsible for the actual, out-of-pocket and commercially reasonable expenses associated with the Joint Access Maintenance. The responsibility for Joint Access Maintenance for the Owner of Lot 3, Block A of the Property shall begin upon construction of any improvement by such Owner on such Lot. These obligations shall run with the land and shall be binding upon all successors and assigns of the Lot Owners and shall survive any later transfer of ownership of the Property on which the Joint Access Easement is situated. The Joint Access Easement is also generally depicted on **Exhibit A**. **Exhibit A** is intended to only be a general depiction of the Joint Access Easement and the legal description above shall control if there is any discrepancy between **Exhibit A** and the legal description set forth above. Notwithstanding any provision in this Declaration to the contrary, in no event shall the Owner of Lot 3 be obligated to contribute towards any costs attributable to the initial construction of improvements within the Joint Access Easement.

4.4 Taxes and Assessments on Joint Access Easement and Critical Access Drive.

With respect to their respective Lots, each Owner (and any successor-in-interest), shall be individually responsible for all real estate taxes and special assessment taxes attributable to their respective Lots (including, without limitation, the portions of the Joint Access Easement and Critical Access Drive situated on each Lot). Accordingly, since no portions of the Critical Access Drive or the Joint Access Easement are situated on Lot 3, in no event shall the Owner of Lot 3, Block A of the Property be liable for any property taxes attributable to the Critical Access Drive and the Joint Access Easement.

4.5 Decisions and Remedies Regarding Expenses of Maintenance, Repairs and Improvements of the Roadways and Extensions. All responsibilities regarding maintenance, repairs and improvements of the Critical Access Drive and the Joint Access Easement shall be promptly performed and completed in a manner and to a standard consistent with a first class retail and commercial area. To the extent the Association or the Owner(s) of Lots 1 or 2 determine that maintenance, repairs or improvements of the Joint Access Easement is necessary, it shall inform all Owners of the Property in writing and the Owners of the Property shall make a good faith effort to agree on the necessity for such maintenance, repairs and improvements including without limitation the choice of contractors to be engaged to provide such services and a time within which work will be completed. To the extent the Association or the Owner of Lot

3 determines that maintenance, repairs or improvements of the Critical Access Drive is necessary, it shall inform all Owners of the Property in writing and the Owners of the Property shall make a good faith effort to agree on the necessity for such maintenance, repairs and improvements including without limitation the choice of contractors to be engaged to provide such services and a time within which work will be completed. In addition to all other remedies available at law or in equity, upon the failure of any Owner or Owners of a Lot to meet any obligations pursuant to this section, or to diligently proceed with meeting the obligation, the Association or the other Owner or Owners within the Property, after providing ten (10) days' written notice to the Owner failing to meet its obligation, shall have the right, but not the obligation, to perform maintenance, repairs and improvements on behalf of such defaulting Owner and to be reimbursed proportionately by such defaulting Owner or Owners upon demand for the reasonable cost thereof with interest at the prime rate as published in The Wall Street Journal plus two percent (2%). Notwithstanding the above, if any of the Owners are responsible for damage to the Critical Access Drive and/or Joint Access Easement other than ordinary wear and tear, the party responsible for the damage shall pay the entire cost of necessary repairs and replacement for the damaged Roadways. Also, notwithstanding the above, it is agreed that should any Owner wish to assume the entire burden and costs for maintenance, repairs or improvements of any portion of the Critical Access Drive and/or Joint Access Easement, that Owner shall have the right, but not the obligation, to undertake such work without requiring the approval or cooperation of any other Owner.

ARTICLE V GOOD ORDER AND REPAIR

5.1 **Requirement to Keep Lot in Good Order and Repair.** Except as otherwise set forth herein, the Owner of a Lot, at such Owner's expense, shall cause its respective Lot and all improvements thereon to be maintained in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns; the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to the general standards of the Property. Determination by the Board concerning a Lot's compliance with this Section 5.1 shall be final and after fifteen (15) days' written notice to such Lot Owner, the Board, shall have the right, through its agents and employees, to enter upon the Lot and to repair, maintain, restore the Lot or such improvements, and the cost thereof, including attorney fees, shall be a binding personal obligation of such Owner, and the Board may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article III hereof.

5.2 **No Disturbance of Streams or Drainage Facilities.** No lake, pond, stream or water drainage facilities, natural or erected, shall be disturbed other than by the Association.

5.3 **Drainage.** Upon the commencement of construction on any Lot, the Lot shall be required to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots, as such guidelines, standards and plans are established by the City of Derby, Sedgwick County, and the Association. A determination by the Board concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall

be final and binding on all Lot Owners. In the event the Board determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Board shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If thirty (30) days after the notice of such violation, or such additional time as may be specified, the Owner of such Lot shall not have taken reasonable steps to correct the same, the Board on behalf of the Association shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such correction together with ten percent (10%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association shall establish a special assessment applicable to such Lot for the costs thereof and shall be entitled to enforce the assessment pursuant to Article III hereof.

5.4 **Reserve Dumping, Storage.** No trash, ashes, dirt, rock, landscape trimmings, waste or other refuse may be dumped or left on Reserve A. All trash containers shall be stored out of sight except on days when trash pick-up is scheduled. No building material shall be stored and no equipment or machinery shall be placed or operated upon any Lot, except as is contemporaneously necessary for the construction or maintenance of improvements on the Property in accordance with this Declaration.

5.5 **Vehicle Storage.** No boat, trailer of any type, camper, recreational vehicle, personal watercraft, or any other vehicle of any type or description other than vehicles operated by customers visiting the Property in the ordinary course of business may be stored or permanently, continually or regularly parked for more than forty-eight (48) continuous hours nor shall such items continue a consistent, cumulative presence on the Property.

ARTICLE VI USE RESTRICTIONS, EASEMENTS AND ACCESS

6.1 **Public Utility and Floodway Easements Dedicated.** Easements for the installation and maintenance of all access, public utilities and for drainage on Lots are dedicated as shown on the recorded Plat of the Property or otherwise of record.

6.2 **Easements in Favor of Association.** Declarant specifically reserves to the Association, their successors and assigns, a perpetual, nonexclusive easement and right-of-way over the Property for the purposes of constructing, maintaining, repairing, replacing and rebuilding pipes, drains, mains and/or utilities for the purpose of conveying gas, water and sewage through the Property, together with the right to excavate and level ditches and/or trenches for the location of such pipes, drains, mains and utilities and to maintain and improve Reserve A. The right to exercise the foregoing easement shall include the obligation to provide reasonable notice to the Lot Owner, to repair any damage to a Lot or Improvements thereon resulting from the use of such easement in a workmanlike manner, and to minimize any disruption to Lot access.

6.3 **Access Easements.** Lot 1 and Lot 2 of Block A share a common boundary and Lot 2 and Lot 3 of Block A share a common boundary. There shall be vehicular access to Lots 1,

2 and 3 via the Critical Access Drive. Additionally, there shall be an easement running north from the Critical Access Drive, continuing north across the Joint Access Easement for the purpose of vehicular access to Rock Road by each of the Lots on the Property, subject to the terms of this Declaration.

6.3.1 The Declarant (as the current Owner of Lot 1 hereby grants and conveys to the Owners of Lots 2 and 3 and their respective successors and assigns (including without limitation, employees, agents and invitees), as an easement appurtenant to Lots 2 and 3, a permanent, non-exclusive easement and right-of-way for the purpose of pedestrian and vehicular (including, but not limited to, tractor trailer delivery trucks, having a total length of 67 feet with 53 feet trailers) ingress, egress, passage, and traffic upon, over, across, and through the Joint Access Easement located on Lot 1. The Owner of Lot 1 hereby reserves the right to use the foregoing easement areas for all purposes that will not interfere with the full enjoyment of the rights granted hereby. The Owner of Lot 1 shall not alter, relocate or close the portion of the Joint Access Easement located on Lot 1 without the prior written consent of the Owners of Lots 2 and 3.

6.3.2 The Declarant (as the current Owner of Lot 2) hereby grants and conveys to the Owners of Lots 1 and 3 and their respective successors and assigns (including without limitation, employees, agents and invitees), as an easement appurtenant to Lots 1 and 3, a permanent, non-exclusive easement and right-of-way for the purpose of pedestrian and vehicular (including, but not limited to, tractor trailer delivery trucks, having a total length of 67 feet with 53 feet trailers) ingress, egress, passage, and traffic upon, over, across, and through the Critical Access Drive and Joint Access Easement located on Lot 2. The Owner of Lot 2 hereby reserves the right to use the foregoing easement areas for all purposes that will not interfere with the full enjoyment of the rights granted hereby. The Owner of Lot 2 shall not alter, relocate or close the portions of the Critical Access Drive and/or Joint Access Easement located on Lot 2 without the prior written consent of the Owners of Lots 1 and 3.

6.3.3 The Critical Access Drive and the Joint Access Easement are for vehicular access only (including, without limitation, tractor trailer delivery trucks, having a total length of 67 feet with 53 feet trailers) and shall in no event be considered an easement for parking vehicles or other use in a manner that prevents any Lot Owner from unrestricted use of the Critical Access Drive and/or the Joint Access Easement.

6.3.4 Each of the Owners of Lots 1, 2 and 3 of Block A shall use their Lots and the Critical Access Drive and Joint Access Easement in such manner that will not interfere with the other Owners' non-exclusive use of the Critical Access Drive and Joint Access Easement and further agree that they will not maintain or create a nuisance in their respective use of the Critical Access Drive and Joint Access Easement.

6.3.5 Notwithstanding any provision in this Declaration to the contrary, in the event vehicular access to Lot 3 is obstructed due to an obstruction on Lot 2 (including, but not limited to, the Critical Access Drive) or an activity of any Owner of Lots 1 or 2 (or their respective agents or invitees) (each such event, a "**Critical Access Drive Default**"), the Owner of Lot 3 may notify the Owner of Lot 1 or 2 (as applicable) by any

means reasonable under the circumstances, including via facsimile or telephone, of the Critical Access Drive Default and demand that the Critical Access Drive Default be remedied. If, after 24 hours after such notice has been provided, Owner of Lot 1 or 2 (as applicable) has not remedied the Critical Access Drive Default or commenced to remedy the Critical Access Drive Default and thereafter remedies such Critical Access Drive Default within 24 hours, the Owner of Lot 3 shall have the right (but not the obligation) to remedy the Critical Access Drive Default (including the right to enter upon Lot 2) and shall be reimbursed by the Owner of Lot 1 or 2 (as applicable) for the reasonable costs for such remedy in accordance with the provisions of Section 4.3 above.

6.4 Detention and Drainage Easement. Subject to the terms and conditions set forth in this Agreement, Declarant and the Association (as the current or future owners of Reserve A) hereby grants and conveys to the Owners of Lots 1, 2, and 3 and their respective successors and assigns, as an easement appurtenant to Lots 1, 2, and 3, a perpetual, exclusive easement over and across Reserve A, as may be necessary for the purposes of using, maintaining, repairing and replacing storm water pipes, connections and related improvements (as the applicable Owner may require) connecting Lots 1, 2, and 3 to storm drainage pipes and the detention pond (the “**Detention Pond**”) situated on Reserve A (collectively, “**Detention Facilities**”), together with the right of inflow into and outflow out of the Detention Pond and Detention Facilities. The Detention Pond and the portion of the Detention Facilities located on Reserve A shall not be altered, removed or relocated without the prior written consent of all of the Owners of Lots 1, 2, and 3.

6.5 Utility Easements.

6.5.1 Subject to the terms and conditions set forth in this Agreement, the Declarant (as the current Owner of Lot 1) hereby grants and conveys to the Owners of Lots 2 and 3 and their successors and assigns, as an easement appurtenant to Lots 2 and 3, a non-exclusive easement over, under and across Lot 1 as may be necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of utility lines, connections and related improvements (collectively, “**Utility Lines**” and individually, a “**Utility Line**”), together with the right of ingress and egress for the foregoing purposes. Utility Lines include, but are not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The Owner of Lot 1 shall have the right at any time to relocate a Utility Line located upon its Property upon 30-days prior written notice the Owner of the of Lot which is benefitted by such Utility Line; provided, however, that such relocation shall not interfere with or diminish the utility service to such benefitted Owner; shall not reduce or unreasonably impair the usefulness or function of such Utility Line; shall be performed without cost or expense to such benefitted Owner; and shall be completed using materials and design standards which equal or exceed those originally used. The Owner of Lot 2 or 3 (as applicable) shall install, maintain and replace, at its sole cost and expense and in a good condition, its Utility Lines that are located on Lot 1 (unless the provider of the service or a governmental or quasi-governmental authority has agreed to maintain such Utility Line). Any maintenance and repair of Utility Lines located on the Lot 1 shall be performed in such a manner as to cause as little disturbance in the use of Lot 1 as is practicable under the circumstances. Following the Owner of Lot 2 or 3 (as applicable)

installation, maintenance or replacement of a Utility Line on Lot 1, the Owner of Lot 2 or 3 (as applicable) shall restore the affected portion of Lot 1 to a condition equal to or better than the condition which existed prior to commencement of such work.

