

FILED SARRY CO. NE.
INSTRUMENT NUMBER
2008-19158

2008 JUL -3 P 1:46 PM

Sharon G. ...
REGISTER OF DEEDS

BOUNTER WB O.E. WB
VERIFY a D.E. P
PROOF TM
FEES \$ 82.00
CHECK # _____
CHG CRs -82.00 CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

ENFORCEMENT OF EXCLUSIVES AGREEMENT

This Enforcement of Exclusives Agreement (this "**Agreement**") is made and entered into this 20 day of June, 2008, by and between Market Pointe, LLC, a Missouri limited liability company (hereinafter referred to as "**Market Pointe**"), and Cole MT Papillion NE, LLC, a Delaware limited liability company (hereinafter referred to as "**Cole**").

WITNESSETH:

WHEREAS, concurrently with the execution and delivery of this Agreement, Market Pointe is conveying to Cole, by Special Warranty Deed, certain real property legally described in Exhibit A and reflected on Exhibit C attached hereto and made a part hereof for all purposes (the "**Property**");

WHEREAS, as of the date hereof, Market Pointe is the owner of certain real property adjacent to the Property (referred to herein as, the "**Remaining Lots**") which Remaining Lots are legally described in Exhibit B and reflected on Exhibit C attached hereto and made a part hereof for all purposes;

WHEREAS, the Property, the Remaining Lots and the lots described in Exhibit D attached hereto (the "**Sold Lots**") (collectively, the "**Shopping Center**") are subject to certain restrictions; and

WHEREAS, the parties hereto desire to enter into the agreements contained herein as to the restrictions affecting the Property, Remaining Lots and the Sold Lots.

NOW, THEREFORE, in consideration of the receipt of Ten Dollars (\$10.00), the agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Market Pointe and Cole agree as follows:

1. Market Pointe hereby assigns to Cole on a nonexclusive basis any rights Market Pointe may have to enforce any use restrictions which have been placed of record relating to the Sold Lots.

2. With respect to the Remaining Lots, Market Pointe agrees not to violate any of the applicable exclusive use clauses set forth on Exhibit E, attached hereto and incorporated herein by reference (the "**Exclusives**"), so long as such Exclusives are in effect. The foregoing

Land America Commercial Svcs
Attn: Sarah Christian
165 N. Meramec Avenue, Ste 200
St Louis, MO 63105

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RECORD 7th

19158

CC10128

A

shall be binding upon the Remaining Lots and upon Market Pointe and its successors and assigns as owners thereof, and shall run with the land.

3. This Agreement shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

4. This Agreement shall be construed under and enforced in accordance with the laws of the State of Nebraska.

5. This Agreement may be executed in one or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all of such counterparts taken together shall constitute one and the same instrument.

[SIGNATURES ON THE FOLLOWING PAGE]

B

EXECUTED effective as of the date first above written.

MARKET POINTE:

MARKET POINTE, LLC,
a Missouri limited liability company

By: 
Owen J. Buckley, Managing Member

Date of Execution: 6/18/08

COLE:

COLE MT PAPILLION NE, LLC,
a Delaware limited liability company

By: Cole REIT Advisors II, LLC, a Delaware limited liability company, its Manager

By: _____
John M. Pons, Executive Vice President

Date of Execution: _____

C

EXECUTED effective as of the date first above written.

MARKET POINTE:

MARKET POINTE, LLC,
a Missouri limited liability company

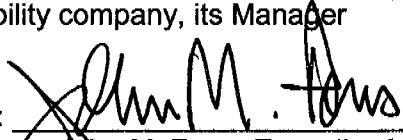
By: _____
Owen J. Buckley, Managing Member

Date of Execution: _____

COLE:

COLE MT PAPILLION NE, LLC,
a Delaware limited liability company

By: Cole REIT Advisors II, LLC, a Delaware limited liability company, its Manager

By:  _____
John M. Pons, Executive Vice President

Date of Execution: _____

D

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Now on this 30 day of June, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, who is 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 his free act and deed and the free 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.

