

UNOFFICIAL COPY



Doc# 1628713022 Fee \$82.00
RHSP Fee:\$9.00RPRF Fee \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/13/2016 11:13 AM Pg: 1 of 23

Prepared by and return to:
Hartman Simons & Wood LLP
6400 Powers Ferry Road
Atlanta, Georgia 30339
Attn: Peter M. Hartman, Esq.

Permanent Tax Index Number
10-15-115-017-0000 and
10-15-115-020-000

Property Address:
Intersection of Skokie Boulevard, Emerson
Street and Gross Point Road, in Skokie, Illinois,
commonly known as "Emerson Crossing"

OUTPARCEL DECLARATION

THIS OUTPARCEL DECLARATION (this "Declaration") is made and entered into as of the 10th day of October, 2016, by **EMERSON SKOKIE PARTNERS, LLC**, a Delaware limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of certain outparcels herein referred to as the following: Outparcel A, Outparcel B, and Outparcel C (each as further defined in Article 1 below and depicted and labeled on the Site Plan, defined below);

WHEREAS, Declarant desires to establish certain restrictions, easements and conditions for the development and maintenance of certain portions of the Outparcels; and

WHEREAS, the Outparcels shall, after the date hereof, be held, occupied, conveyed, leased, mortgaged and otherwise dealt with subject to the restrictions, easements and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the benefits accruing to each of the Outparcels from the restrictions, easements and conditions created hereby, Declarant, as Owner with respect to each of the Outparcels, hereby submit and subject the Outparcels to the restrictions, easements and conditions hereinafter set forth and does further agree as follows:

CCRD REVIEW 

UNOFFICIAL COPY

ARTICLE 1

DEFINITIONS AND MEANINGS

1.1 “Alterations” shall mean any excavation, infill or grading on an Outparcel or the construction of any Building or other exterior alterations or improvements on an Outparcel.

1.2 “Buildable Envelope” shall mean, with respect to any Outparcel, the Buildable Envelope as depicted on the Site Plan, as may be amended from time to time by the Owners.

1.3 “Building” shall mean any building that is constructed within the Project, including any ancillary attached improvement under a permanent roof structure.

1.4 “Common Area” shall be defined as the common driveways, curbcuts, entrances, storm water drainage system, parking areas and signage used by multiple Occupants located within the Project; provided, however, neither single-user trash enclosures nor drive-through lanes and related improvements shall be considered Common Area hereunder.

1.5 “Declarant” shall mean Emerson Skokie Partners, LLC, and its successors and assigns, for so long as Declarant owns fee simple title to one or more of the Outparcels. From and after the date Emerson Skokie Partners, LLC (or its successors and assigns) sells, conveys or transfers fee simple title of the last remaining Outparcel so that Emerson Skokie Partners, LLC (or its successors and assigns) no longer owns fee simple title to any Outparcel, the “Declarant” shall mean the Owner elected by the majority vote of all Outparcel Owners, such vote to be held within sixty (60) days following the sale of the last remaining Outparcel by Emerson Skokie Partners, LLC (or its successors and assigns). Thereafter, following the written request from any Owner, the Owners shall have a re-vote not more than once every three (3) years.

1.6 “Governmental Regulations” shall mean all applicable rules, rulings, regulations, laws, statutes, orders, writs, decrees, injunctions, codes, ordinances, permits, conditions of approval or authorization of any governmental and quasi-governmental jurisdiction or agency having jurisdiction over the Project.

1.7 “Party” or “Parties” shall mean one or all Owners and/or Occupants, as applicable.

1.8 “Occupant” shall mean any lessee, ground lessee, tenant, or other occupant of any Outparcel, or any assignee or successor thereof, who is entitled to use or occupy all or any portion of any Outparcel, as the case may be, under an ownership right or any lease, sublease, assignment, or other similar agreement.

1.9 “Outparcel A” shall mean all that approximately 0.850 acre tract or parcel of land depicted and designated as “Outparcel A” on the Site Plan, and legally described on **Exhibit “B”** attached hereto and by this reference incorporated herein.

1.10 “Outparcel B” shall mean all that approximately 0.92 acre tract or parcel of land depicted and designated as “Outparcel B” on the Site Plan, and legally described on **Exhibit “B-1”** attached hereto and by this reference incorporated herein.

UNOFFICIAL COPY

1.11 “Outparcel C” shall mean all that approximately 0.711 acre tract or parcel of land depicted and designated as “Outparcel C” on the Site Plan, and legally described on **Exhibit “B-2”** attached hereto and by this reference incorporated herein.

1.12 “Outparcel” or “Outparcels” shall mean, individually or collectively, as the case may be, Outparcel A, Outparcel B, and/or Outparcel C.

1.13 “Owner” shall mean, individually or collectively any person or entity owning fee simple title to all or any portion of any Outparcel or Outparcels; provided, however, so long as an Outparcel is entirely leased to a single Occupant, such Occupant is hereby appointed the entity to act as the Owner of such Outparcel. The foregoing does not constitute a transfer of fee simple title and does not give rise to a sale, conveyance or transfer for purposes of a change in the Declarant.

1.14 “Project” shall collectively mean the three (3) Outparcels.

1.15 “Site Plan” shall mean that certain Site Plan attached hereto as **Exhibit “A”** and by this reference incorporated herein.

ARTICLE 2

SCOPE; TERM; RIGHTS OF GENERAL PUBLIC AND OCCUPANTS

2.1 Scope. Every Party shall be bound by this Declaration only during the period it is the Owner or Occupant of any Outparcel(s) or portion thereof, except as to obligations, liabilities or responsibilities that arise or accrue during said period of ownership or occupancy. If more than one Owner or Occupant has a legal interest in an Outparcel, all such Owners or Occupants of said Outparcel shall be jointly and severally liable for the obligations hereunder as such obligations may be specifically set forth hereunder.

