

A

Use"), and for no other purpose for a period of 25 years after the date this Declaration is filed of record in Sarpy County, Nebraska.

2. It is understood and agreed between the parties hereto that the Premises shall be used and occupied only for the Permitted Use for no other purpose or purposes. In addition to Owner's agreement to operate only for the Permitted Use as hereinabove provided, Owner expressly covenants and agrees that it shall not operate or permit any operation in the Premises so as to violate or permit the violation of any of the exclusives and/or restrictions which have been negotiated to date, which are set forth in Exhibit G attached to the Agreement and incorporated herein by this reference and are set forth in Exhibit D attached hereto and incorporated herein by reference (collectively, the "Exclusives") or any then existing exclusive uses previously granted by Developer within the Shopping Center which affect the Premises (the "Future Exclusives"). In the event that Owner's use conflicts with its Permitted Use or any use protected by the Exclusives or the Future Exclusives, Developer shall give Owner written notice of same and Owner shall immediately cease the use of the Premises for such prohibited use within 5 days thereafter. In the event Owner fails to cease such prohibited use, then Owner agrees to indemnify, defend, and hold harmless Developer from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss of rents resulting from the termination by a tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, including any cost or legal expenses of Developer in enforcing the restriction as and against Owner, and including any cost or legal expenses of Developer arising from or related to wholly or in part, the use of the Premises for any purpose prohibited or listed in Exhibit D hereto or any Future Exclusive. In the event Owner violates any of the provisions of this Section, Developer shall have all rights and remedies provided herein and in the Agreement, in addition to all rights and remedies available to Developer at law or in equity, including, but not limited to, injunctive relief.

3. Owner has certain exclusive rights regarding its Permitted Use as more particularly set forth in the Agreement, which rights may be provided upon written request. The following is an excerpt from the provision (and the capitalized terms used in the following shall have the meaning given to them in the Agreement):

So long as Purchaser: (i) shall be fully and continuously (except for periods due to casualty and condemnation) occupying the Property fully staffed and operating under the Permitted Use, (ii) shall not be in default of an term of the ECR, (iii) shall not be in violation of any exclusive use rights applicable to the Property which benefit other lots in the Shopping Center, or (iv) has not conveyed the Property to a third party, then Seller will not lease, sublease or otherwise operate or contract, by conveyance or otherwise, on premises owned or leased by Seller, as and for banking with a retail storefront, lending with a retail storefront or a drive-through automated teller machine, for: (A) a period of two (2) years from Closing (but such period shall end no later than December 31, 2008), within Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 or Lot 9 as approximately shown on **Exhibit B** attached hereto; and (B) for a period of twenty (20) years from Closing, within Lot 10, Lot 11 or Lot 13 as approximately shown on **Exhibit B** attached hereto. The foregoing restriction in this paragraph shall be known as "**Purchaser's Exclusive Use**". Purchaser's Exclusive Use shall automatically terminate upon the earliest occurrence of: (x) any one of the events listed in (i) through (iv) in the sentence above, or (y) two (2) years from Closing (but such period shall end no later than

December 31, 2008), as applicable to Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 and Lot 9, as approximately shown on **Exhibit B** attached hereto and twenty (20) years from closing, as applicable to Lot 10, Lot 11 and Lot 13 as approximately shown on **Exhibit B** attached hereto. In the event of a "Willful Violator" (hereinafter defined), Purchaser shall not have any remedy against Seller for the actions of such Willful Violator. For purposes of this Section, a "**Willful Violator**" shall mean and refer to any tenant or owner of property within the Shopping Center not otherwise excluded from the provisions of this Section that operates its premises in violation of an express prohibition in its lease or an express prohibition in a deed restriction or restrictive covenant, against operating for Purchaser's Exclusive Use hereunder. Furthermore, in the event a Willful Violator is violating Purchaser's Exclusive Use, Seller agrees that Purchaser shall have the right to seek "Judicial Relief" (hereinafter defined) for the actions of the Willful Violator, in which event, Seller agrees to execute any and all documents reasonably necessary for Purchaser to seek Judicial Relief against the Willful Violator and Purchaser agrees to indemnify and hold Seller harmless from and against any all costs and expenses of any kind incurred by Seller in reviewing and executing documents reasonably necessary for Purchaser to seek Judicial Relief. The term "**Judicial Relief**" shall mean a temporary restraining order, preliminary injunction, order of eviction, or other court order enjoining the Willful Violator from violating Purchaser's Exclusive Use. In the event a court of competent jurisdiction determines that the Purchaser does not have standing to seek Judicial Relief against the Willful Violator for violations of Purchaser's Exclusive Use, Seller agrees to promptly seek Judicial Relief against the Willful Violator and Purchaser hereby agrees to indemnify and hold Seller harmless from and against any and all costs and expenses of any kind incurred by Seller in seeking Judicial Relief.