Amber Jackson
Amber Jackson, Notary Public
(Print Name)

My Commission Expires: 10/14/08



AMBER JACKSON
My Commission Expires
October 14, 2008
Clay County
Commission #04622229

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

Now on this _____ day of _____, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John M. Pons, the Executive Vice President of Cole REIT Advisors II, LLC, a Delaware limited liability company, the Manager of Cole MT Papillion NE, LLC, a Delaware limited liability company, who is 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 his free act and deed and the free 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
(Print Name)

My Commission Expires: _____

E

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Now on this _____ day of _____, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, who is 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 his free act and deed and the free 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
(Print Name)

My Commission Expires: _____

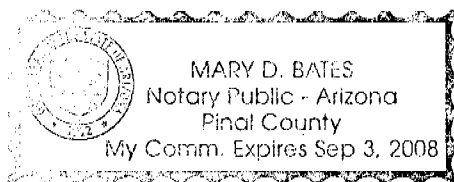
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 18th day of June, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John M. Pons, the Executive Vice President of Cole REIT Advisors II, LLC, a Delaware limited liability company, the Manager of Cole MT Papillion NE, LLC, a Delaware limited liability company, who is 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 his free act and deed and the free 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.

Mary D. Bates
MARY D. BATES Notary Public
(Print Name)

My Commission Expires: 9/3/08



F

EXHIBIT A

Property Description

All of the following described property located in the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th Principal Meridian, Sarpy County, Nebraska:

Lots 9, 10 and 11, all in MARKET POINTE ADDITION REPLAT 1, an administrative subdivision and replat of Lots 8 through 14 of MARKET POINTE ADDITION, a subdivision in Sarpy County, Nebraska

and

Lots 2 and 3, Administrative Lot Line Adjustment, Lots 2 and 3, MARKET POINTE ADDITION, recorded October 26, 2005 as Inst. No. 2005-39750, in the records of Sarpy County, Nebraska

and

Outlots "E" and "F", Stockmans Hollow, a Subdivision in Sarpy County, Nebraska.

G

EXHIBIT B

Market Pointe's Remaining Lots

All of the following described property located in the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th Principal Meridian, Sarpy County, Nebraska:

Lots Four (4), Five (5), and Six (6), Market Pointe Addition, an addition in Sarpy County, Nebraska

and

Lots One (1) and Two (2), Market Pointe Addition Replat 3, an Administrative Subdivision, being a replat of Lot Seven (7), Market Pointe Addition and Lot Eight (8), Market Pointe Addition Replat 1, a Subdivision in Sarpy County, Nebraska.