2.2 Term. Unless otherwise canceled or terminated, all of the easements granted in this Declaration shall continue in perpetuity and all other rights and obligations hereof, except for restrictions on use, shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof. All restrictions on use set forth herein shall continue in full force and effect for a period of twenty (20) years from the date hereof and thereafter shall automatically renew for eight (8) successive ten (10) year periods unless all Owners shall file of record a written termination of such restrictions prior to such renewal. Notwithstanding the foregoing, in the event any law prohibits any such restrictions, easements and/or conditions from being enforceable for a period in excess of the period stated above, Declarant (or the party to purchase Declarant’s remaining Outparcel) hereby retains the right to unilaterally re-record this Declaration at any time and from time to time for the purposes of extending the enforceability thereof provided such re-recording has the consent of a majority of the Owners.

2.3 No Rights in Public Generally. Except as otherwise specifically provided herein, the restrictions, easements and conditions created, reserved, granted and established in this Declaration do not, are not intended to, and shall not be construed to create any easements, rights or privileges in and for the benefit of the general public. Notwithstanding anything to the contrary contained herein, each Party shall have the right to prohibit or limit any solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafleting, picketing, carrying of signs, canvassing, demonstrations, or similar activities within that portion of the Common Area located on said Party’s Outparcel.

UNOFFICIAL COPY

ARTICLE 3

MAINTENANCE OF OUTPARCELS AND COMMON AREAS

3.1 Construction and Maintenance of the Common Areas. Declarant shall be responsible for the construction of the initial Common Areas in accordance with the Site Plan. Following the completion of the construction of the Common Areas and the authorized building(s) on each Outparcel, the Owners of each Outparcel shall, at their respective sole cost and expense, perform all such maintenance and repair of the Common Areas (the "Performing Party") on their respective Outparcel. Each Performing Party's repair and maintenance obligations as aforesaid shall include: (1) maintaining the surfaces in a level, smooth and evenly covered condition, (2) removing all papers, debris, snow, ice, filth and refuse and sweeping the areas to keep the Common Areas in a neat, clean and orderly condition, (3) placing, keeping in repair and replacing any signs, markers and lines, (4) maintaining all landscaped areas (5) maintaining the Common Area free of any impediments to easy and safe movement; and (6) operating, keeping in repair and replacing lighting facilities, and keeping the Common Area well lighted up to 11:30 p.m. each night along with artificial lighting for the access drives from dusk to dawn for safety purposes which times may be adjusted for safety purposes. All repairs and maintenance of the Common Areas by each Performing Party shall be performed in accordance with applicable law, and standards of first class shopping centers, and shall be consistent with and in harmony with the overall condition and presentation of the remaining Common Areas of the Shopping Center.

3.2 Failure to Maintain. Should any Performing Party fail to maintain and repair the Common Areas on their Outparcel in accordance with the terms above, any other Owner or Occupant (the "Notifying Party") may give written notice thereof to any such Performing Party (with copies sent to all other Owners), setting forth with particularity the claimed deficiencies in the maintenance and repair of the Common Areas. In the event the Performing Party fails to undertake and complete the cure of such objections and/or deficiencies within thirty (30) days after receipt of such notice (unless such correction requires more than thirty (30) days to complete in which event such Performing Party shall not be in breach of this provision so long as it commences to cure within such 30-day period and thereafter diligently pursues the same to completion), then the Notifying Party shall have the right thereafter to complete the needed maintenance or repair. In such an event, such Performing Party shall reimburse the Notifying Party for all actual, reasonable costs and expenses paid or incurred in connection with the completion of such maintenance or repairs together with interest on all such incurred costs and expenses calculated at the rate of twelve percent (12%) per annum ("Interest"). Said written demand shall be accompanied by invoices and other reasonable documentation evidencing the costs incurred. The required reimbursement shall be delivered to the Notifying Party within ten (10) business days after such Performing Party's receipt of written demand thereof. In the event such Performing Party fails to make such payment within said 10-business day period, then the Notifying Party shall be entitled to all remedies available at law and in equity including the right to file a lien against the defaulting Owner or Occupant's Outparcel (if the Performing Party is an Owner or Occupant).

3.4 Casualty. If any Building or improvements in the Project are destroyed or damaged by fire or other casualty, then the Owner or Occupant of the Outparcel upon which the Building or improvements were located will either (i) cause the improvements to be repaired, replaced or rebuilt within nine (9) months after receipt by Owner or Occupant of the permits needed to complete the same, or (ii) cause the improvements to be promptly razed and the Outparcel placed in a safe and sightly condition. Notwithstanding the foregoing, the Owner or Occupant must promptly repair, restore or replace any damaged portion of the Critical Access Drives that are located on its Outparcel. Notwithstanding the foregoing, in the event (i) said fire or other casualty occurs within the last two (2) years of the Tract B Occupant's lease term, and/or (ii) damages to Tract B affect more than the financial institution, at the

UNOFFICIAL COPY

election of Tract B Occupant, the aforementioned obligations in this Section 3.4 shall be solely the responsibility of Tract B Owner. In the event Tract B Occupant elects to repair, replace or rebuild the financial institution located on Tract B, in no event shall Tract B Occupant be required to complete said repairs, replacement or rebuild within nine (9) months after receipt of permits needed to complete the same, provided, however, Tract B Occupant shall proceed with reasonable diligence to reconstruct or repair Tract B to substantially the same condition in which it existed prior to the damage or destruction.

3.5 Insurance. Each Owner shall (i) cause all Buildings and improvements located on its Outparcel to be insured against loss or damage by fire and customary extended coverage on a replacement cost basis; (ii) procure and maintain or cause to be procured and maintained by an Occupant with respect to each Outparcel, commercial general liability insurance with limits of at least Three Million Dollars (\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate for bodily injury and property damage; and (iii) list all Owners' lienholder or mortgagee as a loss payee and additional insured on each insurance policy. From time to time upon request by the Performing Party or an Owner, each Owner shall deliver or cause to be delivered to the requesting party certificates, using Acord Form 25 or the equivalent, evidencing all insurance policies required under this Declaration and thereafter shall deliver certificates evidencing renewal or replacements of such policies at least fifteen (15) days prior to the expiration of any existing policy. All insurance policies shall be written by companies that are authorized to do business in the State of Illinois and that have a Best's financial category minimum rating of Class "A-/VII" as shown in the most recent edition of Best's Insurance Report. Any insurance coverage required to be carried under this Declaration may be provided under a primary, blanket, umbrella, or excess policy or any combination thereof. Owners and Occupants may self-insure for the insurance required above so long as such Owner or Occupant maintains an adequate plan of self-insurance and a tangible net worth in excess of \$50,000,000. Owners and Occupants hereby release all other Owners, Owners' lienholder or mortgagee, and Occupants from any liability for damage or destruction to property, whether or not caused by acts or omissions of a released party or, its employees, agents or contractors, and waives any and all claims and right of recovery against a released party or, its employees, agents or contractors to the extent that any such claim is covered by their respective insurance policies. Owners and Occupants shall each look to their respective insurance coverage for recovery of any insured property damage.

ARTICLE 4

EASEMENTS

4.1 Access and Parking Easements. Declarant and all Owners do hereby declare, establish, create and grant to the individual Owners and/or Occupants of the Outparcels, for their benefit, the non-exclusive right, privilege and easement over and across the Common Area of the granting Party's Outparcel for (a) the construction of the Common Areas (such easement to be temporary and expire upon completion of the initial construction of the Common Areas), (b) perpetual vehicular and pedestrian ingress and egress over and across the Common Areas located on such granting Party's Outparcel and, as necessary, across the remaining portions of the Common Area of the Project, including, but not limited to, all roadways and driveways within the Project, such rights of ingress and egress to include such rights for the employees, agents, contractors, customers, vendors, suppliers, visitors and invitees of the Owners and/or Occupants of the Outparcels, (c) perpetual parking rights throughout the Project (provided, however, the total number of parking spaces on each Outparcel shall not be reduced by more than three (3) parking spaces from the total number of parking spaces shown on the Site Plan for each Outparcel; provided, however, that no reserved parking spaces specifically allocated to an Occupant may be reduced), (d) perpetual repair and maintenance to the extent that any Party hereunder has the right to and, in fact, does exercise its self-help rights set forth in this Declaration.

UNOFFICIAL COPY

4.2 Utility Easements. Declarant and all Owners do hereby declare, establish, create and grant to Declarant and the individual Owners and/or Occupants of the Common Area of the Outparcels, for their benefit, the non-exclusive right, privilege and easement over, under and across the granting Party's Outparcel for the installation, construction, use, maintenance, repair and replacement of certain utility facilities, including, but not limited to telephone, gas, electric, cable, water, storm sewer and sanitary sewer lines (the "Utility Facilities") to be located in the areas shown on the utility easement plan attached hereto as **Exhibit "A-1"** and by reference thereto incorporated herein (the "Utility Easement Areas"). In addition to the foregoing, Declarant does hereby declare, establish, create and grant to all Owners and/or Occupants of the Outparcels, for their benefit, the non-exclusive right, privilege and easement to drain all storm water and sanitary sewer water through the storm drainage and/or sanitary sewer facilities and lines to the extent such lines cross under, over or across the remaining portions of the Common Area of the Project. Subject to the prior written approval of the Parties affected, Declarant shall have the right (but not the obligation) to relocate, repair or replace the Utility Facilities upon ten (10) days' prior written notice to the Owner and/or Occupant of the particular Outparcel affected by such repair and/or relocation. Declarant shall indemnify and hold the Owner and/or Occupant of the Outparcel obtaining service from such Utility Facilities harmless from any loss or damage occasioned by such relocation or general construction activities, including, but not limited to, interruption of service. In the event of any interruption of service caused by relocation or general construction activities, the party damaging the Utility Facilities serving another Outparcel shall perform the necessary repairs and restore service within twenty-four (24) hours and if it fails to do so, the damaged party may exercise self-help and charge the damaging party for all reasonable costs to repair the Utility Facilities and/or restore service. Upon completion of such repairs and/or relocation, Declarant shall restore the Outparcel to substantially the condition existing prior to such relocation, repair or replacement of the Utility Facilities.

4.3 Ancillary Use Easements. Declarant and all Owners do hereby declare, establish, create and grant to the Owner and Occupant of **Outparcel B**, for their benefit, an easement to construct, maintain, repair, replace and use a drive-through lane and associated improvements (including paving, curbing, directional and menu board signage, and electrical lines illuminating the signage) along with an easement to construct, maintain, repair, replace and use a trash enclosure (for such Occupant's exclusive use) in the area marked on **Exhibit "A-1"** as the "Trash Enclosure Area."

Following the initial construction and installation of the Utility Facilities, drive-through and Trash Enclosure Area, each Owner shall be obligated to maintain and repair the Utility Facilities, along with any drive-through lane and/or Trash Enclosure Area as the case may be contained within their Outparcel.

No Owner, Occupant or other party utilizing the Outparcels may overburden the Utility Facilities or enlarge the Utility Facilities without the prior written consent of Declarant. In addition, Declarant reserves the right to dedicate any portion or all of the Utility Facilities to the applicable governmental authorities and each Owner and/or Occupant shall cooperate with Declarant in effectuating such dedication at no cost to Declarant including executing such documents as may be reasonably required by the governmental authority in connection with the same.

