

## **RESTRICTED USE COVENANT**

This Covenant is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by the **Overland Park Heritage Foundation**, a Kansas not for profit corporation, f/k/a the Overland Park 2000 Foundation (the “Foundation”); and the **Overland Park Historical Society**, a Kansas not for profit corporation (the “Society”), agrees and consents to the provisions herein. The Foundation or Society may be referred to individually herein as the “Party” or collectively herein as the “Parties.”

WHEREAS, the Society entered into a Commercial Real Estate Contract to acquire ownership of the old Stanley Bank building, legally described in Exhibit A, attached hereto and incorporated herein (the “Property”), from the Foundation on or about November 12, 2012 (the “Real Estate Contract”); and

WHEREAS, the Foundation and Society have agreed pursuant to the Real Estate Contract to have title to the Property transferred from the Foundation to the Society for its preservation, operation and management; and

WHEREAS, ownership and use of the Property is restricted by the terms of an Agreement, dated April 20, 1998, between the City of Overland Park, Kansas (the “City”) and the Foundation and recorded with the Johnson County Records and Tax Administration Office, Johnson County, Kansas (the “RTA”) in Book 5579 at Page 896 (“1998 Agreement”); and

WHEREAS, simultaneous with the execution of this Covenant, the City and the Foundation have agreed to execute a release of the provisions regarding the Property under the 1998 Agreement provided that the Foundation execute this Covenant to maintain the intended and current use of the Property for limited historical display purposes; and

WHEREAS, the Society hereby consents and agrees to the restricted use provisions set forth in this Covenant.

NOW, THEREFORE, the Parties do hereby covenant and agree as follows:

1. Historical Exhibits. The Foundation agrees to provide certain space in the Property, identified in Exhibit A attached hereto, for exclusive use as historical museum and exhibit areas, depicting the history of Overland Park and Johnson County, Kansas.

2. Operation of Display. The Foundation agrees to use its best efforts to continuously operate and maintain historical displays as specified in this Covenant, except for periods when removal of the exhibits is necessary for maintenance or repair of the Property or for alterations to or changing of the artifacts on exhibit. The Foundation further agrees that the historical museum exhibits will be open and available to the public at all times that the premises of the Property are so open; provided, that the City may, in writing, agree to modifications of these public access requirements.

3. Standards for Exhibits. The Foundation agrees to use its best efforts to operate and maintain the exhibits in a professional manner consistent with similar historical museums and exhibits in the community.

4. Termination of Intended Use. In the event the Foundation, or any transferee, grantee, successor or permitted assign of the Foundation, in its discretion determines the intended use of historical display to be unfeasible, such Party shall obtain the express written consent of the City prior to terminating such intended use. Such consent of the City shall not be arbitrarily or unreasonably withheld. Notwithstanding, the restrictions set forth in this Covenant shall expire after December 31, 2040.

5. Simultaneous Execution. Simultaneous with the execution hereof, the Foundation shall enter into the Partial Release of Agreement with the City, attached hereto and marked Exhibit B, to be recorded with the RTA, which shall release the Property from any and all provisions contained in the 1998 Agreement recorded with the RTA in Book 5579 at Page 896.

6. Entire Covenant and Agreement. This Covenant constitutes the sole and entire covenant and agreement by and between the Parties with respect to the subject matter hereof, and supersedes any previous agreements, understandings and arrangements between the Parties. Any amendments hereto are enforceable only if in writing, signed by each of the Parties and consented to by the City (whose consent shall not be arbitrarily or unreasonably withheld).

7. Binding Effect. This Covenant shall run with the land and shall inure to the benefit of, and be binding upon, every transferee, grantee, successor or permitted assign of the Parties hereto. By executing this Covenant, the Society hereby consents to be bound by the provisions herein upon the final closing of the Real Estate Contract.

8. Recordation. This Covenant shall be recorded with the RTA.

9. Governing Law. This Covenant shall be subject to, interpreted by and in accordance with, the laws of the State of Kansas.

10. Negotiated Transaction. The rule of law that a document is to be construed against the drafting party shall have no application to the interpretation of this Covenant, as the Parties acknowledge that the provisions of this Covenant were negotiated at arm's length by the Parties hereto, and shall be deemed to have been drafted by all of the Parties hereto. Accordingly, the language in all parts of this Covenant shall be construed in accordance with its fair meaning and not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Restricted Use Covenant on the day and year first above written.

**FOUNDATION:**

Overland Park Heritage Foundation,  
a Kansas not for profit corporation,  
f/k/a Overland Park 2000 Foundation

By: \_\_\_\_\_  
Roger Peugeot, President

**SOCIETY:**

Overland Park Historical Society,  
a Kansas not for profit corporation

By: \_\_\_\_\_  
James Conrad, President

CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON        )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **Roger Peugeot**, President of the **Overland Park Heritage Foundation**, a Kansas not for profit corporation, f/k/a the Overland Park 2000 Foundation, who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of said company, and acknowledged the execution of the same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:  
\_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_        )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **James Conrad**, President of the **Overland Park Historical Society**, a Kansas not for profit corporation, who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of said company, and acknowledged the execution of the same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:  
\_\_\_\_\_