

CONSTRUCTION STAGING AREA LICENSE AGREEMENT

THIS CONSTRUCTION STAGING AREA LICENSE AGREEMENT [“License”] is entered into by and between the City of Overland Park, Kansas [“Licensor”] and Market Lofts, LLC [“Licensee”]

RECITALS

WHEREAS, Licensor is the owner of property currently used for a public parking lots within Downtown Overland Park vicinity 79th Street and Marty Street and 80th Street and Marty Street in proximity to property owned and to be developed by the Licensee [“Parking Lot”], and

WHEREAS, the Licensee is proposing to redevelop a portion of Downtown Overland Park at 7300 West 80th Street and that redevelopment will provide a substantial benefit to the economic vitality of the downtown area as well as sales and property tax revenue to the City eventually, and

WHEREAS, the nature of redevelopment in the downtown area requires the use of the entire parcel of property being redeveloped for the building being constructed and parking facilities, leaving no property available for a construction primary and/or secondary staging area during the construction process, presenting substantial practical difficulties and expense for redevelopment in the downtown area, and

WHEREAS, the Licensor has agreed to allow Licensee secondary use of said public parking areas for primary and/or secondary construction staging areas pursuant to the terms and conditions set forth in this License Agreement.

NOW, THEREFORE, the Licensor and Licensee agree as follows:

1. LICENSE. Licensor hereby grants to Licensee a secondary and non-exclusive license to use the portion of the public parking lot in the vicinity of 79th Street and Marty Street legally described on Exhibit A, [“the primary staging area”] which is attached to and made a part of this Agreement, for the purpose of a construction primary and/or secondary staging area for construction taking place on the property legally described on Exhibit C [“the construction area”]. Furthermore, Licensor hereby grants to Licensee a secondary and non-exclusive license to use the portion of the public parking lot in the vicinity of 80th Street and Marty Street legally described on Exhibit B, [“the secondary staging area”] which is attached to and made a part of this Agreement. The rights of the Licensee under this License shall include a nonexclusive right of Licensee over and across the primary and/or secondary staging area for storage and operation of construction equipment and supplies and for ingress and egress. The Licensee shall cooperate with the Licensor in determining the layout and exact use of the primary and/or secondary staging area and in protecting the Licensor’s permanent use of the primary and/or secondary staging area as a public parking lot after this license has terminated.

2. **TERM OF PRIMARY CONSTRUCTION STAGING AREA.** The term of this License for the primary construction staging area shall begin on the date of the issuance of a building permit to the Licensee for the construction area and may continue for so long as the City's Director of Planning and Development Services or his designee ["the Director"] determines that use of the primary and/or secondary staging area is necessary for the construction taking place at the construction area. Either the Licensor or the Licensee may terminate this License at any time upon thirty (30) days written notice to the other party. If this License is terminated pursuant to this provision, the Licensee shall remove all equipment, fencing, materials and so forth from the primary and/or secondary staging area and return the site to its original or better condition within 10 business days after termination as directed by the Director.
3. **TERM OF SECONDARY CONSTRUCTION AREA.** The term of this License for the secondary construction staging area shall be no longer than ten (10) business days dependent on construction operations, schedule, and weather. The Licensee will notify the City's Director of Planning and Development Services a minimum of seven calendar days prior to the use of the secondary staging area. The secondary staging area will only be used for the storage and erection of pre-cast concrete panels used in the assembly of an underground parking structure. Upon completion of this construction task the secondary staging area will be cleared, restored and released back to the Licensor.
4. **TERM OF AGREEMENT.** Either the Licensor or the Licensee may terminate this License at any time upon thirty (30) days written notice to the other party. If this License is terminated pursuant to this provision, the Licensee shall remove all equipment, fencing, materials and so forth from the primary and/or secondary staging area and return the site to its original or better condition within ten (10) business days after termination as directed by the Director.
5. **FEE.** No fee shall be required for this License.
6. **USE.** The rights of the Licensee hereunder shall be to temporarily use the designate area of the primary and/or secondary staging area for necessary construction related purposes, such as a construction trailer, construction equipment, a materials trailer, building materials and other related uses, all as determined by the Director and as specified in a Site Plan, including fencing and access, as approved by the Director. Licensee shall not permit any waste or damage to be done to the primary and/or secondary staging area and shall maintain the primary and/or secondary staging area and keep the said area in good condition and repair and free of any litter, construction debris or any other waste and not allow any such litter or debris to blow away from the site. The site shall be returned to the Licensor in its original or better condition when a Temporary Certificate of Occupancy is issued for the construction area, and no permanent Certificate of Occupancy shall be issued unless and until the Licensor has

