

## **RESTRICTIVE COVENANT**

**THIS INDENTURE** is made as of the \_\_\_\_ day of June, 2008 (the “Effective Date”), by and between the CITY OF OVERLAND PARK, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas, whose mailing address is 8500 Santa Fe, Overland Park, KS 66212 (“Grantor”) for the benefit of MARKET LOFTS, L.L.C., a Kansas limited liability company (“Grantee”) whose mailing address is 8435 Cherokee Lane, Leawood, KS 66206.

**WHEREAS**, Grantor is the owner of the real property described in Exhibit “A” attached hereto and made a part hereof (“Grantor’s Property”); and

**WHEREAS**, Grantee is the owner of the real property described in Exhibit “B” attached hereto and made a part hereof (“Grantee’s Property”), which property is adjacent to Grantor’s Property; and

**WHEREAS**, Grantor desires Grantee to complete a redevelopment of Grantee’s Property that includes the construction of improvements that shall be located adjacent to the common boundary line between Grantor’s Property and Grantee’s Property (the “Grantee Development”).

**WHEREAS**, in order for Grantee to complete the Grantee Development in such location as desired by Grantee and in compliance with municipal regulations, laws and ordinances, a thirty foot setback preventing construction on a portion of Grantor’s Property must be established.

**NOW, THEREFORE**, in consideration of Grantee undertaking construction of the Grantee Development and other sufficient consideration and benefits inuring to the Grantor, Grantor hereby covenants as follows:

1. Grant of Restrictions. As of the Effective Date, Grantor hereby causes the following restrictive covenant to apply to the portion of Grantor’s Property legally described at Exhibit “C-1”, and as detailed by the site plan set forth at Exhibit “C-2” (the “Restricted Property”):

No building or other inhabitable structure shall at any time be erected on the Restricted Property.

2. Covenants to Run with the Land. The restrictions and provisions contained in this Restrictive Covenant: (i) are made for the benefit of the Grantee; (ii) will create a servitude upon the Restricted Property in favor of the Grantee’s Property; (iii) will constitute covenants running with the land; (iv) will bind or inure to the benefit of every person having any fee, leasehold, or other interest in any portion of the Grantee’s Property or Restricted Property at any time or from time to time to the extent that such portion is bound by or benefited by the provisions of this Restrictive Covenant; and (v) will inure to the benefit and be binding upon the Grantor and Grantee of this Restrictive Covenant, their legal representatives, successors and assigns.

3. Third Parties. The rights and obligations herein set forth shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and shall be covenants running with the land. No other third parties shall obtain any rights or benefits through the operation of this Restrictive Covenant.

4. Rule Against Perpetuities. To the extent, and only to the extent, that rights and easements contained in this Restrictive Covenant are determined to be subject to the rule against perpetuities, or to the operation of any rule relative to restraints on alienation and the limitation thereof, or to any other rule limiting the enforceability or validity of the restrictions herein granted, such restrictions and rights shall be of force and effect only during the maximum period during which any such rules would not render the same invalid or unenforceable. Where the lives of persons are the measuring standard for the application of such rules, such lives shall be of the individuals signing this agreement and their spouses, and the issue of such persons living at the date of this document. Consistent therewith, as of the date of this agreement, to the extent that rights and restrictions in this agreement should be determined to be subject to any such rules, the same shall be of force and effect only during the period which ends 21 years (or such longer period as may hereafter be allowed by law) following the last to die of those persons referred to above and this issue now living of such persons, and thereafter, shall be of no further force and effect.

5. Remedies for Breach. If any party having the benefit or burden of this agreement shall fail to comply with or violate any of the provisions of this agreement, then any other party entitled to the benefit of such provision may institute such actions or proceedings as may be appropriate and permissible, including actions and proceedings to compel specific performance and to seek injunctive relief, including recovery of damages, expenses and costs.

6. Easement Termination. If the Grantee Development is not constructed in a substantially similar manner to the plans being reviewed by Grantor at execution of this Agreement and a certificate of occupancy for the building is not issued on or before \_\_\_\_\_, the easement granted by this Agreement may be terminated upon a recording of termination of easement by the Grantor.

