

FILED SARPY CO. NE.
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2006-31883

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Sharon J. Dowling
REGISTER OF DEEDS

COUNTER UD G.E. MM
VERIFY UD D.E. UD
PROOF UD
FEES \$ 60.50
CHECK # 161227
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

c/o Lane 4 Property Group, Inc.
4705 Central
Suite 200
Kansas City, MO 64112

DEVELOPER ACQUISITION RIGHTS AGREEMENT

This Developer Acquisition Rights Agreement (the "**Agreement**") is made and entered into this 13 day of September, 2006, by and between **MARKET POINTE TRANSWEST PROPERTIES, LLC**, a Nebraska limited liability company ("**Owner**"), and **MARKET POINTE, LLC**, a Missouri limited liability company, having a mailing address at c/o The R.H. Johnson Company, 801 West 47th Street, Suite 219, Kansas City, MO 64112 ("**Developer**").

RECITALS:

WHEREAS, contemporaneously herewith (i) Owner has acquired from Developer that certain parcel of land (hereafter, the "**Tract**") described in **Exhibit BB-1** attached hereto pursuant to the terms and conditions set forth in an Agreement of Sale dated April 20, 2006 (the "**Purchase Agreement**"), which transaction is evidenced by the recording of a Special Warranty Deed (the "**Deed**") from Developer to Owner, which is filed of record prior to the recording of this Agreement. The Tract is subject to that certain declaration of Easements with Covenants and Restrictions Affecting Land dated January 23, 2006, filed January 24, 2006 as Instrument No. 2006-02430, Records, Sarpy County, Nebraska, as amended (the "**ECR**") and

WHEREAS, the Tract is also subject to that certain Declaration of Restrictive Covenants governing the use of the Tract (the "**Restrictive Covenant**"); and

WHEREAS, Owner has agreed to grant to Developer certain options to re-purchase the Tract and all improvements and appurtenances thereon, exclusive of movable equipment and fixtures, inventory, signs and other personal property upon certain conditions.

NOW, THEREFORE, in consideration of the premises, and good and valuable consideration given, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. **Option Events.** The following shall be deemed to be "Option Events":

1.1. **Completion of Construction.** In the event Owner or its successor and assigns does not cause the completion of a restaurant of at least Eight Thousand (8,000) square feet, and no more than nine thousand five hundred (9,500) square feet, with no less than one hundred fifty (150) parking spaces and open for business within two hundred forty (240) days from the date of this Agreement (the "**Construction Completion Date**"), then Developer, for a period of one hundred eighty (180) days shall have the option to repurchase said Tract.

1.2. **Vacation.** In the event that Owner, its successors or assigns, vacate any portion of the Tract for a period in excess of three hundred sixty (360) days, then Developer shall have the option to repurchase said Tract.

1.3. **Change of Use.** In the event Owner, its successors or assigns, changes the use of the Tract from a restaurant, then Developer, for a period of one hundred eighty (180) days from the date Developer becomes aware of such change in use, shall have the option to repurchase said Tract in addition to any other options available to Developer at law or in equity because of Owner's violation of any Restrictive Covenant.

1.4. **Failure to Pay ECR Costs.** In the event that Owner fails to pay any obligation to Developer under the Master Declaration or the ECR and such failure to pay the same remains unpaid for a period of one hundred eighty (180) days after written demand from Developer, then Developer shall have the option to repurchase the Tract. However, in the event of a legitimate, good faith dispute as to the obligation to pay an item, the period shall be stayed until such dispute is resolved provided Owner has previously paid all other undisputed amounts to Developer.

The period of time during which the Developer may exercise its option to purchase the Tract after an Option Event is herein referred to as the "Option Period".

2. **Exercise of the Option.** Developer may exercise its option to repurchase the Tract under Section 1 hereof by delivering written notice of such intent, together with an earnest money deposit of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) in cash or certified check made payable to the Escrow Agent, within the Option Period. The failure of Developer to exercise an option within the Option Period and in accordance with the requirements herein provided shall result in such option expiring. No claim or event shall cause such option to be extended or reinstated.

3. **Purchase Price.** The Purchase Price shall be determined as follows:

3.1. **Section 1.1, 1.3 or 1.4 Purchase.** If the option detailed in Section 1.1, 1.3, or 1.4 is exercised, the purchase price of such Tract shall be the **lesser** of (i) ninety percent (90%) of the Fair Market Value of said Tract as hereinafter defined, or (ii) ninety percent (90%) of the actual and reasonable Costs (as hereafter defined) for the Tract.

