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FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2010-13108

05/25/2010 11:32:30 AM

Clay J. Dowling

REGISTER OF DEEDS



RC

Nebraska Land Title & Abstract
PO Box 1077
Lincoln NE 68506

Declaration Of Exclusive Use Restrictive Covenant

THIS DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANT ("Declaration") is made and entered into this 21st day of May, 2010, by and between MARKET POINTE, LLC, a Missouri limited liability company ("Developer") and CFT DEVELOPMENTS, LLC, a California limited liability company, its successors and/or assigns ("Owner").

RECITALS:

WHEREAS, under a Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated January 16, 2010 (the "Agreement"), Developer agreed to sell to Owner certain real property legally described on Exhibit A (the "Property") and located in Market Pointe Shopping Center (the "Shopping Center");

WHEREAS, the Agreement provides that Developer shall restrict the permitted uses of certain real property owned by Developer and shown as Lots 4, 5, 6 and 8 on Exhibit B-1 attached hereto and legally described on Exhibit B-2 attached hereto and incorporated herein by this reference (the "Restricted Area"); and

WHEREAS, the Property is subject to that certain Easements With Covenants and Restrictions Affecting Land recorded January 24, 2006, as Instrument No. 2006-02430, as amended by that certain First Amendment to Easements With Covenants and Restrictions Affecting Land recorded September 5, 2006, as Instrument No. 2006-30539, and as further amended by that certain Second Amendment to Easements With Covenants and Restrictions Affecting Land recorded February 9, 2009, as Instrument No. 2009-03341 (collectively the "ECR");

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer covenants and agrees as follows:

1. **Owner's Exclusive Use.** So long as the following conditions (the "Exclusive Conditions") exist: (i) Owner has not ceased operating for business for "Owner's Exclusive Use" (as defined below) for more than one hundred eighty (180) consecutive days (excluding any period for which Tenant shall fail to so operate Tenant's business by reason of remodeling, making alterations to the Premises, closures due to governmental laws, rules or regulations, repairs after a casualty, force majeure, condemnation, or other damage or destruction); and (ii) Owner has not conveyed the Property to a third party other than to a user who sells Asian Food, Developer will not lease, sublease or contract for or operate as (by conveyance or otherwise), within the Restricted Area, a restaurant serving "Asian Food", as defined below (hereinafter "**Owner's Exclusive Use**"). In the event: (1) Developer acquires fee simple title to any portion of land within a one (1) mile radius of the boundary of the Property (the "**Future Restricted Area**"); or (2) this Declaration is still in effect and has not terminated, expired or been released; and (3) Owner is not in violation of any of the Exclusive Conditions as of the date Developer acquires title to such land, Owner's Exclusive Use will apply against such portion of land in the Future Restricted Area which is acquired by Developer; PROVIDED, HOWEVER, Owner agrees that the foregoing restriction shall not apply to any then-existing tenant or occupant of the Future Restricted Area that has the right to use its premises for the Owner's Exclusive Use. For purposes of this Section, the term "**Asian Food**" as used herein shall mean Chinese, Japanese (including sushi), Vietnamese, Thai, Hawaiian, Mongolian and Korean food, any of the foregoing foods cooked in a wok, foods generally recognized as Chinese, soy sauce based food, or Asian Food served in a buffet format. Additionally, notwithstanding anything in this Declaration to the contrary, the restriction against operating for Owner's Exclusive Use shall not apply to any

A

tenant or occupant under a lease or occupancy agreement, or the purchaser under a purchase agreement, entered into prior to the date of this Declaration, and any such tenant's or occupant's successors, assigns or subtenants; PROVIDED, HOWEVER, in the event Developer has the contractual right to consent to or approve any proposed change in use of any such tenant's or occupant's premises, and such proposed change in use would otherwise violate the restriction against operating for Owner's Exclusive Use, then Developer shall withhold its consent or approval to such change of use, subject to applicable laws. Notwithstanding anything to the contrary in this Declaration, in the event of a Willful Violator (as defined below), Owner shall not have any remedy against Developer 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 in the Restricted Area (or Future Restricted Area, if applicable) that: (a) is not otherwise excluded from the restriction against operating for Owner's Exclusive Use; and (b) operates its premises in violation of Owner's Exclusive Use hereunder. Furthermore, in the event a Willful Violator is violating Owner's Exclusive Use, Developer agrees that Owner shall have the right to seek Judicial Relief (as hereinafter defined) for the actions of the Willful Violator, in which event Developer agrees to execute any and all documents reasonably necessary for Owner to seek Judicial Relief against the Willful Violator. 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 Owner's Exclusive Use.

The foregoing restriction is for the benefit of Buyer and shall run with the Property and shall be for the benefit of and binding upon all successive owners and occupants of the Property.

2. This instrument shall be recorded in each county or parish in which the Property is located. **Exhibit A** is attached hereto and incorporated herein by this reference.

3. Failure to comply with any of the foregoing restrictions shall be grounds for relief which may include, without limitation, an action to recover damages, injunctive relief or any combination thereof.

B

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictive Covenant as of the date set forth below.

Signature of Developer:

Signature of Owner:

MARKET POINTE, LLC,
a Missouri limited liability company

CFT DEVELOPMENTS, LLC,
a California limited liability company

By: [Signature]
Name: Owen J. Buckley
Title: Managing Member

By: _____
Name: _____
Title: _____

Witness: Marta Chasteen

Witness: _____

Witness: [Signature]

Witness: _____

PLEASE ATTACH ALL EXHIBITS
ALL SIGNATURES MUST BE NOTARIZED

STATE OF Missouri)
COUNTY OF Jackson) ss.

Now on this 20th day of May, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Owen J. Buckley, Managing Member of Market Pointe, LLC, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

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: 10/20/12



AMBER JACKSON
My Commission Expires
October 20, 2012
Clay County
Commission #08622229

D

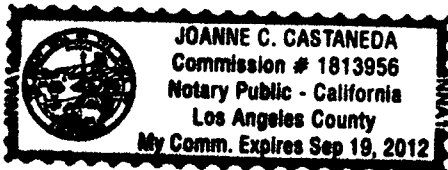
ACKNOWLEDGMENT

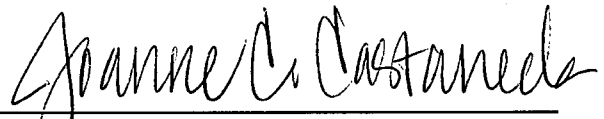
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On May 20, 2010, before me, **JOANNE CASTANEDA**, Notary Public, personally appeared **CHARLIE SHEN**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my name and official seal.





Joanne Castaneda
Notary Public in and for the
State of California
My commission expires: September 19, 2012

DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANT

Re: Certain Real Property located within Market Pointe Shopping Center, Papillion, NE
Signer: Charlie Shen, Manager of CFT Developments, LLC, a California limited liability company

E

EXHIBIT A

TO DECLARATION OF EXCLUSIVE USE AND RESTRICTIVE COVENANT

Legal Description of the Property

Lot 2, Market Pointe Addition Replat 4, an Administrative Subdivision, being a replat of Lot 6, Market Pointe Addition and Lots 1 and 2, Market Pointe Addition Replat 3, an Addition to the City of Papillion, as surveyed, platted and recorded in Sarpy County, Nebraska.

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EXHIBIT B-1

TO DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANT

Restricted Area

(See attached)



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THE SHOPPES AT
MARKET
POINTE

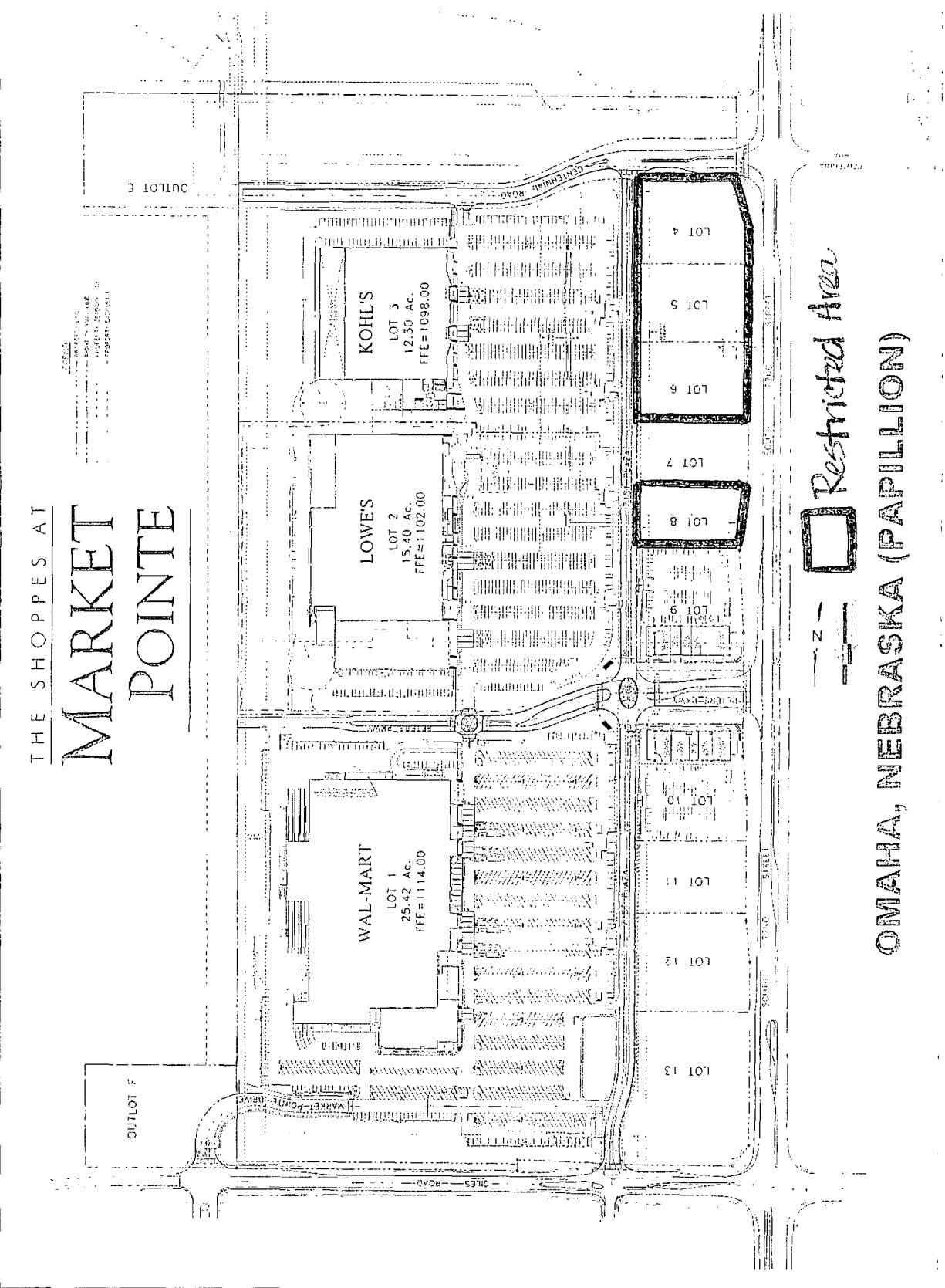
JOHNSON COMPANY
T. R. JOHNSON
ASSOCIATES
P.L.L.C.
1400 N. 10TH STREET
SUITE 200
OMAHA, NE 68102
TEL: 402.341.1000
FAX: 402.341.1001

REVISIONS

2008

MARKET POINTE ADDITION
PAPILLION, NEBRASKA

SITE PLAN
EXHIBIT



— Z — Restricted Area

OMAHA, NEBRASKA (PAPILLION)

2010-13108 H

EXHIBIT B-2

TO DECLARATION OF EXCLUSIVE USE RESTRICTIVE COVENANT

Legal Description of Restricted Area

Lots 4 and 5, Market Pointe Addition, an addition in Sarpy County, Nebraska.

Lots 1 and 3, Market Pointe Addition Replat Replat 4, an Administrative Subdivision, being a replat of Lot 6, Market Pointe Addition and Lots 1 and 2, Market Pointe Addition Replat 3, an Addition to the City of Papillion, as surveyed, platted and recorded in Sarpy County, Nebraska.

