



The City of Oklahoma City
Development Services Department, Subdivision and Zoning
420 West Main Street, Suite 910, Oklahoma City, Oklahoma, 73102
Phone: (405) 297-2623 – Web: <https://www.okc.gov>

APPLICATION FOR CLOSING

Public Way (Street / Alley) or Easement

The Hub at Midtown, LLC

Name of Applicant

1400 N. Robinson

Address / Location of Property

Residential development.

Purpose Statement / Development Goal

Staff Use Only:

Case No.: CE -

File Date:

Ward No.: 6

Nbhd. Assoc.:

School District:

Extg Zoning:

Overlay:

Undeveloped; DTD-1 and SPUD-1248

Present Use of Property

SUBMITTAL REQUIREMENTS:

- ☐ One (1) Typed Legal Description of Easement Closure area in MS Word file (.doc or .docx) format.
- ☐ One (1) copy of Recorded Deed(s), with Exhibit(s), for each property owner requesting closure.
- ☐ One (1) copy of Letter of Authorization from Property Owner (s) listing Designated Representative if Applicant is not a Property Owner of record.
- ☐ One (1) copy of Property Owners Report listing all property owners who own property within a 300-foot buffer area of the property to be rezoned. The list **MUST** include the mailing address and the legal description of their property and **MUST** be current to within 30 days of the date of submittal of the application. A minimum of 15 separate individual property owners is required. If there are less than 15 individual owners within the 300-foot buffer, the radius must be extended by increments of 100 feet until the list contains no less than 15 owners. Provide One (1) PDF (.pdf) file version, AND one (1) MS Excel (.xls or .xlsx) file version.
- ☐ One (1) Signed and Notarized copy of "Affirmation" that the Property Owners Report listings are true and correct unless the list is prepared by a Certified Abstractor or County official.
- ☐ One (1) Petition of Request for Public Way or Easement Closure. Consisting of written consent from more than Fifty Percent (50%) of all property owners with frontage along the proposed total frontage of proposed closure. Said petition must include all consenting property owners' names, signatures with date(s), subject property address, mailing address(es), telephone number(s), and email contact information in .pdf file format. Reference "Easement Closure Petition Sample" document for preferred formatting.
- ☐ One (1) map which indicates the location of the public way/easement to be closed. This map must illustrate property ownership lines and indicate property the owner's names of all property owners requesting closure.
- ☐ Maps, Site Plan and, or Survey Exhibits must be 600dpi minimum resolution, scalable, and in a .pdf file format. Photographic file formats of drawings, maps, or other documents will not be accepted.
- ☐ A filing fee of \$1500.00 must be remitted within One (1) business day of submittal confirmation. Make checks payable to "City Treasurer".

Property Owner Information (if other than Applicant):

Name

Mailing Address

City, State, Zip Code

Phone

Email

Signature of Applicant

Williams Box, Forshee & Bullard, P.C. on behalf of the applicant

Applicant's Name (please print)

522 Colcord Drive

Applicant's Mailing Address

Oklahoma City, OK 73102

City, State, Zip Code

405-232-0080

Phone

dmbox@wbfbllaw.com; esilberg@wbfbllaw.com

Email

Submit your Application by Email to Subdivisionandzoning@OKC.gov

Compressed files (.zip, etc...) or links to FileShare services (Dropbox, Google Drive, etc...) can not be accepted for security purposes.

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LEGAL DESCRIPTION

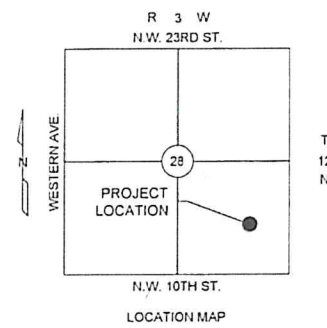
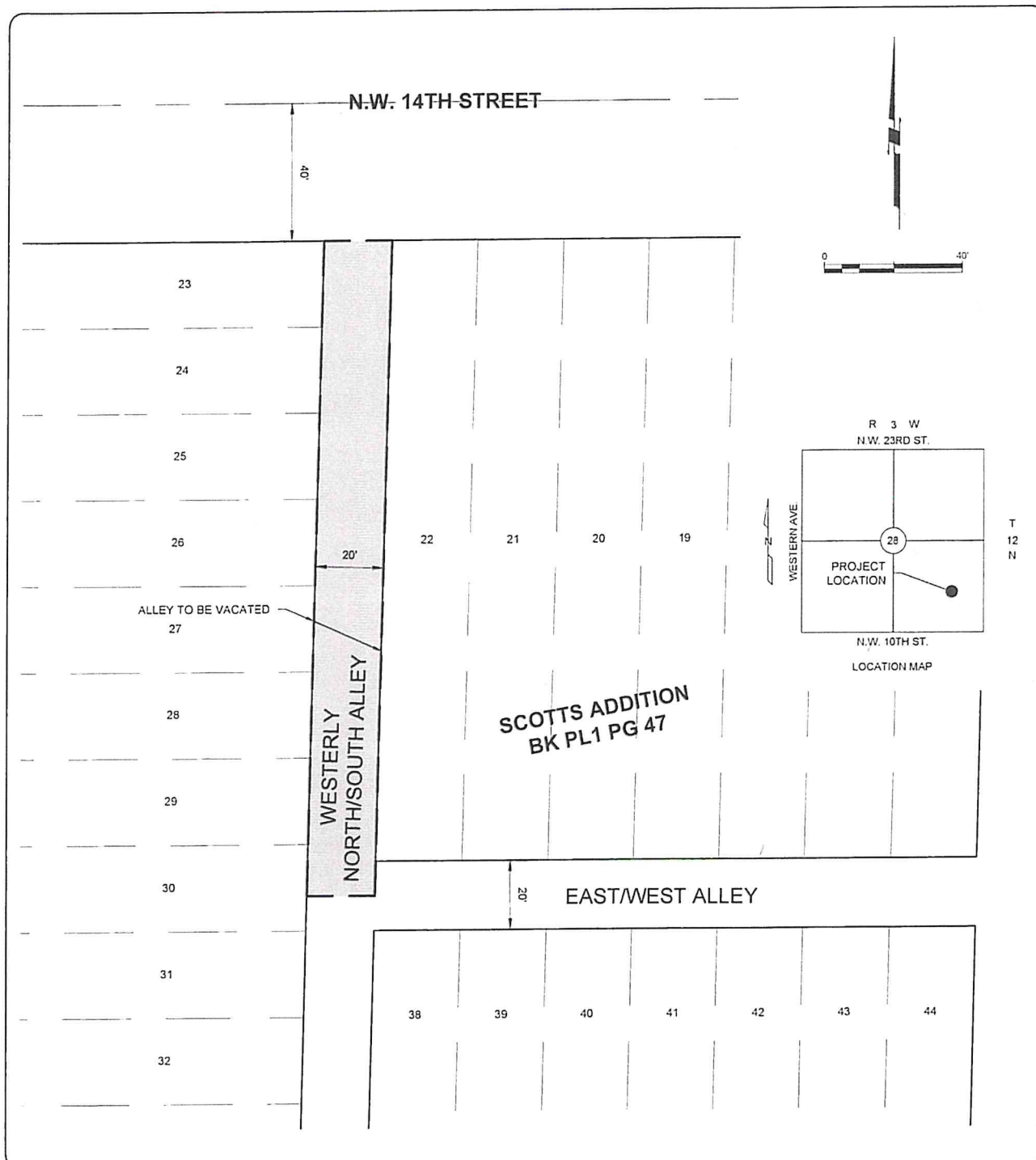
N.W. 13th Street & Broadway Avenue
Alley Vacation

July 5, 2023

A tract of land being a part of the Southeast Quarter (SE/4) of Section Twenty-Eight (28), Township Twelve (12) North, Range Three (3) West of the Indian Meridian, Oklahoma City, Oklahoma County, Oklahoma, and being a portion of SCOTTS ADDITION according to the Plat recorded in Book PL1, Page 47, being more particularly described as follows:

All of the Westerly North-South Alley in said SCOTTS ADDITION from the South Right-of-Way line of N.W. 14th Street to the extended Centerline of the East-West Alley in said SCOTTS ADDITION.