4.4 Intentionally Deleted.

4.5 Avoidance of Prescription. The Owner (but not any Occupant) of each Outparcel shall be entitled to interrupt or disturb the passage of vehicular and pedestrian access, ingress and egress over and across all roadways, driveways, entranceways and sidewalks from time to time located on such Owner's Outparcel for the purpose of preventing the creation of prescriptive easement rights in favor of the public or otherwise, but such closure or interruption (i) shall be permitted only to the extent necessary under

UNOFFICIAL COPY

applicable law to prevent prescriptive rights from vesting, and (ii) shall be conducted so as to minimize the disruption of business operations and access of any other Owner or Occupant as the case may be.

4.6 Indemnity. Each Owner or Occupant, as the case may be, shall indemnify and hold the other Parties and Owners' lienholder or mortgagee harmless from and against any and all loss, damage, cost or expense (including actual and reasonable attorneys' fees and court costs) incurred as a result, directly or indirectly, of the exercise of the indemnifying Party's rights granted under this Declaration, or as a result, directly or indirectly, of any act or omission under this Declaration of any such indemnifying Party, its agents, employees, contractors, subcontractors or any other party acting on behalf of said indemnifying Party.

ARTICLE 5

DEVELOPMENT

5.1 Construction. Any Alterations must be constructed in a good and workmanlike manner without substantial interruption and such constructing Owner or Occupant shall use commercially reasonable efforts to minimize interference with the ongoing business operations of other Owners and Occupants. All Buildings must be located within the Building Envelopes that are set forth on the Site Plan unless reasonably approved by the Owners. Constructing Owners and Occupants must stage for construction entirely on the constructing party's Outparcel, without interfering with or hindering the use of any "Critical Access Drives" as shown on the Site Plan. Critical Access Drives shall include all curb cuts and entrances and portions of drive aisles which provide ingress and egress for multiple Outparcels.

5.2 Configuration. No Outparcel shall be split, divided or further subdivided in any manner without the prior written reasonable approval of the Owners. No Outparcel Owner shall realign or relocate those Critical Access Drives and Buildable Envelopes without the prior written reasonable approval of the Owners.

5.3 Signage. Subject to Governmental Regulations, each Owner or Occupant may construct such building signs, freestanding pole and/or monument signs, and directional signage on its Outparcel as such Owner or Occupant deems appropriate.

ARTICLE 6

GENERAL

6.1 Amendment. No amendment to this Declaration shall be permitted without the prior written consent of the Owners or Occupants of all Outparcels, which consent shall not be unreasonably withheld. All proposed amendments to this Declaration shall be in writing, duly executed by all consenting Parties (to the extent required hereunder), and recorded in the Public Records of Cook County, Illinois. To the extent that any lienholder or mortgagee has any rights over any portion of any Outparcels, the Owner of such Outparcel shall be required to obtain such lienholder or mortgagee's consent in writing to the modification or termination hereof.

6.2 Enforcement. Each of the easements, covenants and restrictions herein contained will be enforceable by Owners and Occupants, as the case may be, by injunction, specific performance or by any other appropriate course of action. If any Owner or Occupant commences an action to enforce any of the terms of this Declaration, the prevailing Owner or Occupant will be entitled to recover the reasonable attorneys' fees, costs and expenses incurred in connection therewith.

UNOFFICIAL COPY

6.3 Partial Invalidity. In the event any provision of this Declaration is determined to be illegal or legally unenforceable, such determination shall have no effect upon the remaining terms and provisions hereof, and the remaining terms and provisions hereof shall continue in full force and effect.

6.4 Notices. Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon or given hereunder shall be in writing and shall be delivered or sent by (i) nationally recognized overnight courier, (ii) hand delivery, (iii) registered or by certified mail, postage prepaid, return receipt requested, or (iv) facsimile, with a "hard" copy also sent by either of the means provided in (i) or (ii) above, and shall be delivered to the following address:

If to Declarant: Emerson Skokie Partners, LLC
c/o Klaff Realty LP
180 N. Michigan Avenue, Suite 300
Chicago, IL 60601
Attn: Ryan Levy

With a copy to: Hartman Simons & Wood LLP
6400 Powers Ferry Road, N.W.
Atlanta, Georgia 30339
Attn.: Peter M. Hartman, Esq.

*With a copy to Outparcel
Occupant:* Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349-2998
Attn: Property Management-Real Estate Legal

and to:

Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349-2998
Attn: Real Estate Legal Department-FSU Division

*With a copy to Outparcel
B Occupant:* Bank of America, National Association
13850 Ballantyne Corporate Place
Mail Code NC2-150-03-06
Charlotte, North Carolina 28277
Attn: Lease Administration (MH # ILW-265)

and to:

Sarah A. Harmon, Vice President
Bank of America, National Association
214 N. Tryon Street
Mail Code NC1-027-MZ-01
Charlotte, North Carolina 28255

*With a copy to Outparcel
Occupant:* ACG Car Care, LLC
1 Auto Club Drive
Dearborn, MI 48216
Attn. Real Estate Services

UNOFFICIAL COPY

With a copy to: Office of General Counsel
The Auto Club Group
1515 North Westshore Blvd.
Tampa, FL 33607

With a copy to any other Owner: To the address specified in the records of the Office of the Cook County Assessor for such Owner.

If to Declarant's Lender: Wintrust Bank
231 S. LaSalle Street
Chicago, IL 60604
Attention: Kevin Lichterman

With a copy to: Clark Hill PLC
150 N. Michigan Avenue
Suite 2700
Chicago, IL 60601
Attention: Chad M. Poznansky

Any current or subsequent Owner or Occupant of any Outparcel may specify or change the place for service of notice by sending a notice to the other Owners or Occupant(s), which notice shall become effective ten (10) days after delivery thereof. All such notice addresses shall be within the United States.

