

WAUKESHA COUNTY, WI  
REGISTER OF DEEDS  
James R Behrend

Recorded On: 05/08/2014 8:57:21 AM

Total Fee: \$30.00 Page(s): 8  
Transfer Tax: \$0.00

**DECLARATION OF USE RESTRICTION**

Document Number

Document Name

**JELIVANN WAUKESHA LLC**, a Wisconsin limited liability company ("JELIVANN"), owns the real estate commonly known as 1640-1660 E. Main Street, Waukesha, WI, legally described as Lots 6, 7 and 8 of Certified Survey Map No. 11104 recorded in Volume 109 of Certified Survey Maps, pages 34-39, as Document No. 4046895, in the City of Waukesha, Waukesha County, Wisconsin ("**JELIVANN Property**").

**WAUKESHA STATE BANK**, a Wisconsin banking corporation ("WSB"), has a leasehold interest in the real estate described as Lot 6 of Certified Survey Map No. 11104 recorded in Volume 109 of Certified Survey Maps, pages 34-38, as Document No. 4046895, in the City of Waukesha, Waukesha County, Wisconsin ("**WSB Property**").

By this Declaration, JELIVANN and WSB intend to impose a use restriction on all parts of the JELIVANN Property except for the WSB Property (the Restricted Parts), each of the benefit of the other, on the terms and conditions that follow.

**Recording Area**

Name and Return Address  
JELIVANN WAUKESHA  
ATTN: BRET A. BACKUS  
7818 BIG SKY DRIVE, SUITE 201  
MADISON, WI 53719

**WAKC 1007047**

Parcel Identification Number(s):  
This is not homestead property.

1. **Exclusive Use Restriction.** JELIVANN hereby declares that neither JELIVANN nor any other owner or tenant of the Restricted Parts may use the Restricted Parts as a location for a free standing bank, credit union, or other financial institution, licensed, chartered, or otherwise authorized to do business under federal or state law (the Restriction).

1.1 **Benefit.** The Restriction is solely for the benefit of the WSB Property. Neither JELIVANN nor WSB may amend this Declaration without the prior written consent of the other.


1.2 **No Duty to Enforce.** JELIVANN will have no obligation to enforce the Restriction, but JELIVANN will not sell or lease the Restricted Parts to a user who, to the actual knowledge of JELIVANN, intends to violate the Restriction. The owner or tenant of the WSB Property, from time to time, will have the sole responsibility of enforcing the Restriction at its sole expense.

1.3 **Injunctive Relief.** Any owner or tenant having the benefit of the Restriction will suffer irreparable harm if the Restriction is violated. Damages will not be an adequate remedy. Such an owner or tenant will have the right to injunctive relief to enforce the Restriction. In addition, the owner or tenant will have the right to damages and such other relief as is available under applicable law.

2. **RESTRICTIONS RUN WITH THE LAND.** This Declaration will run with the land and will be binding upon and inure to the benefit of the owners of the JELIVANN Property and the WSB Property, and their respective successors and assigns. Any owner or tenant of the WSB Property will have the power to enforce the terms of this Declaration.

3. **VENUE.** Any litigation that is the subject matter of this instrument will be venued in the circuit court for Waukesha County, Wisconsin, and each party hereto and their successors and assigns accepts the jurisdiction of such court.
4. **NO WAIVER.** Failure to enforce any provision of this Declaration will in no event be deemed a waiver of the right to do so for any subsequent violation or a waiver of the right to enforce any other provision of the Declaration.
5. **COVENANTS.** The benefits and obligations described in this Declaration will be construed as covenants and not as conditions, and will constitute equitable servitudes upon the two Properties. This Declaration will create privity of contract and estate with and among all owners and tenants of both Properties and their respective representatives, successors and assigns.
6. **DURATION & AMENDMENT.** This Declaration and the Restriction will cease, and be of no further force or effect, as of November 22, 2033. Neither the doctrine of merger of title nor any other doctrine will operate to terminate this Declaration earlier than that.
7. **Termination.** If WSB does not construct a building and open for business as a branch of Waukesha State Bank on the WSB Property on or before December 1, 2014, this Declaration and the Restriction will cease on that date. If that business is opened by that date, but subsequently the WSB Property ceases to operate as a free standing bank, credit union, or other financial institution, licensed, chartered, or otherwise authorized to do business under federal or state law, for a period of twelve (12) consecutive months, this Declaration and the Restriction will cease at the expiration of such twelve months. If, however, that business ceases as the result of a casualty, and WSB diligently rebuilds the damaged building but is unable to complete the rebuilding in such twelve months as a result of an event of force majeure, such twelve months shall be extended by the duration of such event, but no more than by six months.
8. **NOTICES.** Any notice given in connection with this agreement will be in writing and may be given in any one of the following ways: by personal delivery or by delivery by an express mail service.