ACAD FILE: S:\Civil 3D\proj\5327\Working Folder\5327-Alley Vacation.dwg, 7/5/2023 12:27 PM, Braxton Bruner
XREFS LOADED: 5327-bdy.dwg

Copyright © 2023 Johnson & Associates

Proj. No.: 5327
Date: 7-5-23
Scale: 1"=40'

N.W. 13TH STREET & BROADWAY AVENUE
OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA
ALLEY VACATION



Johnson & Associates
1 E Sheridan Ave., Suite 200
Oklahoma City, OK 73104
(405) 235-5075 FAX (405) 235-8078 www.jaok.com
Certificate of Authorization #1434 Exp. Date 06-30-2025
• ENGINEERS • SURVEYORS • PLANNERS •

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LETTER OF AUTHORIZATION

The Hub at Midtown ^{LLC} (the property owner of record) or (an agent of the property owner of record) authorize the firm of Williams, Box, Forshee & Bullard P.C., to make application for municipal approvals and to do all things necessary for the advancement of such application with respect to the property at the following location 101 NW 13th & adjacent.

By: _____

Title: _____

Date: _____



Petition for Alley Closure

The undersigned does hereby request that an alley, existing within the City limits of Oklahoma City, be closed.

The alley is located and described by:

See attached Exhibit "A" – Legal Description

The Hub at Midtown, LLC
820 NE 63rd St. Ste. Lower E
Oklahoma City, OK 73105

 7/10/23
Signature Date

RICHARD LABARTHE CO-MGR.
Name Title



Exhibit A

LEGAL DESCRIPTION

**N.W. 13th Street & Broadway Avenue
Alley Vacation**

July 5, 2023

A tract of land being a part of the Southeast Quarter (SE/4) of Section Twenty-Eight (28), Township Twelve (12) North, Range Three (3) West of the Indian Meridian, Oklahoma City, Oklahoma County, Oklahoma, and being a portion of SCOTTS ADDITION according to the Plat recorded in Book PL1, Page 47, being more particularly described as follows:

All of the Westerly North-South Alley in said SCOTTS ADDITION from the South Right-of-Way line of N.W. 14th Street to the extended Centerline of the East-West Alley in said SCOTTS ADDITION.



CERTIFICATE OF BONDED ABTRACTOR
(400 FEET RADIUS REPORT)

STATE OF OKLAHOMA)
) §:
COUNTY OF OKLAHOMA)

The undersigned bonded abstractor in and for Oklahoma County, State of Oklahoma, does hereby certify that the following Ownership is true and correct according to the current year's tax rolls in the office of the County Treasurer of Oklahoma County, Oklahoma, as updated by the records of the County Clerk of Oklahoma County, Oklahoma; that the owners, as reflected by said records, are based on the last conveyance or final decree of record of certain properties located within 400 feet in all directions of the following described land:

A tract of land being a part of the Southeast Quarter (SE/4) of Section Twenty-Eight (28), Township Twelve (12) North, Range Three (3) West of the Indian Meridian, Oklahoma City, Oklahoma County, Oklahoma, and being a portion of SCOTTS ADDITION according to the Plat recorded in Book PL1, Page 47, being more particularly described as follows:

All of the Westerly North-South Alley in said SCOTTS ADDITION from the South Right-of-Way line of N.W. 14th Street to the extended Centerline of the East-West Alley in said SCOTTS ADDITION.

and find the following owners, addresses and brief legal descriptions on the attached pages numbered from (1) to (5), both inclusive.

NOTICE TO CUSTOMERS: This report is released with the understanding that the information is strictly confidential. This report contains information from public land records only and is not to be construed as an abstract of title, opinion of title, title commitment, title insurance policy, or environmental research report. As used herein, the term "public land records" means those land records which under the recording laws of the applicable state, impart constructive notice to the third parties with respect to recorded, unreleased or record instruments memorializing legal interests in real estate. The company suggests that you contact your attorney for matters of a legal nature or legal opinion. We have exercised due care and diligence in preparing this report, however, the Abstractor does not guarantee validity of the title and acceptance of this report by the Company or person(s) for whom this report is made, constitutes agreement and confirmation of the limitation of this report.

Dated: July 07, 2023 at 7:30 AM

First American Title Insurance Company

By: 
Shelly Duke
Abstractor License No. 4792
OAB Certificate of Authority # 0049
File No. 2823451-OK99



RETURN AFTER RECORDING TO:



20190208010162890
02/08/2019 08:31:20 AM
Bk:RE13945 Pg:1233 Pgs:2 DEED
State of Oklahoma
County of Oklahoma
Oklahoma County Clerk
David B. Hooten

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

QUITCLAIM DEED

This QUITCLAIM DEED is made and executed effective this 8th day of February, 2019, by **THE HUB AT MIDTOWN LLC**, an Oklahoma limited liability company (herein "Grantor"), whose notice address is Attn.: Richard C. Labarthe, 1300 N Walker Ave., Oklahoma City, OK 73103, in favor of **THE HUB AT MIDTOWN LLC**, an Oklahoma limited liability company (herein "Grantee"), whose notice address is Attn.: Richard C. Labarthe, 1300 N Walker Ave., Oklahoma City, OK 73103. *W1*

GRANTOR, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby quitclaims, grants, bargains, sells and conveys to Grantee, and Grantee's successors and assigns forever, that certain piece, parcel or tract of land situate in Oklahoma County, Oklahoma, more particularly described on Exhibit "A", together with all improvements thereon and easements, rights-of-way, privileges, appurtenances and other rights, if any, pertaining thereto (collectively, the "Property").

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereunto in anywise belonging unto said Grantee, its successors and assigns, forever.

**** Consideration for this conveyance is less than \$100.00, therefore this Deed is exempt from Documentary Stamp Tax pursuant to Title 68 Section 3202.****

"GRANTOR"

THE HUB AT MIDTOWN LLC, an Oklahoma limited liability company

Exempt Documentary Stamp Tax
05 Title 68
Article 32 Section 3201 or 3202,
Paragraph 3201

By: *Richard C. Labarthe*

Richard C. Labarthe, Manager

STATE OF OKLAHOMA

} SS.

COUNTY OF OKLAHOMA

The foregoing instrument was acknowledged before me this 7th day of February, 2019 by Richard C. Labarthe, Manager of The Hub at Midtown LLC, an Oklahoma limited liability company.

[Seal]

Pat J. Ball
NOTARY PUBLIC

My Commission Expires: 6/23/2020

My Commission Number: 16006099

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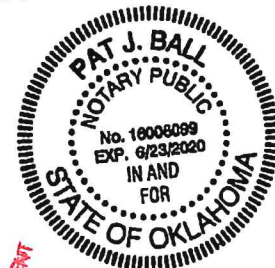


Exhibit A
Legal Description of the Property

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof:

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);
3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot Fifteen (15);
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37)
9. Lots Forty-three (43) and Forty-four (44);
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

20190208010162850
Filing Fee: \$15.00

02/08/2019 08:31:20 AM
DEED



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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

The Hub at Midtown LLC, an Oklahoma limited liability company,

Plaintiff,

vs.

The Classen Co., a corporation,
and its successors and assigns, C.F. Eltzholtz,
an individual, and Felix Levy, an individual, and
their respective unknown heirs, personal
representatives, devisees, trustees,
beneficiaries, grantees, successors and assigns,
immediate and remote,

Defendants.

Case No. CV-2019-394

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JUN 24 2019

RICK WARREN
COURT CLERK

JOURNAL ENTRY OF DEFAULT JUDGMENT

This cause came on for consideration this 18th day of June, 2019, Honorable Susan C. Stallings, District Judge, presiding, and the issues having been heard, judgment is rendered in the above-styled and numbered cause as follows:

1. This action is a quiet title action involving the parcels located in Oklahoma County, Oklahoma described on Exhibit 1 hereto (the "Hub at Midtown Property").