6.5.2 Subject to the terms and conditions set forth in this Agreement, the Declarant (as the current Owner of Lot 2) hereby grants and conveys to the Owners of Lots 1 and 3 and their successors and assigns, as an easement appurtenant to Lots 1 and 3, a non-exclusive easement over, under and across Lot 2 as may be necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of utility lines, connections and related improvements (collectively, "**Utility Lines**" and individually, a "**Utility Line**"), together with the right of ingress and egress for the foregoing purposes. Utility Lines include, but are not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The Owner of Lot 2 shall have the right at any time to relocate a Utility Line located upon its Property upon 30-days prior written notice the Owner of the of Lot which is benefitted by such Utility Line; provided, however, that such relocation shall not interfere with or diminish the utility service to such benefitted Owner; shall not reduce or unreasonably impair the usefulness or function of such Utility Line; shall be performed without cost or expense to such benefitted Owner; and shall be completed using materials and design standards which equal or exceed those originally used. The Owner of Lot 1 or 3 (as applicable) shall install, maintain and replace, at its sole cost and expense and in a good condition, its Utility Lines that are located on Lot 2 (unless the provider of the service or a governmental or quasi-governmental authority has agreed to maintain such Utility Line). Any maintenance and repair of Utility Lines located on the Lot 2 shall be performed in such a manner as to cause as little disturbance in the use of Lot 2 as is practicable under the circumstances. Following the Owner of Lot 1 or 3 (as applicable) installation, maintenance or replacement of a Utility Line on Lot 2, the Owner of Lot 1 or 3 (as applicable) shall restore the affected portion of Lot 2 to a condition equal to or better than the condition which existed prior to commencement of such work.

6.5.3 Subject to the terms and conditions set forth in this Agreement, the Declarant (as the current Owner of Lot 3) hereby grants and conveys to the Owners of Lots 1 and 2 and their successors and assigns, as an easement appurtenant to Lots 1 and 2, a non-exclusive easement over, under and across Lot 3 as may be necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of utility lines, connections and related improvements (collectively, "**Utility Lines**" and individually, a "**Utility Line**"), together with the right of ingress and egress for the foregoing purposes. Utility Lines include, but are not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The Owner of Lot 3 shall have the right at any time to relocate a Utility Line located upon its Property upon 30-days prior written notice the Owner of the of Lot which is benefitted by such Utility Line; provided, however, that such relocation shall not interfere with or diminish the utility service to such benefitted Owner; shall not reduce or unreasonably impair the usefulness or function of such Utility Line; shall be performed without cost or expense to such benefitted Owner; and shall be completed using materials and design standards which equal or exceed those originally used. The Owner of Lot 1 or 2 (as applicable) shall install, maintain and replace, at its sole cost and expense and in a

good condition, its Utility Lines that are located on Lot 3 (unless the provider of the service or a governmental or quasi-governmental authority has agreed to maintain such Utility Line). Any maintenance and repair of Utility Lines located on the Lot 3 shall be performed in such a manner as to cause as little disturbance in the use of Lot 3 as is practicable under the circumstances. Following the Owner of Lot 1 or 2 (as applicable) installation, maintenance or replacement of a Utility Line on Lot 3, the Owner of Lot 1 or 2 (as applicable) shall restore the affected portion of Lot 3 to a condition equal to or better than the condition which existed prior to commencement of such work.

6.6 **Temporary Construction Easement.** The Declarant (as the current Owner of Lot 2) hereby grants and conveys to the Owner of Lot 3 and its successors and assigns, as an easement appurtenant to Lot 3, a non-exclusive temporary construction easement and right-of-way for the benefit of Lot 3, to the extent needed in accordance with good construction practices, but only during a period of construction on Lot 3 (and the Owner of Lot 3's construction of the Critical Access Drive), on, over, across and through the areas defined as set out on **Exhibit B**, attached hereto and made a part hereof, referred to as the "**Joint Temporary Construction Easement**". The Joint Temporary Construction Easement will be granted for the use of the Owner of Lot 3, the Owners of Lots 1 and 2, and the City of Derby in constructing improvements (including, without limitation, the Owner of Lot 3's construction of the Critical Access Drive) on the Lots 1, 2, and 3. The Joint Temporary Construction Easement will provide a temporary means of access for construction vehicles to and from Lots 1, 2, and 3, for the purpose of facilitating construction on Lots 1, 2, and 3. Each party and contractor used by each party will be responsible for any damage caused to the Lots 1, 2 or 3, and each such party and contractor used by such party will be obligated to restore the Lots 1, 2, or 3 to substantially the same condition as existed prior to its use as permitted under the Joint Temporary Construction Easement. Notwithstanding any provision in this Declaration to the contrary, any Owners' use of the Joint Temporary Construction Easement shall at no time (i) block access or visibility to any of the Lots or the signage thereon, (ii) obstruct or interfere with the business operations on the Lots and/or any construction activities on any of the Lots, or (iii) store construction vehicles or materials on the Joint Temporary Construction Easement.

ARTICLE VII ADDITIONAL LAND

7.1 **Annexation of Additional Land.** The Association (by a writing signed by all of the Members) may, from time to time, annex, include additional land into the Property, add or include additional land within the Association. Upon such annexation or transfer, such land shall become subject to the terms and conditions of this Declaration by the execution and filing for recordation with the Sedgwick County Register of Deeds of an instrument expressly stating an intention to so annex or transfer such land and describing the real property to be so annexed or transferred.

ARTICLE VIII MISCELLANEOUS

8.1 **Provisions Binding on Grantees.** The Association and each grantee hereafter of

any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of the Property, accepts the same subject to all of the terms, conditions, restrictions, duties and obligations and subject to the various rights and powers of the Association and Declarant provided for in this Declaration. This Declaration shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assigns) of the Owners.

8.2 **Interpretations of Restrictions.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties, provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Lot site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of the Declaration shall control.

8.3 **Construction and Validity of Restrictions.** All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

8.4 **Waiver and Exceptions.** The failure by the Association or any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

8.5 **Severability.** All of the covenants, conditions and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such covenants, conditions or restrictions, or any part thereof, is invalid or for any reason becomes unenforceable, no other covenant, condition or restriction or any part thereof, shall be affected or impaired.

8.6 **Titles.** All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

8.7 **Successors-in-Interest.** Reference herein to the Association or Owner shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

8.8 **Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by all of the Owners of Lots 1, 2, and 3, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part. Notwithstanding the foregoing, all easements set forth in this Declaration shall be perpetual.

8.9 **Amendments.** No change, amendment, termination or attempted waiver of any of the provisions of this Declaration shall be effective unless in writing and signed and recorded by all Owners of Lots 1, 2, and 3.

8.10 **Mortgage Protection Clause.** No breach of any covenant, condition or restriction herein contained, nor the enforcement of any lien provided for herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale.

8.11 **No Merger.** All of the provisions of this Declaration are for the mutual benefit and protection of the present and all future Owners of the Property; and if there should at any time be common ownership of any of the Property, or any estate therein then it is the intention of the Declarant that there be no merger into the respective fee simple estates of the rights and benefits and the obligations and burdens of this Declaration, but rather that such rights and benefits and such obligations and burdens shall be separately preserved for the benefit of all future Owners of the fee simple estates in the Property.

8.12 **Termination of Liability Upon Transfer.** If the Owner of a Lot should transfer its fee simple interest (or any portion thereof) in and ownership of such Lot, then the obligation and liability of such Owner for the performance or breach of any covenant or provision contained in this Declaration, occurring after the date of such transfer, shall automatically be terminated; such Owner upon transfer shall cease to be an Owner and the transferee shall become an Owner under this Declaration and by the acceptance of the conveyance of such fee simple interest, shall automatically be deemed to have accepted, assumed and agreed to observe or perform all such covenants or provisions after the date of such transfer.

8.13 **Covenants Run With the Land.** It is intended that the covenants, easements, and restrictions as set forth in this Declaration, shall run with the land. If any portion of the Property is subdivided and sold, any obligation or expense attributed to a subdivided parcel shall be deemed an expense of such subdivided parcel and the then Owner thereof.

8.14 **Defaults.** If any Owner or the Association (the "**Defaulting Party**") should fail to observe any of the terms, conditions, restrictions or provisions of, or should fail to perform any of its covenants or obligations under this Declaration (including, without limitation, the Association's obligation to maintain Reserve A, the Detention Pond, and the Detention Facilities) within a period of 30 days after any other Owner (the "**Non-Defaulting Owner**") has

given to the Defaulting Party written notice thereof, then the Defaulting Party shall be in default under this Declaration; provided that if the obligation is of such a nature that the same cannot, with due diligence, be reasonably performed within such 30-day period, then such default shall be deemed to have been cured if the Defaulting Party commences such performance within such 30-day period and thereafter undertakes and proceeds with due diligence to complete the same and does complete the same within a reasonable time. If a default has occurred and is not cured within the time period specified in this Section 8.14, then any of the Non-Defaulting Parties shall have all of the rights and remedies afforded to them by law and also all of the rights and remedies set forth in Section 8.15 below (whether or not they are expressly provided by statute or recognized by judicial precedent), any one or more of which may be exercised and enforced independently or concurrently at any time that such default remains uncured, without waiving any of the Non-Defaulting Parties' other rights and remedies, and all of which shall, to the extent applicable, survive the termination of any right granted in this Declaration.

8.15 **Remedies.**

8.15.1 **Cure.** Following the expiration of the applicable cure period, any of the Non-Defaulting Parties may, at its election, cure any default of the Defaulting Party under this Declaration; and if the Non-Defaulting Party should do so, then it shall be entitled to be reimbursed for all reasonable and documented costs and expenses expended by it in connection therewith, together with interest ("**Interest**") thereon at the lower of (i) the rate of 10% per annum, or (ii) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full. Such costs, expenses and Interest shall be payable upon demand and presentation of such documentation. Any provision of this Declaration to the contrary notwithstanding, all sums due from a Party under the provisions of this Section of this Declaration shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time encumbering the Property of the Defaulting Party, and to the rights of the holder or holders of any indebtedness secured by the same.

8.15.2 **Civil Actions.** Following the expiration of the applicable cure period, the Non-Defaulting Party may bring an action against the Defaulting Party for the specific performance of any obligation undertaken by the Defaulting Party in this Declaration, for injunctive or other equitable relief, or for damages in any court of competent jurisdiction for Sedgwick County, Kansas, in order to enforce the rights and remedies available to the Non-Defaulting Party.

8.16 **Farming Activities.** Notwithstanding any provision within this Declaration to the contrary, the respective Owner of each Lot reserves the right to conduct Farming Activities (defined below) upon the respective Lot owned by such Owner until such Lot is commercially developed. The right to conduct such Farming Activities shall automatically cease upon the commercial development of such Lot. The term "Farming Activities" shall be limited to solely the reasonable planting and harvesting of crops commonly farmed in the Derby, Kansas region. All such Farming Activities shall be performed and maintained in a good and slightly condition. Notwithstanding any provision in this Declaration to the contrary, in no event shall (i) such Farming Activities interfere with the business (or construction) operations conducted on the

other Lots, and (ii) any animals, livestock or poultry of any kind be raised, bred or kept within the Property. If such Farming Activities cause any dirt and/or debris to be placed on the Critical Access Drive, then the Owner performing such Farming Activities shall, at its sole cost and expense, remove such dirt and/or debris. Further, if any Farming Activities cause any damage or unreasonable wear and tear to the Critical Access Drive, then the Owner performing such Farming Activities shall, at its sole cost and expense, be responsible for the repair of such damage and/or unreasonable wear and tear.

8.17 **Estoppel Certificate.** Each Owner, within fifteen (15) business days of a written request from another Owner, shall execute, acknowledge and deliver an estoppel certificate, in a mutually acceptable form, certified to such requesting Owner or any prospective purchaser, or mortgagee designated by such requesting Owner, without charge, certifying that (a) if true, this Declaration is in full force and effect, without modification (or if there have been modifications, identifying the modifications); (b) to the certifying Owner's actual knowledge, without any investigation or inquiry, there are no existing defaults of any other Owner, or if there are outstanding defaults, the certifying Owner shall describe them; (c) there exist no outstanding disputes relative to amounts payable by or to such Owner (or if so, setting forth the nature and amount of the dispute); and (d) such other information concerning the status of this Declaration or the performance of the Owners of their respective obligations hereunder as may be reasonably requested.

