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SUBMITTED CHICAGO TITLE INSURANCE - K

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2012-16526**

2012 Jun 05 12:20:30 PM

*Sheryl J. Roushney*

REGISTER OF DEEDS



**Prepared by and when recorded  
return to:**

Troutman Sanders LLP  
600 Peachtree Street NE, Suite 5200  
Atlanta, Georgia 30308  
Attn: Michael H. Wall, Esq.

**RESTRICTIVE COVENANT AGREEMENT**

This Restrictive Covenant Agreement (the "Agreement") is entered into as of this 22<sup>nd</sup> day of May, 2012 by and between MARKET POINTE, LLC, a Missouri limited liability company ("Grantor"), and CHICK-FIL-A, INC., a Georgia corporation ("Grantee").

**BACKGROUND STATEMENT:**

Grantor is the owner of the land in Sarpy County, Nebraska, described on Exhibit "A" (the "Grantor's Tract"), which consists of two (2) outparcels in a shopping center known as Shoppes at Market Pointe (the "Shopping Center"). Grantee is the owner of another outparcel in the Shopping Center, which outparcel is described on Exhibit "B" (the "Grantee's Tract"; the Grantor's Tract and the Grantee's Tract are sometimes referred to individually as a "Tract" and collectively as the "Tracts"). Grantor has agreed to encumber the Grantor's Tract with certain restrictions benefitting the Grantee's Tract as provided in this Agreement.

In consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged by the parties to this Agreement, Grantor and Grantee covenant and agree as follows:

1. Benefitted Parties/Binding Effect. Except as otherwise expressly provided, the rights, restrictions and obligations established in this Agreement run with the land and are for the benefit of the Grantee's Tract and run with the land and are binding on the Grantor's Tract.

2. Restrictions on the Grantor Tract. Grantor hereby restricts the use of the Grantor Tract as follows:

CTIC - 2011-18021C

(i) So long as Grantee does not cease to operate a Chick-fil-A restaurant on the Grantee's Tract for a period in excess of twelve (12) consecutive months (except that the time during which operations cease due to a remodeling, condemnation, casualty or event of force majeure will not count towards the 12-month period), no portion of the Grantor's Tract will be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. For the purposes of this Agreement, "a restaurant selling or serving chicken as a principal menu item" means a restaurant, other than a restaurant where orders are taken and served by a server at the customer's table, deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken.

(ii) So long as Grantee does not cease to operate a Chick-fil-A restaurant on the Grantee's Tract for a period in excess of twelve (12) consecutive months (except that the time during which operations cease due to a remodeling, condemnation, casualty or event of force majeure will not count towards the 12-month period), no portion of the Grantor's Tract will be leased, used or occupied by or for any of the following uses: Boston Market, Kenny Roger's, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Chicken Out, Willie May's Chicken, Biscuitville, Zaxby's, Ranch One, Koo-Koo Roo or Raising Cane's.

3. Remedies for Violation. Grantee will be entitled to injunctive relief and any other appropriate relief as may be available at law or in equity for any violation of this Agreement. Notwithstanding the foregoing, Grantor only will be liable for a breach of the restrictions set forth in Section 2 if a violation occurs as a result of Grantor's failure to include the restrictions in any lease or deed entered into between August 31, 2011 and the date of this Agreement, or if Grantor is the user engaging in the violation. The limitations in the previous sentence will not apply to Grantor's successors or assigns, including, without limitation, the tenants or occupants of the Grantor's Tract. Grantee may, at its option and without waiver of any rights and remedies against Grantor, directly enforce the restrictions in Section 2 against tenants or occupants of the Grantor's Tract.

4. Duration. Subject to the limitations set forth in Section 2, the provisions of this Agreement will remain in effect perpetually to the extent permitted by law.

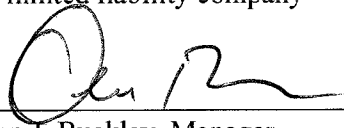
5. Miscellaneous. This Agreement will be governed in accordance with the laws of the state in which the property is located. The paragraph headings in this Agreement are for convenience only, will in no way define or limit the scope or content of this Agreement, and will not be considered in any construction or interpretation of this Agreement or any part of this Agreement. Nothing in this Agreement will be construed to make the parties to this Agreement partners or joint venturers. No party to this Agreement will be obligated to take any action to enforce the terms of this Agreement or to exercise any easement, right, power, privilege or remedy granted, created, conferred or established under this Agreement. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns. Time is of the essence of this Agreement.

[Signatures begin on next page]

Grantor and Grantee have executed this Agreement under seal as of the day, month and year on the first page of this Agreement.

GRANTOR:


MARKET POINTE, LLC,  
a Missouri limited liability company

By:  (SEAL)  
Owen J. Buckley, Manager

STATE OF KANSAS            )  
                                      ) SS  
COUNTY OF JOHNSON        )

On this 30<sup>th</sup> day of April, 2012, before me appeared Owen J. Buckley to me personally known, who, being by me duly sworn, did say that he is the Manager of Market Pointe, LLC, and that the seal affixed to the foregoing instrument is the seal of said limited liability company and that said instrument was signed and sealed in behalf of said limited liability company, by authority of its Members, acknowledged said instrument to be the free act and deed of said limited liability company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first written above.

  
Rhonda Williamson, Notary Public

My Commission Expires: 9/21/15

**Rhonda Williamson**  
**Notary Public**  
**State of Kansas**  
Commission expires 9/21/15

[Signatures continue on next page]

GRANTEE:

CHICK-FIL-A, INC.,  
a Georgia corporation

By: B. Lynn Chastain  
Name: B. Lynn Chastain  
Title: VP + Assistant General Counsel

By: Philip A. Barrett  
Name: Philip A. Barrett  
Title: VP, Controller

(CORPORATE SEAL)

STATE OF GEORGIA           )  
  ) SS  
COUNTY OF FULTON        )

On this 30 day of April, 2012, before me appeared B. Lynn Chastain and Philip A. Barrett to me personally known, who, being by me duly sworn, did say that he/she is the VP + Assistant General Counsel and VP, Controller, respectively, of Chick-fil-A, Inc., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation, by authority of its board of directors, acknowledged said instrument to be the free act and deed of said corporation.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first written above.

Heather M. G.  
Notary Public:

My Commission Expires:



EXHIBIT "B"

Legal Description of the Grantee's Tract

Lot 1, Market Pointe Addition Replat 4, an Administrative Lot Line Adjustment, being a replat of Lot 6, Market Pointe Addition and Lots 1 and 2, Market Pointe Addition Replat 3 a subdivision in Sarpy County, Nebraska.

EXHIBIT "A"

Legal Description of the Grantor's Tract

Lot 2, Market Pointe Addition Replat 5, and Lot 1, Market Pointe Addition Replat 5, a subdivision in Sarpy County, Nebraska.