2. The factual background to this quiet title action is as follows:

a. Plaintiff is the owner and is in possession of the Hub at Midtown Property.

b. Plaintiff derives its title to the Hub at Midtown Property pursuant to

(i) a Special Warranty Deed, dated October 31, 2018, recorded November 1, 2018 in Book 13876, Page 1944 of the records of the County Clerk of Oklahoma County, Oklahoma (the "Oklahoma County Clerk"); and

(ii) a Quitclaim Deed dated February 8, 2019 recorded February 8, 2019 in Book 13945, Page 1233 of the records of the Oklahoma County Clerk.

c. The Plat (herein the "Plat") of SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, was recorded in Plat Book 1, Page 47 of the records of the records of the Oklahoma County Clerk.

d. Subsequent to the recording of the Plat, The Classen Co., as owner of the SCOTT'S ADDITION lots fronting on 14th Street and pursuant to an instrument recorded in October, 1902 (the "Additional 14th Street Dedication"), granted to the City of Oklahoma City an additional

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59

twenty (20) foot street right-of-way wherein the north twenty (20) feet of Lot Fifteen (15), Lots Sixteen (16) through Twenty-two (22), both inclusive, and Lot Twenty-three (23), SCOTT'S ADDITION, was dedicated as additional right of way for NW 14th Street in Oklahoma City.

e. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., C.F. Eltzholtz and Felix Levy imposed, by way of the five (5) separate deeds listed below (the "14th Street Deeds"), deed restrictions with respect to the specific lots in Scott's Addition described immediately below (the "Affected 14th Street Lots") prohibiting the construction of improvements within thirty feet (30) feet (the "14th Street Setback Restrictions") of the south line of the 14th Street right-of-way as established pursuant to the Additional 14th Street Dedication, to wit:

(i) Deed recorded in November, 1903 in Book 46, Page 200 imposing a 30 foot setback on Lots 20-22 Scott's Addition from south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication and Deed recorded in May, 1903 in Book 55, Page 115 imposing 30 foot setback on Lots 20-22, Scott's Addition from south line of 14th street as the extended southward pursuant to the Additional 14th Street Dedication;

(ii) Deed recorded in December, 1904 in Book 47, Page 183 imposing a 30 foot setback on Lots 11-15, Scott's Addition from the south line of 14th Street as extended southward pursuant to the Additional 14th Street Dedication;

(iii) Deed recorded in May, 1903 in Book 37, Page 97 imposing a 30 foot setback on Lots 16 and 17, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication; and

(iv) Deed recorded in May, 1903 in Book 37, Page 112 imposing a 30 foot setback on Lots 18 and 19, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication.

f. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., by way of the deed (the "Broadway Deed") recorded in December, 1904, in Book 47, Page 184, placed of record a deed restriction (the "Broadway Setback Restriction") prohibiting the construction of improvements within thirty feet (30) feet of the west line of Broadway on Lots 9 and 10, Scott's Addition.

g. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., by way of the deed (the "Robinson Deed") recorded in December, 1904, in Book 47, Page 279, placed of record a deed restriction (the "Robinson Setback Restriction") prohibiting the construction of improvements within thirty feet (30) feet of the east line of Robinson on Lots 28 and 29, Scott's Addition.

h. Pursuant to Ordinance Number 15762 enacted by the City of Oklahoma City on April 29, 1980 and recorded in Book 4669, Page 411 of the records of the Oklahoma County Clerk (the "Closure Ordinance"), the City of Oklahoma City closed the additional

street right of way granted to the City in the Additional 14th Street Dedication, thereby leaving the anomalous situation upon the enactment of the Closure Ordinance where construction of improvements is prohibited on the various lots fronting on 14th Street at a distance of twenty (20) to fifty (50) feet from the south line of the 14th Street right of way, but not on the twenty (20) feet immediately south of the south line of the 14th Street right of way.

i. No grantor under the 14th Street Deeds, Broadway Deed or Robinson Deed (collectively the "Scott's Addition Deeds") reserved, in those deeds, a right of enforcement of the setback covenants contained therein, nor did any of those deeds identify a parcel or parcels intended to be benefitted by the 14th Street Setback Restrictions, Broadway Setback Restrictions or Robinson Setback Restrictions (collectively the "Scott's Addition Setback Restrictions").

j. Neither The Classen Co., nor C. F. Eltzholtz nor Felix Levy currently own any real property of record in Oklahoma County, Oklahoma.

k. The Defendants in this Action (herein the "Defendants") consist of The Classen Co., C. F. Eltzholtz and Felix Levy and their unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors, and assigns, immediate and remote.

l. All Defendants in this Action were served by publication, with no answer or entry of appearance being filed by or on behalf of any such person.

3. The Court has conducted a judicial inquiry into the sufficiency of the Plaintiff's search to determine the names and whereabouts of the Defendants who were served herein by publication and, based upon the evidence adduced, the Court finds that the Plaintiff has exercised due diligence and has conducted meaningful search of all reasonably available sources at hand. Attached hereto as Exhibit 2 is a more detailed affidavit of the Plaintiff's counsel addressing due diligence in locating the names and whereabouts of the defendants served by publication, as well as addressing the reasoning underlying the identification of the specific persons named as Defendants herein. The Court further approves the publication service given herein as meeting both statutory requirements and the minimum standards of state and federal due process as to the Defendants named in this action who were served by publication. Attached hereto as Exhibit 3 is a copy of the Affidavit of the Plaintiff's counsel supporting the publication of Notice against all parties served by publication. Notice of Service by Publication was filed February 25, 2019, and is attached hereto as Exhibit 4. That Notice was published in the Journal Record on February 26, 2019, March 5, 2019, and March 12, 2019, and no Answer was forthcoming from any person served by publication. The Publisher's Affidavit, filed March 12, 2019, is attached hereto as Exhibit 5. David D. Kennedy, Counsel to the Plaintiff, has filed his

sworn Affidavit (the "Servicemember's Affidavit") in accordance with the Servicemember's Civil Relief Act of 2003. A copy of the Servicemember's Affidavit is attached hereto as Exhibit 6.

4. The Court finds that the setback restrictions contained in the Scott's Addition Deeds constitute covenants in gross for the personal benefit of the grantors thereunder as opposed to for the benefit of any identified parcel and that those setback restrictions have lapsed with the dissolution or death of The Classen Co., C.F. Eltzholz or Felix Levy, resulting in the Scott's Addition Setback Restrictions being deemed void and unenforceable.

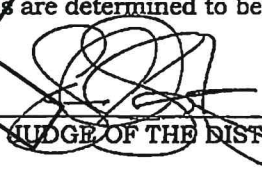
Whereupon, the Court, having examined the evidence makes the following order:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff is the owner and in possession of the Hub at Midtown Property hereinabove described and that

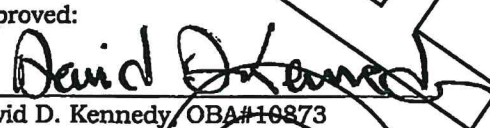
(i) the rights of Plaintiff in the Hub at Midtown Property are superior to the rights of each Defendant named herein;

(ii) each Defendant is forever barred from hereafter claiming any interest in the Hub at Midtown Property or attempting to enforce the Scott's Addition Setback Restrictions, and

(iii) the Scott's Addition Setback Restrictions are determined to be void and of no effect.


JUDGE OF THE DISTRICT COURT

Approved:


David D. Kennedy, OBA #10873
David D. Kennedy, PLC
6701 W. Hefner, Suite A
Oklahoma City, OK 73162
Phone: 405-812-7220
Fax: 405-752-2543
ddk@ddkenneylaw.com

And

Richard C. Labarthe, OBA #11393
Law Offices of Richard C. Labarthe, P.C.
828 N.E. 63rd Street
Oklahoma City, OK 73105
Phone : 405-843-5616
Fax: 405-843-9685
richard@labarthe-law.com

Attorneys for Plaintiff

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JUN 24 2019

RICK WARREN COURT CLERK
Oklahoma County

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EXHIBIT 1
HUB AT MIDTOWN PROPERTY

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof.