8.18 **Enforcement.**

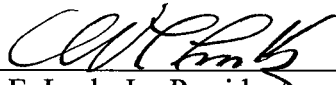
8.18.1 The Owner(s) of any Lot or the Association shall have the right to enforce or to prevent the breach by any proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, shall be brought exclusively in the Sedgwick County District Court to the exclusion of all other courts and tribunals.

8.18.2 **Attorneys' Fees and Costs.** The Association or any Owner shall have the right to include in such claim for relief a reasonable sum for attorney's fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants, conditions and restrictions hereunder.

[Signature and Acknowledgement Page Follows]

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

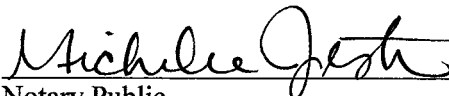
Rock Road Commercial, Inc.,
a Kansas corporation

By 
W. E. Lusk, Jr., President

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on the 23rd day of June, 2015, before me, the undersigned, a Notary Public, came W. E. Lusk, Jr., as President of Rock Road Commercial, Inc., to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf, and as the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.


Notary Public

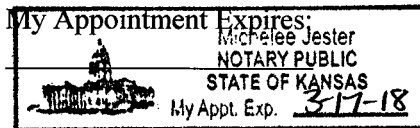


EXHIBIT A
Site Plan

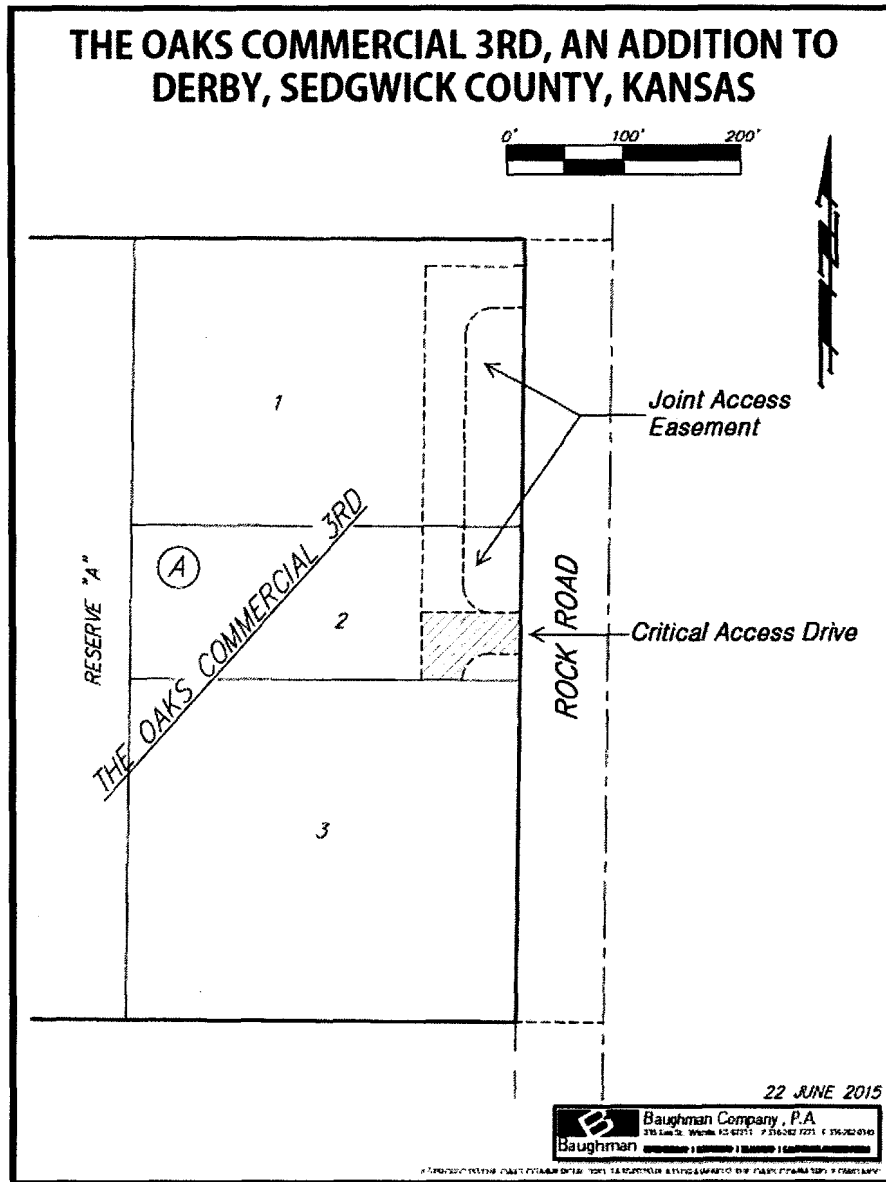


EXHIBIT B
Joint Temporary Construction Easement

That part of Lots 2 and 3, Block A, The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Lot 2; thence N00°47'23"E along the east line of said Lot 2, 13.00 feet for a point of beginning; thence N89°40'00"W parallel with the lot line common to said Lots 2 and 3, 39.00 feet; thence S00°47'23"W parallel with the east line of said Lot 2, 13.00 feet to the intersection with the lot line common to said Lots 2 and 3; thence continuing S00°47'23"W parallel with the east line of said Lot 3, 10.00 feet; thence N89°40'00"W parallel with the lot line common to said Lots 2 and 3, 55.00 feet; thence N00°47'23"E parallel with the east line of said Lot 3, 10.00 feet to the intersection with the lot line common to said Lot 2 and Lot 3; thence continuing N00°47'23"E parallel with the east line of said Lot 2, 68.00 feet; thence S89°40'00"E parallel with the lot line common to said Lots 2 and 3, 94.00 feet to the intersection with the east line of said Lot 2; thence S00°47'23"W along the east line of said Lot 2, 10.00 feet; thence N89°40'00"W parallel with the lot line common to said Lots 2 and 3, 84.00 feet; thence S00°47'23"W parallel with the east line of said Lot 2, 58.00 feet to the intersection with the lot line common to said Lots 2 and 3; thence S89°40'00"E along the lot line common to said Lots 2 and 3, 35.00 feet; thence N00°47'23"E parallel with the east line of said Lot 2, 23.00 feet; thence S89°40'00"E parallel with the lot line common to said Lots 2 and 3, 49.00 feet to the intersection with the east line of said Lot 2; thence S00°47'23"W along the east line of said Lot 2, 10.00 feet to the point of beginning.

EXHIBIT C
Critical Access Drive Legal Description

That part of Lot 2, Block A, The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas described as follows: Commencing at the northeast corner of Lot 1 in said Block A; thence $S00^{\circ}47'23''W$ along the east line of said Lot 1, 23.00 feet; thence continuing $S00^{\circ}47'23''W$ along the east line of said Lot 1, 35.00 feet; thence $N89^{\circ}40'00''W$, 26.18 feet to the point of curvature of a tangent curve to the left; thence westerly, southwesterly, and southerly along said curve, having a central angle of $89^{\circ}32'37''$ and a radius of 23.00 feet, an arc distance of 35.95 feet, (having a chord length of 32.40 feet bearing $S45^{\circ}33'41''W$), to the point of tangency of said curve; thence $S00^{\circ}47'23''W$ parallel with the east line of said Lot 1, 163.18 feet to the intersection with the lot line common to said Lots 1 and 2; thence continuing $S00^{\circ}47'23''W$ parallel with the east line of said Lot 2, 49.82 feet to the point of curvature of a tangent curve to the left; thence southerly, southeasterly, and easterly along said curve, having a central angle of $90^{\circ}27'23''$ and a radius of 23.00 feet, an arc distance of 36.31 feet, (having a chord length of 32.66 feet bearing $S44^{\circ}26'19''E$), to the point of tangency of said curve; thence $S89^{\circ}40'00''E$ parallel with the south line of said Lot 2, 25.82 feet to a point on the east line of said Lot 2, and for a point of beginning; thence $S00^{\circ}47'23''W$ along the east line of said Lot 2, 35.00 feet; thence $N89^{\circ}40'00''W$ parallel with the south line of said Lot 2, 26.18 feet to the point of curvature of a tangent curve to the left; thence westerly, southwesterly, and southerly along said curve, having a central angle of $89^{\circ}59'53''$ and a radius of 23.00 feet, an arc distance of 36.13 feet, (having a chord length of 32.53 feet bearing $S45^{\circ}20'03''W$), to the end of said curve, the end of said curve being a point on the south line of said Lot 2 and $N89^{\circ}40'00''W$, 49.00 feet from the southeast corner of said Lot 2; thence $N89^{\circ}40'00''W$ along the south line of said Lot 2, 35.00 feet; thence $N00^{\circ}47'23''E$ parallel with the east line of said Lot 2, 58.00 feet; thence $S89^{\circ}40'00''E$ parallel with the south line of said Lot 2, 84.00 feet to the point of beginning.

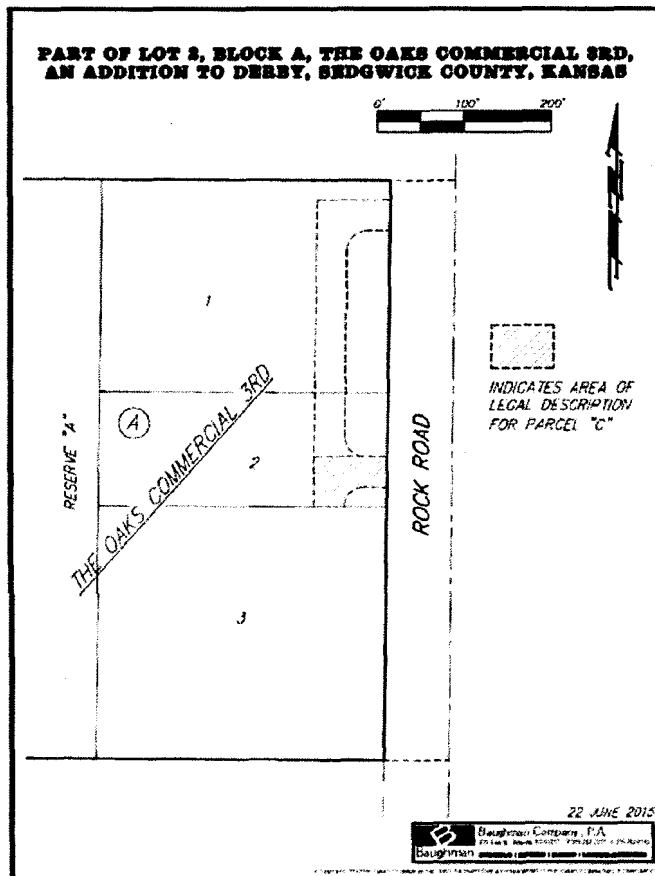


EXHIBIT D**Joint Access Easement Legal (Portion Situated on Lot 1)**

That part of Lot 1, Block A, The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas described as follows: Commencing at the northeast corner of said Lot 1; thence $S00^{\circ}47'23''W$ along the east line of said Lot 1, 23.00 feet for a point of beginning; thence continuing $S00^{\circ}47'23''W$ along the east line of said Lot 1, 35.00 feet; thence $N89^{\circ}40'00''W$, 26.18 feet to the point of curvature of a tangent curve to the left; thence westerly, southwesterly, and southerly along said curve, having a central angle of $89^{\circ}32'37''$ and a radius of 23.00 feet, an arc distance of 35.95 feet, (having a chord length of 32.40 feet bearing $S45^{\circ}33'41''W$), to the point of tangency of said curve; thence $S00^{\circ}47'23''W$ parallel with the east line of said Lot 1, 163.18 feet to the intersection with the lot line common to said Lot 1 and Lot 2 in said Block A; thence $N89^{\circ}40'00''W$ along the lot line common to said Lots 1 and 2, 35.00 feet; thence $N00^{\circ}47'23''E$ parallel with the east line of said Lot 1, 221.00 feet; thence $S89^{\circ}40'00''E$, 84.00 feet to the point of beginning.

