

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

BRF II Baker Square, LLC Attention: Mike Castellitto 1111 Benfield Blvd., #100 Millersville, MD 21108

Space Above for Record's Use Only

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ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this _____day of _____, ____, by BRF II Baker Square, LLC, a Delaware limited liability company, with principal offices at 1111 Benfield Blvd., #100, Millersville, MD 21108 (BRF II), Grantor and BRF II, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS:

A. Grantor is the owner of real property located at 13215 West Center Road, Omaha, Douglas County, Nebraska, legally described as follows:

Baker's Square, Lot 1, being a replatting of Lot 385, Kingswood Estates, a subdivision in Douglas County, Nebraska, except that part taken by the State of Nebraska for right-ofway by warrant deed recorded in Book 1535 at Page 597 of the Douglas County Records. Tax assessment parcel number 1533847000.

B. Holder/Grantee is BRF II.

C. A portion of the real property described above was used as a dry-cleaning facility by Max I. Walker Cleaners. Soil vapor and groundwater at the site have been contaminated as the result of previous dry-cleaning activities. Primary contaminants of concern detected are tetrachloroethene (PCE), trichloroethene (TCE), and vinyl chloride (VC). D. The Property is the subject of an environmental response project or action pursuant to the Nebraska Voluntary Cleanup Program authorized by the Remedial Action Plan Monitoring Act.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environment and Energy (NDEE).

F. The selected environmental response project or action is documented in the Remedial Action Plan, NDEE Document ID 20210436132, received by the NDEE on August 6, 2021. The administrative record for this project is available online at <u>http://dee.ne.gov</u> by selecting "Public Records Search" at the bottom of the NDEE webpage and providing the site-specific NDEE "Facility Number" 13690 and Program "RAP."

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. <u>Representations and Warranties.</u> The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. <u>Purpose</u>. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. <u>Running with the Land.</u> The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations, and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part

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thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations, and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases the Grantor from its duties and obligations under the approved environmental response project or action.

- 4. <u>Activity and Use Limitations</u>. The Property is subject to the following activity and use limitations:
 - a. Land use limitations The Property shall not be used for any use other than industrial or commercial use, excluding childcare facilities, which shall be prohibited.
 - b. Ground water limitations Domestic, irrigation, and other water wells of any type must not be drilled or maintained on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Property must not be used as a source of drinking water or for other direct contact purposes, including fountains.
 - c. Other limitations Annual assessments and operation and maintenance of the sub-slab depressurization system in operation in units 2928 and 2936 must adhere to the Agency approved Operation and Maintenance Plan, NDEE Document ID 20230003682, received January 6, 2023, until environmental conditions at the property deem continued use of the sub-slab depressurization system unwarranted. Any changes in the use of the sub-slab depressurization system must receive prior approval by the Agency.

5. <u>Reserved Rights of Grantor</u>. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. <u>Compliance Reporting</u>. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. <u>Enforcement.</u> The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any

signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder/Grantee and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

8. <u>Rights of Access.</u> The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. <u>Notice Upon Conveyance.</u> Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Douglas County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED ______, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF DOUGLAS COUNTY, NEBRASKA ON ______, IN [DOCUMENT ______, BOOK ______, PAGE ___]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

<u>Activity and Use Limitations.</u> The Property is subject to the following activity and use limitations:

- a. Land use limitations The Property shall not be used for any use other than industrial or commercial use, excluding childcare facilities, which shall be prohibited.
- b. Ground water limitations Domestic, irrigation, and other water wells of any type must not be drilled or maintained on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Property must not be used as a source of drinking water or for other direct contact purposes, including fountains.
- c. Other limitations Annual assessments and operation and maintenance of the sub-slab depressurization system in operation in units 2928 and 2936 must adhere to the Agency approved Operations and Maintenance Plan, NDEE Document

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ID 20230003682, received January 6, 2023, until environmental conditions at the property deem continued use of the sub-slab depressurization system unwarranted. Any changes in use of the sub-slab depressurization system must receive prior approval by the Agency.

10. <u>Waiver of Certain Defenses</u>. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. <u>Amendment and Termination</u>. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental Covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an Environmental Covenant to a new holder is an amendment.

12. <u>Severability</u>. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. <u>Captions.</u> The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. <u>Governing Law.</u> This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. <u>Recordation</u>. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Douglas County Register of Deeds.

16. <u>Effective Date.</u> The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Douglas County Register of Deeds.

17. <u>Distribution of Environmental Covenant</u>. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Agency.