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);
3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot 15;
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37)
9. Lots Forty-three (43) and Forty-four (44);
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 28 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

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EXHIBIT 2

[Affidavit Supporting Default Judgment attached]

UNOFFICIAL

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FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 14 2019

RICK WARREN
COURT CLERK

The Hub at Midtown LLC, an Oklahoma limited
liability company,

Plaintiff,

vs.

Case No. CV-2019-394

The Classen Co., a corporation,
and its successors and assigns, C.F. Eltzholtz, an
individual, and Felix Levy, an individual, and their
respective unknown heirs, personal representatives,
devisees, trustees, beneficiaries, grantees, successors
and assigns, immediate and remote,

Defendants.

AFFIDAVIT SUPPORTING DEFAULT JUDGMENT

The undersigned, David D. Kennedy, attorney for Plaintiff in this action, hereby states as follows in connection with Rule 16 of the Rules for District Courts:

1. This action is a quiet title action involving the parcels located in Oklahoma County, Oklahoma described on Exhibit A hereto (the "Hub at Midtown Property").
2. Plaintiff is the owner and is in possession of the Hub at Midtown Property.
3. Plaintiff derives its title to the Hub at Midtown Property pursuant to
 - (i) a Special Warranty Deed, dated October 31, 2018, recorded November 1, 2018 in **Book 13876, Page 1944** of the records of the County Clerk of Oklahoma County, Oklahoma (the "Oklahoma County Clerk"); and
 - (ii) a Quitclaim Deed dated February 8, 2019 recorded February 8, 2019 in **Book 13945, Page 1233** of the records of the Oklahoma County Clerk.
4. The Plat (herein the "Plat") of SCOTT'S ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, was recorded in Plat Book 1, Page 47 of the records of the County Clerk of Oklahoma County, Oklahoma.
5. Subsequent to the recording of the Plat, The Classen Co., as owner of the SCOTT'S ADDITION lots fronting on 14th Street and pursuant to an instrument recorded in October, 1902 (the "Additional 14th Street Dedication"), granted to the City of Oklahoma City an additional twenty (20) foot street right-of-way wherein the north twenty (20) feet of Lot Fifteen (15), Lots Sixteen (16) through Twenty-two (22), both inclusive, and Lot Twenty-three (23), SCOTT'S ADDITION, was dedicated as additional right of way for NW 14th Street in Oklahoma City.
6. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., C.F. Eltzholtz and Felix Levy imposed, by way of the five (5) separate deeds listed below (the "14th Street Deeds"), deed restrictions with respect to the specific lots in Scott's Addition described immediately below (the "Affected 14th Street Lots") prohibiting the construction of improvements within thirty feet (30) feet (the "14th Street Setback Restrictions") of the south line of the 14th Street right-of-way as established pursuant to the Additional 14th Street Dedication, to wit:

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(a) Deed recorded in November, 1903 in Book 46, Page 200 imposing a 30 foot setback on Lots 20-22 Scott's Addition from south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication and Deed recorded in May, 1903 in Book 55, Page 115 imposing 30 foot setback on Lots 20-22, Scott's Addition from south line of 14th street as the extended southward pursuant to the Additional 14th Street Dedication;

(b) Deed recorded in December, 1904 in Book 47, Page 183 imposing a 30 foot setback on Lots 11-15, Scott's Addition from the south line of 14th Street as extended southward pursuant to the Additional 14th Street Dedication;

(c) Deed recorded in May, 1903 in Book 37, Page 97 imposing a 30 foot setback on Lots 16 and 17, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication; and

(d) Deed recorded in May, 1903 in Book 37, Page 112 imposing a 30 foot setback on Lots 18 and 19, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication.

7. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., by way of the deed (the "Broadway Deed") recorded in December, 1904, in Book 47, Page 184, placed of record a deed restriction (the "Broadway Setback Restriction") prohibiting the construction of improvements within thirty feet (30) feet of the west line of Broadway on Lots 9 and 10, Scott's Addition.

8. Subsequent to the recording of the Additional 14th Street Dedication, The Classen Co., by way of the deed (the "Robinson Deed") recorded in December, 1904, in Book 47, Page 279, placed of record a deed restriction (the "Robinson Setback Restriction") prohibiting the construction of improvements within thirty feet (30) feet of the east line of Robinson on Lots 28 and 29, Scott's Addition.

9. No grantor under the 14th Street Deeds, Broadway Deed or Robinson Deed (collectively the "Deeds") reserved, in those Deeds, or to the knowledge of Plaintiff pursuant to any other recorded or unrecorded instrument, a right of enforcement of the setback covenants contained therein, nor did any of those deeds identify a parcel or parcels intended to be benefitted by the setback restrictions contained therein.

10. Pursuant to Ordinance Number 15762 enacted by the City of Oklahoma City on April 29, 1980 and recorded in Book 4669, Page 411 of the records of the Oklahoma County Clerk (the "Closure Ordinance"), the City of Oklahoma City closed the additional street right of way granted to the City in the Additional 14th Street Dedication, thereby leaving the anomalous situation upon the enactment of the Closure Ordinance where construction of improvements is prohibited on the Affected 14th Street Lots at a distance of twenty (20) to fifty (50) feet from the south line of the 14th Street right of way, but not on the twenty (20) feet immediately south of the south line of the 14th Street right of way.

11. Since the restrictive covenants contained in the Deeds fail to identify any specific parcel of land intended to be benefitted thereby, those restrictive covenants are properly categorized as "covenants in gross" which run for the personal benefit of The Classen Co., C.F. Eltzholtz or Felix Levy, as opposed to the for benefit of any identifiable parcel of land.

12. This Action was instituted to obtain a determination that the referenced setback restrictions, as covenants in gross, are void and unenforceable.

13. Neither The Classen Co., nor C. F. Eltzholtz nor Felix Levy continue to own any real property in Oklahoma County, Oklahoma.

14. To the best of the Plaintiff's ability to determine after substantial research, The Classen Co. ceases to exist and C. F. Eltzholtz and Felix Levy are deceased and they, together with their unknown heirs,

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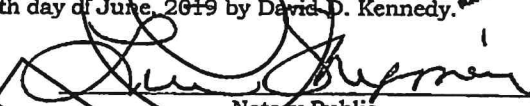
executors, administrators, devisees, trustees and assigns of said persons, whether immediate or remote, could not have been served other than via publication notice.

15. No Defendant served by publication entered an appearance or filed an Answer to the Petition in this action.

16. In connection with the attempt to locate any such persons named as defendants, the undersigned did search as primary sources, the following records: (a) local assessor records, (b) local county treasurer records, (c) local deed records as to the property involved for return address on recorded instruments, (d) local probate records; and (e) records of the Oklahoma County Clerk.


DAVID D. KENNEDY

Subscribed and sworn to before me this 13th day of June, 2019 by David D. Kennedy.


Notary Public

[SEAL]

 LISA SHIPMAN
My Commission No.: Notary Public
State of Oklahoma
Commission # 02016841 Expires 10/02/22
My Commission Expires:

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EXHIBIT A
Hub at Midtown Property

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof:

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);
3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot 15;
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37);
9. Lots Forty-three (43) and Forty-four (44); AND
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

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EXHIBIT 3

[Affidavit of Service By Publication attached]

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

The Hub at Midtown LLC, an Oklahoma limited liability company,

Plaintiff,

vs.

The Classen Co., a corporation,
and its successors and assigns, C.F. Eltzholtz,
an individual, and Felix Levy, an individual, and
their respective unknown heirs, personal
representatives, devisees, trustees,
beneficiaries, grantees, successors and assigns,
immediate and remote,

Defendants.