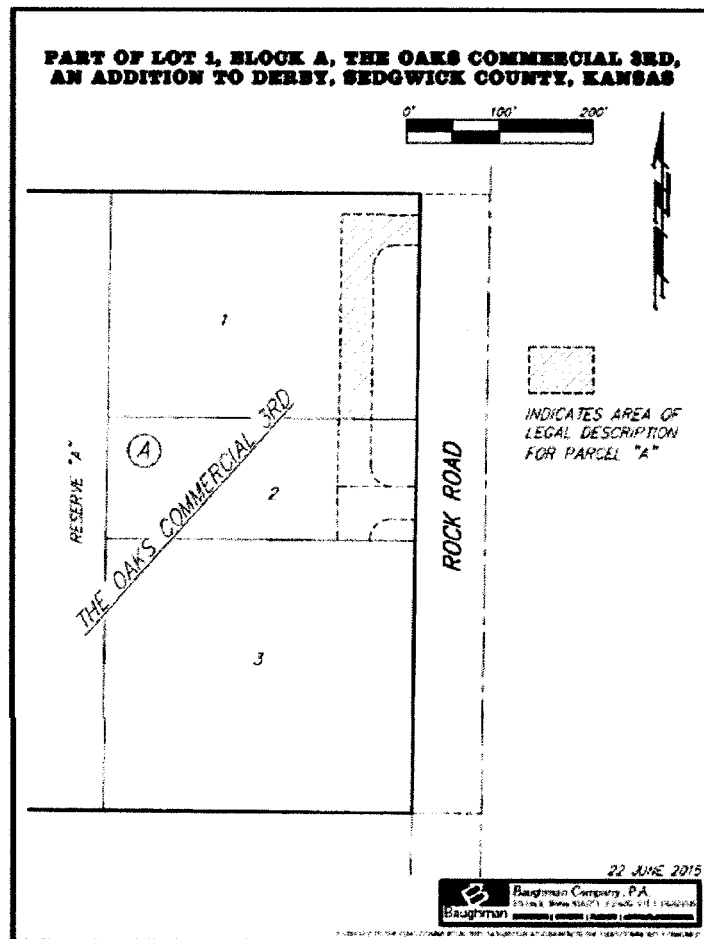
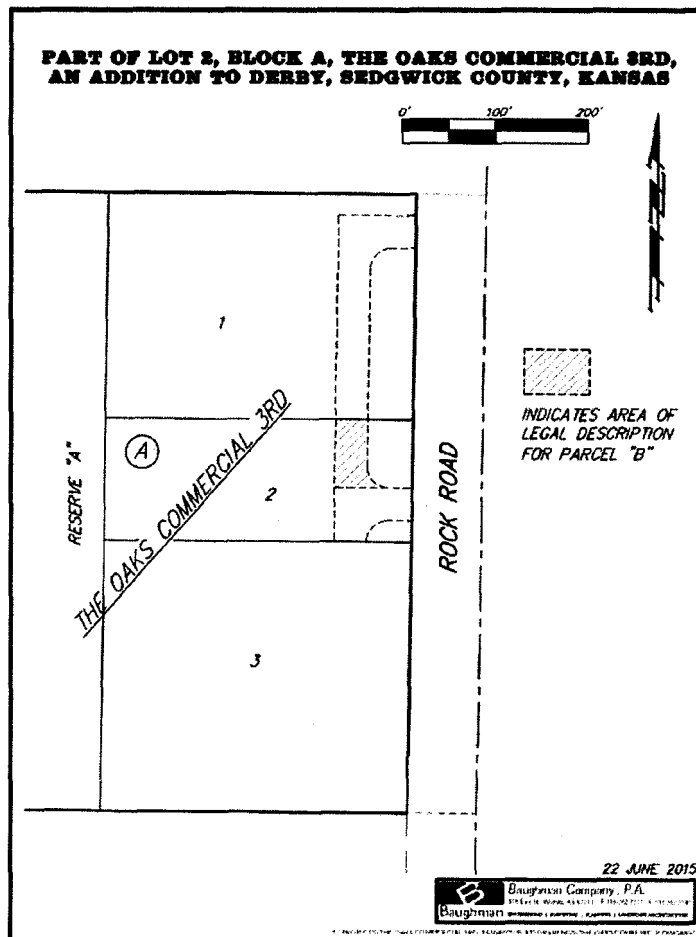


EXHIBIT E**Joint Access Easement Legal (Portion Situated on Lot 2)**

That part of Lot 2, Block A, The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas described as follows: Commencing at the northeast corner of Lot 1 in said Block A; thence $S00^{\circ}47'23''W$ along the east line of said Lot 1, 23.00 feet; thence continuing $S00^{\circ}47'23''W$ along the east line of said Lot 1, 35.00 feet; thence $N89^{\circ}40'00''W$, 26.18 feet to the point of curvature of a tangent curve to the left; thence westerly, southwesterly, and southerly along said curve, having a central angle of $89^{\circ}32'37''$ and a radius of 23.00 feet, an arc distance of 35.95 feet, (having a chord length of 32.40 feet bearing $S45^{\circ}33'41''W$), to the point of tangency of said curve; thence $S00^{\circ}47'23''W$ parallel with the east line of said Lot 1, 163.18 feet to the intersection with the lot line common to said Lots 1 and 2, and for a point of beginning; thence continuing $S00^{\circ}47'23''W$ parallel with the east line of said Lot 2, 49.82 feet to the point of curvature of a tangent curve to the left; thence southerly, southeasterly, and easterly along said curve, having a central angle of $90^{\circ}27'23''$ and a radius of 23.00 feet, an arc distance of 36.31 feet, (having a chord length of 32.66 feet bearing $S44^{\circ}26'19''E$), to the point of tangency of said curve; thence $N89^{\circ}40'00''W$ along the westerly extension of the line tangent to the end of the last described curve and parallel with the lot line common to said Lots 1 and 2, 58.18 feet; thence $N00^{\circ}47'23''E$ parallel with the east line of said Lot 2, 73.00 feet to the intersection with the lot line common to said Lots 1 and 2; thence $S89^{\circ}40'00''E$ along the lot line common to said Lots 1 and 2, 35.00 feet to the point of beginning.





Sedgwick County
Register of Deeds - Bill Meek
Doc. #/Flm-Pg: 29536789

Receipt #: 1938421
Pages Recorded: 13

Recording Fee: \$108.00

Cashier: KVENATOR
Date Recorded: 06/25/2015 02:50:00 PM

Authorized By: 



**DECLARATION
OF
RESTRICTIONS ON USES
WITHIN
THE OAKS COMMERCIAL 3RD ADDITION**

THIS DECLARATION OF RESTRICTIONS ON USES WITHIN THE OAKS COMMERCIAL 3RD ADDITION ("Declaration") is made effective the 23rd day of June, 2015, by Rock Road Commercial, Inc., a Kansas corporation (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of the following described land (hereinafter referred to as the "Property") located in Sedgwick County, Kansas, to-wit:

**Lots 1, 2 and 3, Block A,
Including platted Reserve A
The Oaks Commercial 3rd, an Addition to Derby, Sedgwick County, Kansas**

such real property being hereinafter referred to as the "Property". The term "Lot" shall mean only Lots 1, 2, and 3 and the term "Lot" shall expressly not include Reserve A. Individually each of Lots 1, 2 or 3 shall be referred to herein as a "Lot" and collectively as the "Lots".

B. Declarant anticipates that it will convey the following described land (hereinafter referred to as the "Grocery Lot"):

**Lot 3, Block A,
The Oaks Commercial 3rd, an Addition to
Derby, Sedgwick County, Kansas**

C. The following portions of the Property shall be referred to herein as the "Residual Lots"):

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**Lots 1 and 2, Block A,
The Oaks Commercial 3rd, an Addition to
Derby, Sedgwick County, Kansas**

D. Declarant further anticipates that it will convey the platted Reserve A ("Reserve A") within the Property, to the Oaks Commercial 3rd Owners' Association (the "Association"), and will convey the Lots 1, 2, and 3, Block A, within the Property to one or more persons or entities who will become record title owner of a fee or undivided fee interest in a Lot, such persons or entities referred as to "Owner" or "Owners".

E. It is the purpose and intention of the Declarant and of this Declaration that the Property be held and/or conveyed subject to the provisions of this Declaration.

F. In order to ensure the proper development of the Property and to provide for the protection of the value of the Property and the protection of the rights of the Property owners, it is necessary to establish binding use restrictions, covenants, and conditions applicable to the Property which shall be binding upon any person or entity acquiring an interest therein, their grantees, successors, heirs, legal representatives and assigns.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held and used subject to the following restrictions, covenants and conditions, all of which are for the purpose of promoting the development and protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties having or acquiring any right, title or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of and burden each owner thereof.

**ARTICLE I
USE RESTRICTIONS**

1.01 **Use Restrictions on the Residual Lots and Reserve A.** Declarant covenants and agrees, for the benefit of the Grocery Lot, that neither Declarant, nor any successor in interest will use, lease, rent, sell or otherwise permit the Residual Lots and/or Reserve A to be owned, controlled, leased, used or occupied for the uses set forth in Exhibit A, attached hereto and made a part hereof.

1.02 **Use Restrictions on the Grocery Lot.** Declarant covenants and agrees, for the benefit of the Residual Lots, that neither Declarant, nor any successor in interest will use, lease, rent, sell or otherwise permit the Grocery Lot to be owned, controlled, leased, used or occupied for the uses set forth in Exhibit B, attached hereto and made a part hereof.

1.03 **Use Restrictions on the Grocery Lot, Lot 1 and Reserve A.** Declarant covenants and agrees, for the benefit of the Lot 2, that neither Declarant, nor any successor in interest will use, lease, rent, sell or otherwise permit the Grocery Lot, Lot 1 and/or Reserve A to be owned, controlled, leased, used or occupied for the uses set forth in Exhibit C, attached hereto and made a part hereof.

ARTICLE II

GENERAL PROVISIONS

2.01 **Provisions Binding on Grantees.** Declarant and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of the Property, accepts the same subject to all of the terms, restrictions, covenants, conditions, duties and obligations provided for in this Declaration. This Declaration shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assigns) of the Owners and the Declarant (as the owner of Reserve A).

2.02 **Interpretations of Restrictions.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties, provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any portion of the Property or upon the construction of buildings or structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of the Declaration shall control.

2.03 **Construction and Validity of Restrictions.** All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

2.04 **Waiver and Exceptions.** The failure by Declarant, the Association or any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

2.05 **Severability.** All of the covenants, conditions and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such covenants, conditions or restrictions, or any part thereof, is invalid or for any reason becomes unenforceable, no other covenant, condition or restriction or any part thereof, shall be affected or impaired.

2.06 **Titles.** All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

2.07 **Successors-in-Interest.** Reference herein to the Association, Declarant, or Owner shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

2.08 **Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association and any Owner of any portion of the Property, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by all of the Owners of Lots 1, 2, and 3, Block A within the Property has been recorded, agreeing to abolish or change these restrictions, covenants and conditions, in whole or in part. Notwithstanding the foregoing, if applicable law does not permit such duration, then the term of this Declaration shall run for the maximum time period permitted pursuant to applicable law.

2.09 **Amendments.** No change, amendment, termination or attempted waiver of any of the provisions of this Declaration shall be effective unless in writing and signed and recorded by all Owners of Lots 1, 2, and 3, Block A within the Property.

2.10 **Mortgage Protection Clause.** No breach of any covenant, condition or restriction herein contained, nor the enforcement of any lien provided for herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale.

2.11 **No Merger.** All of the provisions of this Declaration are for the mutual benefit and protection of the present and all future owners of the Property; and if there should at any time be common ownership of any of the Property, or any estate therein then it is the intention of the Declarant that there be no merger into the respective fee simple estates of the rights and benefits and the obligations and burdens of this Declaration, but rather that such rights and benefits and such obligations and burdens shall be separately preserved for the benefit of all future owners of the fee simple estates in the Property.

2.12 **Termination of Liability Upon Transfer.** If the Owner of a portion of the Property should transfer its fee simple interest (or any portion thereof) in and ownership of such Property, then the obligation and liability of the transferor for the performance or breach of any covenant or provision contained in this Declaration, occurring after the date of such transfer, shall automatically be terminated with respect to only the portion of the Property actually transferred; and the transferee, by the acceptance of the conveyance of such fee simple interest, shall automatically be deemed to have accepted, assumed and agreed to observe or perform all such covenants or provisions after the date of such transfer.

2.13 **Covenants Run With the Land.** It is intended that the restrictions, covenants, and conditions as set forth in this Declaration, shall run with the land. If any portion of the Property is subdivided and sold, any obligation or expense attributed to a subdivided parcel shall be deemed an expense of such subdivided parcel and the then owner thereof.

2.14 **Defaults.** If Declarant, any Owner or the Association (the "**Defaulting Party**") should fail to observe any of the terms, conditions, restrictions or provisions of, or should fail to perform any of its covenants or obligations under this Declaration within a period of 30 days after any other Owner and the Association (the "**Non-Defaulting Owner**") has given to the Defaulting Party written notice thereof, then the Defaulting Party shall be in default under this Declaration. If a default has occurred and is not cured within the time period specified in this Section 2.14, then any of the Non-Defaulting Parties shall have all of the rights and remedies afforded to them by law or in equity and also all of the rights and remedies set forth in Section 2.15 below (whether or not they are expressly provided by statute or recognized by judicial precedent), any one or more of which may be exercised and enforced independently or concurrently at any time that such default remains uncured, without waiving any of the Non-Defaulting Parties' other rights and remedies, and all of which shall, to the extent applicable, survive the termination of any right granted in this Declaration.