approved the condition of the primary and/or secondary primary and/or secondary staging area. No materials, equipment or any else not intended and used for the construction area specified in Exhibit C shall be stored at this site.

7. **INDEMNIFICATION.** Licensee shall indemnify, defend protect and hold harmless the Licensor, and its officers, agents, and employees from and against any and all liens and encumbrances of any nature whatsoever which may arise in the exercise of Licensee's rights hereunder, and from all claims, causes of action, liabilities, costs and expenses (including all reasonable attorney's and in-house counsel fees), losses or damages arising from Licensee's use of the primary and/or secondary primary and/or secondary staging area, any breach of this License, or any act or failure to act of Licensee or Licensee's agents, employees, construction workers, or invitees, except those arising out of the sole negligence or willful misconduct of the Licensor, its officers, agents and employees.
8. **RISK OF DAMAGE OR LOSS.** Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to its property or injury to all persons and personal property in or upon the primary and/or secondary staging area. Licensee hereby releases and relieves Licensor, and waives its entire right of recovery against Licensor, for any loss or damage arising out of or incident to the Licensee's use of the primary and/or secondary primary and/or secondary staging area.
9. **HAZARDOUS MATERIALS.** Licensee shall not use, generate, manufacture, store or transport or dispose of, on or over the primary and/or secondary staging area, any flammable liquids, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or any other "hazardous materials" as that term may be defined under federal or state laws, except for the hazardous materials which may be in the vehicles that Licensee will park or store on the primary or secondary primary and/or secondary staging area. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the primary or secondary primary and/or secondary staging area as a result of Licensee's use and occupancy thereof, Licensee shall provide notice as required by law and Licensee, at its sole cost and expense, shall undertake all appropriate remediation on all the property affected, whether owned by Licensor or any third party, to the satisfaction of the Licensor and any governmental body have jurisdiction thereof. Licensee must also notify Licensor as required by law of any release of hazardous materials that have come or will come to be located on or beneath the primary and/or secondary primary and/or secondary staging area.
10. **ALTERATIONS.** Licensee shall not alter the primary and/or secondary primary and/or secondary staging area or any improvements on the primary and/or secondary staging areas except as specifically authorized by the Director.
11. **RESTORATION.** Licensee shall maintain the primary and/or secondary primary and/or secondary staging area in its current condition and will restore the primary

and/or secondary staging area to its pre-construction condition to include repair to any damaged pavement, curbs, markings, or other public infrastructure components. All repairs must be completed ten [10] days after completion of the term outlined in paragraph 2 above.

