



MISC 2013100237



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Fee amount: 40.00  
FB: 67-36852  
COMP: PN

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/01/2013 16:38:46.00



2013100237

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Return to:  
Michael C. Schilken  
Baird Holm LLP  
1500 Woodmen Tower  
Omaha, NE 68102

### ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS (the "Agreement") is made and entered into as of the 23 day of Sept., 2013, effective on the Effective Date set forth below, between CAROL J. GENDLER AND STEVEN H. GENDLER, CO-TRUSTEES OF THE H. LEE GENDLER FAMILY TRUST, CAROL J. GENDLER, TRUSTEE OF THE CAROL J. GENDLER REVOCABLE TRUST AND NATALIE GENDLER, TRUSTEE OF THE IRVIN GENDLER REVOCABLE TRUST (collectively, "Gendler") and NORTHWEST I-680, LLC, a Nebraska limited liability company (the "Assignee").

WHEREAS, Carol J. Gendler, Successor Trustee of the H. Lee Gendler Revocable Trust and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust executed that certain Declaration of Protective Covenants (the "Original Declaration") on January 29, 1997 and recorded the same in the office of the Register of Deeds of Douglas County, Nebraska on December 5, 1997 at Miscellaneous Book 1231, Page 334. Carol J. Gendler, Successor Trustee of the H. Lee Gendler Revocable Trust, Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust, and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust executed that certain First Amendment to Declaration of Protective Covenants (the "First Amendment") on December 2, 1997 and recorded the same in the office of the Register of Deeds of Douglas County, Nebraska on December 5, 1997 at Miscellaneous Book 1231, Page 341. Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust executed that certain Second Amendment to Declaration of Protective Covenants (Restated) (the "Second Amendment") on June 29, 1999 and recorded the same in the office of the Register of Deeds of Douglas County Nebraska on August 6, 1999 at Miscellaneous Book 1303, Page 377. Carol J. Gendler and Steven H. Gendler, Co-Trustees of the H. Lee Gendler Family Trust, Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust, Simmonds Properties, Ltd., a Nebraska limited partnership, and Dave's Auto Body, Incorporated, a Nebraska corporation executed that certain Partial Release of Declaration of Protective Covenants on April 3, 2003 and

recorded the same in the office of the Register of Deeds of Douglas County Nebraska on April 4, 2003 at Miscellaneous Book 1507, Page 551 (the "Partial Release"). On June 26, 2013, a Third Amendment of Declaration of Protective Covenants was executed and recorded in the office of the Register of Deeds of Douglas County Nebraska on July 11, 2013 at Miscellaneous Book 2013070277 (the "Third Amendment"). The Original Declaration, the First Amendment, the Second Amendment, the Third Amendment and the Partial Release are collectively referred to as the "Declaration"; and

WHEREAS, the real estate described on Exhibit "A" attached hereto and incorporated herein by this reference is subject to the Declaration; and

WHEREAS, the Declaration designates Gendler as the "Declarant" and grants the Declarant the authority to exercise certain rights and powers described therein as of the Effective Date; and

WHEREAS, Gendler desires to assign and transfer to Assignee all of Gendler's rights, entitlements and exemptions as Declarant under the Declaration ("**Declarant Rights**") as of the Effective Date; and

WHEREAS, Assignee desires to acquire Declarant's Rights and to assume Gendler's obligations under the Declaration to the extent and as more fully set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption of Declarant's Rights.

- (a) As of the Effective Date, Gendler does hereby assign, transfer and set over unto Assignee all of Gendler's right, title and interest in and to the position of "Declarant" under the Declaration, and to all of the Declarant's Rights under the Declaration, whereby the Assignee shall become an assignee of Gendler as the Declarant, with full power and authority to exercise all Declarant's Rights.
- (b) As of the Effective Date, Assignee hereby accepts the assignment and transfer of all of Gendler's right, title and interest in and to the position of "Declarant" under the Declaration, and assignment and transfer of all of the Declarant's Rights under the Declaration, assumes all of Gendler's obligations in Declaration ("Gendler's Obligations") as of the Effective Date (defined below), and agrees to be bound by all of the terms and provisions of the Declaration with respect the powers, authorities and obligations of the Declarant's Rights under the Declaration.

2. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska. This Agreement and any amendments, waivers, consents, or supplements may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same agreement. This Agreement shall run with the land and be binding on the successors and assigns of the parties hereto. This Agreement contains the

entire agreement of the parties regarding the assignment and transfer of the Declarant's Rights. This Agreement may only be amended, modified or terminated by a writing executed by both parties hereto, or their respective successors and assigns.

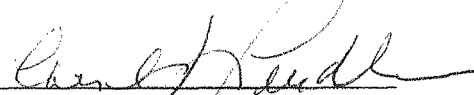
Gendler and Assignee each represent to the other that it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of it enforceable against it in accordance with the terms hereof.

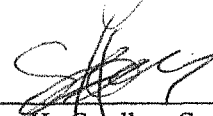
3. Effective Date. The provisions of this Assignment shall be effective commencing as of the 8 day of MAY, 2008 ("Effective Date").


4. Indemnity. Assignee agrees to release, indemnify, defend, protect and hold harmless Gendler from and against any and all claims, losses, liabilities, damages, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of, or claimed to arise out of, the failure of Assignee to pay, perform or discharge any of Gendler's Obligations from and after the Effective Date.


5. No Amendment. This Assignment shall not be construed or considered an amendment of the Declaration. Subject to the assignment of Declarant Rights and Assigned Obligations described above, Gendler and Assignee hereby ratify and confirm all provisions of the Declaration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By:   
Carol J. Gendler, Co-Trustee of the H. Lee Gendler Family Trust

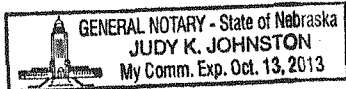
By:   
Steven H. Gendler, Co-Trustee of the H. Lee Gendler Family Trust

By:   
Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust

By:   
Natalie Gendler, Trustee of the Irvin Gendler Revocable Trust

STATE OF NEBRASKA )  
 ) ss  
COUNTY OF DOUGLAS )

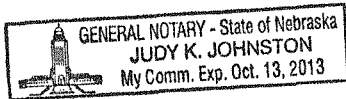
The foregoing instrument was acknowledged before me this 23 day of September, 2013, by Carol J. Gendler, Co-Trustee of the H. Lee Gendler Family Trust.



Judy K. Johnston  
Notary Public

STATE OF NEBRASKA )  
 ) ss  
COUNTY OF DOUGLAS )

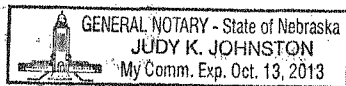
The foregoing instrument was acknowledged before me this 23 day of September, 2013, by Steven H. Gendler, Co-Trustee of the H. Lee Gendler Family Trust.



Judy K. Johnston  
Notary Public

STATE OF NEBRASKA )  
 ) ss  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 23 day of September, 2013, by Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust



Judy K. Johnston  
Notary Public

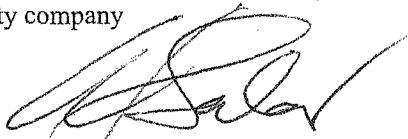
WASHINGTON  
STATE OF NEBRASKA )  
 ) ss  
KING  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 11 day of SEPTEMBER, 2013, by Natalie Gendler, Trustee of the Irvin Gendler Revocable Trust.

Bruce E. Rinne  
Notary Public BRUCE E. RINNE



Northwest I-680, LLC, a Nebraska limited liability company

By: 

Name: Anthony Saldi

Its: Authorized Member

STATE OF NEBRASKA    )  
  ) ss  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September, 2013, by Anthony Saldi, the Authorized Member of Northwest I-680, LLC, a Nebraska limited liability company, on behalf of the company.



Notary Public

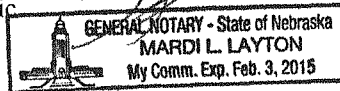


Exhibit "A"  
Legal Description

Lots 1 through 13, inclusive and Outlot 1, Starwood South, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

NOW KNOWN AS;

**67-36852**

Lots 1, 2, 3, 4, 5, 7, 13 and Outlot 1, in Starwood South, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska.

**67-36854**

Lots 1, 2, 3, 4, 5, 6 and Outlot A, in Starwood South Replat, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska.

**67-36872**

Lots 1 and 2, in Starwood South Replat 2, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska.