

INTRODUCED BY: Trustees Fortune, Graves, Whitmore, Eisenhauer and Stoeckl

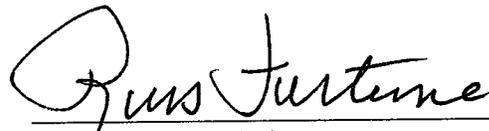
**AN ORDINANCE APPROVING A SECOND AMENDMENT TO RESTRICTION AND EASEMENT AGREEMENT AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF TRUSTEES TO EXECUTE SAME ON BEHALF OF THE VILLAGE OF TWIN OAKS.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Trustees hereby approves, and the Chairman of the Village of Twin Oaks, Missouri is hereby authorized to execute, the Second Amendment to Restriction and Easement Agreement, between USR-Desco Twin Oaks, L.L.C. and the Village of Twin Oaks in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference.

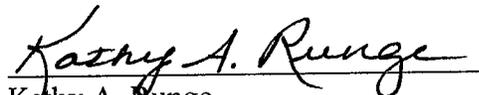
**Section 2.** This ordinance having been read by title or in full two times prior to passage, shall be in full force and effect from and after its passage and after being duly signed by the Chairman of the Board of Trustees and attested by the Village Clerk.

PASSED AND APPROVED THIS 18<sup>TH</sup> day of MAY, 2016.

  
\_\_\_\_\_  
Russ Fortune, Chairman  
Board of Trustees

ATTEST:

First Reading: 5-18-16

  
\_\_\_\_\_  
Kathy A. Runge  
Village Clerk/Controller

Second Reading: 5-18-16

**Exhibit 1**

**SECOND AMENDMENT TO**  
**RESTRICTION AND EASEMENT AGREEMENT**

This Second Amendment to Restriction and Easement Agreement, made and entered into this \_\_\_ day of May, 2016, by and between **USR-Desco Twin Oaks, L.L.C.**, a Delaware limited liability company ("Developer") and the **Village of Twin Oaks**, a Missouri Municipal Corporation ("Purchaser"), and

**WHEREAS**, Developer (as successor in interest to SM Properties Twin Oaks, L.L.C.) and Bank of America, N.A. (as predecessor to Twin Oaks-Manchester, LLC and later, the Village of Twin Oaks) entered into a Restriction and Easement Agreement (the "Original REA") on November 30, 2004, and recorded at Book 16295, Page 2553-2587 of the St. Louis County Recorder of Deeds, in conjunction with Bank of America acquisition of real property within the Twin Oaks Shopping Center, which acquired parcel is legally described on Exhibit A attached hereto (the "Purchaser Parcel"); and

**WHEREAS**, Developer and Twin Oaks-Manchester, LLC (as successor in interest to Bank of America, N.A.) entered into a First Amendment to Restriction and Easement Agreement (the "First Amended REA") on October 10, 2014, and recorded at Book 21216, Page 882 of the St. Louis County Recorder of Deeds, in conjunction with Twin Oaks-Manchester, LLC's acquisition of the Purchaser Parcel; and

**WHEREAS**, the Original REA, as amended by the First Amended REA (collectively, the "REA"), provides, among other things, allowable uses for the Purchaser Parcel, as well as certain uses which are prohibited thereon; and

**WHEREAS**, the REA permits its amendment by document in writing to be signed by the parties; and

**WHEREAS**, the parties desire to amend certain provisions of the REA.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, Developer and Purchaser agree as follows:

1. The first sentence of section 5.5(a) shall be deleted in its entirety and the following sentence shall be inserted in its place:

‘There shall be only one (1) free-standing building (“Building”) erected and maintained on Purchaser Parcel, such Building not to exceed six thousand (6,000) square feet in total area as measured from the exterior surfaces of the outer walls and including in aggregate the square footage of all mezzanine levels and basement levels, excluding patio, porch, portico, veranda, terrace or other outdoor spaces.’

2. Section 5.10(d) shall be deleted in its entirety and of no further force or effect.

3. Except for the specific provisions contained in this Second Amendment, the Original REA as amended by the First Amended REA, currently existing shall remain in full force and effect according to the terms thereof.

Executed as of the day and year first above written:

USR-DESCO TWIN OAKS, LLC, a Delaware limited liability company

By: USR-Desco Member, LLC, a Delaware limited liability company, its sole member

By: USR-Desco, LLC, a Delaware limited liability company, its sole member

By: Desco 2, LLC, a Missouri limited liability company, its managing member

By: The DESCO Group, Inc., a Missouri corporation, its sole manager

By: \_\_\_\_\_

Name: Mark J. Schnuck

Title: President

The Village of Twin Oaks

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Chairman

STATE OF MISSOURI            )  
                                          ) SS.  
COUNTY OF ST. LOUIS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be the person described in and who executed the foregoing instrument,  
and acknowledged that he executed the same as the President of USR-Desco Twin Oaks, L.L.C. a  
Delaware limited liability company, and acknowledged that the foregoing instrument was executed  
as the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in  
the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires: \_\_\_\_\_

STATE OF MISSOURI        )  
                                          ) SS.  
COUNTY OF ST. LOUIS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_, to be known to be the person described in and who executed the foregoing  
instrument, and acknowledged that he executed the same as the Chairman of the Village  
of Twin Oaks, and acknowledged that the foregoing instrument was executed as the free act  
and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in  
the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires:

**EXHIBIT A**

**LEGAL DESCRIPTION OF PURCHASER PARCEL**

Lot 1 of Twin Oaks Center Subdivision, as recorded in Plat Book 352, Page 889 of the St. Louis County, Missouri Recorder of Deeds Office