



MISC Inst. # 2020029238, Pg: 1 of 9 Rec Date: 03/30/2020 13:30:16.373

Fee Received: \$58.00 Electronically Recorded By: CC

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

Upon recording please return to:

J. Mark Wittenburg
Batis Development
2933 SW Woodside Drive, Suite 200
Topeka, KS 66614

ACCESS EASEMENT AND AGREEMENT

This Access Easement and Agreement ("**Agreement**") is made and entered into as of this 30th day of March, 2020 ("Effective Date") by and between CUSTARD CATS, LLC, a Kansas limited liability company ("**Grantor**"), whose address is 520 McCall Road, Manhattan, Kansas 66502, and BATIS DEVELOPMENT COMPANY, a Kansas corporation, ("**Grantee**"), whose address is 2933 SW Woodside Drive, Suite 200, Topeka, Kansas 66614.

RECITALS:

A. Grantor is the Owner of certain real property located in Omaha, Douglas County, Nebraska, which is more particularly described in Exhibit A attached hereto ("**Grantor Property**").

B. Grantee is the owner of certain real property located in Omaha, Douglas County, Nebraska, which is more particularly described in Exhibit B attached hereto ("**Grantee Property**").

C. Under that certain Public Access Easement recorded in the Douglas County, Nebraska Register of Deeds on August 11, 2015 as Document Number 2015-066814 ("**Public Access Easement**"), Grantor granted certain easements on the Grantor Property and the Grantee Property, for the benefit of the public as more fully set forth in the Public Access Easement.

D. Grantee desires to obtain from Grantor the non-exclusive perpetual access easements over Grantor's Property for signage rights set forth herein and as to the "**Additional Easement Area**", all as more fully set forth hereinafter.

E. Grantor is willing to grant such easement rights subject to the terms and agreements contained herein.

NOW THEREFORE, it is declared as follows:

1. **Recitals.** The foregoing Recitals are true and correct and incorporated into this Agreement by this reference.

2. **Definitions.** In addition to any terms whose definitions are fixed and defined elsewhere in this Agreement each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

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(a) "Benefitted Parties" means Grantee and Grantee's Occupants and Permittees.

(b) "Occupant" shall mean any individual, partnership, firm, association, corporation, trust or any other form of entity from time to time legally entitled to use and occupy any portion of a building on Grantee's Property by virtue of ownership thereof or under any lease, sublease, license, concession agreement, contract or other similar agreement.

(c) "Permittees" shall mean all Occupants and the officers, directors, managers, members, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of Occupants in so far as their activities relate to the intended use of Grantee's Property.

3. Signage.

(a) Grantor hereby establishes and grants, for the common use and benefit of Grantee, its successors and assigns in title and Grantee's Benefitted Parties, a perpetual non-exclusive easement to, under, over and across Grantor's Property for Grantee (and any Permittee of Grantee) to install, maintain, repair and replace sign panels on the monument sign (in the location shown on Exhibit D attached hereto and incorporated herein) bearing the business name, logo, or other corporate or brand identifier of a Permittee on the monument sign located on Grantor's Property (the "Monument Sign"). Grantor agrees to maintain, repair and replace the Monument Sign (but not a Permittee's panels) and utilities serving the Monument Sign in a first class manner (the "Sign Costs"); and

(b) Grantor hereby establishes and grants, for the common use and benefit of Grantee, its successors and assigns in title and Grantee's Benefitted Parties, a perpetual non-exclusive easement to, under, over and across Grantor's Property for Grantee (and any Permittee of Grantee) to install, maintain, repair and replace directional signage in or adjacent to the Additional Easement Area as defined below. The location of the directional signage shall be mutually agreed to by the parties. Grantee agrees to maintain, repair and replace the directional sign and any utilities serving the directional sign in a first-class manner and such costs shall constitute Sign Costs.

4. Access Easement for Grantee. Grantor hereby reaffirms and expressly grants to Grantee, its successors and assigns in title and Grantee Benefitted Parties, the easements and rights set forth in the Public Access Easement. Further, Grantor hereby establishes and grants, for the common use and benefit of Grantee, its successors and assigns in title and Grantee's Benefitted Parties, a perpetual non-exclusive easement for vehicular and pedestrian access into, over, and across Grantor's Property described and shown on Exhibit C attached hereto and incorporated herein (the "**Additional Easement Area**").