2.15 **Remedies.** Following the expiration of the applicable cure period, the Non-Defaulting Party may bring an action against the Defaulting Party for the specific performance of any obligation undertaken by the Defaulting Party in this Declaration, for injunctive or other equitable relief, or for damages in any court of competent jurisdiction for Sedgwick County, Kansas, in order to enforce the rights and remedies available to the Non-Defaulting Party.

2.16 **Enforcement.**

2.16.1 The Owner(s) of any portion of the Property and the Association shall have the right to enforce or to prevent the breach by any proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, shall be brought exclusively in the Sedgwick County District Court to the exclusion of all other courts and tribunals.

2.16.2 **Attorneys' Fees and Costs.** The Association and any Owner shall have the right to include in such claim for relief (and the Defaulting Owner shall be responsible for) a reasonable sum for attorney's fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants, conditions and restrictions hereunder.

2.16.3 **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of Kansas. For all litigation, disputes and controversies which may arise out of or in connection with this Declaration, the Owners hereby waive the right to trial by jury and consent to the jurisdiction of the courts in Kansas. In the event the Non-Defaulting Party brings or commences legal proceedings to enforce any of the terms of this Declaration, the Non-Defaulting Party, if successful, shall then be entitled to receive from the Defaulting Party, in every such action commenced, a reasonable sum as attorneys' fees and costs, including all fees and costs incurred upon any appeals, to be fixed by the court in the same action.

ARTICLE III
NOTICES; NOTICE OF TRANSFER

3.01 Notices. Any notice or other communication required or permitted to be given to an Owner under this Agreement shall be in writing and shall be deemed effective upon delivery (or refusal of delivery) when transmitted by one of the following methods to such Party at the address set forth in this Section 3.01: (a) via a nationally recognized overnight delivery service (such as FedEx or UPS); or (b) by certified mail, postage prepaid, return receipt requested. Any Owner may change its address for notice by giving written notice thereof to the other Owners at least ten (10) business days prior to the effective date of such change of address. The address of each Owner for notice initially is as follows:

If intended for the Owner of the Residual Lots, to:

Rock Road Commercial, Inc.
Attn: W.E. Lusk, Jr.
1608 E. Lewis
Wichita, Kansas 67211-1823

If intended for the Owner of the Grocery Lot, to:

Aldi Inc. (Kansas)
Attn: Director of Real Estate
10505 S. K7 Highway
Olathe, Kansas 66061

With a copy to:

Kayne Law Group
612 Park Street, Suite 100
Columbus, Ohio 43215
Attn: Alex P. Duprey

If intended for the Owner of Lot 2, following conveyance, to:

CGP Derby MF, LLC
Attn: Robert W. Buchalter
361 Summit Boulevard, Suite 110
Birmingham, Alabama 35243
Telephone: (205) 968-9263
Fax: (205) 968-9229

With a copy to:

Steve Gold
361 Summit Boulevard, Suite 110

Birmingham, Alabama 35243
Telephone: (205) 968-9263
Fax: (205) 968-9229

And a copy to:

Chad Post
Baker, Donelson, Bearman, Caldwell & Berowitz
Wells Fargo Tower
420 Twentieth Street North
Suite 1400
Birmingham, Alabama 35203
Telephone: (205) 244-3823
Fax: (205) 488-3823

3.02 Notice of Conveyance. If Declarant should convey its fee interest in and to the Residual Lots (or any portion thereof) to another person, it shall notify the Owner of the Grocery Lot of such conveyance at least ten (10) days prior to such transfer in the manner provided in Section 3.01 hereof. Such notice shall contain the name of the grantee and the address of such grantee for purposes of receiving notices hereunder.

[Signature and Acknowledgement Page Follows]

2015061209

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first
above written.

Rock Road Commercial, Inc.,
a Kansas corporation

By 
W. E. Lusk, Jr., President

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on the 23rd day of June, 2015, before me,
the undersigned, a Notary Public, came W. E. Lusk, Jr., as President of Rock Road Commercial,
Inc., to me known to be the same person who executed the within instrument of writing and such
person duly acknowledged to me the execution of the same, for and on behalf, and as the act and
deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official
seal, the day and year last above written.


Notary Public



EXHIBIT A**Use Restrictions on the Residual Lots and Reserve A**

Declarant covenants and agrees for the benefit of the Grocery Lot that neither Declarant nor any successor in interest will use, lease, rent, sell or otherwise permit any portion of the Residual Lots and/or Reserve A to be owned, controlled, leased, used or occupied for the uses set forth below:

Any use as a Retail Grocery Store. The term "**Retail Grocery Store**" shall mean a supermarket, meat market, grocery store, fruit and vegetable store or stand, frozen or otherwise processed food store and any store where more than 50 grocery items are sold for off-premises consumption. "Retail Grocery Store" shall not include a delicatessen, or any restaurant wherein prepared food is sold for on-premises consumption or for "take-out" consumption.

1. Any use which is a public or private nuisance
2. Any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness
3. Any use which produces obnoxious odors
4. Any use which produces noxious, toxic, caustic or corrosive fuel or gas
5. Any use which produces dust, dirt or fly ash in excessive quantities
6. Any use which produces fire, explosion or other damaging or dangerous hazard (including storage, display or sale of explosives or fireworks)
7. Any warehouse
8. Any assembling, manufacturing, industrial, distilling, refining, smelting, agriculture or mining operation
9. Living quarters, sleeping apartment or lodging rooms
10. Any establishment selling or exhibiting pornographic materials
11. A massage parlor or the business of "adult" materials, including without limitation, magazines, books, movies, videos, and photographs
12. Any mortuary, funeral home, crematorium, cemetery or similar facility
13. Any skating rink, bingo parlor, bowling alley, game room, pool or billiard parlor or room, game arcade or amusement center

14. Any lounge, tavern, night club, disco, discotheque, dance hall, strip show, or any establishment or business offering live entertainment of any kind. This restriction shall not include restaurants with live music
15. Any establishment which sells alcoholic beverages for one-site consumption, other than in connection with a pharmacy or full service restaurant
16. Pawn shops
17. Any flea market
18. Any carnival, amusement park or circus
19. Off-track betting sites
20. Any gymnasium, sport or health club or spa that requires a cross parking agreement
21. Any sale of new or used motor vehicles, trailers or mobile homes
22. Any banquet hall, auditorium or other place of public assembly
23. Any training or educational facility (including, but not limited to, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers)

EXHIBIT B**Use Restrictions on the Grocery Lot**

Declarant covenants and agrees for the benefit of the Residual Lots that neither Declarant nor any successor in interest will use, lease, rent, sell or otherwise permit any portion of the Grocery Lot to be owned, controlled, leased, used or occupied for the uses set forth below:

1. Any use which is a public or private nuisance
2. Any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness
3. Any use which produces obnoxious odors
4. Any use which produces noxious, toxic, caustic or corrosive fuel or gas
5. Any use which produces dust, dirt or fly ash in excessive quantities
6. Any use which produces fire, explosion or other damaging or dangerous hazard (including storage, display or sale of explosives or fireworks)
7. Any warehouse
8. Any assembling, manufacturing, industrial, distilling, refining, smelting, agriculture or mining operation
9. Living quarters, sleeping apartment or lodging rooms
10. Any establishment selling or exhibiting pornographic materials
11. A massage parlor or the business of "adult" materials, including without limitation, magazines, books, movies, videos, and photographs
12. Any mortuary, funeral home, crematorium, cemetery or similar facility
13. Any skating rink, bingo parlor, bowling alley, game room, pool or billiard parlor or room, game arcade or amusement center
14. Any lounge, tavern, night club, disco, discotheque, dance hall, strip show, or any establishment or business offering live entertainment of any kind. This restriction shall not include restaurants with live music

15. Any establishment which sells alcoholic beverages for one-site consumption, other than in connection with a pharmacy or full service restaurant
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17. Any flea market
18. Any carnival, amusement park or circus
19. Off-track betting sites
20. Any gymnasium, sport or health club or spa that requires a cross parking agreement
21. Any sale of new or used motor vehicles, trailers or mobile homes
22. Any banquet hall, auditorium or other place of public assembly
23. Any training or educational facility (including, but not limited to, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers)

EXHIBIT C**Use Restrictions on the Grocery Lot, Lot 1 and Reserve A**

Declarant covenants and agrees for the benefit of Lot 2 that neither Declarant nor any successor in interest will use, lease, rent, sell or otherwise permit any portion of the Grocery Lot, Lot 1 and/or Reserve A to be owned, controlled, leased, used or occupied by a tenant or occupant whose primary use under such lease or occupancy agreement shall be for the sale of mattresses and/or waterbeds. For purposes of this Exhibit C, a use shall be deemed a "primary use" if such tenant or occupant derives more than fifteen percent (15%) of its gross sales from such items.

Notwithstanding any provision in this Declaration to the contrary, the use restrictions set forth in this Exhibit C shall automatically terminate and be of no further force or effect in the event that Lot 2 is not operated for the sale of mattresses and/or waterbeds as the primary use for a period of more than two (2) consecutive years, excluding periods of closure due to force majeure.



Sedgwick County
Register of Deeds - Tonya Buckingham
Doc. #/Fim-Pg: 29785564

Receipt #: 2072499
Pages Recorded: 11
Cashier: leclark

Recording Fee: \$191.00

Authorized By: *Tonya Buckingham*
Date Recorded: 07/18/2018 11:16:01 AM

After Recording Return To:

Jay T. Shadwick
11040 Oakmont
Overland Park, Kansas 66210
(913) 498-3536

DECLARATION OF EASEMENTS COVENANTS, AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS ("Agreement") is made and entered into as of July 16, 2018, by **M Group Derby, LLC**, a Kansas limited liability company ("Declarant"). The address of Declarant is 301 N. Main, Suite 1400, Wichita, Kansas 67202.

WHEREAS, Declarant is the owner of that certain real property situated in the City of Derby, County of Sedgwick, State of Kansas, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, which real property is made up of two parcels, shown on the Site Plan attached hereto as **Exhibit B** ("Site Plan") and referred to herein individually as "**Parcel A**" and "**Parcel B**", and collectively as the "Parcels".

WHEREAS, Parcel A and Parcel B are currently owned by Declarant, but Declarant desires to impose certain easements upon the Parcels, and to establish certain covenants, conditions and restrictions with respect to said Parcels, for its benefit and for the mutual and reciprocal benefit and complement of Parcel A and Parcel B and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the 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 Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the Declarant on its behalf and its successors and assigns covenants and agrees as follows:

AGREEMENTS

1. **Definitions.** For purposes hereof:

(a) The term "Common Area" shall mean those portions of Parcel A and Parcel B that are outside of exterior walls of buildings or other structures from time to time located on the Parcels, and which are either unimproved, or are improved as (without limitation) parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements.

E-Recorded by Security 1st Title LLC

Deborah Beck 316.293.1688

File No. 2268619

(b) The term "Driveway" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits (including the "Access Openings"), in the location on the Parcels as shown cross-hatched or otherwise marked on the Site Plan attached hereto as **Exhibit B-1** and made a part hereof.

(c) The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property. Declarant is the current "Owner" of Parcel A and Parcel B.

(d) The term "Parcel" or "Parcels" shall mean Parcel A and Parcel B, and any future subdivisions thereof.

(e) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(f) The term "Site Plan" shall mean that site plan of the Parcels attached hereto as **Exhibit B-1** and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, the Declarant hereby grants, establishes, covenants and agrees that the Parcels, and all Owners and Permittees of the Parcels, 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 Owner's and Permittees of the Parcels:

(a) An easement for reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of the Common Area of Parcel B and the Common Area of Parcel A, as they exist from time to time, including, without limitation, the Driveway, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Common Area of such Parcels intended for such purposes, and to and from all abutting streets or rights of way furnishing access to such Parcels;

(b) There shall be no cross-parking easement between and among the Parcels, except as provided in writing by Declarant.

(c) An easement under and across those parts of the Common Areas that are not within any permissible building areas shown on the Site Plan, 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 Common Areas and each building from time to time located within 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 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 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. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Parcel (except for such parts

thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel.

2.2 Indemnification. Each Owner having rights with respect to an easement granted hereunder, shall indemnify and hold the Owner whose Parcel is subject to the easement harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Access Opening. The opening(s) and access point(s) contemplated between the Parcels for use of the Driveway is shown on the Site Plan and such opening(s) and access point(s) between the Parcels for use of the Driveway, as contemplated pursuant to paragraph 2.1(a) above, are hereinafter called the "Access Openings." The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Site Plan. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the Driveway for pedestrian and vehicular ingress and egress as set forth in paragraph 2.1 above. Except with respect to the Access Openings, each Owner shall be permitted to maintain curbing, landscaping or other improvements along the boundary line of its Parcel, consistent with the Site Plan and as long as such improvements do not contradict the purposes of this Agreement.

