
(ABOVE LINE FOR RECORDER'S USE ONLY)

DECLARATION OF EASEMENTS

This Declaration of Easement (this "Declaration") is made this ____ day of _____, 2021 (the "Effective Date"), by DJC Partners, LLC, an Ohio limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Hamilton County, Ohio commonly known as 7877 Beechmont Avenue, Anderson Township, Ohio, such parcel being legally described on Exhibit A attached hereto (the "Lot"); and

WHEREAS, the Lot adjoins certain real property located at 7863 Beechmont Avenue, Anderson Township, Ohio, such parcel being legally described on Exhibit B attached hereto (the "Adjoining Property"); and

WHEREAS, Declarant intends to redevelop the Lot, and as part of such redevelopment, has agreed, at the request of the Anderson Township, Ohio to establish cross access between the Lot and the Adjoining Property, subject to the terms and conditions of this Declaration.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares, grants, establishes and agrees as follows:

1. Declaration of Access Easement. Subject to the restrictions and conditions set forth in Section 2 below, Declarant hereby declares, grants and establishes a permanent, non-exclusive, reciprocal easement for pedestrian and vehicular ingress, egress and regress for the benefit of the Adjoining Property and the fee simple owners thereof (each an "Owner" and collectively the "Owners"), their tenants, authorized invitees, officers, managers, contractors, agents, representatives, employees, successors, successors-in-interest and assigns, on, over and across that portion of the Lot more particularly described on the Exhibit C attached hereto. The area described on the attached Exhibit C being referred to as the "Access Easement Area," and

said easement is referred to as the “Access Easement”. The Access Easement shall not be used by the Adjoining Property used for heavy truck access, including, without limitation, construction trucks and delivery trucks.

2. Restrictions on Use of Access Easement. The use of the Access Easement by any Owner of the Adjoining Property, or any person claiming rights to the Access Easement through the Owner of the Adjoining Property, is expressly contingent upon the Declarant and the owner of the Adjoining Property executing an amendment to this Declaration (the “Declaration Amendment”) incorporating each following conditions, as well as such other customary terms acceptable to Declarant:

(a) Reciprocal Access. The Owner of the Adjoining Property shall grant Declarant an access easement substantially similar to the Access Easement granted herein which shall provide vehicular and pedestrian access over the paved portions of the Adjoining Property to any user of the Lot.

(b) Shared Maintenance Costs. The Owner of the Adjoining Property and the Declarant shall execute a commercially reasonable amendment to this Declaration (the “Declaration Amendment”) wherein the Owner of the Adjoining Property agrees to reimburse Declarant for a portion of Declarant’s costs in maintaining, repairing, and replacing, as needed, the drive aisle located within the Access Easement Area.

(c) Use Restriction on Adjoining Property. The Adjoining Property shall not be used for the operation of a Mexican-themed sit down restaurant, with dine-in, take-out and delivery service, that includes a bar, including the sale of wine, beer and spirits, and (b) any restaurant specializing in Mexican cuisine, such as Chili’s, Chevys, On the Border Mexican Grill, Torchy’s Tacos, Uncle Julio’s, Velvet Taco, Bar Taco, and the like. Additionally, a restaurant shall be deemed to be “specializing in Mexican cuisine” if ten percent (10%) or more of its menu items (including specials not on the printed menu) are Mexican, Latin American, Mexican-American or Tex-Mex cuisine items, or if ten percent (10%) or more of its sales are derived from the sale of tacos, or if the restaurant uses the word “Taco,” “Mexican,” or “Mexico” or Mexican words in its name, tagline or marketing materials or if the restaurant is a “fast food” restaurant specializing in Mexican cuisine.

The foregoing restrictions set forth in this Section 2 are conditions precedent to the Owner of the Adjoining Property being able to utilize the Access Easement granted herein.

3. No Dedication. Nothing contained in this Declaration shall be construed as a dedication of the Access Easement to any governmental entity or for use by or for the benefit of the public.

4. Run With the Land. It is intended that the easements declared and established herein, as well as all the other covenants, restrictions and obligations set forth in this Declaration relating to maintenance or other responsibilities, shall run with the land for the benefit and to the burden of the Lot and Adjoining Property, and shall be binding on the Owners thereof, their tenants, authorized invitees, officers, managers, contractors, agents, representatives, employees, successors, successors-in-interest and assigns.

5. Miscellaneous.

(a) Whenever in this instrument a pronoun is used it shall be construed to represent either the singular or plural, or masculine, feminine or neuter gender, as the case may demand.

(b) Except as specifically set forth in this Declaration, this Declaration may only be modified by a subsequent written agreement executed by Declarant.

(c) This Declaration shall be governed, interpreted, construed, regulated and enforced in accordance with the laws of the State of Ohio and without regard to any conflicts of law principles.

(d) This Declaration does not and shall not be construed to create a partnership, joint venture, a relationship of principal and agent or employer and employee, between all or any of the parties which are signatories hereto or any of their personal representatives, heirs, successors, assigns or successors-in-interest.

(e) In the event of a dispute involving the interpretation or construction of this Declaration involving Declarant and/or any other party or parties, it shall be deemed that this Declaration was jointly drafted by all parties to the dispute, and no rule of construction or presumption shall be asserted in favor or to the detriment of Declarant or any other party based upon the identity of the party actually drafting this Declaration.

(f) All notices, demands, elections, deliveries, and other communications which are required or desired to be given in connection with this Declaration (for purposes of this Section 5(f), each a "Notice"), to be effective under this Declaration, shall be in writing and shall be deemed to be given and received (i) when delivered personally, (ii) one business day after deposit with a national overnight courier service (e.g., Federal Express, UPS, DHL, or Airborne) and marked for overnight priority delivery; or (iii) three business days after deposit with the United States Postal Service as certified mail, return receipt requested; in any event with all charges and postage prepaid and addressed as follows:

If to Declarant: 3805 Edwards Road
Suite 390
Cincinnati, Ohio 45209

Notices to all other Owners shall be sufficient if sent to the address of its property; provided, that any Owner may from time to time may designate another address for the receipt of future Notices by giving a Notice in accordance with this Section 5(f) to the other parties at the address set forth herein, or as last provided by such other party in accordance with the provisions of this Section 5(f). It shall not be necessary for an Owner to record an amendment to this Declaration to amend the address to which Notices may be sent pursuant to this Section 5(f), but any such Owner shall have the right to do so without the joinder of any other Owner so long as it has also provided notices to the other Owners of its intent and any such amendment shall not affect any other provision of this Declaration.

(g) The captions and headings used in this Declaration are for the purpose of convenience only and in no way define, describe or limit the scope or intent of this Declaration or any provision hereof.

(h) No agreement shall be effective to add to, change, modify, waiver or discharge this Agreement in whole or part, unless such agreement is in writing and signed by all of the Parties to this Agreement.

Remainder of Page Intentionally Blank. Signature Page to Follow.

IN WITNESS WHEREOF, Declarant has executed this Declaration through its duly authorized, undersigned representative, to be effective as of the date first above written.

DJC Partners LLC,
an Ohio limited liability company

Name: Douglas Compton
Title: Authorized Manager

State of Ohio)
) :ss
County of Hamilton)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Douglas Compton, the Authorized Manager of DJC Partners LLC, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

My Commission expires:_____

This instrument was prepared by:

Barrett P. Tullis, Esq.
Keating Muething & Klekamp
One East 4th Street, Suite 1400
Cincinnati, OH 45202

Exhibit A

Exhibit B

Exhibit C