The "Restricted Property" subject to the restrictions set forth above is depicted on **Exhibit B** attached hereto.

4. This Declaration and the restrictions contained herein constitute covenants running with the land which shall bind subsequent owners and users of the Premises.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

C

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

"OWNER"

WELLS FARGO BANK, N.A.,
a national association

By: William A. MacPetersen
Name: WILLIAM A. MACPETERSEN
Title: VP GROUP PROPERTY MGR
Date of Execution: 8/30/06

"DEVELOPER"

MARKET POINTE, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____
Date of Execution: _____

D

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

"OWNER"

WELLS FARGO BANK, N.A.,
a national association

By: _____
Name: _____
Title: _____
Date of Execution: _____

"DEVELOPER"

MARKET POINTE, LLC,
a Missouri limited liability company

By: Owen J. Buckley
Name: OWEN J. BUCKLEY
Title: Managing Member
Date of Execution: 8/31/06

E

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)

Now on this 30th day of August, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came William A. MacPherson who is personally known to me to be the same person who executed the within instrument on behalf of Wells Fargo Bank, N.A. and who duly acknowledged the execution of the same to be his free act and deed on behalf of the such entity.

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

Charlotte A Straub
Notary Public

My Commission Expires: 1-31-10



STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of ____, 2006 before me personally appeared Owen J. Buckley to me personally known, who being by me duly sworn did say he is a Managing Member of Market Pointe, LLC, a Missouri limited liability company, and that said instrument was signed and delivered on behalf of said company and acknowledged to me that he executed the same as the free act and deed of said limited liability company, duly authorized by its Members.

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

Notary Public

My Commission Expires: _____

F

STATE OF _____)
) ss.
COUNTY OF _____)

Now on this _____ day of _____, 200__, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came _____, who is personally known to me to be the same person who executed the within instrument on behalf of Wells Fargo Bank, N.A. and who duly acknowledged the execution of the same to be his free act and deed on behalf of the such entity.

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

Notary Public

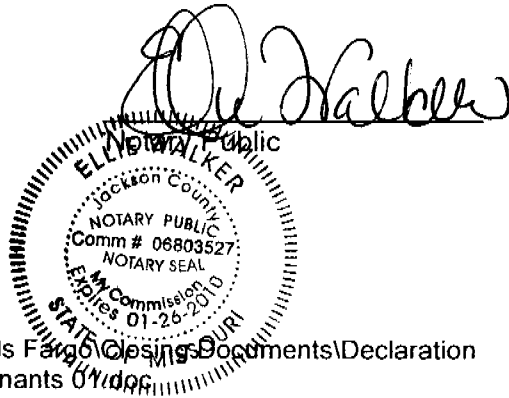
My Commission Expires: _____

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

On this 31st day of Aug, 2006 before me personally appeared Owen J. Buckley to me personally known, who being by me duly sworn did say he is a Managing Member of Market Pointe, LLC, a Missouri limited liability company, and that said instrument was signed and delivered on behalf of said company and acknowledged to me that he executed the same as the free act and deed of said limited liability company, duly authorized by its Members.

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

My Commission Expires: 1/26/2010



G

EXHIBIT A

THE PREMISES

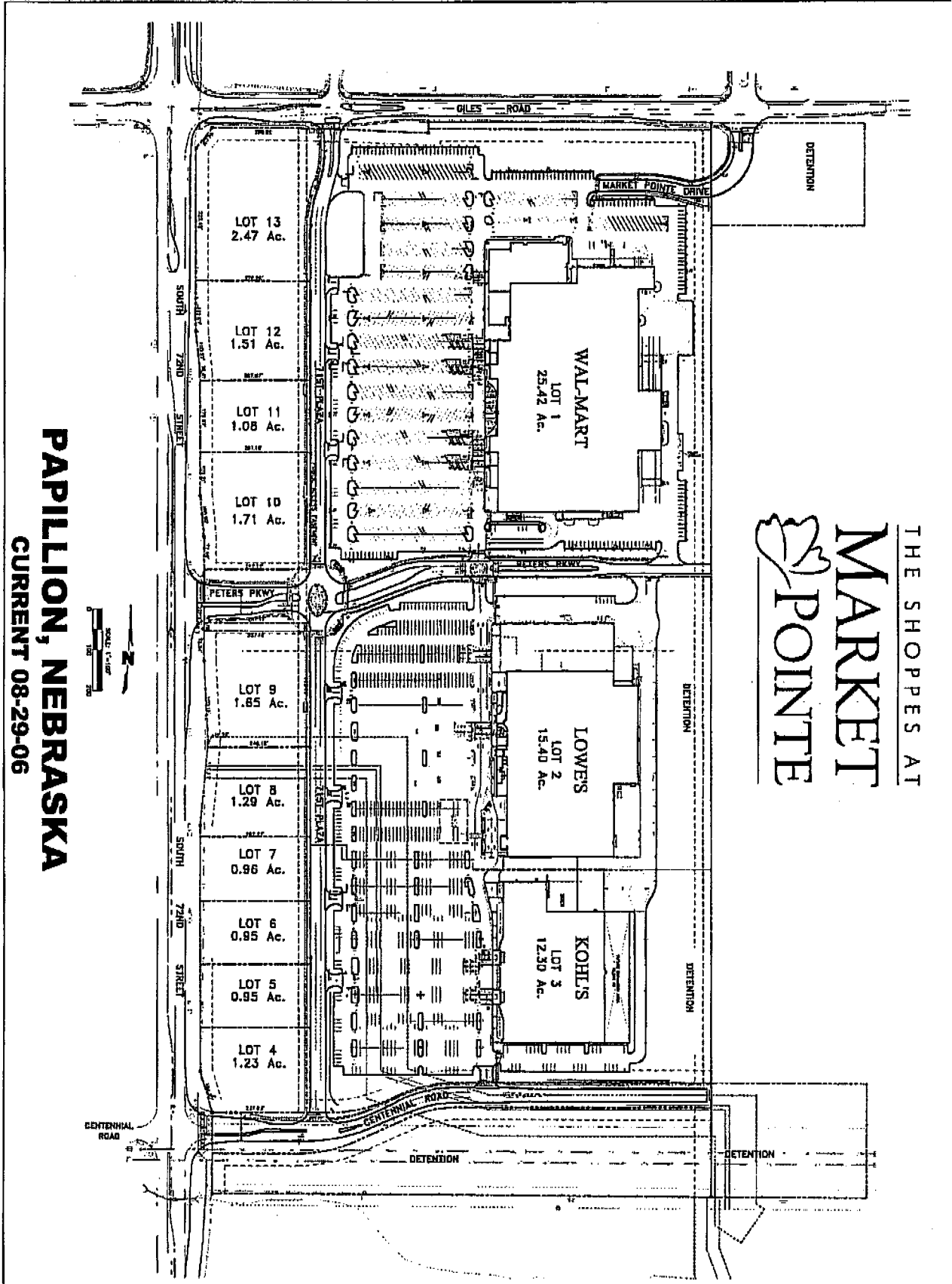
Lot Twelve (12), Market Pointe Addition Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska.

H

EXHIBIT B
SITE PLAN ATTACHED

I

EXHIBIT B



THE SHOPPES AT
MARKET
 POINTE

PAPILLION, NEBRASKA
 CURRENT 08-29-06



SHEET 1 OF 1	SITE PLAN EXHIBIT	REVISIONS		 GLEASON ASSOCIATES ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS
	MARKET POINTE ADDITION	2006		
PAPILLION, NEBRASKA		2006		

J

EXHIBIT C

THE RESTRICTED PROPERTY

Lots Four (4) through seven (7), Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska and Lots Eight (8) through Eleven (11) and Lot thirteen (13), Market Pointe Addition Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska

K

EXHIBIT D

RESTRICTIONS

Wells Fargo Bank, N.A., its successors and assigns shall hereinafter be referred to as "**Purchaser**". Market Pointe, LLC, its successors and assigns shall hereinafter be referred to as "**Developer**." As used hereinafter, the term "**Property**" shall mean the land legally described on Exhibit A above. The term "**Shopping Center**" shall mean the Market Pointe Shopping Center including any outparcels, as shown on the Site Plan on Exhibit B above. Purchaser shall not violate the following existing exclusives. Purchaser agrees to be bound by the exclusive as if Purchaser has specifically agreed as to their Property not to sell or allow others to sell the particular item, and this obligation shall survive the closing of the sale transaction. A violation of these exclusives is an event of default.

1. WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust d/b/a Wal-Mart or alternative d/b/as, its successors and/or assigns (herein "**Wal-Mart**")
 - 1.1. So long as Wal-Mart, or any affiliate of Wal-Mart, is a user of the Shopping Center, either as owner or lessee, no space in or portion of the Property, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Purchaser, shall be leased or occupied by or conveyed to any other party for use as (a) a facility dispensing gasoline or fuel from pumps, (b) a membership warehouse club, (c) a pharmacy requiring the services of a licensed pharmacist, (d) a Discount Department Store or other Discount Store, as such terms are defined below, (e) a variety, general or "dollar" store, (f) a Grocery Store or Supermarket as such terms are defined below or (g) any combination of the foregoing uses. "Grocery Store" and "Supermarket," as those terms are used herein, shall mean a food store or a food department containing more than 16,000 square feet of Floor Area used for the purpose of selling food for off-premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products or any grocery products normally sold in such stores or departments. "Discount Department Store" and/or "Discount Store," as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods including, but not limited to, clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories at a discount in a retail operation similar to that of Wal-Mart. The term "Discount Department Store" and "Discount Store" shall specifically exclude and not apply to either: (i) Kohl's Department Stores ("Kohl's"); or (ii) Lowe's Home Centers, Inc..
2. LOWE'S HOME CENTERS, INC., a North Carolina corporation d/b/a Lowe's or alternative d/b/as, its successors and/or assigns (herein "**Lowe's**")
 - 2.1. So long as Lowe's or a successor lessee or assignee is an owner or lessee of property at the Shopping Center, as either an owner or lessee, no portion of the Property shall be used for any of the following purposes: (i) a hardware store

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containing more than 5,000 square feet of useable floor area; (ii) an appliance and/or home electronics store containing more than 5,000 square feet of useable floor area (provided the foregoing shall not prohibit a Circuit City store, Best Buy store, Gateway Computer store, Radio Shack store or a successor store to any of the foregoing which has substantially the same types and quantities of merchandise as offered by such stores on January 23, 2006, or if different types or quantities of merchandise are offered, such merchandise does not exceed the limitations in this Section); (iii) a lawn and garden store containing more than 3,000 square feet of useable floor area; (iv) a paint and/or home décor center containing more than 5,000 square feet of useable floor area; or (v) a retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands; Scotty's and Orchard Supply. These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (i) through (v) which such space exceeds the limitations of subparagraphs (i) through (v).

3. **PANEBRASKA, L.L.C.**, an Iowa limited liability company d/b/a Panera or alternative d/b/as, its successors and/or assigns (herein "**Panera**")

3.1. So long as (i) Tenant is fully open, staffed and operating its business for the Permitted Use in all portions of the Premises; and (ii) Tenant is not otherwise in default beyond any applicable notice and cure period under this Lease, Landlord will not lease space in the Shopping Center, or in any space owned by Landlord within a 1.5 mile radius of the Shopping Center, to a bakery or café whose "primary" use is the sale of all of the following (the "**Exclusive Items**"): baked goods, breads, brewed coffee, ground or whole coffee beans, brewed tea and tea leaves and food items used in connection with the preparation of coffee and tea ("**Tenant's Exclusive**"). The term "**primary**" as used herein shall mean a tenant or occupant that derives 25% or more of its Gross Sales from the sale of the Exclusive Items. Notwithstanding the foregoing, Tenant's Exclusive shall not apply to the following: (a) any tenant or occupant in the Shopping Center that bakes or sells breads as items or ingredients of a meal and any successor or assign thereof; (b) any tenant or occupant of the Shopping Center that operates a full service restaurant; (c) Lot 1, Lot 2 and Lot 3 as shown on the Site Plan; and (d) Starbucks and its successors or assigns, Caribou Coffee and its successors or assigns and Scooter's and its successors or assigns. An example of tenants who are subject to this exclusive include, without limitation, Atlanta Bread Company, Camille's, Cosi, Paradise Bakery and Brueggers.

4. **GAMESTOP INC.**, a Minnesota corporation d/b/a Gamestop or alternative d/b/a, its successors and/or assigns (herein "**Gamestop**")

4.1. During the Term of this Lease, and provided (i) Tenant is fully open, staffed and operating its business for the Permitted Use in all portions of the Premises, and

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(ii) Tenant is not otherwise in default beyond any applicable notice and cure period under this Lease, Landlord shall not for the Term of this Lease enter into an agreement (excluding tenants or occupants of the Shopping Center existing as of the Effective Date) for occupancy of space within Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, and Lot 13 of the Shopping Center, with any entity whose Floor Area is less than 5,000 square feet, for the retail sale of entertainment software, video software or video games typically sold in GameStop retail stores ("**Tenant's Exclusive Use**"). For the purposes of this exclusive, the following are excluded: (i) any tenant or user in the Shopping Center who has previously executed a lease or agreement prior to the date hereof, and any successor or assign thereof, and (ii) Blockbuster Video and/or its affiliates, successors or assigns, Hollywood Video and/or its affiliates, successors or assigns and Movie Gallery and/or its affiliates, successors or assigns.

5. WELLS FARGO BANK, N.A., a national association d/b/a Wells Fargo or alternative d/b/as, its successors and/or assigns (herein "**Wells Fargo**")

5.1. So long as Purchaser: (i) shall be fully and continuously (except for periods due to casualty and condemnation) occupying the Property fully staffed and operating under the Permitted Use, (ii) shall not be in default of an term of the ECR, (iii) shall not be in violation of any exclusive use rights applicable to the Property which benefit other lots in the Shopping Center, or (iv) has not conveyed the Property to a third party, then Seller will not lease, sublease or otherwise operate or contract, by conveyance or otherwise, on premises owned or leased by Seller, as and for banking with a retail storefront, lending with a retail storefront or a drive-through automated teller machine, for: (A) a period of two (2) years from Closing (but such period shall end no later than December 31, 2008), within Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 or Lot 9; and (B) for a period of twenty (20) years from Closing, within Lot 10, Lot 11 or Lot 13.

6. MARKET POINTE TRANSWEST PROPERTIES, LLC, a Missouri limited liability company d/b/a Bennigan's or alternative d/b/a, its successors and/or assigns (herein "**Bennigan's**")

6.1. So long as Purchaser: (i) shall be fully and continuously occupying the Property as a fully staffed and operating under the Permitted Use, (ii) shall not be in default of an term of the ECR, (iii) shall not be in violation of any exclusive use rights applicable to the Property which benefit other lots in the Shopping Center, (iv) has not conveyed the Property to a third party, (v) has not had a change in ownership or control, then Seller, for a period of ten (10) years from Closing, will not lease, sublease or otherwise operate or contract, by conveyance or otherwise within the Lots designated as Lot 10, Lot 11 and Lot 12 to any of the following users so long as such users continue to operate in a manner substantially similar to their respective operations as of the date hereof: Chili's, TGIFridays, or Applebee's.

7. NEBRASKA FRESH-MEX, LLC, a Colorado limited liability company d/b/a Qdoba Mexican Grill, or Qdoba or alternative d/b/as, its successors and/or assigns (herein "**Qdoba**")