6.5 No Waiver. No delay or failure on the part of Declarant and/or any other Owner or Occupant in the enforcement of its rights under this Declaration shall impair enforcement, or be construed as a waiver of any such right, or constitute acquiescence by Declarant or any other Owner or Occupant to the breach or violation thereof. Except as otherwise specifically provided herein, no waiver by Declarant or any other Owner or Occupant shall be valid unless made in writing and signed by Declarant, or Owner or Occupant, and then only to the extent expressly set forth therein.

6.6 Use Restrictions. No portion of the Project shall be used in violation of the use restrictions set forth on **Exhibit "C"** attached hereto and made a part hereof.

6.7 Obligations Run With the Land. The easements, rights and obligations provided for herein shall benefit and burden the Outparcels, shall be perpetual, shall run with the land, and shall bind and inure to the benefit of the Owners and Occupants and set forth herein and their respective successors and assigns.

6.8 Estoppels. Declarant and/or an Owner or Occupant may request in writing that each other Owner or Occupant or any of them provide to Declarant and/or the requesting Owner or Occupant, its proposed purchaser, mortgagee or trustee under a deed to secure debt, or in connection with a prospective transfer or financing of an Outparcel, within twenty-one (21) days from receipt of such written request, an estoppel certificate stating that such Owner is in compliance with the terms and conditions of this Declaration, that to the best of such Owner's knowledge there are no amounts due and owing hereunder (or to the extent there are such party shall so state), and such other information as the requesting Party shall reasonably request, and any exceptions thereto.

6.9 Governing Law. This Declaration shall be governed in accordance with the laws of the State of Illinois.

UNOFFICIAL COPY

6.10 Liens. In the event a Party is entitled to file a lien against another Outparcel pursuant to the express terms of this Declaration, such lien shall automatically be subordinate to any pre-existing first deed to secure debt, mortgage or deed of trust (a "Mortgage") encumbering the defaulting Owner's Outparcel and to the interest of (i) any successor or assignee of the mortgagee under such Mortgage, (ii) any party that has purchased the Outparcel and leased it from the preceding Owner, or its affiliate or subsidiary, on a net lease basis with the lessee assuming all obligations (i.e., a sale-leaseback transaction), or (iii) any purchaser at a foreclosure or trustee's sale or deed in lieu of foreclosure under such first Mortgage.

LIST OF ATTACHMENTS AND EXHIBITS:

<u>Attachment #1</u>	–	Consent and Subordination of Lender
<u>Exhibit "A"</u>	–	Site Plan
<u>Exhibit "A-1"</u>	–	Utility Easement Areas; Trash Enclosure Area
<u>Exhibit "B"</u>	–	Outparcel A Legal Description
<u>Exhibit "B-1"</u>	–	Outparcel B Legal Description
<u>Exhibit "B-2"</u>	–	Outparcel C Legal Description
<u>Exhibit "C"</u>		Use Restrictions

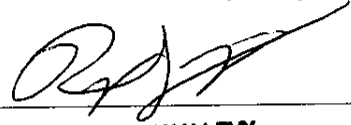
[Signature on following page]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized representative as of the day and year first above written.

DECLARANT:

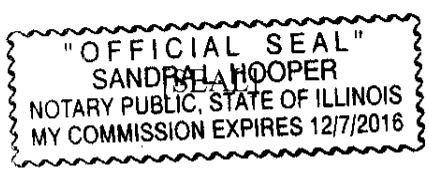
EMERSON SKOKIE PARTNERS, LLC,
a Delaware limited liability company

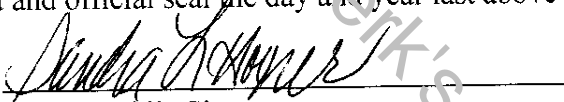
By: 
Name: RYAN LEVY
Title: AUTHORIZED SIGNER

Date: 10/5/2016

STATE OF Illinois
COUNTY OF Cook

On this 5th day of October, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared Ryan Levy, as Authorized Signer of Emerson Skokie Partners LLC, who executed the foregoing instrument on behalf of said LLC for the purposes therein expressed. He/She is either () personally known to me or () has produced _____ as identification, and () did or () did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.




Notary Public Signature
Printed/Typed Name: Sandra L. Hooper
My Commission Expires: 12/7/16
Commission Number: 521775

UNOFFICIAL COPY

CONSENT OF OCCUPANTS

By its signature below, Chick-Fil-A, Inc. hereby consents to the provisions, execution and delivery of this Declaration.

CHICK-FIL-A, INC.,
a Georgia corporation

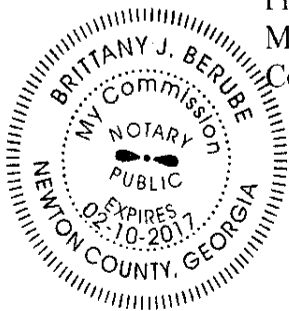
By: _____
Name: Vance Burgess
Title: Sr. Director

STATE OF Georgia)
) §
COUNTY OF Fulton)

On this 30th day of September, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared Vance Burgess, as Sr. Director of Chick-Fil-A, Inc., who executed the foregoing instrument on behalf of said Corporation for the purposes therein expressed. He/She is either () personally known to me or () has produced _____ as identification, and () did or () did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

Brittany J. Berube
Notary Public Signature
Printed/Typed Name: _____
My Commission Expires: _____
Commission Number: _____

[SEAL]



UNOFFICIAL COPY

By its signature below, Bank of America, National Association hereby consents to the provisions, execution and delivery of this Declaration.