5. Maintenance. Grantor hereby agrees to: (i) operate in a first class manner, maintain, repair, replace and cause snow and ice removal to be performed in the Additional Easement Area; and (ii) operate in a first class manner, maintain, repair, replace and cause snow and ice removal to be performed in the Public Access Easement. Grantor shall have no duty regarding maintenance, repair, replacement, or snow and ice removal relating to other portions of the Grantee Property. As consideration for Grantor's agreement to perform under this Section 5 and under Section 3 with regard to Sign Costs, Grantee shall pay Grantor a fee every twelve months (or pro rata portion thereof) of

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\$1,000.00, which amount shall commence December 1, 2020 and shall be paid within thirty (30) days of receipt of an invoice from Grantor. The foregoing fee shall increase by 8% every five years on December 1 of such year.

6. Attorneys Fees. If either party hereto shall institute any action or proceeding against the other party relating to any of the provisions of this Agreement, or any breach thereof, the substantially prevailing party in such action or proceeding shall be entitled to recover from the other party its reasonable attorneys' fees and taxable and non-taxable costs and expenses incurred therein as determined by the Court and not by a jury.

7. Notices. Any and all notices required or contemplated hereunder shall be in writing and be given: (i) by personal delivery; or (ii) by depositing the notice in the United States mail, via certified mail, return receipt requested, postage pre-paid; or (iii) by delivering the notice via a nationally recognized over-night delivery services, such as Federal Express or United Parcel Service, to the addresses shown above.

Notice shall be deemed given and received upon (a) personal delivery to the designated address of the addressee, (b) three (3) calendar days after deposit of said notice in the United States mail, via certified mail, return receipt requested, postage pre-paid, addressed in accordance with the terms hereof, or (c) one (1) business day after the delivery of said notice to a nationally recognized over-night delivery service, addressed in accordance with the terms hereof. Any address of a notice party may be changed in the same manner for giving notice hereunder.

8. Enforcement; Self-help. In the event of any violation or breach by Grantor or by the successors or assigns of Grantor, of any of the terms, conditions or covenants set forth in this Agreement, Grantee and its successors or assigns, shall have, in addition to the right to collect damages, the right to enjoin such violation or breach in any court of competent jurisdiction. If Grantor fails to perform its maintenance, repair and replacement obligations under Section 5 within thirty (30) days after Grantee's written notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Grantee may, at its option, undertake such repairs and Grantor shall reimburse Grantee for the reasonable out of pocket costs incurred by Grantee within thirty (30) days after receipt of a bill from Grantee, together with copies of applicable invoices. If Grantor fails to perform its snow and ice removal obligations within a commercially reasonable period of time after the need arises, Grantee may, at its option, undertake such snow and ice removal and Grantor shall reimburse Grantee for the reasonable out of pocket costs incurred by Grantee within thirty (30) days after receipt of a bill from Grantee, together with copies of applicable invoices.

9. Miscellaneous.

- (a) The easements granted herein shall operate as covenants running with the land.
- (b) This Agreement shall be construed and governed in accordance with the substantive laws of the State of Nebraska without reference to any conflicts of law principles.
- (c) Nothing herein contained shall be deemed to be a gift or dedication of any part of the property by this Agreement to the general public, or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes expressed herein.

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(d) This Agreement shall be perpetual and shall be recorded in the official records of the Recorder of Douglas County, Nebraska.

(e) If any clause, phrase, sentence, condition or other portion of this Agreement shall be or become invalid, null or void for any reason or shall be held by any court of competent jurisdiction to be so, the remaining portions of this Agreement shall not be affected thereby and such remaining portions shall remain in full force and effect to be construed as if such invalid, null or void clause, phrase, sentence, condition or other portion had never been herein contained.

IN WITNESS WHEREOF, Grantor and Grantee executed this Agreement as of the date above.

GRANTOR:

CUSTARD CATS, LLC, a
Kansas limited liability company

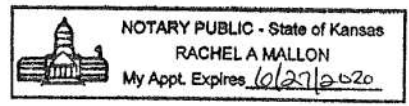
By: [Signature]
Name: Dave Dreiling
Title: Manager

State of Kansas)
)ss.
County of Pottawatomie)

This Access Easement and Agreement was signed and acknowledged before me this 27th day of March 2020, by Dave Dreiling, as Manager of Custard Cats, LLC, on behalf of Grantor.

Rachel A Mallon
Notary Public
Rachel A Mallon
Print name
6/27/2020
My commission expires:

(Seal)



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GRANTEE:

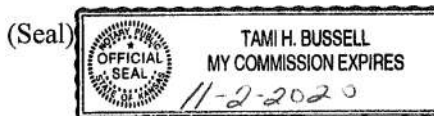
BATIS DEVELOPMENT COMPANY, a
Kansas corporation

By: J. Mark Wittenburg
J. Mark Wittenburg, President

State of Kansas)
)ss.
County of Shawnee)

This Access Easement and Agreement was acknowledged before me this 27 day of March 2020, by J. Mark Wittenburg, President of Batis Development Company, on behalf of said company.