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18. <u>Notice</u>. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Superfund/VCP Section Monitoring & Remediation Division Nebraska Department of Environment and Energy 245 Fallbrook Blvd., Suite 100 Lincoln, NE 68521

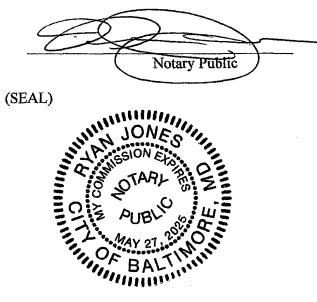
ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this $\frac{100}{200}$ day of Applic _____, 2012

By: BRF II Baker Square, LLC MORIZED A GENT Title: Mike Custellitto Mary la STATE OF NEDE)) ss. COUNTY OF Ave Arundel)

The foregoing instrument was acknowledged before me this 20° of April, 2023 by Minc Costellitto who acknowledged said Environmental Covenant on behalf of Grantor.



AGENCY:

IN WITNESS WHEREOF, NDEE, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEE a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF ENVIRONMENT AND EMERGY By: Director

STATE OF NEBRASKA) ss. COUNTY OF LANCASTET

The foregoing instrument was acknowledged before me this $\underline{11}$ of $\underline{\Gamma1AY}_{..., 2023}$ by $\underline{1.11}$ $\underline{\Gamma1ACY}_{...}$ who acknowledged said Environmental Covenant on behalf of the Agency.

Notary Public (SEAL) GENERAL NOTARY - State of Nebraska CINDY R. WOOD My Comm. Exp. January 18, 2028

DEED Inst. # 2021156968, Pg: 1 of 1 Rec Date: 12/01/2021 14:38:42.327 Fee Received: \$64.00 By: MLS Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

8/26/2021 11:42 AM BOB ROHLFING H:\1700\1767 ALTA Surveys\1767-19\025 Broad Reach Retail Partners LLC 13215 W Center Rd Kingswood Estates Lot 385\Drawings\A1767-19-25A.dwg

