

ACCESS EASEMENT AGREEMENT

THIS INDENTURE is made as of the ____ day of June, 2008, 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”) and 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, Grantor and Grantee desire to establish and create a driveway from a publicly dedicated street known as Marty Street over and across Grantor’s Property to Grantee’s property to provide ingress to and egress from Grantee’s Property.

NOW, THEREFORE, in consideration of the premises and the mutual promises, agreements and benefits inuring to the parties hereto, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor does hereby declare, create, grant and convey to Grantee and its successors and assigns a non-exclusive, perpetual access easement over that part of Grantor’s Property legally described at Exhibit “C-1”, and as detailed by the site plan set forth at Exhibit “C-2” (the “Access Easement Parcel”), to provide pedestrian and vehicular access, ingress and egress, and passage from Grantee’s Property to Marty Road.

2. Construction of Driveway. Grantee agrees at its sole cost and expense to construct a driveway over and upon the Access Easement Parcel and to construct the same in a good and workmanlike manner using quality materials so that the driveway shall be paved with concrete, asphalt or other hard surface materials. Grantee shall indemnify and hold Grantor harmless from any cost, expense, demand or claim, including, without limitation, any claim or assertion of a mechanic’s lien, arising from such construction agreed to be made pursuant to this paragraph.

3 Use of Access Easement Parcels. The access easement granted herein shall be appurtenant to the property benefited by such easements and shall be for the future benefit of all present and future owners of Grantee’s Property and their respective lessees, customers, suppliers, employees, contractors, agents or other invitees. Any improvements hereafter constructed on the Access Easement Parcel shall not interfere with the use of said parcel for access purposes. Any use of the Access Easement Parcel or the driveway located thereon, or any portion thereof, by any of the current or future owners of the Access Easement Parcel shall at all times conform with the terms and conditions of

this Agreement and all applicable statutes, ordinances and regulations.

4. Maintenance and Repair of Driveway Grantee shall, at its own cost and expense, maintain and repair the driveway constructed on the Access Easement Parcel in good condition and repair at all times.

5. Taxes and Assessments. Grantor shall be solely responsible for all property taxes and assessments, whether general, special, ordinary or extraordinary, imposed on the Access Easement Parcel or any portion thereof by any governmental or quasi-governmental authority, or any subdivision thereof, without any obligation on the part of the of the other party to pay or contribute any part or portion thereof.

6. Enforcement. If any proceeding is commenced to enforce the terms of this Agreement, the prevailing party in such proceeding shall be entitled to an award of its costs and expenses, including reasonable attorney's fees and disbursements, incurred in connection therewith.

7. 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.

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

a. Nothing herein contained shall be deemed to be a gift or dedication of the Access Easement Parcel or any portion thereof to the general public for any public use or purpose whatsoever.

b. The failure of any current or future owner of any of the property benefited by an easement 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.

c. The easement created hereby shall be deemed to be a covenant running with the title to the land hereby affected, and shall be binding upon and inure to the benefit of the parties hereto and upon their respective legal representatives, successors and assigns and all parties claiming by, through or under the parties hereto, or either of them, shall be taken to hold, agree and covenant with the said parties hereto, and with their successors and assigns, and with each of them, to conform to and observe the provisions of this Agreement.

d. This Agreement shall be construed and interpreted in accordance with the laws of the State of Kansas.

e. This Agreement may not be altered, modified or amended except in writing signed by the then owners of each of the properties.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Access Easement Agreement to be executed the day and year first above written.

GRANTOR:
CITY OF OVERLAND PARK, KANSAS

By: _____
Name: _____
Title: _____

GRANTEE:
MARKET LOFTS, L.L.C.

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:

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this _____ day of June, 2008, before me appeared Paul Goehausen, to me personally known, who, being by me duly sworn did say that he is the Manager of Market Lofts, L.L.C., a limited liability company of the State of Kansas, and that said instrument was signed on behalf of said company by authority of its Members, and said Paul Goehausen acknowledged said instrument to be the free act and deed of said company.

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 80th Street at the intersection of 80th 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 ACCESS EASEMENT PARCEL

That part of the platted 15 foot alley between Lot 15 and Lots 16-19 in “Resurvey of Overland Hill Lots 1-18 Inclusive”, and the South 5 feet of Lot 15 of said subdivision as recorded in Johnson County, Kansas, described as follows:

Commencing at the Southeast corner of Lot 16, in said subdivision; thence along the East line of said Lot N 0 degrees 08 minutes 00 seconds E a distance of 128.25 feet to the Northeast corner of said Lot and Point of Beginning; thence along the North line of Lots 16-19 N 89 degrees 55 minutes 55 seconds W a distance of 160.00 feet to the Northwest corner of said Lot 19; thence N 0 degrees 04 minutes 05 seconds E a distance of 20.00 feet; thence parallel to said North line S 89 degrees 55 minutes 55 seconds East a distance of 160.00 feet to a point on the East line of said Lot 15; thence along said East line S 0 degrees 08 minutes 00 seconds W a distance of 20.00 feet to the Point of Beginning, containing 3,200 square feet, more or less, subject to easements and restrictions of record

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