12. **LIENS, TAXES AND ASSESSMENTS.** Licensee shall keep the primary and/or secondary staging area free from all liens, taxes and assessments resulting from or caused by the Licensee's use of the primary and/or secondary staging area, and shall operate the primary and/or secondary staging area in full compliance with all federal, state and municipal laws, ordinances and regulations governing the use and occupancy of the primary and/or secondary staging area.
13. **FENCING AND SIGNAGE.** Licensee may, with the advance approval of the Director, erect fencing and post signage at the entry to the primary staging area indicating that the use of the primary staging area is restricted to the Licensee during the term of this Agreement. Licensee may, with the required seven (7) calendar day advance notification and approval of the Director, erect fencing and post signage at the entry to the secondary staging area on the first day of the allocated ten (10) business days required for use of the secondary staging area.
14. **SURRENDER.** Upon the termination of this license, all rights, use and interest of the Licensee in and to this License shall be surrendered peaceably to the Licensor and the Licensee shall remove all property from the primary and/or secondary staging area and restore the primary and/or secondary staging area and, if needed, any adjoining property, to its former condition or better.
15. **INSURANCE.** Licensee shall maintain in full force and effect during the term of this License, at Licensee's sole cost and expense, a policy of comprehensive general liability insurance in terms and amounts satisfactory to the Licensor and approved in writing by the Licensor's Risk Manager.
16. **DEFAULT.** In the event of a breach by Licensee of any of the terms of this License, all rights of Licensee hereunder shall cease and terminate, and in addition to all other rights Licensor may have at law or in equity, Licensor may re-enter the primary and/or secondary staging area and take possession thereof without notice and may remove any and all persons and property therefrom, and may also cancel and terminate this License; upon any such cancellation, all rights of Licensee in and to the primary and/or secondary staging area shall cease and terminate.
17. **RULES AND REGULATIONS.** The Director shall have the right to establish and enforce reasonable rules and regulations concerning the management, use and operation of the primary and/or secondary staging area, and compliance with said rules and regulations by the Licensee and his officers, agents and employees is expressly made a term of this License Agreement.

18. **ASSIGNMENT AND SUBLETTING.** This License is personal to the Licensee and Licensee agrees not to sublease, assign, sell, transfer, encumber, pledge or otherwise hypothecate any part of the License or Licensee's interest in the primary and/or secondary staging area to any other person or entity without the prior written consent of the Director, which consent may be withheld in the Director's or Licensor's sole and absolute discretion. Any purported assignment or sublease by Licensee of this License shall be void *ab initio* and a basis for immediate termination of this License. In the event that the Director or the Licensor shall provide such prior written consent to an assignment or sublease by Licensee, any such assignment or sublease shall not relieve Licensee of its obligations under this License.
19. **ATTORNEY'S FEES.** If any party named herein brings an action to enforce the terms hereof or to declare its rights hereunder, the prevailing party in any such action, on trial and appeal, shall be entitled to recover its costs and reasonable attorney's fees, including those of in-house counsel.
20. **NOTICES.** All notices, consents, requests, demands, approvals, waivers, and other communications desired or required to be given hereunder shall be in writing and signed by the party so giving notice, and shall, with respect to the Licensor, be delivered, received and time stamped in the office of the Overland Park City Clerk, City Hall, 8500 Santa Fe Drive, Overland Park, KS, 66212. With respect to the Licensee, the notices shall be given to: Paul Goehausen at 8435 Cherokee Lane, Leawood, Kansas 66206. Either party may, from time to time, change the designated party and address for its notices in the manner outlined above.
21. **GOVERNING LAW.** This License Agreement shall be interpreted, enforced and governed by the laws of the State of Kansas.
22. **AMENDMENTS.** No provision of this License Agreement may be amended or modified except by an agreement in writing executed by both parties hereto.
23. **SEVERABILITY.** In the event that one or more of the provisions contained in this License shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of the provisions of this License shall continue in full force and effect without impairment.
24. **SOLE AGREEMENT.** This License constitutes the sole agreement between the Licensor and the Licensee with respect to the staging are.

IN WITNESS WHEREOF, each of the parties has caused its authorized representative to execute triplicate original counterparts of this License this _____ day of _____, 2008.

Licensor: _____

John Nachbar
City Manager
Overland Park, Kansas

Licensee: _____

Paul Goehausen
Market Lofts LLC

Attest: _____

Marian Cook
City Clerk

Reviewed By: _____

Bart Budetti
Assistant City Attorney