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- 7.1. Landlord agrees that so long as (i) Tenant is fully open, staffed and operating its business for the Tenant's Use in all portions of the Leased Premises; and (ii) Tenant is not otherwise in default beyond any applicable notice and cure period under this Lease, Tenant shall have the exclusive right ("**Tenant's Exclusive Use**") to sell in the Shopping Center the following items (the "**Exclusive Items**"): "quick casual" Mexican style food and Mexican style wraps for on and off premises consumption. Notwithstanding the foregoing, Tenant's Exclusive Use shall not apply to the following: (a) any tenant or occupant of the Shopping Center whose sale of the Exclusive Items are "incidental" to such tenant or occupant's business operations (For purposes of this Paragraph 5, the term "**incidental**" shall mean the sale of the Exclusive Items account for less than 10% of such tenant or occupant's gross sales); (b) Lot 1, Lot 2 and Lot 3 as shown on the Site Plan; and (c) any full service Mexican style restaurant such as On The Border and its successors and/or assigns and Mi Cocina and its successors and/or assigns.
8. PAYLESS SHOESOURCE, INC., a Missouri corporation d/b/a Payless Shoesource or alternative d/b/a, its successors and/or assigns (herein "**Payless**")
- 8.1. Subject to applicable Law, Landlord covenants that it will not during the Term of this Lease, enter into a lease or grant its consent, if such consent is required for an assignment of any lease or subletting of any premises to (i) any tenant whose principal use is a retail shoe store and whose premises is less than 6,000 square feet of Floor Area and (ii) any retail shoe store that sells over 50% of non-branded shoes; provided, however, the foregoing covenant shall not apply to (a) Rack Room Shoes or (b) Famous Footwear. If during the Term Landlord violates the foregoing covenant, Tenant's Minimum Rent abates by 50% while such violation continues. The preceding recitation of remedies may not be construed to limit Tenant's rights or remedies for violations of this covenant, which remedies specifically include injunctive relief and the right to terminate the Lease.

In addition to the foregoing exclusives, the Purchaser acknowledges and agrees the following uses are prohibited at the Property:

1. An adult type bookstore or other establishment which stocks, displays, sells, rents or offers for sale or rent pornographic materials or paraphernalia for use with illicit drugs (with the exception of Borders or Barnes & Noble or a similar national bookstore chain).
2. A facility for the sale, rental, leasing or storage of new or used cars, trucks, trailers or recreational vehicles or an automotive service station, automotive repair shop or truck stop.
3. A flea market, barber college, swap shop, thrift shop, salvation army type store or "second-hand" store whose principal business is selling used merchandise.
4. A center for medical procedures (except with regard to vision related procedures and the sale of eyeglasses or eyewear).
5. A facility for counseling or activities relating to abortion, euthanasia or birth control (with the exception of the sale of prescription or over the counter birth control, which is expressly permitted hereunder).
6. A massage parlor, topless bar or a club which provides striptease entertainment,

2006-305420

- X-rated movie theatre or X-rated video shop.
7. A mortuary, crematorium or funeral home.
 8. A mobile home or trailer court, labor camp, junkyard or stockyard, land fill, garbage dump or area for the dumping, disposing, incineration or reduction of garbage.
 9. A bowling alley, billiard parlor, bingo parlor, skating rink or bar (permitted if the bar is part of a sit down restaurant and the sale of alcoholic beverages is less than 50% of the restaurant's gross annual revenues), dance hall, discotheque, night club, or any other business whose annual gross revenues from the sale of alcoholic beverages exceeds 50% of the gross revenues of such business, amusement gallery, arcade, gymnasium, video game room, or off-track betting parlor or gambling establishment.
 10. A carnival or amusement park.
 11. A warehouse, storage or for any assembling, manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation.
 12. For any fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order).
 13. A central laundry, dry cleaning plant or laundromat; provided, however, this restriction shall not apply to any dry cleaning facility providing on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities.
 14. A veterinary hospital or animal raising or boarding facilities (pet shops are permitted).
 15. A car wash.
 16. Living quarters, sleeping apartments or lodging rooms.
 17. A tattoo parlor.
 18. A church, school, day care center or related religious or educational facility or religious reading room; a training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers).
 19. A general office facility.
 20. A cinema or movie theater.
 21. A health club, gymnasium or spa.
 22. A medical clinic or office greater than 5,000 square feet (a medical clinic or office that is less than 5,000 square feet for dentistry, physical therapy/sports medicine, ophthalmology services, podiatry, audiology or dialysis services may be located on an Outlot).
 23. A telephone call center.
 24. A blood bank.
 25. A restaurant located within 200 feet of the Kohl's Building.