2.4 Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees 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 its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) 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 Permittees. 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 its Permittees. 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 its Permittees from all damages, losses, liens or claims attributable to the performance of such work.

3. Maintenance.

3.1 General. Until such time as improvements are constructed on a Parcel, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the building(s) located from time to time on its respective Parcel in good order, condition and repair. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), or (b) demolish and remove all portions of such damaged or

destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition.

3.3 Common Area. Each Owner of a Parcel covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained at its expense all Common Area located on its Parcel in good order, condition and repair. Following the construction of improvements thereon, maintenance of Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe and orderly condition. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the Common Area on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild such Common Area to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement). Each Owner reserves the right to alter, modify, reconfigure, relocate and/or remove the Common Areas or building areas on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to paragraph 2.1(a) shall not be closed or materially impaired; (ii) the Driveway and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners; and (iii) the same shall not violate any of the provisions and easements granted in paragraph 2.

3.4 Utilities. 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.

4. Construction of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on Parcel A or Parcel B, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements.

5. Restrictions.

5.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Agreement, it is expressly agreed that neither Parcel A nor Parcel B shall be used, directly or indirectly, for purposes of a theater; movie theater, auditorium, meeting hall, library or reading room or other place of assembly; automobile sales or repairs; bowling alley, pool hall or skating rink; bar serving alcoholic beverages (except as an incident to a restaurant operation); funeral parlor; massage parlor; hotel or lodging facilities; gun range; off track betting establishment (except incidental sales of state lottery tickets); a so-called "flea market" or other operation selling used goods (except excluding antiques, estate merchandise, "upscale merchandise" or consignment merchandise); any business or use which emits offensive odors, fumes, dust or vapor, or constitutes a public or private nuisance, or emits loud noise or sounds which are objectionable, or which creates a fire, explosive or other hazard; manufacturing facility; warehouse (except incidental to a retail operation); adult book store or similar store selling or exhibiting pornographic materials as a substantial part of its business; night club, discotheque or dance hall.

5.2 Sprint Exclusive. As long as Wireless Lifestyle, LLC is an occupant of Parcel A and operating a Sprint retail store on Parcel A, no Owner or Occupant of Parcel A or Parcel B (except for the Sprint retail store) shall operate any business for the sale or display of communication products and services including, but not limited to wireless communications products and services and their repair, long

and local distances products and services, cable television products and services, Internet access products and services, and any substitutes which are the technological evolution of the foregoing.

5.3 Chiropractic Exclusive. As long as a Future 5 Investments, LLC, or its successors or assigns, is an occupant of Parcel A and operating a chiropractic clinic on Parcel A, no Owner or Occupant of Parcel A or Parcel B (except for the Future 5 Investments, LLC or its successors or assigns) shall offer or provide chiropractic services.

6. Insurance. Throughout the term of this Agreement, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.2 above), death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming each other Owner.

7. 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.

8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B.

9. Remedies and Enforcement.

9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) 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.

9.2 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 Agreement 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 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Agreement 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 Wall Street Journal prime rate, plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on Parcel B, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the Wall Street Journal prime rate, plus two percent (2%), as above described.

9.3 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 Agreement 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 Office of the Register of Deeds of Sedgwick County, Kansas; 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 Office of the Register of Deeds of Sedgwick County, Kansas, 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.

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

9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. 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 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.

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Sedgwick County Register of Deeds and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B in accordance with paragraph 11.2 hereof.

11. Miscellaneous.

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

11.2 Amendment. Declarant agrees that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Sedgwick County Register of Deeds.

11.3 Consents. Wherever in this Agreement 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 Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

11.4 No Waiver. No waiver of any default or 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.

11.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venture partners or of any other association between the parties.

11.6 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.

11.7 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.

11.8 Separability. Each provision of this Agreement and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

11.9 Entire Agreement. This Agreement 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.

11.10 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. The notice addresses of the Declarant is as follows:

M Group Derby, LLC
301 N. Main, Suite 1400
Wichita, Kansas 67202

11.11 Governing Law. The laws of the State of Kansas shall govern the interpretation, validity, performance, and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

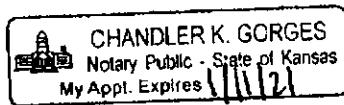
M Group Derby, LLC

By 
J. Douglas Malone, Manager

STATE OF KANSAS)
) ss
COUNTY OF SEDGWICK)

On this 16 day of July, 2018, before me appeared J. Douglas Malone, to me personally known, who, being by me duly sworn, did say that he is the Manager of M Group Derby, LLC, a Kansas limited liability company, and that said instrument was signed on behalf of said limited liability company, and said J. Douglas Malone acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.





Notary Public

My commission expires:

11/11/21

EXHIBIT A

Lot 1, Block A, The Oaks Commercial 2nd, An Addition to Derby Sedgwick County, Kansas, more particularly described for each Parcel as follows:

Parcel "A" – (North Part of Lot 1, Block A, The Oaks 2nd)

That part of Lot 1, Block A, The Oaks Commercial 2nd, an Addition to Derby, Sedgwick County, Kansas described as follows: Beginning at the northeast corner of said Lot 1; thence S00°46'00"W along the east line of said Lot 1, 125.07 feet; thence N89°41'59"W, 224.48 feet to a point on the west line of said Lot 1; thence northerly along the west line of said Lot 1, being a non-tangent curve to the right, through a central angle of 04°31'09" and having a radius of 1121.21 feet, an arc distance of 88.44 feet, (having a chord length of 88.41 feet bearing N04°53'16"E), to the point of tangency of said curve; thence N07°08'50"E along the west line of said Lot 1, 41.27 feet to the northwest corner of said Lot 1; thence easterly along the north line of said Lot 1, being a non-tangent curve to the left, through a central angle of 05°46'21" and having a radius of 800.00 feet, an arc distance of 80.60 feet, (having a chord length of 80.57 feet bearing S86°48'48"E), to the point of tangency of said curve; thence S89°42'31"E along the north line of said Lot 1, 133.04 feet to the point of beginning.

Calculated area: 27642.3 Sq. Ft., or 0.635 Acres, more or less.

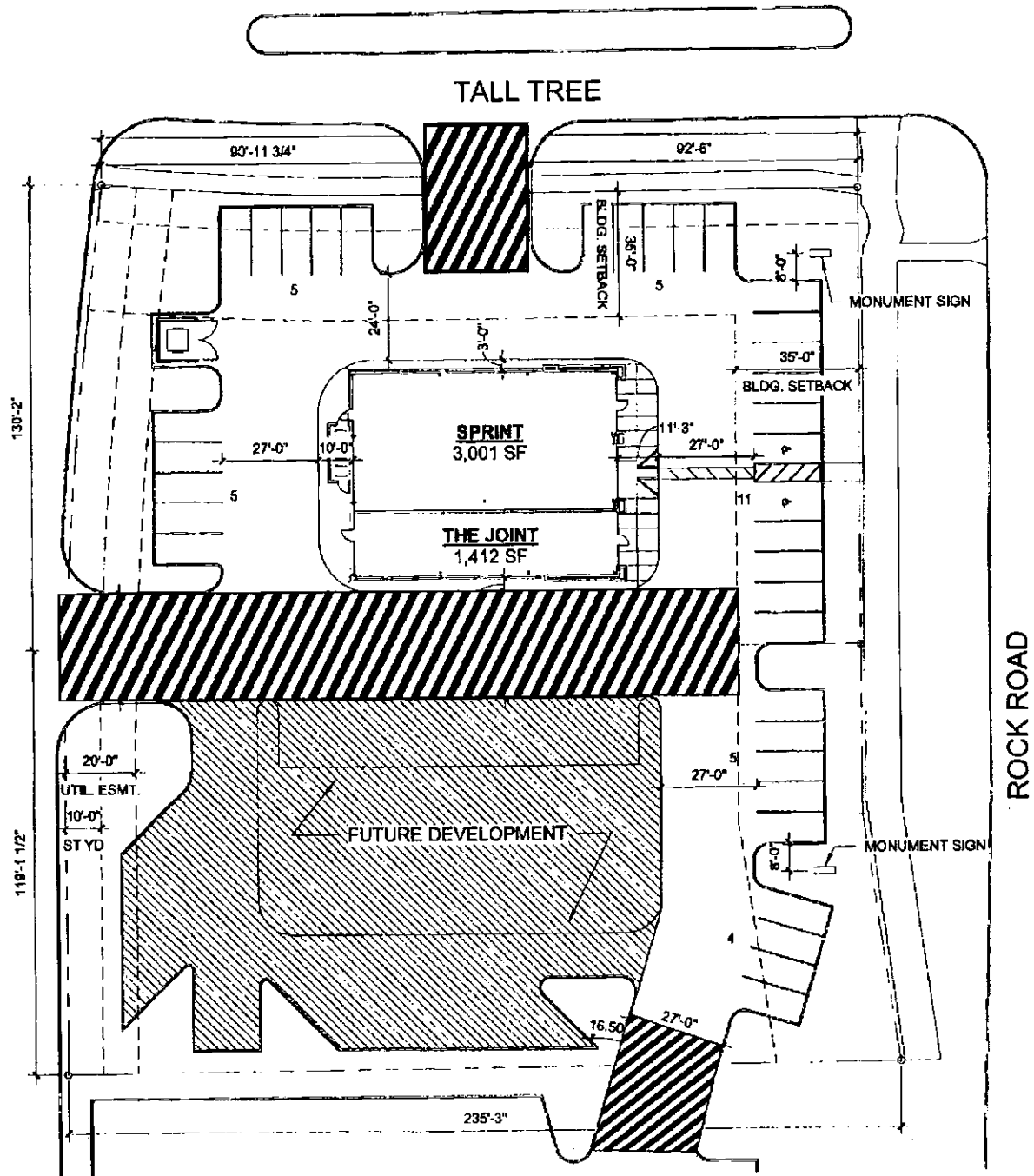
Parcel "B" – (South Part of Lot 1, Block A, The Oaks 2nd)

Lot 1, Block A, The Oaks Commercial 2nd, an Addition to Derby, Sedgwick County, Kansas, EXCEPT that part of said Lot 1 described as follows: Beginning at the northeast corner of said Lot 1; thence S00°46'00"W along the east line of said Lot 1, 125.07 feet; thence N89°41'59"W, 224.48 feet to a point on the west line of said Lot 1; thence northerly along the west line of said Lot 1, being a non-tangent curve to the right, through a central angle of 04°31'09" and having a radius of 1121.21 feet, an arc distance of 88.44 feet, (having a chord length of 88.41 feet bearing N04°53'16"E), to the point of tangency of said curve; thence N07°08'50"E along the west line of said Lot 1, 41.27 feet to the northwest corner of said Lot 1; thence easterly along the north line of said Lot 1, being a non-tangent curve to the left, through a central angle of 05°46'21" and having a radius of 800.00 feet, an arc distance of 80.60 feet, (having a chord length of 80.57 feet bearing S86°48'48"E), to the point of tangency of said curve; thence S89°42'31"E along the north line of said Lot 1, 133.04 feet to the point of beginning.

Calculated area: 27352.9 Sq. Ft., or 0.628 Acres, more or less.

[illegible]

EXHIBIT B-1



1 SITE PLAN 1" = 30'-0"

 Access Openings



PARKING PROVIDED: 28 SPACES (NORTH PROPERTY)
28 SPACES (SOUTH PROPERTY)
52 SPACES (SHARED TOTAL)



Sedgwick County
Register of Deeds - Tonya Buckingham
Doc. #/Flm-Pg: 29879852
Receipt #: 2131794
Pages Recorded: 5

Recording Fee: \$89.00

Cashier: jfisher
Authorized By: *Tonya Buckingham*
Date Recorded: 09/24/2019 12:55:11 PM



DECLARATION OF CROSS-LOT ACCESS AND EASEMENT

This Declaration is made this 18th day of September, 2019, by and between East Newbery, L.C, a Kansas limited liability company; and East Derby Investment, L.C, a Kansas limited liability company (collectively, "**Declarants**"), being the owners of the following property ("**Property**") in Block A, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas:

All of Lots 2, 3, 4, 5, 6, 7, 8, and 9, Block A, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas.

Declarants desire to provide for cross-lot access and easements for pedestrian and vehicular traffic over and across of the Property.

Now, therefore, Declarants hereby declare, establish, and grant to and for the benefit of the Property, for the convenience of the owners and employees, customers, licensees and invitees of the owners thereof, mutual nonexclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across those portions of the Property to be established from time to time as entrances and exits, driveways and sidewalks, and shall be maintained by the abutting property owners in proportion to their lineal footage, unless such cost is later placed upon an owners' association or otherwise determined by a declaration of covenants or other applicable document. Said easements are for the purpose of providing ingress and egress over and between the Property, and are for the benefit of each of the Property, the owners thereof, and their employees, customers, licensees, and invitees. Declarants now declare and establish such nonexclusive easements and rights-of-way for entrances and exits, driveways and sidewalks on the land described on the attached Exhibit A and depicted on Exhibit B.