Case No. 19-394

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

FEB 20 2019

RICK WARREN
COURT CLERK

AFFIDAVIT OF SERVICE BY PUBLICATION

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

SS:

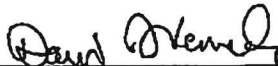
The undersigned, David D. Kennedy, attorney for the Plaintiff in this action, hereby states
as follows in connection with Title 12 O.S. §2004.C.3:

1. After exercising due diligence in an attempt to locate certain Defendants prior to
the filing of the Petition in this action, the undersigned has determined that the persons listed
below cannot be served by any method other than by publication:

The Classen Co., a corporation and its successors, and assigns, immediate and remote.

**C.F. Eltzholtz, an individual and his unknown heirs, personal representatives, devisees,
trustees, beneficiaries, grantees, successors and assigns, immediate and remote.**

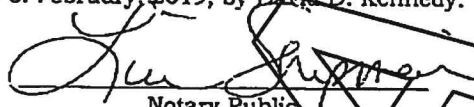
**Felix Levy, an individual and his unknown heirs, personal representatives, devisees,
trustees, beneficiaries, grantees, successors and assigns, immediate and remote.**


DAVID D. KENNEDY

RECEIVED
JUL 17 2023

PLANNING DEPARTMENT

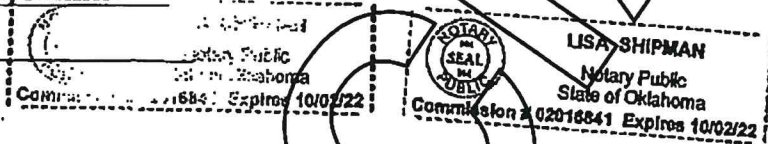
Subscribed and sworn to before me this 13th day of February, 2019, by David D. Kennedy.


Notary Public

[SEAL]

My Commission No. _____

My Commission Expires: _____



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EXHIBIT 4

[Notice of Service By Publication attached]

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[TO BE PUBLISHED IN THE JOURNAL RECORD, ONE DAY A WEEK FOR THREE
CONSECUTIVE WEEKS BEGINNING NOT LATER THAN FEBRUARY 28, 2019]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

The Hub at Midtown LLC, an Oklahoma limited
liability company,

Plaintiff,

vs.

The Classen Co., a corporation,
and its successors and assigns, C.F. Eltzholtz,
an individual, and Felix Levy, an individual, and
their respective unknown heirs, personal
representatives, devisees, trustees,
beneficiaries, grantees, successors and assigns,
immediate and remote,

Defendants.

Case No. CV-2019-394

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

FEB 25 2019

RICK WARREN
COURT CLERK

75

NOTICE OF SERVICE BY PUBLICATION

THE STATE OF OKLAHOMA TO:

The following persons named as Defendants in the Petition filed in this action:

The Classen Co., a corporation and its successors, and assigns, immediate and remote.

C.F. Eltzholtz, an individual and his unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote.

Felix Levy, an individual and his unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote.

Said Defendants are hereby notified that they have been sued in a quiet title action being Case No. CV-2019-394 in the District Court of Oklahoma County, Oklahoma as captioned above, and that they must answer the Petition filed in this action on or before April 19, 2019, or the allegations of said Plaintiff will be taken as true and judgment will be entered in favor of Plaintiff ~~as against~~ said Defendants quieting title in the Plaintiff, with respect to the following real property in Oklahoma County, Oklahoma, to-wit:

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof:

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);

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3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot 15;
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37)
9. Lots Forty-three (43) and Forty-four (44);
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

WITNESS my hand and seal of said Court this 25th day of February, 2019.

RICK WARREN, COURT CLERK

By: 
Deputy Court Clerk

David D. Kennedy, OBA#10873
David D. Kennedy, PLLC
6701 W. Hefner, Suite A
Oklahoma City, OK 73162
Phone: 405-812-7220
Fax: 405-752-2548
ddk@ddkennedylaw.com

and

Richard C. Labarthe, OBA #11393
Law Offices of Richard C. Labarthe, P.C.
820 N.E. 63rd Street
Oklahoma City, OK 73105
Phone : 405-843-5616
Fax: 405-843-9685
richardc.labartheclaw.com

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EXHIBIT 5

[Publisher's Affidavit attached]

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Journal Record Publishing Company
101 N Robinson Suite 101
Oklahoma City, OK 73102

FILED IN DISTRICT COURT
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MAR 12 2019

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COURT CLERK
Page 1 of 2

PUBLISHER'S AFFIDAVIT

CV-2019-394

02/26/2019 03/05/2019 03/12/2019

The Hub at Midtown LLC vs The Classen Co; C.F. Eltzholtz; Felix Levy

NUMBER

PUBLICATION DATES

NOTICE OF SERVICE BY PUBLICATION

Case No. CV-2019-394
IN THE DISTRICT COURT OF
OKLAHOMA COUNTY STATE OF
OKLAHOMA

The Hub at Midtown LLC, an Oklahoma limited liability company, Plaintiff, vs. The Classen Co., a corporation, and its successors and assigns, C.F. Eltzholtz, an individual, and Felix Levy, an individual, and their respective unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote, Defendants.

THE STATE OF OKLAHOMA TO:

The following persons named as Defendants in the Petition filed in this action: The Classen Co., a corporation and its successors, and assigns, immediate and remote, C.F. Eltzholtz, an individual and his unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote, Felix Levy, an individual and his unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote.

Said Defendants are hereby notified that they have been sued in a quiet title action, being Case No. CV-2019-394 in the District Court of Oklahoma County, Oklahoma as captioned above, and that they must answer the Petition filed in this action on or before April 19, 2019, or the allegations of said Plaintiff will be taken as true and judgment will be entered in favor of Plaintiff as against said Defendants quieting title in the Plaintiff with respect to the following real property in Oklahoma County, Oklahoma, to-wit:

THE FOLLOWING PARCELS LOCATED IN SCOTT'S ADDITION, an Addition to the City of Oklahoma City, Oklahoma, County, Oklahoma, according to the recorded plat thereof:
1. Lots One (1) through Eight (8), both inclusive; 2. Lots Nine (9) and Ten (10); 3. Lots Eleven (11) through Fourteen (14), both inclusive; 4. Lot 15; 5. Lots Sixteen (16) through Twenty-two (22), both inclusive; 6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive; 7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof; 8. Lots Thirty (30)

LEGAL NOTICE

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

} S.S.

I, of lawful age, being duly sworn, am a legal representative of The Journal Record of Oklahoma City, Oklahoma, a daily newspaper of general circulation in Oklahoma County, Oklahoma, printed in the English language and published in the City of Oklahoma City, in Oklahoma County, State of Oklahoma, continuously and uninterruptedly published in the County for a period of more than 104 consecutive weeks prior to the first publication of the attached notice, and having a paid general subscription circulation therein and with admission to the United States mails as paid second-class mail matter.

That said notice a true copy of which is attached hereto, was published in the regular edition of said newspaper during the period and time of publication and not in a supplement on the ABOVE LISTED DATE(S).

Term VanHooser, Business Manager

Subscribed and sworn before me this 12th day of March, 2019

MaRanda Beeson, Notary Public

Commission Number: 10001243

My Commission Expires: 02/18/2022

Order Number

11708448

Publisher's Fee

\$ 272.52

Publication fees paid
directly to publisher.

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AFFIDAVIT OF PUBLICATION

Page 2 of 2

through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37) 9. Lots Forty-three (43) and Forty-four (44); 10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:

Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION; thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION; thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition; thence East approximately 20 feet to the Northwest corner of Lot Eight (8) of SCOTTS ADDITION; thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case No. 175025 in the District Court of Oklahoma County, Oklahoma.

WITNESS my hand and seal of said Court this 25th day of February, 2019.

RICK WARREN
(SEAL) COURT CLERK

By: Deputy Court Clerk
David D. Kennedy, OBA #10873
David D. Kennedy, PLC
6701 W. Helmer, Suite A
Oklahoma City, OK 73162
Phone: 405-812-7220
Fax: 405-752-2543
ddk@ddkenedyllaw.com
and

Richard C. Labarthe, OBA #11399
Law Offices of Richard C. Labarthe,
P.C.

