

Recorded: 9/1/2017 at 12:46:57.247 PM  
Fee Amount: \$32.00  
Revenue Tax:  
Polk County, Iowa  
Julie M. Haggerty RECORDER  
Number: 201700019104  
BK: 16630 PG: 391

PREPARED BY AND RETURN TO: SETH BELL AT (310) 961-2002  
BOSTON COMMONS, LLC  
14039 SHERMAN WAY  
SUITE 206  
VAN NUYS, CA 91405

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### **DECLARATION OF EASEMENTS**

This **DECLARATION OF EASEMENTS** (this "Agreement") is made and entered into as of August 28<sup>th</sup>, 2017, by **BOSTON COMMONS, LLC**, a Delaware limited liability company, with an address for the purposes hereof at 14039 Sherman Way, Ste. 206, Los Angeles, California 91405, Attention: Manager ("Declarant").

### **RECITALS**

A. Declarant is the owner of that certain real property commonly known as 3100 Merle Hay Road, Des Moines, Iowa, legally described in **Exhibit "A"** attached hereto and made a part hereof (hereinafter, the "3100 Property").

B. Declarant is also the owner of that certain real property commonly known as 3130 Merle Hay Road, Des Moines, Iowa, legally described in **Exhibit "B"** attached hereto and made a part hereof (hereinafter, the "3130 Property").

C. Declarant is intending to sell the 3100 Property and wishes to establish necessary easements for the joint operation of the 3100 Property and 3130 Property following such sale.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. **Creation of Access and Parking Easement.** Declarant hereby grants, for the benefit of the 3100 Property and 3130 Property, a perpetual, non-exclusive easement, right and privilege in, on, over, and across said parcels in those areas developed as access drives and drive aisles, and the right to park within the parking spaces as they exist from time to time (the "Cross

Access and Parking Easement”) for the use and benefit of both lots and the owner(s), agents, servants, employees, invitees, licensees, tenants, successors, assigns and all other parties lawfully upon said lots. The Cross Access and Parking Easement shall be for the purpose of full vehicular and pedestrian access, ingress and egress to, within and between the 3100 Property and 3130 Property and parking thereon. Notwithstanding anything to the contrary set forth herein, in no event will the parking easement granted hereunder restrict or limit the ability of either Property from being redeveloped and/or renovated as determined by the owner of such Property.

2. **Creation of Utility Easement.** Declarant hereby grants, for the benefit of the 3100 Property and 3130 Property, a perpetual, non-exclusive easement, right and privilege in, on, over, under and across 3100 Property and 3130 Property (the “Utility Easement”) for the use and benefit of both lots and the owner(s), agents, servants, employees, invitees, licensees, tenants, successors, assigns and all other parties lawfully upon said lots. The Utility Easement shall be for the purpose of installation, maintenance and repair of the utility lines serving said lots, including water, sewer, natural gas, electric, telephone/cable and the drainage of stormwater into the facilities serving said lots as approved by the County having jurisdiction over the same.

3. **Maintenance.** Except as otherwise set forth herein, the owner of each tract shall be responsible for the maintenance and repair of their respective tracts, including any easement areas contained thereon.

4. **Indemnification and Insurance.** The owner of the 3100 Property shall indemnify and hold the owner of the 3130 Property harmless for damages for liability to persons or property that might arise from the use of any of the easements over the 3130 Property as contained herein by the owner of the 3100 Property, or its successors, assigns, agents, customers, invitees, employees, contractors and tenants. The owner of the 3130 Property shall indemnify and hold the owner of the 3100 Property harmless for damages for liability to persons or property that might arise from the use of any of the easements over the 3100 Property as contained herein by the owner of the 3130 Property, or its successors, assigns, agents, customers, invitees, employees, contractors and tenants. Each owner, for itself and the other owner, at its sole cost and expense, shall keep its property insured against all statutory and common law liabilities for damage to property or injuries, including loss of life, sustained by any person or persons within or arising out of the respective Tracts, whether caused by negligence or otherwise, in a policy or policies with minimum coverage of \$3,000,000.00 with respect to injury to any one person and \$5,000,000.00 with respect to any one accident or disaster, and \$300,000.00 with respect to damage to property. All such policies shall bear endorsements to the effect that each owner is named additional insureds and that an owner shall be notified not less than five (5) days in advance of any modification or cancellation thereof. Copies of such policies, so endorsed, or certificates evidencing the existence thereof, shall be promptly delivered on an annual basis to each owner upon written request therefor.