No fence, gate or other barrier shall be erected, nor shall parking be permitted, which would prevent or obstruct the passage of such vehicular and pedestrian traffic over paved roadways and sidewalks on the Property (other than as necessary for temporary maintenance and repair). This Declaration shall not be construed to create any rights in the general public nor as a dedication to public use of any portion of the Property. The easements herein granted are superior and paramount to the rights of the owner of the servient estates so created and shall be deemed covenants that run with the land and shall inure to the benefit of and be binding upon the owners of the Property, their successors, and assigns.

This Declaration is in furtherance of that certain Reciprocal Easement Agreement dated August 22, 2011, and recorded August 24, 2011 at Doc#/FLM-PG 29236638 and the Declaration of Cross-Lot



EXHIBIT A

LEGAL DESCRIPTION

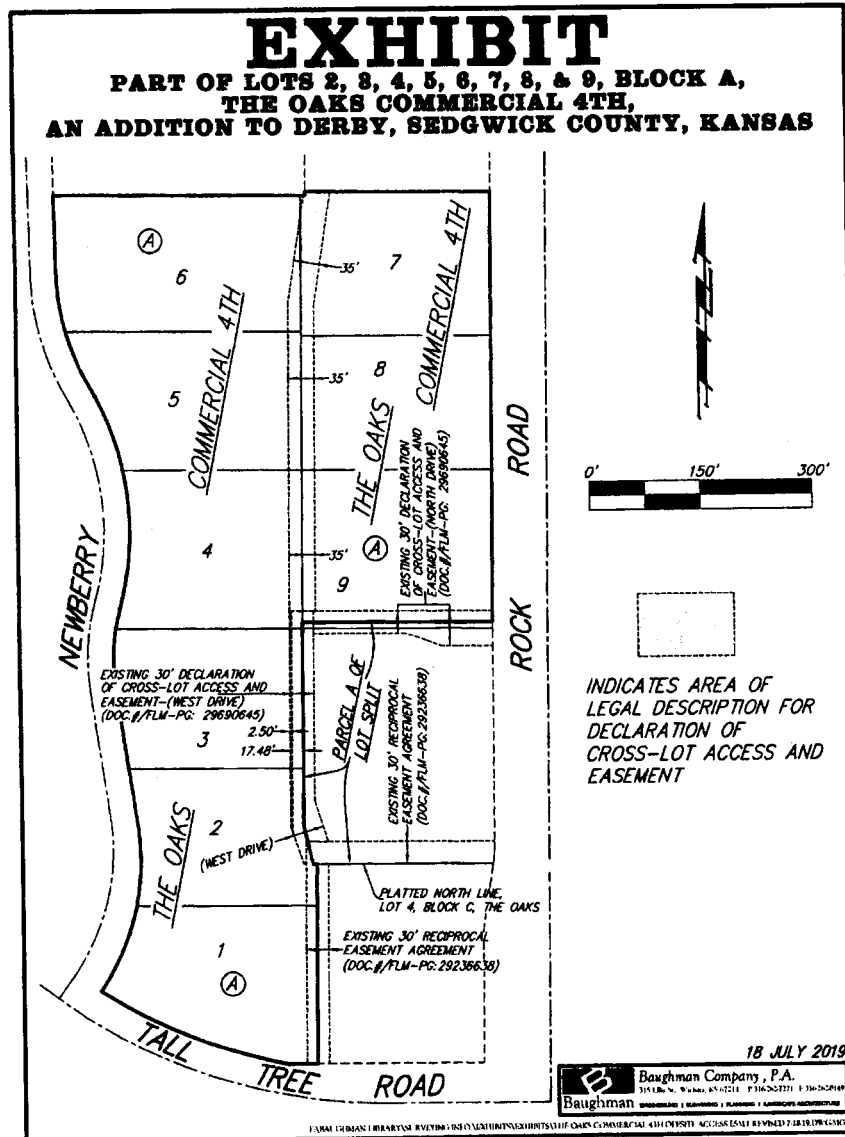
WEST DRIVE CONTINUATION

That part of Lots 2, 3, 4, 5, 6, 7, 8, and 9, Block A, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas described as follows:
Commencing at the most easterly corner common to Lots 3 and 4, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas; thence N89°30'51"W along the most northerly line common to Lots 3 and 4, Block C, in said The Oaks, 252.17 feet to the intersection with the west line of the Reciprocal Easement Agreement recorded in DOC.#/FLM-PG: 29236638 in the Office of the Sedgwick County Register of Deeds, and for a point of beginning, (said point of beginning also being the point of beginning of the tract of land designated as West Drive in the document entitled Declaration of Cross-Lot Access and Easement recorded in DOC.#/FLM-PG: 29690645 in the Office of the Sedgwick County Register of Deeds); thence continuing N89°30'51"W along the most northerly line common to Lots 3 and 4, Block C, in said The Oaks, and along a segment of the south line of said West Drive, 3.20 feet to the southwest corner of said West Drive; thence N18°33'03"W along the southwest line of said West Drive and the prolongation thereof, 52.49 feet to a point 2.50 feet normally distant west of the west line of said West Drive; thence N00°29'09"E parallel with the west line of said West Drive, 80.36 feet to the intersection with the lot line common to Lots 2 and 3, Block A, in said The Oaks Commercial 4th; thence continuing N00°29'09"E parallel with the west line of said West Drive and into Lot 3, Block A, in said The Oaks Commercial 4th, 185.00 feet to the intersection with the lot line common to Lots 3 and 4, Block A, in said The Oaks Commercial 4th; thence continuing N00°29'09"E parallel with the west line of said West Drive and into Lot 4, Block A, in said The Oaks Commercial 4th, 23.10 feet to the northwest corner of said West Drive, the northwest corner of said West Drive being 17.48 feet west of the east line of Lot 4, Block A, in said The Oaks Commercial 4th; thence continuing N00°29'09"E parallel with the east line of Lot 4, Block A, in said The Oaks Commercial 4th, 186.76 feet to the intersection with the lot line common to Lots 4 and 5, Block A, in said The Oaks Commercial 4th; thence continuing N00°29'09"E into said Lot 5 and parallel with the east line of said Lot 5, 185.00 feet to the intersection with the lot line common to said Lot 5 and Lot 6 in said Block A; thence continuing N00°29'09"E into said Lot 6 and parallel with the east line of said Lot 6, 37.61 feet; thence N09°09'18"E, 115.96 feet to the intersection with the lot line common to said Lot 6 and Lot 7 in said Block A; thence continuing N09°09'18"E into said Lot 7, 28.14 feet to the intersection with the most westerly segment of the north line of said Lot 7; thence S89°30'51"E along the most westerly segment of the north line of said Lot 7, 2.53 feet to a deflection corner in said north line; thence N00°29'09"E along the middle segment of the north line of said Lot 7, 4.94 feet to a deflection corner in said north line; thence S89°30'51"E along the most easterly segment of the

north line of said Lot 7, 33.63 feet; thence S09°09'18"W, 151.78 feet to a point 17.52 feet normally distant east of the west line of said Lot 7, said point also being 2.50 feet normally distant east of the northerly prolongation of the east line of said West Drive; thence S00°29'09"W parallel with the west line of said Lot 7 and parallel with the northerly prolongation of the east line of said West Drive, 40.71 feet to the intersection with the lot line common to said Lot 7 and Lot 8 in said Block A; thence continuing S00°29'09"W into said Lot 8, parallel with the west line of said Lot 8, and parallel with the northerly prolongation of the east line of said West Drive, 179.25 feet to the intersection with the lot line common to said Lot 8 and Lot 9 in said Block A; thence continuing S00°29'09"W into said Lot 9, parallel with the west line of said Lot 9, and parallel with the northerly prolongation of the east line of said West Drive, 186.76 feet to the intersection with the north line of the tract of land designated as North Drive in the document entitled Declaration of Cross-Lot Access and Easement recorded in said DOC.#/FLM-PG: 29690645; thence N89°30'51"W along the north line of said North Drive, 2.50 feet to the northwest corner of said North Drive, said northwest corner also being the northeast corner of said West Drive; thence S00°29'09"W along the west line of said North Drive and along the east line of said West Drive, 15.02 feet to the intersection with the south line of said Lot 9; thence N89°30'51"W along the south line of said Lot 9, 15.02 feet to the southwest corner of said Lot 9, said southwest corner also being a corner in the east line of Lot 4 in said Block A; thence S00°29'09"W along the east line of Lot 4 in said Block A, 8.08 feet to the most easterly corner common to Lots 4 and 3 in said Block A; thence continuing S00°29'09"W along the east line of Lot 3 in said Block A, 185.00 feet to the most easterly corner common to Lots 3 and 2 in said Block A; thence continuing S00°29'09"W along a segment of the east line of Lot 2 in said Block A, 79.61 feet to a deflection corner in said east line; thence S13°07'45"E along a segment of the east line of Lot 2 in said Block A, 20.95 feet to a point on a segment of the south line of said West Drive, said point also being a point on the north line of the Reciprocal Easement Agreement recorded in said DOC.#/FLM-PG: 29236638; thence N89°30'51"W along a segment of the south line of said West Drive and along the north line of said Reciprocal Easement Agreement, 2.09 feet to a deflection corner in the south line of said West Drive, said deflection corner also being the northwest corner of said Reciprocal Easement Agreement; thence S00°29'09"W along a segment of the south line of said West Drive and along the west line of said Reciprocal Easement Agreement, 30.00 feet to the point of beginning.

EXHIBIT B

Depiction Showing Easement





**FIRST AMERICAN TITLE
NCS 1001623**

**AMENDED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF THE OAKS**

This Amended Declaration of Covenants, Conditions and Restrictions of a portion of The Oaks, an Addition to Derby, Sedgwick County, Kansas ("**Amended Declaration**") is made September 18, 2020 by **East Newberry LC**, a Kansas limited liability company ("**East Newberry**"), and **East Derby Investment, LC**, a Kansas limited liability company ("**East Derby**") (individually and collectively the "**Declarant**").

Recitals

A. Previously, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions of the Oaks, dated June 8, 2017, and recorded at Doc.#/Flm-pg: 29696062 with the Sedgwick County Register of Deeds (the "**Original Declaration**").

B. Subsequent to the enactment of the Original Declaration, a portion of the Property was replatted, thus changing its legal description.

C. Pursuant to Section 7.01 of the Original Declaration, and that certain Owner's Agreement to Conditions, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas, dated March 27, 2018, between Declarant and the City of Derby, and recorded at Doc.#/Flm-pg: 29762517, Declarant has formed The Oaks Commercial 4th Owners Association, a Kansas non-profit corporation (the "**Association**"). The Association was formed to further the common interests of the Owners, including but not limited to the governance, improvement, care, and maintenance of the Property.

Now, therefore, Declarant declares that the Original Declaration shall be amended as follows. All other terms of the Original Declaration remain in full force and effect.

Amendments

1. **Property**. The definition of "**Property**" as set forth in the Original Declaration is repealed and replaced with the following, it being understood that the following legal description is intended to describe the same property and shall in no event remove any property from the Original Declaration:

Lot 1, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas;

TOGETHER with that part of Lot 3, Block C, in said Addition, described as follows:
Beginning at the most easterly corner common to said Lot 3 and Lot 4, in said Block C; then N89°30'51"W along the north line of said Lot 4, 242.78 feet; thence N13°07'45"W, 51.84 feet; thence N00°29'09"E, 264.61 feet to a point on the north line of said Lot 3; thence S89°30'51"E along said north line, 256.77 feet to the northeast corner of said Lot 3; thence S00°29'09"W along the east line of said Lot 3, 303.11 feet to a deflection corner in said east line; thence S09°01'00"W along the east line of said Lot 3, 12.02 feet to the point of beginning; TOGETHER with part of Lot 2, Block C, in said Addition, described as follows:
Beginning at the southeast corner of said Lot 2; thence N89°30'51"W along the south line of said Lot 2, 256.77 feet; thence N00°29'09"E, 8.08 feet; thence S89°30'51"E parallel with said south line of said Lot 2, 256.77 feet to a point on the east line of said Lot 2; thence S00°29'09"W along said east line, 8.08 feet to the point of beginning;

TOGETHER with Lots 1 through 9, Block A, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas.