BANK OF AMERICA, NATIONAL ASSOCIATION,
a national banking association

By: *Sarah A. Harmon*
Name: Sarah A. Harmon
Title: Vice President

STATE OF NC)
COUNTY OF Mecklenburg) §

On this 23rd day of September, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared Sarah A Harmon, as VP of Bank of America Association, who executed the foregoing instrument on behalf of said Association for the purposes therein expressed. He/She is either () personally known to me or () has produced District NC as identification, and () did or () did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

Sarita Gupta
Notary Public Signature
Printed/Typed Name: SARITA GUPTA
My Commission Expires: 10-12-2016
Commission Number: _____

[SEAL]

SARITA GUPTA
Notary Public
Mecklenburg Co., North Carolina
My Commission Expires Oct. 12, 2016

UNOFFICIAL COPY

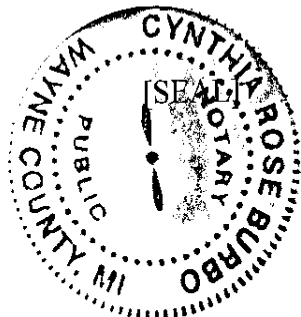
By its signature below, ACG Car Care, LLC hereby consents to the provisions, execution and delivery of this Declaration.

ACG Car Care, LLC,
a Florida limited liability company

By: *Sean H. Maloney*
Name: Sean H. Maloney
Its: Sr Vice President, CFO & Treasurer

STATE OF Michigan _____)
_____) §
COUNTY OF Wayne _____)

On this 10th day of October, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared Sean H. Maloney, as Sr VP, CFO & Treasurer of The Auto Club Group, who executed the foregoing instrument on behalf of said ACG Car Care, LLC for the purposes therein expressed. He/She is either personally known to me or has produced _____ as identification, and did or did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.



Cynthia Rose Burbo
Notary Public Signature
Printed/Typed Name: Cynthia Rose Burbo
My Commission Expires: June 21, 2020
Commission Number: _____

CYNTHIA ROSE BURBO
Notary Public, State of Michigan
County of Wayne
My Commission Expires Jun. 21, 2020
Acting in the County of Wayne

UNOFFICIAL COPY

ATTACHMENT #1

CONSENT AND SUBORDINATION OF LENDER

Wintrust Bank, an Illinois banking corporation, as mortgagee pursuant to a certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated March 1, 2016 and recorded in the Recorder's Office of Cook County, Illinois, on March 10, 2016, as Document Number 1607012070 and assignee of certain Assignment of Rents and Leases dated March 1, 2016 recorded on March 10, 2016, as Document Number 1607012071, does hereby consent to the recording of the foregoing Outparcel Declaration and agrees that the lien of said Mortgage shall be subject and subordinate to the provisions of the foregoing Outparcel Declaration.

IN WITNESS WHEREOF, Wintrust Bank, as mortgagee as aforesaid, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents by Kevin Lichterman, its Vice President, this 11th day of October, 2016.

Wintrust Bank,
An Illinois Banking Corporation

By: [Signature]

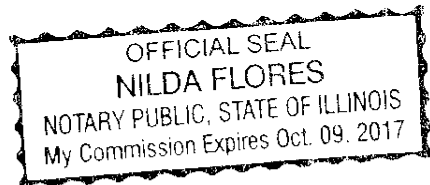
Its: Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Kevin Lichterman personally known to me to be the same person whose names is subscribed above appeared before me this day in person and acknowledged that he or she signed and delivered the said instrument as his or her own free and voluntary act in his or her capacity as Vice President of Wintrust Bank, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

SUBSCRIBED and SWORN to before me this 11th day of October, 2016.

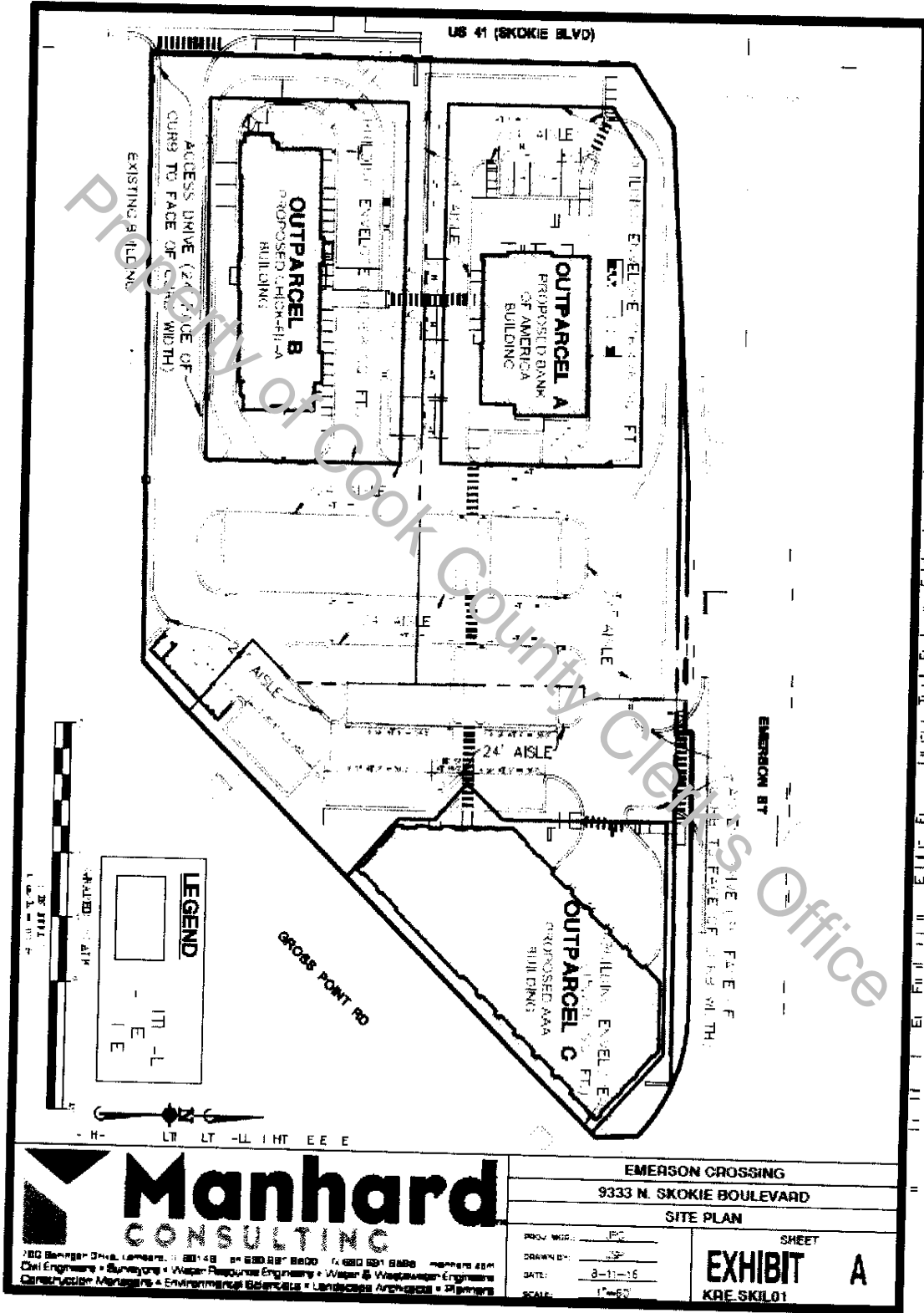
[Signature]
Notary Public



UNOFFICIAL COPY

EXHIBIT "A"

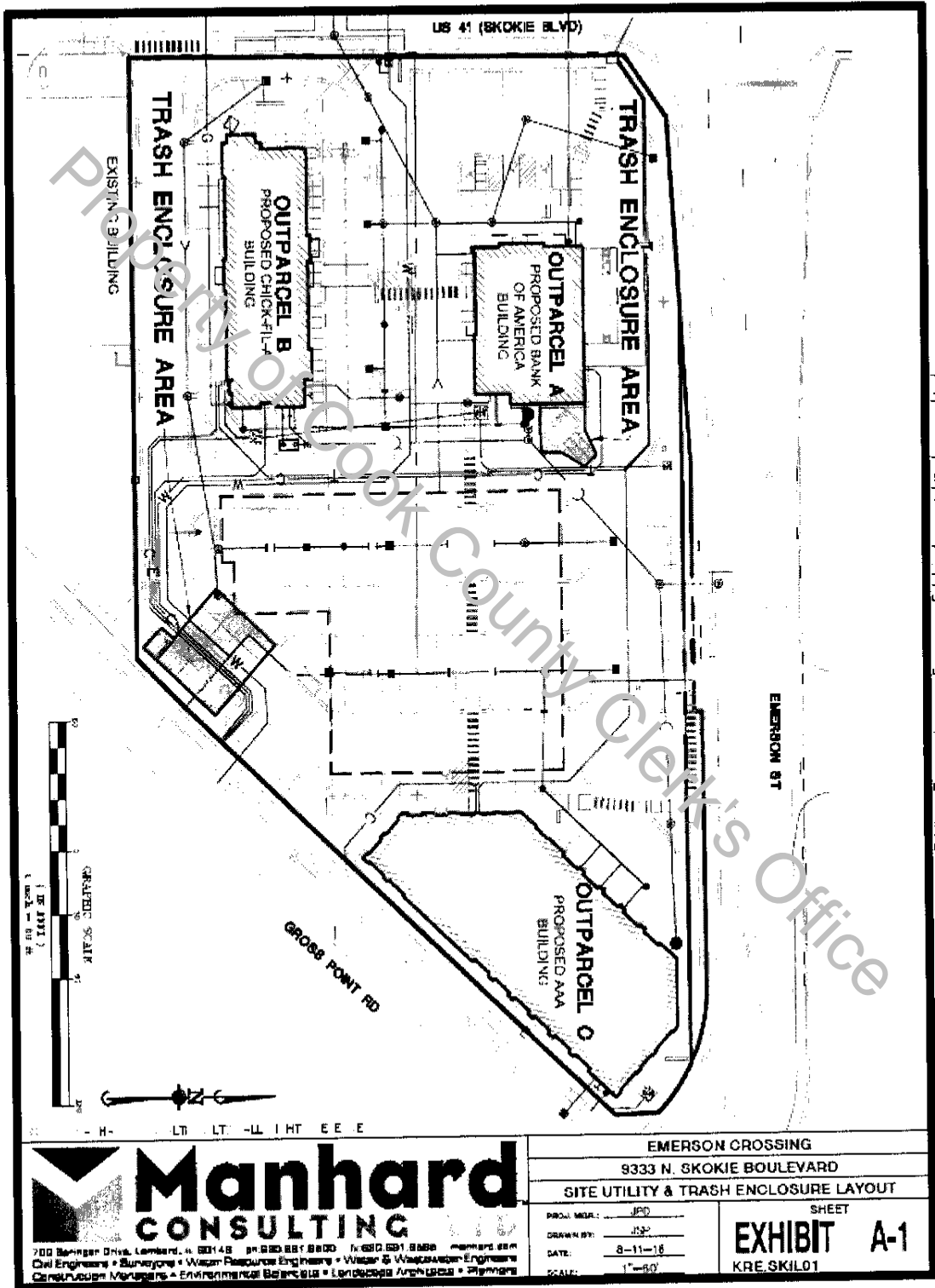
SITE PLAN



UNOFFICIAL COPY

EXHIBIT "A-1"

UTILITY EASEMENT AREAS AND TRASH ENCLOSURE AREA



UNOFFICIAL COPY

EXHIBIT "B"