820 N.E. 63rd Street
Oklahoma City, OK 73105
Phone: 405-843-5616
Fax: 405-843-9683
Richard@labarthe-law.com
(2-26, 3-5, 3-12-19)

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EXHIBIT 6

[Servicemember's Affidavit attached]

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

The Hub at Midtown LLC, an Oklahoma limited liability company,

Plaintiff,

vs.

Case No. CV-2019-394

The Classen Co., a corporation, and its successors and assigns, C.F. Eltzholtz, an individual, and Felix Levy, an individual, and their respective unknown heirs, personal representatives, devisees, trustees, beneficiaries, grantees, successors and assigns, immediate and remote,

Defendants.

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JUN 14 2019

RICK WARREN
COURT CLERK

AFFIDAVIT AS TO MILITARY SERVICE

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

ss.

The undersigned, counsel of record in this action for the Plaintiff, The Hub at Midtown LLC, an Oklahoma limited liability company (the "Plaintiff"), being of lawful age and sound mind and being first duly sworn upon oath, deposes and states as follows:

1. Plaintiff is the owner and is in possession of certain real property located in Oklahoma County, Oklahoma described on Exhibit A hereto (the "Hub at Midtown Property").
2. Pursuant to Deeds recorded as set forth on Exhibit B hereto (the "Scott's Addition Deeds"), all of which pre-date 1906, Defendants The Classen Co., C.F. Eltzholtz and Felix Levy imposed setback restrictions upon certain lots in Scott's Addition, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, recorded in Plat Book 1, Page 47 of the records of the County Clerk of Oklahoma County, Oklahoma.
3. Plaintiff filed its Petition on February 20, 2019 (the "Petition"), seeking to Quiet Title to the Hub at Midtown Property and to invalidate the setback restrictions created in the Scott's Additions Deeds.
4. All Defendants were served herein via publication.
5. The Classen Co. was a corporation formed before the State of Oklahoma became a state and not a party benefited by the Servicemember's Civil Relief Act of 2003.
6. Given that Defendants C. F. Eltzholtz and Felix Levy executed the Scott's Addition Deeds to which they were parties in 1903 and 1904, the Plaintiff was not able to establish a birth date for either Defendant. Additionally, it is uncertain whether a social security number was ever issued to either such Defendant. Nonetheless, the undersigned is confident that (i) neither C. F. Eltzholtz and Felix Levy is alive.

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given the lapse of 115 years since the Scott's Addition Deeds were placed of record in Oklahoma County and, (ii) neither C. F. Eltzholtz and Felix Levy are currently serving in the United States military.

David D. Kennedy
David D. Kennedy

Subscribed and sworn to before me, a Notary Public, this 14th day of June, 2019.

[Seal]



LISA SHIPMAN

Notary Public
State of Oklahoma

Commission # 02016841 Expires 10/02/22

Lisa Shipman
Notary Public

My Commission No.: _____

My Commission Exp.: _____

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EXHIBIT A
HUB AT MIDTOWN PROPERTY

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof:

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);
3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot 15;
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37)
9. Lots Forty-three (43) and Forty-four (44);
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

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EXHIBIT B

1. **14th Street Deeds**

(a) Deed recorded in November, 1903 in Book 46, Page 200 imposing a 30 foot setback on Lots 20-22 Scott's Addition from south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication and Deed recorded in May, 1903 in Book 55, Page 115 imposing 30 foot setback on Lots 20-22, Scott's Addition from south line of 14th street as the extended southward pursuant to the Additional 14th Street Dedication;

(b) Deed recorded in December, 1904 in Book 47, Page 183 imposing a 30 foot setback on Lots 11-15, Scott's Addition from the south line of 14th Street as extended southward pursuant to the Additional 14th Street Dedication;

(c) Deed recorded in May, 1903 in Book 37, Page 97 imposing a 30 foot setback on Lots 16 and 17, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication; and

(d) Deed recorded in May, 1903 in Book 37, Page 112 imposing a 30 foot setback on Lots 18 and 19, Scott's Addition from the south line of 14th Street as the extended southward pursuant to the Additional 14th Street Dedication.

2. **Broadway Deed**

Deed recorded in December, 1904, in Book 47, Page 184 prohibiting the construction of improvements within thirty feet (30) feet of the west line of Broadway on Lots 9 and 10, Scott's Addition.

3. **Robinson Deed**

Deed recorded in December, 1904, in Book 47, Page 279 prohibiting the construction of improvements within thirty feet (30) feet of the east line of Robinson on Lots 28 and 29, Scott's Addition.

20190624010864780
Filing Fee: \$59.00

06/24/2019 10:12:40 AM
JDG



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FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY -1 2020

RICK WARREN
COURT CLERK

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

In the Matter of the Petition of The Hub at)
Midtown LLC, an Oklahoma limited liability)
company, to foreclose the right of the City of)
Oklahoma City, Oklahoma To Reopen Certain)
Closed Alleys in the Plat of Scott's Addition to)
Oklahoma City, Oklahoma County, Oklahoma)
and foreclosing the right of the City of)
Oklahoma City, Oklahoma to Reopen a Portion)
of Closed Northwest 14th Street)

Case No. CV-2019-1778

20200506010633430
05/06/2020 02:52:00 PM
Pk:RE14336 Pg:551 Pgs:21 ORDER
State of Oklahoma
County of Oklahoma
Oklahoma County Clerk
David B. Hooten

**ORDER FORECLOSING RIGHT TO RE-OPEN CLOSED ALLEYS
AND STREET RIGHT-OF-WAY AND RESERVATION OF EASEMENTS**

On the 20th day of September, 2019, the Petition (the "Petition") of The Hub at Midtown LLC, an Oklahoma limited liability company ("Petitioner"), filed in this cause on August 2, 2019, came on for hearing before the Court. The Petitioner appeared by its attorney, David D. Kennedy. J. Kelly Work appeared for Terrance A. Lee and Magda Van Brunt, Trustees under the Terrance A. Lee and Magda Van Brunt Trust dated July 6, 2010 (herein the "Garage Loft Owners"), owners of Lots 38-42, Scott's Addition, as hereinafter defined. Robert N. Sheets appeared on behalf of CoxCom, LLC.

Petitioner, being the owner of certain lots, or portions thereof, and reverted alleyways (collectively the "Hub at Midtown Property") described on Exhibit A hereto, all of which are located in Scott's Addition, as hereinafter defined, has sought in this action to foreclose in Oklahoma County District Court the right of the City of Oklahoma City (the "City") to reopen

(a) certain alleys or specified portions thereof defined herein as the Closed Scott's Addition Alleys located in Scott's Addition to the City of Oklahoma City, Oklahoma County, Oklahoma (herein "Scott's Addition"), and created by the filing of the plat of Scott's Addition which was recorded in Plat Book 1, Page 47 of the records of the County Clerk of Oklahoma County, Oklahoma (the "Plat"), and

(b) a 20 foot street right-of-way easement (the "Closed 14th Street Easement") covering the north twenty feet of (i) Lot 15, (ii) Lots 16-22, both inclusive, and (iii) the East Sixty (60) feet of Lot 23, all in Scott's Addition (collectively the "Closed 14th Street Parcel").

The franchised utility holders were all served by U.S. Mail, Certified Receipt Requested. Those franchised utility holders responded as follows:

1. The Board of County Commissioners of Oklahoma County (the "Board") has filed its Answer herein, and has not objected to the Petition provided that the foreclosure of the right to re-open does not impair the County's right to collect applicable ad valorem or similar taxes.

M/ENW KENNEDY BILLING
PO BOX 721953
OKC, OK 73172

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21/58

2. Oklahoma Natural Gas Company, a division of ONE Gas, Inc. ("**ONG**"), has filed its Entry of Appearance and Disclaimer and requested that a copy of the proposed journal entry be provided to counsel for ONG.