2. **Association.** The definition of "Association" as set forth in the Original Declaration is repealed and replaced with the "Oaks Commercial 4th Owners Association". The Association shall be organized as a not-for-profit corporation for a perpetual term under the laws of the State of Kansas.
3. **Declarant's Control/Board of Directors.** Declarant hereby irrevocably appoints East Derby Investment, LC and East Newberry, LC, whether acting individually or jointly, to carry out all of the duties and exercise all of the powers of the Association and its Board, so long as any member of Declarant owns a Lot, after which the management shall be turned over to the Association, which shall then exercise the powers and duties set forth this Declaration, the Bylaws, or the Articles of Incorporation; provided, however, that Declarant may, at its option, at any earlier time, partially or wholly, transfer all or any part of such duties and powers to the Association or its Board. In the event of a transfer of a portion of Declarant's powers and duties by Declarant to the Association or Board, Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of management. Following transfer of authority from Declarant, the business of the Association shall be managed by its Board which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by the Articles or by the Bylaws directed or required to be exercised or done by the Members.
4. **Membership.** Membership in the Association shall be mandatory for each Owner of a Lot and all Owners, upon becoming such, shall be deemed automatically to have become Members of the Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.
5. **Repair and Maintenance Duties of Owners.** The Owners of each Lot shall be individually responsible for all maintenance, repairs and improvements, which shall include removal of snow, ice, debris, sweeping, repairing, seal as appropriate and repaving when necessary ("Drive Maintenance"), for those portions of the Property to be established from time to time as entrances and exits, driveways and sidewalks located on such Owner's Lot. In addition, the Owner of a Lot, at such Owner's expense, shall cause its respective Lot and all improvements thereof to be maintained in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns,

the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to general standards of the Property.

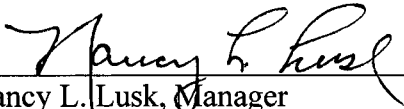
6. **Drainage**. Upon the commencement of construction on any Lot, the Lot shall be required to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots, as such guidelines, standards and plan are established by the City of Derby and/or Sedgwick County.

7. **Estoppel Certificate**. Each Owner (and Declarant), within fifteen (15) business days of receipt of a written request from another Owner, shall execute, acknowledge, and deliver an estoppel certificate, in a mutually acceptable form, certified to such requesting Owner or any prospective purchaser, or mortgagee designated by such requesting Owner, without charge and to its actual knowledge that: (a) if true, this Declaration is in full force and effect, and identifying modifications, if any; (b) without investigation or inquiry, there are no existing defaults of any other Owner, or describing outstanding defaults, if any; and (c) such other information concerning the status of this Declaration or the performance of the Owner of their respective obligations as may be reasonably requested. In the event an Owner requests an estoppel certificate from the Board, the Board, within fifteen (15) business days of receipt of such written request, shall execute, acknowledge, and deliver an estoppel certificate in accordance with this Section.

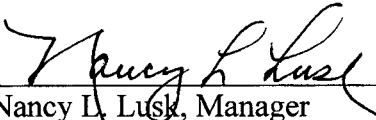
[Signatures on following page.]

Declarant has executed this Amended Declaration the day and year first above written.

East Newberry LC
a Kansas Limited Liability Company

By: 
Nancy L. Lusk, Manager

East Derby Investment, LC
a Kansas Limited Liability Company

By: 
Nancy L. Lusk, Manager

STATE OF KANSAS, SEDGWICK COUNTY) ss:

The above document was acknowledged before me this Sept. 17, 2020 by Nancy L. Lusk as Manager of East Newberry LC and of East Derby Investment, LC.

My appointment expires:


Notary Public





**FIRST AMERICAN TITLE
NCS 1001623**

**AMENDED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF THE OAKS**

This Amended Declaration of Covenants, Conditions and Restrictions of a portion of The Oaks, an Addition to Derby, Sedgwick County, Kansas ("**Amended Declaration**") is made September 18, 2020 by **East Newberry LC**, a Kansas limited liability company ("**East Newberry**"), and **East Derby Investment, LC**, a Kansas limited liability company ("**East Derby**") (individually and collectively the "**Declarant**").

Recitals

A. Previously, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions of the Oaks, dated June 8, 2017, and recorded at Doc.#/Flm-pg: 29696062 with the Sedgwick County Register of Deeds (the "**Original Declaration**").

B. Subsequent to the enactment of the Original Declaration, a portion of the Property was replatted, thus changing its legal description.

C. Pursuant to Section 7.01 of the Original Declaration, and that certain Owner's Agreement to Conditions, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas, dated March 27, 2018, between Declarant and the City of Derby, and recorded at Doc.#/Flm-pg: 29762517, Declarant has formed The Oaks Commercial 4th Owners Association, a Kansas non-profit corporation (the "**Association**"). The Association was formed to further the common interests of the Owners, including but not limited to the governance, improvement, care, and maintenance of the Property.

Now, therefore, Declarant declares that the Original Declaration shall be amended as follows. All other terms of the Original Declaration remain in full force and effect.

Amendments

1. **Property**. The definition of "**Property**" as set forth in the Original Declaration is repealed and replaced with the following, it being understood that the following legal description is intended to describe the same property and shall in no event remove any property from the Original Declaration:

Lot 1, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas;

TOGETHER with that part of Lot 3, Block C, in said Addition, described as follows:
Beginning at the most easterly corner common to said Lot 3 and Lot 4, in said Block C; then N89°30'51"W along the north line of said Lot 4, 242.78 feet; thence N13°07'45"W, 51.84 feet; thence N00°29'09"E, 264.61 feet to a point on the north line of said Lot 3; thence S89°30'51"E along said north line, 256.77 feet to the northeast corner of said Lot 3; thence S00°29'09"W along the east line of said Lot 3, 303.11 feet to a deflection corner in said east line; thence S09°01'00"W along the east line of said Lot 3, 12.02 feet to the point of beginning; TOGETHER with part of Lot 2, Block C, in said Addition, described as follows:
Beginning at the southeast corner of said Lot 2; thence N89°30'51"W along the south line of said Lot 2, 256.77 feet; thence N00°29'09"E, 8.08 feet; thence S89°30'51"E parallel with said south line of said Lot 2, 256.77 feet to a point on the east line of said Lot 2; thence S00°29'09"W along said east line, 8.08 feet to the point of beginning;

TOGETHER with Lots 1 through 9, Block A, The Oaks Commercial 4th, an Addition to Derby, Sedgwick County, Kansas.

2. **Association.** The definition of "Association" as set forth in the Original Declaration is repealed and replaced with the "Oaks Commercial 4th Owners Association". The Association shall be organized as a not-for-profit corporation for a perpetual term under the laws of the State of Kansas.
3. **Declarant's Control/Board of Directors.** Declarant hereby irrevocably appoints East Derby Investment, LC and East Newberry, LC, whether acting individually or jointly, to carry out all of the duties and exercise all of the powers of the Association and its Board, so long as any member of Declarant owns a Lot, after which the management shall be turned over to the Association, which shall then exercise the powers and duties set forth this Declaration, the Bylaws, or the Articles of Incorporation; provided, however, that Declarant may, at its option, at any earlier time, partially or wholly, transfer all or any part of such duties and powers to the Association or its Board. In the event of a transfer of a portion of Declarant's powers and duties by Declarant to the Association or Board, Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of management. Following transfer of authority from Declarant, the business of the Association shall be managed by its Board which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by the Articles or by the Bylaws directed or required to be exercised or done by the Members.
4. **Membership.** Membership in the Association shall be mandatory for each Owner of a Lot and all Owners, upon becoming such, shall be deemed automatically to have become Members of the Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.
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the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to general standards of the Property.

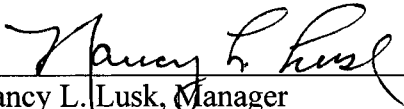
6. **Drainage**. Upon the commencement of construction on any Lot, the Lot shall be required to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots, as such guidelines, standards and plan are established by the City of Derby and/or Sedgwick County.

7. **Estoppel Certificate**. Each Owner (and Declarant), within fifteen (15) business days of receipt of a written request from another Owner, shall execute, acknowledge, and deliver an estoppel certificate, in a mutually acceptable form, certified to such requesting Owner or any prospective purchaser, or mortgagee designated by such requesting Owner, without charge and to its actual knowledge that: (a) if true, this Declaration is in full force and effect, and identifying modifications, if any; (b) without investigation or inquiry, there are no existing defaults of any other Owner, or describing outstanding defaults, if any; and (c) such other information concerning the status of this Declaration or the performance of the Owner of their respective obligations as may be reasonably requested. In the event an Owner requests an estoppel certificate from the Board, the Board, within fifteen (15) business days of receipt of such written request, shall execute, acknowledge, and deliver an estoppel certificate in accordance with this Section.

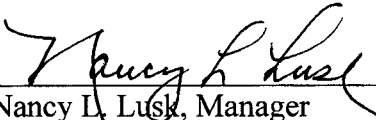
[Signatures on following page.]

Declarant has executed this Amended Declaration the day and year first above written.

East Newberry LC
a Kansas Limited Liability Company

By: 
Nancy L. Lusk, Manager

East Derby Investment, LC
a Kansas Limited Liability Company

By: 
Nancy L. Lusk, Manager

STATE OF KANSAS, SEDGWICK COUNTY) ss:

The above document was acknowledged before me this Sept. 17, 2020 by Nancy L. Lusk as Manager of East Newberry LC and of East Derby Investment, LC.

My appointment expires:


Notary Public





Sedgwick County
Register of Deeds - Bill Meek
Doc.#/Flm-Pg: 29517757

Receipt #: 1928874
Pages Recorded: 3

Recording Fee: \$28.00

Cashier: cponder

Authorized By:

Date Recorded: 04/08/2015 02:34:38 PM



RESTRICTIVE COVENANT

THIS DECLARATION is made this 26th day of February, 2015, by Rock Road Commercial, Inc., a Kansas Corporation, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

THE OAKS COMMERCIAL 3RD
Lots 1 through 3, Block A

WHEREAS, the Declarant is desirous that provisions pertaining to maintenance of and responsibility for Reserve "A", **THE OAKS COMMERCIAL 3RD**, an addition to Derby, Sedgwick County, Kansas, be placed of record.

NOW, THEREFORE, Declarant hereby declares and covenants as follows:

1. Reserve "A" is hereby reserved for open space, landscaping, lakes, berms, drainage purposes, electric transmission lines and related appurtenances as confined to easement, and utilities as confined to utility easements.
2. Reserve "A" shall be owned and maintained by a lot owners' association.
4. Declarant shall organize and incorporate a Lot Owners' Association as a non-profit corporation under Kansas law, all at the Declarant's sole cost. Reserve "A" shall be deeded to the Lot Owners' Association not more than 30 days after its incorporation.
5. The articles of incorporation, declaration of covenants, or other organizational instruments of the Lot Owners' Association shall expressly provide that such Lot Owners' Association, or any similar organization organized in conjunction with subsequent phases of development of all or any portion of property included within **THE OAKS COMMERCIAL 3RD**, shall be responsible for maintenance of Reserve "A" and all common areas contiguous thereto, to the same extent as provided herein or in the applicable developer's agreement or the plat of **THE OAKS COMMERCIAL 3RD**.

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6. Declarant hereby grants a permanent and irrevocable easement to the CITY OF DERBY, KANSAS ("City"), to enter upon Reserve "A" for the purposes of maintaining any drainage improvement located thereon. Entry upon any such reserve shall be subject to the following conditions precedent:

A. The Declarant or Lot Owners' Association, as the case may be, has failed to maintain such drainage improvement as required by this covenant; and

B. The City has given written notice of required corrective action to the Declarant or the Lot Owners' Association, as the case may be, and such entity has failed or refused to initiate such corrective action within ten (10) days after such notice.

If the City performs corrective action pursuant to this covenant, the Declarant or Lot Owners' Association, as the case may be, shall promptly pay to the City its cost therefor together with a reasonable administrative fee. Such charge, if not paid within ten (10) days of submission of an invoice, shall be divided on a square foot basis among all lots within THE OAKS COMMERCIAL 3RD, including any replat of any portion thereof, and such *pro rata* share shall constitute a lien upon each Lot and may, at the City's option, be levied by ordinance as a special assessment against each such Lot.

7. The covenants, conditions, and restrictions on Reserve "A" created and established by this instrument may not be waived, amended, or terminated without the express written consent of the City and no such waiver, amendment or termination shall be effective until the written consent of the City has been recorded in the office of the Register of Deeds of Sedgwick County, Kansas.

8. This covenant shall be binding on Declarant, its heirs, successors, executors and assigns; is a covenant running with the land, and is binding on all successors in title or interest to all Lots as platted in said THE OAKS COMMERCIAL 3RD, an addition to Derby, Sedgwick County, Kansas.

EXECUTED the day and year first above written.

Rock Road Commercial, Inc.,
A Kansas Corporation

By: 
W. E. Lusk, Jr., President

29517757

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 26th day of February, 2015, before me, the undersigned, a Notary Public, came W. E. Lusk, Jr., as President of Rock Road Commercial, Inc., a Kansas corporation, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Mindee Sittner
Notary Public

(My Commission Expires: 9/25/18)