JELIVANN WAUKESHA LLC

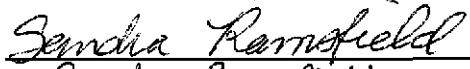
By:   
Bret Backus, Manager

ACKNOWLEDGEMENT

STATE OF WISCONSIN     )  
                                          )ss.  
COUNTY OF DANE         )

SANDRA RAMSFIELD  
Notary Public  
State of Wisconsin

Personally came before me on November 26,  
2013, Bret Backus, to me known to be the person who  
executed the foregoing instrument and acknowledged  
the same.

  
By: Sandra Ramsfield  
Notary Public, State of Wisconsin  
My Commission expires: July 17 2016

WAUKESHA STATE BANK

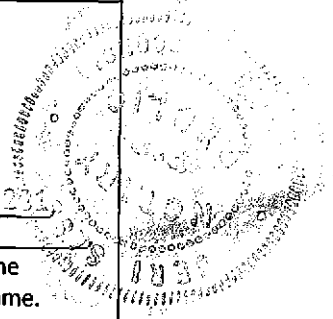
By: Ty R. Taylor  
Name: Ty Taylor  
Title: Pres.

ACKNOWLEDGEMENT

STATE OF WISCONSIN )  
                                  )ss.  
COUNTY OF WAUKESHA)


Personally came before me on Dec. 10, 2013,  
Ty R. Taylor, President  
to me known to be the person who executed the  
foregoing instrument and acknowledged the same.

Jeri Sass  
By: Jeri Sass  
Notary Public, State of Wisconsin  
My Commission expires: 7/31/16



CONSENT OF MORTGAGEE

Undersigned Woodman's Food Market, Inc., the mortgagee of the JELIVANN Property and the WSB Property, hereby consents to this Declaration.

<p>WOODMAN'S FOOD MARKET, INC.</p> <p></p> <p>By: _____ Bret Backus, Vice President-Real Estate</p>	<p>ACKNOWLEDGEMENT</p> <p>STATE OF WISCONSIN     )                                           )ss. COUNTY OF DANE         )</p> <p>Personally came before me on <u>November 26</u>, 2013, Bret Backus, to me known to be the person who executed the foregoing instrument and acknowledged the same.</p> <p><u>Sandra Ramsfield</u> By: <u>Sandra Ramsfield</u> Notary Public, State of Wisconsin My Commission expires: <u>July 17 2016</u></p>	<p><b>SANDRA RAMSFIELD</b> Notary Public State of Wisconsin</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------

### CONSENT OF LAND LESSEE

Undersigned Beres Foods, LLC, has a leasehold interest in Lot 7 of Certified Survey Map No. 11104 being a part of the JELIVANN Property, hereby consents to this Declaration.

BERES FOODS, LLC

By: [Signature]  
Name: Greg J. Beres  
Title: President

ACKNOWLEDGEMENT

STATE OF WISCONSIN )  
 )ss.  
COUNTY OF WAUKESHA)


Personally came before me on 12/18/  
2013, Greg Beres  
to me known to be the person who executed the  
foregoing instrument and acknowledged the same.

By: Lisa Wood  
Notary Public, State of Wisconsin  
My Commission Expires is permanent

NOTARY PUBLIC  
LISA KLEINER  
WOOD  
STATE OF WISCONSIN

CONSENT OF MORTGAGEE

Undersigned Dealar Properties, Inc. the mortgagee of the BERES Parcel, hereby consents to this Agreement and further subordinates the lien of its mortgage to this Agreement.

<p>Dealar Properties, Inc.</p>  <p>By: _____ Bret A. Backus, Vice President</p>	<p>ACKNOWLEDGEMENT</p> <p>STATE OF WISCONSIN     )                                           )ss. COUNTY OF DANE        )</p> <p>Personally came before me on <u>November, 26</u> 2013, Bret Backus, to me known to be the person who executed the foregoing instrument and acknowledged the same.</p> <p><u>Sandra Ramsfield</u> By: <u>Sandra Ramsfield</u> Notary Public, State of Wisconsin My Commission expires: <u>July 17, 2016</u></p>	<p>SANDRA RAMSFIELD Notary Public State of Wisconsin</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------

## CONSENT OF MORTGAGEE

Undersigned BMO Harris Bank, N.A., the mortgagee of the Beres Parcel, hereby consents to this Agreement and further subordinates the lien of its mortgage to this Agreement.

**BMO Harris Bank, N.A.**

By: [Signature]

Name: Michael Goedheer

Title: V.P.-Business Banking

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN )  
 )ss.  
COUNTY OF DANE )

Personally came before me on DEC  
2013, MICHAEL GOEDHEER known to  
the person who executed the foregoing instrument and  
acknowledged the same.

[Signature]  
By: BARBARA J. MARTIN  
Notary Public, State of Wisconsin  
My Commission expires: 5-18-14

**NOTARY PUBLIC**  
BARBARA J. MARTIN  
STATE OF WISCONSIN

Drafted by Bret A. Backus and T.J. Sobota