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3.2. **Section 1.2 Purchase.** If the option in Section 1.2 is exercised, the purchase price of the Tract shall be equal to ninety percent (90%) of the Fair Market Value, as hereinafter defined, of said Tract.

3.3. **Reduction at Closing.** As detailed in Section 6, any liens or deeds of trust or mortgages on the Tract shall be discharged from the proceeds payable by Developer hereunder.

4. **Costs.** As used herein, Costs shall mean the aggregate of the following components to the extent applicable:

4.1. **Purchase Price of Land.** The Purchase Price paid to Developer pursuant to the Purchase Agreement; and

4.2. **Hard Costs.** The actual hard costs of construction actually incurred by Owner reduced by any depreciation to the date of exercise of an option.

4.3. **Data.** Owner shall assemble the required data, including reasonable supporting material, invoices, bids and contracts which shall reasonably relate to the hard and soft costs. Owner shall advise Developer of the amount of such costs and deliver to Developer copies of all relevant information within thirty (30) days of Owner's receipt of Developer's written request.

5. **Fair Market Value.** For the purpose of this Agreement, the Fair Market Value shall mean the price at which the Tract could be sold by a person who desires to sell, but is not required to sell, and is sought by a person who desires to buy, but who is not required to buy, after due consideration of all the elements reasonably affecting value. In the course of any appraisal, the appraiser shall consider at least the following factors: the existing governmental regulations, including zoning, P.U.D. or land use designation; the condition of the building improvements; the condition of building occupancy; the location of the land and access thereto; and use restrictions and other covenants of record which either limit or enhance the enjoyment of the Tract: provided, however, the ECR shall not be considered a detriment to the value of the Tract. Within thirty (30) days after receipt of Developer's notice, Owner and Developer shall each select an appraiser and advise each other of the appraiser's name, address and telephone number. The two (2) appraisers shall consult with each other and shall select a third appraiser within fifteen (15) days of the designation of Owner's appraiser. If the two (2) appraisers cannot agree upon a third appraiser, then either party shall have the right to request appointment of such third appraiser by any judge of the Circuit Court having jurisdiction over the county where the Tract is located, and the non-requesting party shall not raise any question as to such judge's full power and jurisdiction to entertain the application and make the appointment. Each person designated to participate in the appraisal of the Tract shall (i) be a real estate professional specializing in retail commercial property sales and leasing, with emphasis (if possible) on projects containing 50,000 square feet of Floor Area or more, in the metropolitan area where the Shopping Center is located, (ii) have at least five (5) years experience as an appraiser, (iii) be a member of the American Institute of Real Estate Appraisers, and (iv) have no material, financial or other business interest in common with a party to this Agreement. Owner shall cause a

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current title report covering the Tract to be delivered contemporaneously to each appraiser, such report to be issued by the Escrow Agent referred to in Section 6 below. Each party's appraiser shall submit its appraisal to its client within thirty (30) days following receipt of the title report. The third appraiser shall submit its appraisal of the Tract in escrow to the Escrow Agent in a sealed envelope within thirty (30) days following receipt of the title report. Developer and Owner shall meet on the last day for the submission of the appraisals (or if such day is not a business day, then on the first business day thereafter) at 11:00 a.m. at the office of the Escrow Agent. Each party shall disclose its appraiser's valuation. If ninety percent (90%) of the higher valuation is equal to or less than the lower valuation, the two valuations shall be added together and the total divided by two, with the result being the purchase price of the Tract. If the purchase price is not determined by the method set forth in the preceding sentence, then Escrow Agent shall open the envelope received from the third appraiser and disclose his valuation. The third appraiser's valuation, and the appraiser's valuation which is closest by dollar amount to the third appraiser's valuation shall be added together and the total divided by two, with the result being the purchase price of the Tract. The determination of the purchase price of the Tract shall be final and binding upon the parties, absent fraud or gross error. Developer and Owner shall each bear the fees and expenses of their own appraiser and one-half (1/2) of the fees and expenses of the third appraiser.