3. CoxCom, LLC. ("**Cox**") has filed its Answer herein, stated that it has facilities located in 14th Street and also in the open north-south Scott's Addition alley which is located in the western portion of Scott's Addition (the "**Western Alley**") and which is depicted on **Exhibit B** hereto, and has demanded a reservation of rights with respect to its facilities in place. At the continued October 18, 2019 Hearing of this matter, counsel for Cox, Robert N. Sheets, informed the Court, the counsel to the Petitioner and counsel to the Garage Loft Owners that Cox also had facilities in the Closed East-West Alley, as hereinafter defined.

4. Southwestern Bell Telephone Company, a Delaware corporation ("**SWBT**"), has filed its Answer and Objection and requested that a reservation of right-of-way in favor of SWBT be documented in the journal entry with respect to facilities in place. AT&T Corp., an affiliate of SWBT, filed a Disclaimer in the action.

5. Oklahoma Gas & Electric Company ("**OG&E**") has filed an Answer and has requested a reservation of right-of-way in favor of OG&E be documented in the journal entry with respect to the Closed East-West Alley, being one of the alleys with respect to which the Petitioner is seeking, in the Petition, to foreclose the right to re-open.

6. The City has filed its Answer herein and has indicated that it (i) has eight (8) inch sewer lines in each alley for which foreclosure of the right to re-open has been sought herein, (ii) has a six (6) inch water line in the parcel covered by the Closed 14th Street Easement, and (iii) seeks reservation of utility easements for such facilities in place, together with rights of ingress and egress to maintain said utilities until such utilities have been abandoned and/or relocated at the owner's expense.

7. The Garage Loft Owners, owners of Lots 38-42, Scott's Addition, a parcel abutting and to the south of a portion of the Closed East-West Alley, answered and objected to the entry of a decree finding that the north-half of the Closed East-West Alley abutting Lot 22 should revert to Petitioner as owner of Lot 22 in light of the claim of Garage Loft Owners that they have adversely possessed a part of Lot 22 in excess of 15 years.

The Court thereupon examined the record and found that due and proper notice of the Court's hearing of this Petition, together with a copy of the Petition and a Summons, were served upon (i) the City by a certified mailing to the Oklahoma City Clerk, (ii) the Board, by a certified mailing thereto, and (iii) the registered service agents of OGE, ONG, SBT and Cox by certified mailing.

The Court also found that proper notice was published on August 9, 2019, that being thirty (30) days prior to the Court's hearing of the Petition, and that such notice was published in The Journal Record, a newspaper of general circulation in Oklahoma City, Oklahoma; that more than thirty (30) days prior to this hearing, a notice of this action was mailed, together with a copy of the Petition, by the attorney for Petitioner to all owners of property within 300 feet of Scott's Addition; that attached to the Petition was a bonded Abstractor's Certificate listing the names and mailing addresses of all persons or entities owning land within 300 feet of the Scott's Addition and that in all respects Petitioner has fully complied with the provisions of Title 11 O.S. 2001 § 42-112 et seq. The Court also found that the initial hearing of this matter on September

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20, 2019, was continued to October 18, 2019 and that notice of the continuance was published in The Journal Record on September 30, 2019.

The Court thereupon directed Petitioner to proceed and Petitioner informed the Court of its intent to permanently foreclose the right of the City to re-open the following parcels:

1. The north-south alley closed by Ordinance Number 26080 and located in the eastern portion of Scott's Addition as depicted on Exhibit C hereto (the "Closed Northeast Alley").
2. The north-south alley closed by Ordinance Number 6532 and located in the eastern portion of Scott's Addition as depicted on Exhibit D hereto (the "Closed Southeast Alley").
3. The east-west alley closed by Ordinance Number 6070 as depicted on Exhibit E hereto (the "Closed East-West Alley").
4. The 20 foot street right-of-way easement closed by Ordinance Number 15762 covering the Closed 14th Street Parcel.

The Petitioner and Garage Loft Owners have agreed and informed the Court that the Petitioner is withdrawing from this Action its request to foreclose the right to re-open the portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition. The Petitioner thereupon rested.

The Court finds that Petitioner has sustained the material allegations of the Petition as follows:

1. Pursuant to Ordinance Numbers 26080, 6532 and 6070, the City closed the Closed Northeast Alley, Closed Southeast Alley and Closed East-West Alley (collectively the "Closed Scott's Addition Alleys").
2. Pursuant to Ordinance Number 15762, the City closed a 20 foot street right-of-way easement covering the Closed 14th Street Parcel.
3. Petitioner is owner of the Hub at Midtown Property.
4. Petitioner seeks to foreclose, in accordance with Tit. 11 OS Section 42-111, et. seq., the right of the City to reopen the Closed Scott's Addition Alleys and Closed 14th Street Parcel, although Petitioner has withdrawn from this Action its request to foreclose the right to re-open the portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition.
5. The Closed Scott's Addition Alleys and Closed 14th Street Parcel are not currently utilized for public purposes, except for utility purposes as reserved herein.
6. The Garage Loft Owners are owners of Lots 38-42, Scott's Addition, a parcel abutting and to the south of the Closed East-West Alley and adverse possession claimants with respect to a portion of Lot 22.
7. A portion of the building located on Lots 38-42, Scott's Addition extends over the Closed East-West Alley into Lot 22 (the "Garage Lofts Encroachment").

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IT IS THEREFORE ORDERED ADJUDGED AND DECREED that

(i) the right of the City to re-open the Closed Scott's Addition Alleys and the Closed 14th Street Easement is hereby foreclosed, although the foreclosure of the right to re-open the Closed East-West Alley is limited to the portion thereof abutting and to the north of Lots 39-44 and abutting and to the south of Lots 16-21, Scott's Addition,

(ii) the title to the Closed Northeast Alley, Closed Southeast Alley, north-half of the portion of the Closed East West Alley located to the south of Lots 16-21, both inclusive, and the portion of the Closed East-West Alley located to the north of Lots 43 and 44 shall revert to the Petitioner as owner of the real estate adjacent thereto (i.e. the Hub at Midtown Property);

(iii) the title to the south half of the portion of the Closed East-West Alley adjacent to Lots 39-42, Scott's Addition, shall revert to the Garage Loft Owners, as owners of Lots 39-42, Scott's Addition;

(iv) the title to the Closed 14th Street Parcel shall revert to the Petitioner as owner of the Hub at Midtown Property,

(v) nothing herein shall impair the rights of the public or any franchised utility holder with respect to the Western Alley which is depicted on Exhibit B hereto and which is currently open and which remains unaffected by the filing of this Action;

(vi) nothing herein is intended to have any impact on any adverse possession claim, or defenses thereto, relating to the Garage Lofts Encroachment;

(vii) the rights of any holders of a franchise or other special right or privilege granted by ordinance or legislative enactment is terminated with respect to the Closed Scott's Addition Alleys (excepting the 25 foot portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition which has been withdrawn from this Action) and the Closed 14th Street Easement, except as specifically set forth below:

(a) the foreclosure of the right to re-open the Closed Scott's Addition Alleys (excepting the portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition as a result of that portion of the Closed East-West Alley being withdrawn from this Action) and the Closed 14th Street Easement does not terminate or affect any rights with respect to Cox facilities in the Western Alley; furthermore, Cox shall continue to have the right to use the Closed 14th Street Parcel and Closed East-West Alley for its facilities for communication and cable television purposes including easement rights, to construct, operate, maintain, reconstruct and/or remove its facilities, along with rights of ingress and egress.

(b) the foreclosure of the right to re-open the Closed Scott's Addition Alleys (excepting the 25 foot portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition which has been withdrawn from this Action) and the Closed 14th Street Easement does not terminate or affect any rights with respect to SWBT facilities in the Western Alley; furthermore, the foreclosure of the right to re-open the portion of the Closed East-West Alley herein foreclosed does not terminate the easement held therein by SWBT; furthermore, SWBT shall continue to have the right to use the Closed East-West Alley for telephone and communications purposes; and its rights in the Closed East-West Alley to

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construct, operate, maintain, reconstruct and/or remove its telephone and communication facilities is hereby preserved, along with SWBT's rights of ingress and egress.

(c) the foreclosure of the right to re-open the Closed Scott's Addition Alleys (excepting the 25 foot portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition which has been withdrawn from this Action) and the Closed 14th Street Easement does not terminate or affect any rights with respect to OG&E facilities in the Western Alley; furthermore, the foreclosure of the right to re-open the portion of the Closed East-West Alley foreclosed herein does not terminate the easement held therein by OG&E; OG&E shall continue to have a utility easement in the Closed East-West Alley and the right of ingress and egress to continue to enter upon, maintain, operate, upgrade and reconstruct electric utility facilities and continue to operate and provide electric utility facilities and continue to operate and provide electric service in, upon, under and across said property.

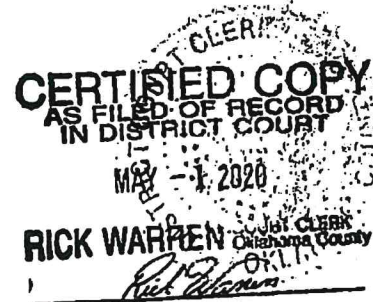
(d) the foreclosure of the right to re-open the Closed Scott's Addition Alleys (excepting the 25 foot portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition which has been withdrawn from this Action) and the Closed 14th Street Easement does not terminate or affect any rights with respect to City facilities in the Western Alley; furthermore, the foreclosure of the right to re-open the Closed Scott's Addition Alleys (excepting the 25 foot portion of the Closed East-West Alley located to the north of Lot 38 and to the south of Lot 22 in Scott's Addition which has been withdrawn from this Action) and the Closed 14th Street Easement does not terminate the easement for sanitary sewer purposes held therein by the City in the closed Scott's Addition Alleys or the easement for a water main located in the Closed 14th Street Parcel; furthermore, the City shall continue to have the right to use, respectively, the Closed Scott's Addition Alleys and Closed 14th Street Parcel for sewer line and water main purposes, and its right to construct, operate, maintain, reconstruct and/or remove its facilities is hereby preserved, along with the City's rights of ingress and egress until said utilities have been abandoned and/or relocated at the owner's expense.

(viii) The legal descriptions of the parcels reverting to Petitioner and to the Garage Loft Owners are set forth on the attached Exhibit F.

JUDGE OF THE DISTRICT COURT

APPROVED AND CONSENTED TO:

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Approvals And Consents To Order Foreclosing Right To Re-Open Closed Alleys
And Street Right-Of-Way And Reservation Of Easements
(OK County CV-2019-1778)


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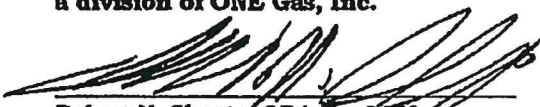
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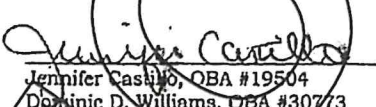
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Approvals And Consents To Order Foreclosing Right To Re-Open Closed Alleys
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(OK County CV-2019-1778)

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Trustees under the Terrance A. Lee and Magda Van Brunt Trust
dated July 6, 2010



Approvals And Consents To Order Foreclosing Right To Re-Open Closed Alleys
And Street Right-Of-Way And Reservation Of Easements
(OK County CV-2019-1778)

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Trustees under the Terrance A. Lee and Magda Van Brunt Trust
dated July 6, 2010

7/17/2020

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EXHIBIT A
HUB AT MIDTOWN PROPERTY

THE FOLLOWING PARCELS LOCATED IN SCOTTS ADDITION, an Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof:

1. Lots One (1) through Eight (8), both inclusive;
2. Lots Nine (9) and Ten (10);
3. Lots Eleven (11) through Fourteen (14), both inclusive;
4. Lot 15;
5. Lots Sixteen (16) through Twenty-two (22), both inclusive;
6. The East 60 feet of Lots Twenty-three (23) through Twenty-seven (27), both inclusive;
7. Lots Twenty-eight (28) and Twenty-nine (29), EXCEPT the west 10 feet thereof;
8. Lots Thirty (30) through Thirty-seven (37), both inclusive, EXCEPT the South 15 feet of Lot Thirty-seven (37) and EXCEPT the West 10 feet of Lots Thirty (30) through Thirty-seven (37)
9. Lots Forty-three (43) and Forty-four (44);
10. That portion of the North-South alley lying West of Lots Seven (7) and Eight (8) more particularly described as follows:
Beginning at the Northwest corner of Lot Six (6) of SCOTTS ADDITION;
thence West approximately 20 feet to the point on the East line of Lot Forty-four (44) of SCOTTS ADDITION;
thence North along the East line of Lots Forty-four (44) and Sixteen (16) of said addition to a point immediately West of the Northwest corner of Lot Eight (8) of said addition;
thence East approximately 20 feet to the Northwest corner of Lot Eight (8), of SCOTTS ADDITION;
thence South to the Point of Beginning, as recited in Journal Entry of Judgment filed in Case no. 175025 in the District Court of Oklahoma County, Oklahoma.

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EXHIBIT B

[Copy of Plat of Scott's Addition with Western Alley depicted]

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EXHIBIT C

[Copy of Plat of Scott's Addition with Closed Northeast Alley depicted]

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PLAT

Quilling of Stephens Ward County, Mo.
The millstone was first found on the 3rd Jan. 1890
at 11^{1/2} A.M., and recorded in Plot Record 1, Page 47

Lo. J. Bowman
Agent of Acad.
St. Alb.

[illegible]

May 1861 Robert M. Booth.

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EXHIBIT D

[Copy of Plat of Scott's Addition with Closed Southeast Alley depicted]

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EXHIBIT E

[Copy of Plat of Scott's Addition with Closed East-West Alley depicted]

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EXHIBIT F

Legal Description of Parcels Reverting to Petitioner and to Garage Loft Owners

1. To Petitioner:

- a. Closed Northeast Alley (Ordinance 26080)—A portion of the North-half (N/2) of the easterly north-south alley in Scott's Addition to Oklahoma City, Oklahoma, being more particularly described as follows: BEGINNING at the Northeast corner of Lots 16 of Scott's Addition, thence east along the north line of Scott's Addition, a distance of 20.00 feet to the northwest corner of Lot 15; thence South along the west line of said Lot 15 extended, a distance of 180.00 feet to a point in the west line of Lot 8; thence West a distance of 20.00 feet to the Southeast corner of Lot 16; thence North, along the east line of said Lot 16, a distance of 180.00 feet to the POINT OF BEGINNING.
- b. Closed Southeast Alley (Ordinance 6532)—The portion of the alley in Scott's Addition to Oklahoma City, Oklahoma between Lots One (1) to Six (6), inclusive, and the South One Hundred Forty feet (140) of Lot 44 in Scott's Addition to Oklahoma City, Oklahoma.
- c. Portion of Closed East-West Alley—(Ordinance 6070)—The north-half (N/2) of the East-West Alley in Scott's Addition to Oklahoma City, Oklahoma Lots abutting (and to the south of) Lots 14-21, both inclusive, (Note that ordinance is in error and says 12-22 as opposed to 14-22) and the south-half said alley abutting (and to the north of) Lots 43 and 44 of Scott's Addition to Oklahoma City, Oklahoma.
- d. The north twenty (20) feet of (i) Lot 15, (ii) Lots 16-22, both inclusive, and (iii) the East Sixty (60) feet of Lot 23, all in Scott's Addition to Oklahoma City.

2. To the Garage Loft Owners.

- a. Portion of Closed East-West Alley—(Ordinance 6070)—The south-half (S/2) of the East-West Alley in Scott's Addition to Oklahoma City, Oklahoma abutting (and to the north of) Lots 39 to 42, both inclusive, of Scott's Addition to Oklahoma City, Oklahoma.

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Filing Fee: \$58.00

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ORDER



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