LEGAL DESCRIPTION OF OUTPARCEL A

LOT 1 IN EMERSON CROSSING SUBDIVISION BEING A PART OF LOTS 1 AND 2 IN THE PARTITION BETWEEN THE HEIRS OF MICHAEL DIEDERICH OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 41 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MAY 9, 2016 AS DOCUMENT 1613016005, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B-1"

LEGAL DESCRIPTION OF OUTPARCEL B

LOT 2 IN EMERSON CROSSING SUBDIVISION BEING A PART OF LOTS 1 AND 2 IN THE PARTITION BETWEEN THE HEIRS OF MICHAEL DIEDERICH OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 41 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MAY 9, 2016 AS DOCUMENT 1613016005, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B-2"

LEGAL DESCRIPTION OF OUTPARCEL C

LOT 3 IN EMERSON CROSSING SUBDIVISION BEING A PART OF LOTS 1 AND 2 IN THE PARTITION BETWEEN THE HEIRS OF MICHAEL DIEDERICH OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 41 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MAY 9, 2016 AS DOCUMENT 1613016005, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

USE RESTRICTIONS

No portion of the Project will be used for any of the following uses or purposes without the prior written consent of the Owners:

- (a) Motion picture, live performance and all other types of theaters.
- (b) Bowling alley.
- (c) Skating rink.
- (d) Circus, carnival, or amusement park or center.
- (e) Auditorium, meeting hall, ballroom, school or other place of public assembly.
- (f) Gym or fitness center (excluding, however, yoga and/or pilates studios).
- (g) Mortuary or funeral parlor.
- (h) Establishment selling cars or other motor vehicles, gas stations or any establishment selling trailers.
- (i) Cocktail lounge, bar, tavern, or nightclub.
- (j) Billiard parlor.
- (k) Pawn shop.
- (l) Gambling (provided that state sponsored lottery tickets shall not be prohibited), gaming room, casino or off-track betting operation.
- (m) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation.
- (n) Adult bookstore or facility selling, renting or displaying pornographic books, literature, or videotapes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality) (excluding, however, a full line retail bookstore or full line retail video store or a full line retail consumer electronic store or convenience stores that sell such materials as part of their business).
- (o) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia or the sale of medical marijuana.
- (p) Any residential use, including, but not limited to, hotels, motels, living quarters, or lodging rooms.

UNOFFICIAL COPY

- (q) Unemployment agency, service or commission.
- (r) Dance hall.
- (s) Tattoo parlor or body piercing parlor.
- (t) Bingo or similar games of chance (lottery tickets and other items commonly sold in retail establishments may be sold).
- (u) Video game (except as an incidental part of business) or amusement arcade.
- (v) Car wash.
- (w) Pawn shops, auction house, or flea market.
- (x) Gas station.
- (y) Any unlawful use.
- (z) Any central laundry or dry cleaning plant (the foregoing shall not apply to a laundromat or drop off facility).
- (aa) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors that constitute a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.
- (bb) Massage parlor, except for a Massage Envy type use (as the same operates as of the date hereof) or as an ancillary use in connection with the operation of a day spa.
- (cc) No merchandise, kiosks, carts, vending machines, promotional devices or services shall be offered or stored within the Common Areas of the Project.
- (dd) So long as the occupant of Outparcel B is open and operating on Outparcel B as a restaurant selling or serving chicken as a principal menu item (subject to temporary closures not to exceed one (1) year), no portion of the Project (other than Outparcel B) will be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. A "restaurant selling or serving chicken as a principal menu item" means a restaurant deriving 25% or more of its gross sales from the sale of chicken. Also, no portion of the Adjoining Property will be leased, used or occupied by or for any of the following: McDonald's, Wendy's, Arby's, Boston Market, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Carl's Jr., Hardee's, Chicken Out, Zaxby's, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raising Cane's, Chester's, Bush's Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, or Ezell's Famous Chicken.
- (ee) So long as the occupant of Outparcel B is open and operating on Outparcel B as a restaurant (subject to temporary closures not to exceed one (1) year), no portion of the Project (other than Outparcel B) shall be used as a restaurant.
- (ff) So long as the occupant of Outparcel C is open and operating on Outparcel C as a AAA automotive facility (subject to temporary closures not to exceed one (1) year), no portion of the Project (other than Outparcel C) shall be used for the principal business of AAA Automotive, which

UNOFFICIAL COPY

specifically includes travel services, insurance sales and service, repairs and service of automobiles as well as other related motor club services.

(gg) No portion of Project (other than Outparcel A) shall be used for the purpose of conducting the business of a Financial Services Institution. As used in herein, the term "Financial Services Institution" shall mean any entity engaged in any one or more of the following activities: (a) operation of a commercial bank, savings bank, savings and loan association, credit union, mutual or thrift association, or any other institution that accepts deposits of money; (b) operation of any sort of automated teller machine or cash dispensing machine (an "ATM"); (c) operation of a stock brokerage firm; (d) operation of a mortgage broker; (e) operation of a finance company, mortgage company or any other institution that lends money; (f) investment banking; (g) private banking; (h) wealth management services; (i) insurance brokerage; and (j) any other financial services or products that Bank of America (or its successors or assigns) is permitted to offer by law; provided that said restriction shall not prevent other occupants from maintaining and operating a single ATM within their premises, provided that (x) such ATM only possesses cash dispensing capabilities and does not accept deposits; (y) any signage related to the ATM shall be on a white background and be limited to the network name such ATM is a part of, and in no event shall the name of any logo of any bank, savings and loan, credit union or any ATM owner be on any sign visible from the exterior of the Building; and (z) such ATM shall be located entirely within that tenant's premises such that it is not accessible from the exterior of its premises. Notwithstanding the above, AAA shall not be restricted in any way in its ability to sell insurance (e.g. property, casualty, life and annuities) and its issuance of credit cards in the normal course of its business.