6. **Closing; Payment of Liens and Encumbrances.** The purchase of Owner's interest in the Tract shall be consummated through an escrow established at a title insurance company (the "**Escrow Agent**") selected by the Owner. The purchase price shall be payable in cash or other method acceptable to Owner. Title to the Tract shall be conveyed by Owner to Developer by general warranty deed, subject to all real estate taxes, installments of special assessments, easements, restrictions, covenants and conditions of record, except that delinquent real property taxes or installments of special assessments, and any mortgage or liens, including potential mechanics liens or other liens outstanding on the Tract, shall be discharged from the proceeds payable by Developer hereunder. Current real property taxes and installments of special assessments shall be prorated as of the date of Closing. The costs of closing and title shall be discharged from the proceeds payable by Developer hereunder.

7. **First Right of Offer.** In the event Owner desires to resell any Tract, Owner shall notify Developer of Owner's asking price (the "**Asking Price**") for the Tract. Developer shall, within ten (10) days of receipt from Owner of the Asking Price, notify Owner that: (a) Developer will purchase the Tract at the Asking Price with the closing to take place in ninety (90) days following notice from Developer in accordance with the Asking Price and paragraph 6 above; or (b) Developer is making a counter-offer to Owner (the "**Counter-Offer**") to purchase the Tract for the amount set forth in such notice (the "**Countered Price**"). If Developer makes a Counter-Offer, Owner shall, within ten (10) days of receipt from Developer of the Counter-Offer, notify Developer of Owner's acceptance or refusal of the Counter-Offer. If Owner accepts the Counter-Offer, the closing shall take place in ninety (90) days following notice from Developer in accordance with the Counter-Offer and paragraph 6 above. If Owner refuses the Counter-Offer, the Owner shall be free to sell the Tract to a third party for any price in excess of the Countered Price without the obligation to re-offer the Tract to Developer. However, if Owner refuses the Counter-Offer and at any time thereafter Owner receives a bona fide offer equal to or less than the Counter-Offer

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from any person or entity, Owner shall provide written notice to Developer of such interested party and provide Developer with a copy of any such offer or contract detailing the terms and conditions of the proposed sale (the "**Offer**"). For thirty (30) days after receipt of such written notice, Developer shall have the right to elect to match or meet the Offer. In the event Developer shall elect to match or meet the Offer to purchase, Developer shall signify such election by written notice to Owner within such thirty (30) day period, and the sale shall close within ninety (90) days after receipt of such notice on the same terms and conditions as the Offer. This first right of refusal shall be a continuing right which shall be renewed upon any change in the terms or conditions of the Offer if equal to or less than the Counter-Offer or upon any subsequent Offer if such Offer is equal to or less than the Counter-Offer. Any provision of this Agreement to the contrary notwithstanding, provided that the "Transferee" (hereinafter defined) agrees to be bound by the terms and conditions of this Agreement, Owner may transfer the Tract, in whole or in part, without creating an obligation under this paragraph, to: (i) any corporation into which or with which Owner has merged or consolidated; (ii) any parent, subsidiary, successor or affiliated corporation of Owner; (iii) any partnership of which more than seventy-five percent (75%) of the partnership interest shall be owned by Owner or the parent corporation of Owner, provided Owner or such parent corporation is a general partner; and (iv) any shareholder or owner may transfer his/her ownership interest to his/her spouse or issue (the "**Transferee**").

8. **Termination.** Upon termination of each option to purchase, Developer agrees to duly execute and deliver freely, without charge, to Owner a release (properly executed, acknowledged and in recordable form) of such option right and any interest of Developer in the Tract arising out of each such option right. The separate options to purchase herein granted shall automatically terminate as follows:

8.1.1. Upon the expiration of each option pursuant to the terms of each option.

8.1.2. As to an Option Event, the performance by Owner of the condition which if not performed would trigger the option term as to said option.

9. **Assignment.** Developer may assign its rights arising under this Agreement, including an assignment to its original first mortgagee, provided that the assignee at the time of such assignment agrees in writing to be bound by all terms and conditions contained herein which are applicable to Developer, and provided further, that a copy of such instrument is given to Owner.

10. **Binding Effect.** Subject to the provisions hereof regarding assignment, this Agreement shall be binding upon and inure to the benefit of the owners of the Tract. The terms and provisions of this Agreement shall expire by its terms and be of no further force and effect as of the date that is ten (10) years following the date this Agreement is filed in the real estate records of Sarpy County, Nebraska.