Tami H. Buswell
Notary Public
Tami H. Buswell
Print name
11-2-2020
My commission expires:



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**EXHIBIT A
GRANTOR PROPERTY**

Lot 1, Benson Acres Replat 8, a platted and recorded subdivision in Douglas County, Nebraska

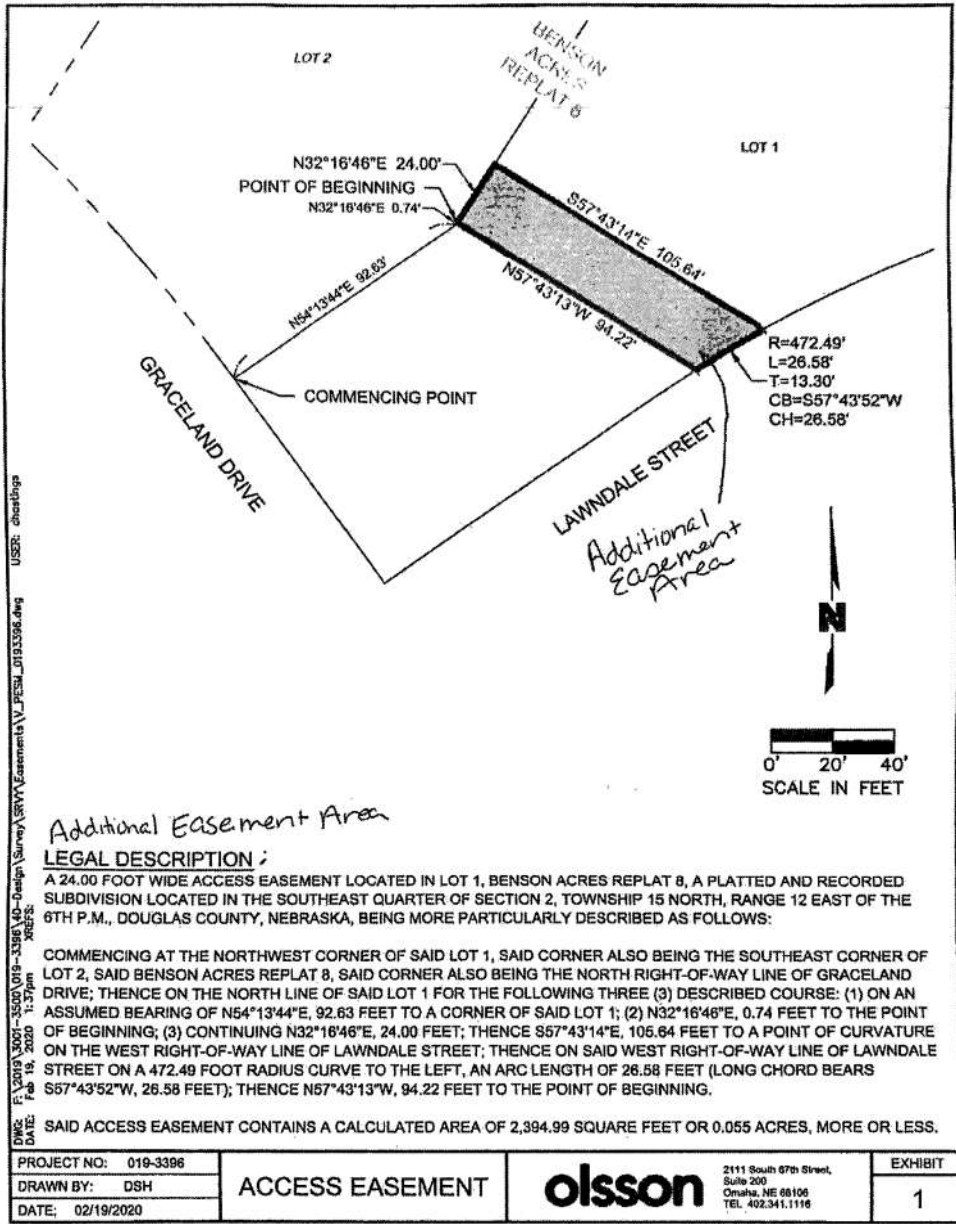
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EXHIBIT B

GRANTEE PROPERTY

Lot 2, Benson Acres Replat 8, a platted and recorded subdivision in Douglas County, Nebraska

EXHIBIT C
ADDITIONAL EASEMENT AREA



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EXHIBIT D
MONUMENT SIGN LOCATION