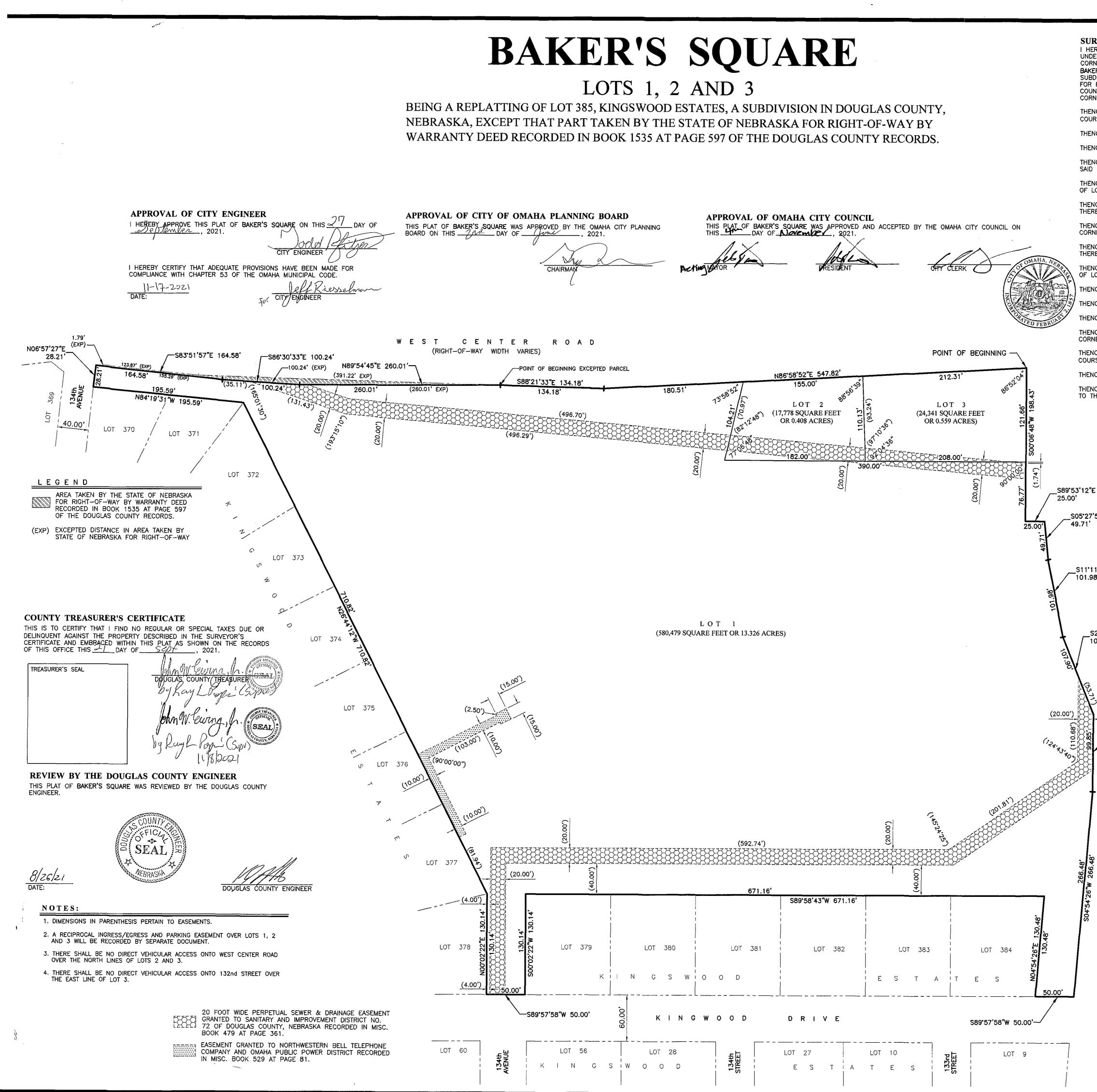


Exhibit A

SURVEYOR'S CERTIFICATE

HEREBY CERTIFY THAT A BOUNDARY SURVEY OF THE SUBDIVISION DESCRIBED HEREIN WAS MADE UNDER MY DIRECT SUPERVISION AND THAT PERMANENT MARKERS WERE FOUND OR SET AT ALL CORNERS OF SAID BOUNDARY AND AT ALL LOT CORNERS WITHIN SAID SUBDIVISION TO BE KNOWN AS BAKER'S SQUARE, LOTS 1, 2 AND 3, BEING A REPLATTING OF LOT 385, KINGSWOOD ESTATES, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, EXCEPT THAT PART TAKEN BY THE STATE OF NEBRASKA FOR RIGHT-OF-WAY BY WARRANTY DEED RECORDED IN BOOK 1535 AT PAGE 597 OF THE DOUGLAS COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 385;

THENCE SOUTHERLY ON THE EASTERLY LINE OF SAID LOT 385 ON THE FOLLOWING DESCRIBED SEVEN COURSES; THENCE S00'06'48"W (ASSUMED BEARING) 198.43 FEET;

THENCE S89'53'12"E 25.00 FEET; THENCE S05'27'53"E 49.71 FEET; THENCE S11'11'24"E 101.98 FEET; THENCE S21'44'54"E 107.90 FEET;

THENCE S00'06'48"W 99.85 FEET; THENCE S04'54'26"W 266.48 FEET TO THE SOUTHEAST CORNER OF

SAID LOT 385; THENCE S89'57'58"W 50.00 FEET ON THE SOUTH LINE OF SAID LOT 385 TO THE SOUTHEAST CORNER

OF LOT 384, SAID KINGSWOOD ESTATES; THENCE N04'54'26"E 130.48 FEET ON THE EAST LINE OF SAID LOT 384 TO THE NORTHEAST CORNER THEREOF;

THENCE S89'58'43"W 671.16 FEET ON THE SOUTH LINE OF SAID LOT 385 TO THE NORTHWEST CORNER OF LOT 379, SAID KINGSWOOD ESTATES:

THENCE S00'02'22"W 103.14 FEET ON THE WEST LINE OF SAID LOT 379 TO THE SOUTHWEST CORNER THEREOF;

THENCE S89'57'58"W 50.00 FEET ON THE SOUTH LINE OF SAID LOT 385 TO THE SOUTHEAST CORNER OF LOT 378, SAID KINGSWOOD ESTATES:

THENCE NO0'02'22"E 130.14 FEET ON THE WESTERLY LINE OF SAID LOT 385 TO A CORNER THEREOF; THENCE N26'44'12"W 710.82 FEET ON THE WESTERLY LINE OF SAID LOT 385 TO A CORNER THEREOF THENCE N84'19'31"W 195.59 FEET ON THE WESTERLY LINE OF SAID LOT 385 TO A CORNER THEREOF; THENCE NO6'57'27"W 28.21 FEET ON THE WESTERLY LINE OF SAID LOT 358 TO THE NORTHWEST CORNER THEREOF;

THENCE EASTERLY ON THE NORTHERLY LINE OF SAID LOT 385 ON THE FOLLOWING DESCRIBED SIX COURSES; THENCE S83'51'57"E 164.58 FEET;

THENCE S86'30'33"E 100.24 FEET; THENCE N89'54'45"E 260.01 FEET; THENCE S88'21'23"E 134.18 FEET; THENCE N86'58'52"E 547.82 FEET TO THE POINT OF BEGINNING.