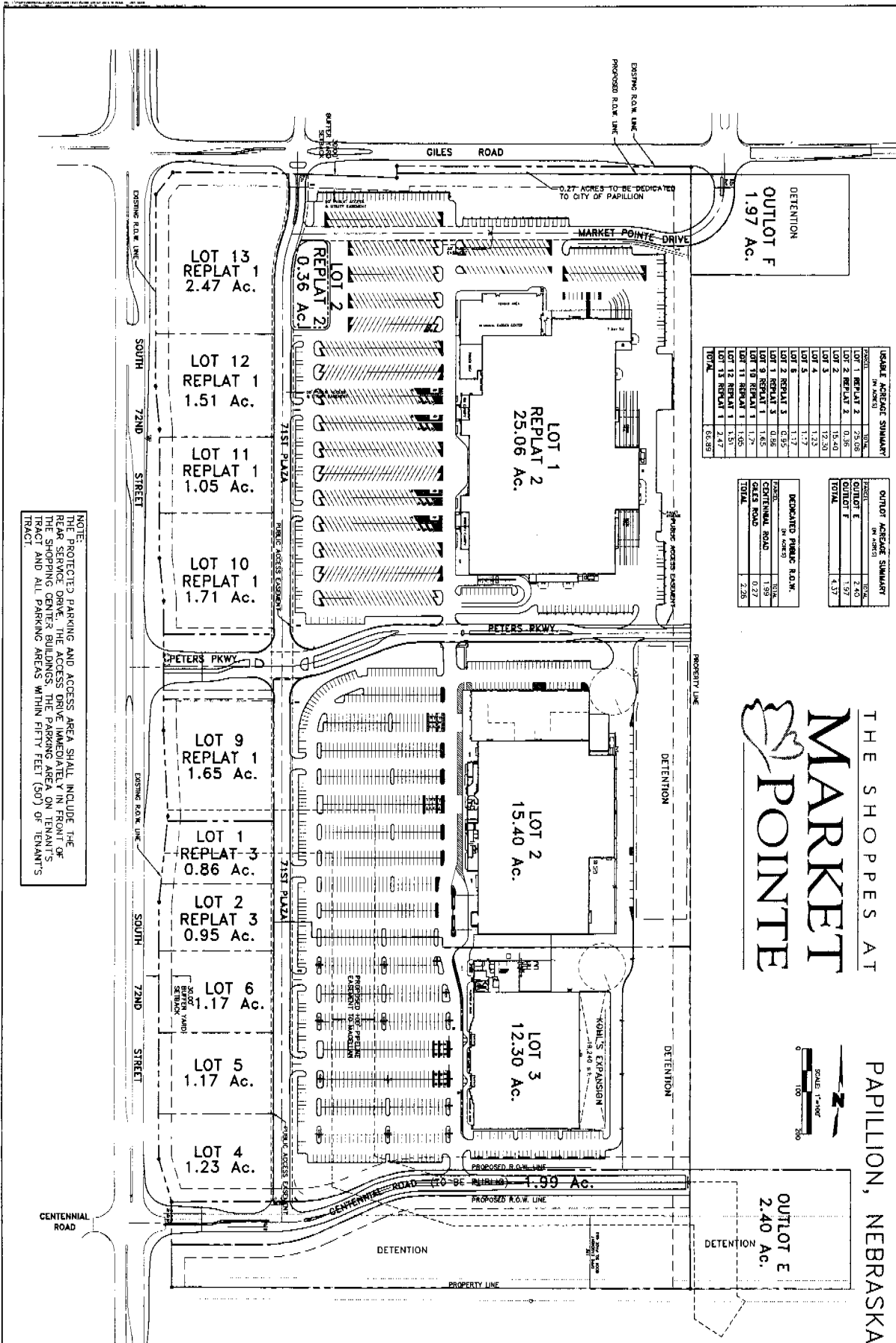
H

EXHIBIT C

Site Plan

[see attached]

H



USABLE AREAS SUMMARY
(IN ACRES)

LOT 1	25.06
LOT 2	15.40
LOT 3	12.30
LOT 4	1.23
LOT 5	1.17
LOT 6	1.17
LOT 9	1.65
LOT 10	1.71
LOT 11	1.05
LOT 12	1.51
LOT 13	2.47
TOTAL	88.99

OUTLOT AREAS SUMMARY
(IN ACRES)

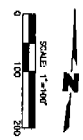
OUTLOT E	2.40
OUTLOT F	1.97
TOTAL	4.37

DEDICATED PUBLIC R.O.W.
(IN ACRES)

CENTENNIAL ROAD	1.99
GILES ROAD	0.27
TOTAL	2.26

THE SHOPPES AT
**MARKET
POINTE**

PAPILLION, NEBRASKA



NOTE:
THE PROTECTED PARKING AND ACCESS AREA SHALL INCLUDE THE REAR SERVICE DRIVE, THE ACCESS DRIVE IMMEDIATELY IN FRONT OF THE SHOPPING CENTER BUILDINGS, THE PARKING AREA ON TENANT'S TRACT AND ALL PARKING AREAS WITHIN FIFTY FEET (50') OF TENANT'S TRACT.

SHEET 1 OF 3	USABLE/OUTLOT AREAS SITE PLAN MARKET POINTE ADDITION PAPILLION, NEBRASKA	REVISIONS <table border="1"> <tr><th>NO.</th><th>DATE</th><th>DESCRIPTION</th></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </table>	NO.	DATE	DESCRIPTION										THE R.H. JOHNSON COMPANY	MOILSSON ASSOCIATES 2120 South 72nd Street Suite 1400 Omaha, NE 68124-4314 TEL 402.341.1116 FAX 402.341.6896
	NO.	DATE	DESCRIPTION													
2005	02-10-05 6/24/05	2005	2005	2005												

J

EXHIBIT D

Legal Description of the Sold Lots

All of the following described property located in the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th Principal Meridian, Sarpy County, Nebraska:

Lots Twelve (12) and Thirteen (13), Market Pointe Addition Replat 1, an Administrative Subdivision, being a replat of Lots Eight (8) through Fourteen (14), Market Pointe Addition, a Subdivision in Sarpy County, Nebraska.

K

EXHIBIT E

Exclusives

Capitalized terms not defined herein shall have the meanings set forth in the respective leases.

1. PANEBRASKA, L.L.C., an Iowa limited liability company, d/b/a Panera or alternative d/b/as, its successors, assigns, and/or affiliates (herein "**Panera**") pursuant to Lease Agreement dated March 30, 2006 (the "**Panera Lease**"):

So long as (i) Panera is fully open, staffed and operating its business for the Permitted Use under the Panera Lease in all portions of the Premises; and (ii) Panera is not otherwise in default beyond any applicable notice and cure period under the Panera Lease, Market Pointe will not lease space in the Restricted Area to a bakery or café whose "primary" use is the sale of all of the following (the "**Panera 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 ("**Panera's Exclusive**"). The term "**primary**" as used in this Section 1 shall mean a tenant or occupant that derives 25% or more of its Gross Sales from the sale of the Panera Exclusive Items. Notwithstanding the foregoing, the Panera's Exclusive shall not apply to the following: (a) any tenant or occupant in the Restricted Area 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 Restricted Area that operates a full service restaurant; and (c) Starbucks and its successors or assigns, Caribou Coffee and its successors or assigns and Scooter's and its successors or assigns. The Panera's Exclusive shall automatically and permanently expire on the earlier of any of the following events: (1) Panera shall cease to operate its business for the Permitted Use in all portions of the Premises; (2) Panera shall be beyond any applicable notice and cure period for any default of any obligation under the ECR, the Panera Lease, or any other tenant's exclusive; (3) Panera shall cease to sell from the Premises one or more of the Panera Exclusive Items; or (4) the end of the Panera Lease Term. An example of tenants who are subject to this exclusive include, without limitation, Atlanta Bread Company, Camille's, Cosi, Paradise Bakery and Brueggers.

2. GAMESTOP INC., a Minnesota corporation, d/b/a Gamestop or alternative d/b/a, its successors, assigns, and/or affiliates (herein "**Gamestop**") pursuant to Lease Agreement dated August 24, 2006 (the "**Gamestop Lease**"):

During the Term of the Gamestop Lease, and provided (i) Gamestop is fully open, staffed and operating its business for the Permitted Use in all portions of the Premises, and (ii) Gamestop is not otherwise in default beyond any applicable notice and cure period under the Gamestop Lease, Market Pointe shall not for the Term of the Gamestop Lease enter into an agreement (excluding tenants or occupants of the Shopping Center existing as of the Effective Date of the Gamestop Lease) for occupancy of space within the Restricted Area, 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 ("**Gamestop's Exclusive Use**"). For the purposes of this

L

exclusive, the following are excluded: (i) any tenant or user in the Restricted Area who has previously executed a lease or agreement prior to the date of the Gamestop Lease, and any successor or assign thereof, and (ii) provided the following do not operate a game store such as Game Rush or Game Crazy within the Restricted Area, 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. The terms of this exclusive shall automatically and permanently expire on the earlier of any of the following events: (i) Gamestop shall cease to operate its business for the Permitted Use in all portions of the Premises, or (ii) Gamestop shall be beyond any applicable notice and cure period for any default of any obligation under the ECR, the Gamestop Lease, or any other tenant's exclusive, or (iii) the end of the Term of the Gamestop Lease or any extension thereto.

3. NEBRASKA FRESH-MEX, LLC, a Colorado limited liability company, d/b/a Qdoba Mexican Grill, or Qdoba or alternative d/b/as, its successors, assigns and/or affiliates (herein "**Qdoba**") pursuant to Lease dated June 28, 2006 (the "**Qdoba Lease**"):

So long as (i) Qdoba is fully open, staffed and operating its business for the Tenant's Use in all portions of the Leased Premises; and (ii) Qdoba is not otherwise in default beyond any applicable notice and cure period under the Qdoba Lease, Qdoba shall have the exclusive right ("**Qdoba's Exclusive Use**") to sell in the Restricted Area the following items (the "**Qdoba Exclusive Items**"): "quick casual" Mexican style food and Mexican style wraps for on and off premises consumption. Notwithstanding the foregoing, Qdoba's Exclusive Use shall not apply to the following: (a) any tenant or occupant of the Restricted Area whose sale of the Qdoba Exclusive Items are "incidental" to such tenant or occupant's business operations (For purposes of this Section 3, the term "**incidental**" shall mean the sale of the Qdoba Exclusive Items account for less than 10% of such tenant or occupant's gross sales.); and (b) 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 that operates a full service restaurant with more than 4,000 square feet of floor area. Qdoba's Exclusive Use shall automatically and permanently expire on the earlier of any of the following events: (1) Qdoba shall cease to operate its business for the Tenant's Use in all portions of the Premises; (2) Qdoba shall be beyond any applicable notice and cure period for any default of any obligation under the Qdoba Lease; (3) Qdoba shall cease to sell from the Leased Premises one or more of the Qdoba Exclusive Items; or (4) the expiration or earlier termination of the Qdoba Lease. Notwithstanding anything in this Section 3 to the contrary, in no event shall Market Pointe be in violation of the provisions of this Section 3, if another tenant or occupant operates for Qdoba's Exclusive Use in violation of its written agreement with Market Pointe (a "**Renegade Tenant**"). In the event a Renegade Tenant operates for Qdoba's Exclusive Use in violation of its written agreement with Market Pointe, Qdoba (to the extent permitted by law) shall be responsible for enforcing Qdoba's Exclusive Use against the Renegade Tenant.

4. PAYLESS SHOESOURCE, INC., a Missouri corporation, d/b/a Payless Shoesource or alternative d/b/a, its successors, assigns, and/or affiliates (herein "**Payless**") pursuant to Lease Agreement dated May 18, 2006 (the "**Payless**"):

M

Lease”):

Subject to applicable Law, Market Pointe covenants that it will not during the Term of the Payless 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.

5. OMAHA CELLULAR TELEPHONE COMPANY, a Nebraska partnership, d/b/a Verizon Wireless or alternative d/b/a, its successors, assigns, and/or affiliates (herein “**Verizon**”) pursuant to Lease Agreement dated February 26, 2007 (the “**Verizon Lease**”):

Subject to the provisions of this Section 5, and provided that all of the following conditions (collectively, the “**Verizon Conditions**”) are satisfied: (i) the Term of the Verizon Lease has not expired and the Verizon Lease has not been terminated; (ii) Verizon is not in default of the Verizon Lease beyond any applicable notice and cure periods; and (iii) Verizon has not ceased operating for business in the Premises for the Permitted Use or ceased utilizing the entire Premises for the Permitted Use, Market Pointe shall include a provision (a “**Restrictive Provision**”) in the lease of every tenant in the Restricted Area that is signed after the Effective Date of the Verizon Lease and that is otherwise subject to the provisions of this Section 5 prohibiting such tenant from selling Verizon wireless service and prohibit such tenant from operating a business in the Restricted Area that is considered, in the wireless telecommunications industry, a competitor of Verizon Wireless (i.e., a business that primarily sells wireless telecommunication products and services) (a “**Verizon Competitor**”), and Market Pointe shall not consent to the sublease of any premises or the assignment of any lease within the Restricted Area whereby the sublessee or assignee is a Verizon Competitor. Notwithstanding anything in this Section 5 to the contrary, the provisions of this Section 5 shall not apply to any of the following: (1) any tenant whose lease is executed at any time when one or more of the Verizon Conditions are not satisfied; (2) any tenant whose lease was executed prior to the Effective Date of the Verizon Lease, and any such tenant’s successors, assigns and subtenants (provided Market Pointe does not have the right to restrict or limit the use of the premises of such successors, assigns and subtenants); and (3) any tenant in the Restricted Area whose premises contain 10,000 square feet or more of Floor Area. Additionally, without limiting the foregoing, the provisions of this Section 5 shall not apply during any period: (A) when any or all of the Verizon Conditions are not satisfied; (B) after Verizon has ceased operating for business in the Premises for the Permitted Use or ceased utilizing the entire Premises for the Permitted Use; or (C) following the expiration or sooner termination of the Verizon Lease.

6. GENERAL NUTRITION COPORATION, a Pennsylvania corporation, d/b/a/ General Nutrition Center or alternative d/b/a, its successors, assigns, and/or affiliates (herein “**GNC**”) pursuant to Lease Agreement dated February 26, 2008 (the “**GNC Lease**”):

2008-19/58 N

Subject to the provisions of this Section 6, Market Pointe shall include, in each lease (including temporary leases, kiosks and carts) which is entered into by Market Pointe on after the Effective Date of the GNC Lease for occupancy within the Restricted Area (a "**GNC Restricted Lease**"), a provision (the "**GNC Restrictive Provision**") which prohibits the tenant under such GNC Restricted Lease from using its premises "primarily" (as defined below) for the sale of health foods, vitamins, mineral and herbal supplements or sports nutrition supplements (collectively, the "**GNC Exclusive Items**"), provided that all of the following conditions (collectively, the "**GNC Conditions**") are satisfied at the time such GNC Restricted Lease is entered into by Market Pointe: (i) the Term of the GNC Lease has not expired or been earlier terminated; (ii) no Event of Default exists; (iii) GNC is operating for business in the entire Premises for the Permitted Use and under the Trade Name; and (iv) GNC is offering all of the GNC Exclusive Items for sale to the public in the Premises. For purposes of this Section 6, the term "**primarily**" shall mean that such tenant (including GNC) uses, for the sale of the GNC Exclusive Items, more than the lesser of: (a) 100 square feet of Floor Area in its premises, or (b) 5% of the Floor Area in its premises. Notwithstanding anything in this Section 6 to the contrary, the provisions of this Section 6 shall not apply to any of the following: (1) any tenant or occupant whose lease or occupancy agreement is entered into at any time when one or more of the GNC Conditions are not satisfied; (2) any tenant or occupant under a lease or occupancy agreement, or the purchaser under a purchase agreement, entered into prior to the Effective Date of the GNC Lease, and any such tenant's, occupant's or purchaser's successors, assigns and subtenants, or any tenant or occupant leasing pursuant to any renewal, extension or modification of any lease that was executed prior to the Effective Date of the GNC Lease; or (3) any tenant or occupant that does not devote more than the lesser of: (a) 100 square feet of Floor Area in its premises, or (b) 5% of the Floor Area in its premises, to the sale of the GNC Exclusive Items. Additionally, without limiting the foregoing, the provisions of this Section 6 shall be deemed forever null and void and of no force or effect upon the earliest to occur of the following: (A) the date upon which any or all of the GNC Conditions are not satisfied; (B) the date upon which any or all of the GNC Exclusive Items are not offered for sale to the public in the Premises; or (C) the date of expiration or earlier termination of the GNC Lease.