7. Miscellaneous. The following additional terms and conditions are hereby agreed to:

a. The failure of any current or future owner of any of the property benefited by an the restrictions granted hereunder to insist upon strict performance of any of the terms or conditions of this agreement shall not be deemed a waiver of any rights or remedies which such owner may have hereunder or at law, or in equity and shall not be deemed a waiver of any subsequent breach or default of any such terms or conditions.

b. This Restrictive Covenant shall be construed and interpreted in accordance with the laws of the State of Kansas.

c. This Restrictive Covenant may not be altered, modified or amended except in writing signed by the then owners of each of the properties; provided, however, the then owner of Grantee's Property shall not unreasonably withhold approval of such modification requested by the Grantor provided the granting of such request would not adversely affect the ability of a building located on the Grantee's Property to remain in full compliance with the building code under which it was constructed and approved.

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**IN WITNESS WHEREOF**, Grantor has caused this Restrictive Covenant to be executed the day and year first above written.

GRANTOR:  
**CITY OF OVERLAND PARK, KANSAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn did say that he is the \_\_\_\_\_ of CITY OF OVERLAND PARK, KANSAS and that said instrument was signed on behalf of said \_\_\_\_\_ by authority of its \_\_\_\_\_, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said \_\_\_\_\_.

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

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF GRANTOR'S PROPERTY**

All that part of Resurvey Of Lots 1 to 18 Inclusive in Overland Hill, a platted subdivision of land in the City of Overland Park, Johnson County, Kansas being more particularly described as follows:

Commencing at the Northeast corner of Lot 16, Blk. 1 of said subdivision, thence N 2 degrees 14 minutes 53 seconds E, 15.0 ft. to the north boundary of the dedicated alley, to the True Point of Beginning, said point being the Southeast corner of Lot 15, Blk. 1, continuing N 2 degrees 14 minutes 53 seconds E, 264.0 ft. along a line to the Northeast corner of Lot 10, Blk. 1 of said subdivision. Thence N 87 degrees 51 minutes 53 seconds W, 145.0 ft. along the north lot line of said Lot 10, continuing N 87 degrees 51 minutes 53 seconds W, 7.5 ft to a point at the middle of the vacated alley, thence S 2 degrees 14 minutes 53 seconds W, 44.0 ft. to a point, thence S 87 degrees 51 minutes 53 seconds E, 7.5 ft. to the Northwest corner of Lot 11, Blk.1. Thence S 2 degrees 14 minutes 53 seconds W, 220.0 ft to the Southwest corner of Lot 15, Blk. 1 continuing S 87 degrees 51 minutes 53 seconds E, 145.0 ft., to the True Point of Beginning and containing 9,440 sq. ft. more or less.

**EXHIBIT “B”**

**LEGAL DESCRIPTION OF GRANTEE’S PROPERTY**

All that part of Resurvey Of Lots 1 to 18 Inclusive in Overland Hill, a platted subdivision of land in the City of Overland Park, Johnson County, Kansas being more particularly described as follows:

Beginning at the Northeast corner of Lot 16 of said subdivision, thence S 2 degrees 14 minutes 53 seconds W along said lot line, 128.25 ft. to a point on the northern Right of Way of 80<sup>th</sup> Street at the intersection of 80<sup>th</sup> Street and Marty Ave., thence N 87 degrees 51 minutes 53 seconds W along said Right of Way line, 160.00 ft. to a point, the point being the Southwest corner of Lot 19, thence N 2 degrees 14 minutes 53 seconds E, 128.32 ft. to the Northwest corner of Lot 19, thence S 87 degrees 51 minutes 53 seconds E, 160.00 ft. to the True Point of Beginning and containing 20,531 sq. ft. more or less.

**EXHIBIT “C-1”**

**LEGAL DESCRIPTION OF RESTRICTED PROPERTY**

The east 160.00 feet of the platted alley between Lots 15 and 16-19 as shown on the recorded plat of “Resurvey of Overland Hill Lots 1-18 Inclusive” in Johnson County, Kansas, along with the South 15 feet of Lot 15 in said subdivision and the South 15 feet of the vacated alley between Lots 15 and 25 in said subdivision, containing 2,400 square feet, more or less, subject to easements and restrictions of record.

[illegible][illegible]