CONTAINING 622,598 SQUARE FEET OR 14.293 ACRES

CHRIS E DORNER NEBRASKA RLS #507

APRIL 1, 2021

DEDICATION

49.71'

107.90**'**

KNOW ALL MEN BY THESE PRESENTS: THAT WE, BRF I BAKER SQUARE LLC, A DELAWARE LIMITED LIABILITY COMPANY, BEING THE OWNERS, AND -TRMT-GB-LENDER LLC: A DELAWARE LIMITED LIABILITY COMPANY. BEING THE MORTCASE HOLDERS OF S05'27'53"E THE LAND DESCRIBED WITHIN THE SURVEYOR'S CERTIFICATE AND EMBRACED WITHIN THIS PLAT, HAVE CAUSED SAID LAND TO BE SUBDIVIDED INTO LOTS TO BE NUMBERE AS SHOWN, SAID SUBDIVISION TO BE HEREAFTER KNOWN AS BAKER'S SQUARE, AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THIS PLAT AND WE HEREBY GRANT A PERPETUAL EASEMENT TO THE OMAHA PUBLIC POWER DISTRICT, AND ANY COMPANY WHICH HAS BEEN GRANTED A FRANCHISE TO PROVIDE A CABLE TELEVISION SYSTEM IN THE AREA TO BE SUBDIVIDED, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE, MAINTAIN, S11'11'24"E REPAIR, AND RENEW POLES, WIRES, CROSSARMS, DOWN GUYS AND ANCHORS, CABLES, 101.98' CONDUITS AND OTHER RELATED FACILITIES AND TO EXTEND THEREON WIRES OR CABLES FOR THE CARRYING AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT. HEAT, AND POWER FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS AND THE RECEPTION THEREOF, INCLUDING SIGNALS PROVIDED BY A CABLE TELEVISION SYSTEM AND THEIR RECEPTION, ON, OVER, THROUGH, UNDER AND ACROSS A FIVE (5') FOOT WIDE STRIP OF LAND ABUTTING THE FRONT LOT LINES AND SOUTH LINE OF LOT 1 AND THE NORTH LINE OF LOT 2, AND AN EIGHT (8') FOOT WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES. _S21'44'54"E

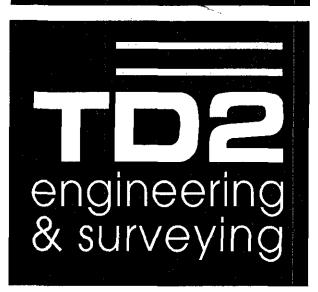
PERPETUAL EASEMENTS SHALL BE GRANTED TO METROPOLITAN UTILITIES DISTRICT OF OMAHA, AND ANY NATURAL GAS PROVIDER, AND THEIR SUCCESSORS AND ASSIGNS. TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES. HYDRANTS, AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE-FOOT-WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS AND ALONG ALL STREET FRONTAGES OF ALL LOTS,

NO PERMANENT BUILDINGS, TREES, RETAINING WALLS OR LOOSE ROCK WALLS SHALL BE PLACED IN SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS. SHRUBS, LANDSCAPING, SIDEWALKS, DRIVEWAYS AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS THEREIN GRANTED.

BRF II BAKER SQUARE LLC, A DELAWARE LIMITED LIABILITY COMPANY-----_S00'06'48"W 99.85' NATHANIEL A. TOWER, AUTHORIZED AGENT t CD Lender, LlC, -C. DOUGLAS LANOIS, CHIEF FINANCIAL OFFICER . **ACKNOWLEDGEMENT OF NOTARY** STATE OF MARYLAND £ COUNTY OF ANNE ARUNDEL) THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME THIS AUTHORIZED AGENTS OF BRF II BAKER SQUARE LLC, A DELAWARE LIMITED, PADELTON ON BEHALF OF SAID COMPANY. V NTARL - PUBLIC . NOTARY (PUBLIC - Rulan Jones (sh' шE ACKNOWLEDGEMENT OF NOTARY STATE OF

COUNTY OF

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME THIS DAY OF _, 2021 BY G. DOUGLAS LANOIS, HIEF FINANCIAL OFFICER, OF TRMT CB LENDER, LLC, A DELAWARE D LIABILITY COMPANY ON BEHALF OF SAID COMPANY



thompson, dreessen & dorner, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com

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Revision Dates

No.	Description	MM-DD-YY

Job No.: A1767-19-25A Drawn By: RJR Reviewed By: CED Date: APRIL 1, 2021 Book: 19/06 Pages: 43-48

Sheet Title

CITY OF OMAHA FINAL PLAT

Sheet Number

NOTARY PUBLIC

SHEET 1 OF 1