5. **Incidental Rights.** The easements created hereby include the creation of all incidental rights reasonably necessary for the use and enjoyment of such easements for their intended purposes, including without limitation, the right of entry for purposes of maintenance, operation, repair and construction of any improvements now or hereafter located within any of the easement areas created herein.

6. **Non-Disturbance of Tracts.** The owner of the 3100 Property and the owner of the 3130 Property agree to minimize any disturbance of the other party's tract or the businesses conducted thereon while using the easements granted herein. Except as specifically set forth herein, no easement granted herein shall prevent either party from further developing its own tract or conducting its business thereon. The owner of each tract shall repair any damage to the other party's tract caused directly or indirectly as a result of the grantee's use of any easement contained herein and shall cause the property on the grantor's tract to be repaired and/or restored to its condition as existed prior to such damage,

7. **Notices.** Any and all notices required or contemplated hereunder shall be provided by hand delivery, or by overnight mail by a nationally recognized courier service, or by certified United States Mail, return receipt requested and postage prepaid to the notice addresses contained in the first paragraph hereof. Any notice sent in accordance with this section shall be deemed to have been "given" as of the time said notice is received or refused. Any party hereto (including its successor and/or assigns) may change its address for the purpose of this section by giving notice to the other party pursuant to and in accordance with this section.

8. **Governing Law.** This Agreement shall be governed by the laws of the State of Iowa.

9. **Binding Effect.** This Agreement shall bind the successors, heirs and assigns of the parties hereof. The easements contained herein and the rights granted hereby shall run with the titles to the 3100 Property and the 3130 Property and shall bind and inure to the benefit of and be enforceable by and against the respective successors and assigns of any party to this Agreement and the owners of all or any portion of the 3100 Property and the 3130 Property.

10. **Entire Agreement.** It is agreed that this document contains the entire agreement between the parties as to the matters herein contained and this Agreement shall not be modified in any respect except by agreement in writing executed by the parties hereto or their respective successors and assigns.

11. **No Public Dedication.** Nothing contained herein shall be construed to mean a grant to any public agency or governmental authority.


12. **Counterparts.** This Agreement may be executed in counterparts or with counterpart signature pages, which upon execution by all parties shall constitute one integrated agreement.

13. **Captions.** The headings to the sections hereof have been inserted for convenience only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the day and year first above written.

**BOSTON COMMONS, LLC,**  
**a Delaware limited liability company**

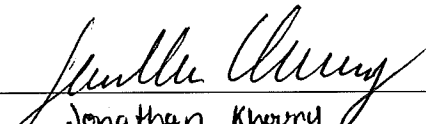
By:   
Name: Seth Bell  
Title: Authorized Signatory

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

The foregoing instrument was acknowledged before me this 28 day of August, 2017, by Seth Bell, as Authorized Signatory of **BOSTON COMMONS, LLC**, a Delaware limited liability company, who executed the foregoing instrument on behalf of said limited liability company:

- ☒ is personally known to me; or  
( ) produced a \_\_\_\_\_ driver's license as identification; or  
( ) produced \_\_\_\_\_ as identification.



  
Print: Jonathan Khoury,  
Notary Public, State and County Aforesaid  
My commission expires: 9/18/19  
Serial No. 2127089

(Notarial Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF 3100 PROPERTY**

Lots 154 and 155 in CLOVER ACRES, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa, EXCEPT that part deeded to the State of Iowa on February 24, 2010 in Book 13365 at Page 718.

**EXHIBIT "B"**  
**LEGAL DESCRIPTION OF 3130 PROPERTY**

Lots 21 and 153 in CLOVER ACRES, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa.