

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is made as of _____, 2014, by and between

100 East 9th Street, LLC, a Kansas limited liability company,
c/o First Management, Inc.
601 North Iowa, P.O. Box 1797
Lawrence, Kansas 66044 (the **“Developer”**), as grantor; and the

CITY OF LAWRENCE, KANSAS,
a municipal corporation duly organized and existing under the laws of the State of Kansas
City Clerk
City Hall
Box 708
Lawrence, Kansas 66044-0708 (the **“City”**), as grantee.

RECITALS

A. On August 7, 2012, the City created the Ninth & New Hampshire Tax Increment Financing Redevelopment District (the **“Redevelopment District”**) pursuant to K.S.A. 12-1770 *et seq.* (the **“Act”**) and Ordinance No. 8768 of the City (the **“Redevelopment District Ordinance”**).

B. Pursuant to the Redevelopment District Ordinance, the Redevelopment District consists of two redevelopment project areas, a “North Project Area” and a “South Project Area” as legally described on **Exhibit A** attached hereto.;

C. The Developer submitted to the City the North Project Area Redevelopment Project Plan for the Ninth & New Hampshire Tax Increment Financing District, dated January 27, 2014 (the **“North Project Plan”**), which was approved by the City on _____, 2014, pursuant to Ordinance No. _____.

D. The North Project Plan contemplates the construction of a multi-use structure consisting of approximately 114 apartment units, office and clubhouse space on the ground floor (the **“Apartment Project”**) and drive-through banking facility and an underground parking structure consisting of approximately 100 parking spaces (the **“Parking Garage Structure”**) on the approximately _____ acre site located at the Northeast corner of 9th and New Hampshire within the North.

E. As additional consideration for the City’s role in approving creation of the Redevelopment District and the approval of the North Project Plan, the Developer has agreed to enter into this Agreement with the City with regard to the permitted uses of the Parking Garage Structure.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Restrictions. Operations of Parking Garage Structure. The Developer shall operate or cause the Parking Garage Structure to be operated solely as a public parking garage, with parking spaces being made available to the occupants of the Apartment Project at such times as the Developer determines will be necessary to provide such parking for guests, visitors, and customers and employees of the Apartment Project. When such use is not required, the Parking Garage Structure shall be made available for public parking at such customary charges as the City and the Developer may approve. No part of the Parking Garage Structure shall be utilized for any purpose other than such public parking and ancillary uses. Without limiting the generality of the foregoing, no part of the Parking Garage Structure shall be used for retail sales, restaurant, or storage purposes, except with respect to storage of equipment and supplies necessary for the operation of the Parking Garage Structure.

2. Compliance with Laws and Regulations. The Parking Garage Structure shall comply with all applicable building and zoning, health, environmental and safety resolutions and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

3. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect for fifty (50) years from the date of approval of the North Project Plan. This Agreement shall remain in effect whether or not the Ninth & New Hampshire Tax Increment Financing District Development Agreement for the North Project Area, as amended from time to time (the “**Redevelopment Agreement**”) expires or is terminated.

4. Covenants Running with the Land. All covenants, conditions, restrictions and agreements of this Agreement are made for the direct benefit of each and every part of the Redevelopment District, and the owners, successors and assigns thereof, and shall operate as covenants running with the land for the benefit of all other parts of the Redevelopment District, except as otherwise expressly provided in this Agreement.

5. Remedies. If any covenant, condition, restriction or agreement under this Agreement with respect to the Parking Garage Structure is breached or violated, and such breach or violation is not cured within thirty (30) days after written notice to Developer or the then current owner or operator of the Parking Garage Structure, the City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived. The Developer recognizes that a default under this Agreement may cause material injury or damage not compensable in money, and that the City is entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the restrictions, or an injunction to enjoin the continuance of any violation of the restrictions.

6. Effect of Violation of the Terms and Provisions of this Agreement. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose

favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest in the Hotel Project or the Redevelopment District. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

7. Amendments. This Agreement may be amended only by the mutual consent of the parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

8. Authorized parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

9. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the Developer:

100 East 9th Street, LLC
c/o First Management, Inc.
601 North Iowa
P.O. Box 1797
Lawrence, Kansas 66044

To the City:

City Clerk
City Hall
Box 708
Lawrence, Kansas 66044-0708

With a copy to:

City Attorney
City Hall
Box 708
Lawrence, Kansas 66044-0708

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

10. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

12. Recordation of Agreement. The parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording in the real estate records of Douglas County, Kansas.

[The remainder of this page intentionally left blank.]

THIS AGREEMENT has been executed as of the date first hereinabove written.

100 East 9th Street, LLC

By: 100 East 9th Street, LLC, Manager

By _____

Douglas J. Compton, President

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared *Douglas J. Compton*, President of **100 East 9th Street, LLC**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as the manager of **100 East 9th Street, LLC**, and acknowledged to me that he executed the same in his authorized capacities, and that by such person’s signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires:

THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF LAWRENCE, KANSAS

By: _____
Mike Amyx, Mayor

(SEAL)
ATTEST:

_____, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On _____, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared *Mike Amyx* and _____, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument as Mayor and City Clerk, respectively, of the **CITY OF LAWRENCE, KANSAS**, the city of the first class therein named, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF REDEVELOPMENT DISTRICT

North Project Area

Lots 60, 62, 64, 66, and 68 New Hampshire Street, and Lot 61 Rhode Island Street, City of Lawrence, Douglas County, Kansas and adjacent right-of-way of alley to the east, and adjacent right-of-way of New Hampshire Street to the west and extending north from northern boundary of the project area through the 8th Street intersection.

South Project Area

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