11. **Amendment and/or Modification.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified

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orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

12. **Costs and Attorneys' Fees.** If any party hereto shall bring any suit or other action against another for relief, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the prevailing party's reasonable costs and expenses, including such sum as the Court may determine to be reasonable attorneys' fees.

13. **Time.** Time is of the essence with respect to each option term.

14. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, without giving effect to principles and provisions thereof relating to conflict or choice of laws and irrespective of the fact that any one of the parties is now or may become a resident of a different state. Venue for any action under this Agreement shall lie in Sarpy County, Nebraska.

15. **Documents.** Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

16. **Entire Agreement.** This Agreement (and any attached exhibits) contains the entire agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating thereto are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein. This agreement shall be filed of record.

17. **Severability.** In the event any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been inserted herein.

18. **Headings.** The section or paragraph headings shown in this Agreement are for convenience of reference only and shall not be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. **Notice.** All notices, demands and requests (collectively, the "**Notice**") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such Notice is (i) delivered to the party intended, (ii) delivered to the then current address of the party intended, or (iii) rejected at the then current address of the party intended, provided such Notice was sent prepaid. Upon at least ten (10) days prior written notice, each party shall have

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the right to change its address to any other address within the United States of America. The initial address of the parties shall be:

Owner: Market Pointe Transwest Properties, LLC
1248 "O" Street, Suite 800
Lincoln, Nebraska 68508

With copy to: Jack G. Wolfe, Esq.
Wolfe, Snowden et al.
1248 "O" Street, Suite 800
Lincoln, Nebraska 68508

Developer: Market Pointe, LLC
c/o Lane 4 Property Group, Inc.
4705 Central, Suite 200
Kansas City, MO 64112

With copy to: Richard B. Katz, Esq.
The Katz Law Firm
435 Nichols Rd., Suite 200
Kansas City, MO 64112

20. **Counterparts.** This Agreement may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

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IN WITNESS WHEREOF, Owner and Developer have caused this Developer's Acquisition Rights Agreement to be executed effective as of the day and year above referenced.

"OWNER"

**MARKET POINTE TRANSWEST
PROPERTIES, LLC,
a Nebraska limited liability
company**

By: _____

Name: _____

Title: _____

Date of

Execution: _____

"DEVELOPER"

**MARKET POINTE, LLC, a Missouri
limited liability company**

By: 

Name: OWEN J. BUCKLEY

Title: Managing Member

Date of Execution: 8/21/06

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STATE OF _____)
) ss.
COUNTY OF _____)

Now on this _____ day of _____, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came _____ of Market Pointe Transwest Properties, LLC, a Nebraska limited liability company, personally known to me to be the same person who executed the within instrument on behalf of said company and who duly acknowledged the execution of the same to be the act and deed of said company.

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.



Notary Public

My Commission Expires 1/26/2010

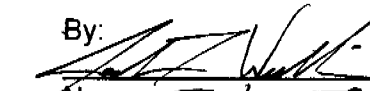
I

IN WITNESS WHEREOF, Owner and Developer have caused this Developer's Acquisition Rights Agreement to be executed effective as of the day and year above referenced.

"OWNER"

MARKET POINTE TRANSWEST
PROPERTIES, LLC,
a Nebraska limited liability
company

By:


Name: Joshua Westling
Title: Manager
Date of
Execution: 9/3/16

"DEVELOPER"

MARKET POINTE, LLC, a Missouri
limited liability company

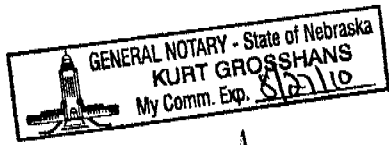
By: _____
Name:
Title:
Date of Execution: _____

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STATE OF Nebraska)
) ss.
COUNTY OF Lincoln)

Now on this 3rd day of Sept, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Joshua Westling Manager of Market Pointe Transwest Properties, LLC, a Nebraska limited liability company, personally known to me to be the same person who executed the within instrument on behalf of said company and who duly acknowledged the execution of the same to be the act and deed of said company.

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



[Signature]
Notary Public

My Commission Expires: 8/22/10

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: _____

2006-31883 K

**EXHIBIT BB-1
To Developer's Acquisition Rights Agreement**

THE TRACT

Lot Thirteen (13), Market Pointe Addition Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska.