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**DECLARATION
FOR
WEST VILLAGE POINTE
BUSINESS ASSOCIATION**

POINTE 180 LLC, a Nebraska limited liability company, and Village West LLC, a Nebraska limited liability company, establish the following declaration and covenants.

PRELIMINARY STATEMENT

Pointe 180 LLC, a Nebraska limited liability company ("Pointe 180"), is the record owner of Lots 8, 9 and 11, West Village Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. Village West LLC, a Nebraska limited liability company ("Village West") is the record owner of Lots 1 to 7, inclusive, Lot 10 and Outlots A, B, C and D in West Village Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. The Lots and Outlots described in this Preliminary Statement are referred to collectively as the "West Village Pointe Subdivision". Pointe 180 and Village West may sometimes be referred to collectively as the "Declarant".

To provide for the orderly and prompt maintenance of such Outlots and any public rights of way and facilities within West Village Pointe Subdivision, the Declarant desires to cause the formation of West Village Pointe Business Association under the Nebraska nonprofit corporation laws ("Association").

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which by this reference is repeated and incorporated in this portion of this Declaration in its entirety, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby establishes the following easements, covenants and restrictions:

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1. **Definitions.**

A. **Building Area.** The term "Building Area" shall mean and include that area of Lots 1 to 11, inclusive, upon which a building, buildings or other structures may be constructed or erected.

B. **Development Agreement.** The term Development Agreement shall mean that certain agreement dated July 27, 2004 among the City of Omaha, Nebraska, Village West LLC, Pointe 180 LLC, and 180 West LLC.

C. **Lots.** The term "Lots" shall mean Lots 1 to 11, inclusive, West Village Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; the term "a Lot", "any Lot", or "each Lot" shall mean one or each of the Lots as the context may require. It is understood that each respective Lot created as a result of a lot split, administrative plat or subdivision or replat shall be considered a Lot. From time to time, reference may be made to one or more of the Lots by their respective lot number.

D. **Outlots.** The term "Outlots" shall mean Outlots A, B, C and D, inclusive, West Village Pointe, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; the term "an Outlot" or "each Outlot" shall mean one of the Outlots as the context may require. From time to time, reference may be made to one or more of the Outlots by their respective lot numbers.

E. **Owner.** The term "Owner" shall mean any individual, partnership, limited liability company, corporation, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of one or more of the Lots or Outlots.

F. **Public Facilities.** The term "Public Facilities" shall mean any public streets and public facilities, including, but not limited to, developed and undeveloped right of way, planted medians, street identification and directional signs, traffic control signs, street lights, and other public and private amenities located within public right of way or immediately adjacent thereto and benefiting the public or the Association, situated within the West Village Pointe Subdivision.

G. **Subdivision Agreement.** The term Subdivision Agreement shall mean that certain agreement dated July 27, 2004 among Village West LLC, Pointe 180 LLC, 180 West LLC, Sanitary and Improvement District No. 483 of Douglas County, Nebraska, West Village Pointe Business Association, and the City of Omaha, Nebraska.

2. **Access Easement.**

(a) Village West hereby grants to the Association, its successors and assigns, a non-exclusive easement over, under and upon the Outlots for the purpose of the

repair, maintenance and replacement of the Outlots, including, but not limited to, any storm water detention facilities and systems, storm sewers, sanitary sewers, street and/or landscape lighting, landscaping and any Public Facilities situated within the Outlots.

(b) Pointe 180 and Village West, respectively, grant to the Association and its successors and assigns, a non-exclusive access easement and temporary staging easement over, upon and within those non-Building Areas of Lots 1 to 11, inclusive, which adjoin or are adjacent and in reasonably close proximity to Outlots A, B, C and D for the repair, replacement and maintenance of such Outlots, including, but not limited to, landscaping and vegetation, storm water detention facilities and systems, storm sewers, sanitary sewers, street and/or landscape lighting, and any Public Facilities within the Outlots. Any damage to such adjacent or adjoining non-Building Areas shall be repaired or restored promptly by the Association at its expense.

3. **Improvement of Outlots.** Village West will cause the Outlots to be improved in accordance with the Development Agreement and Subdivision Agreement. The initial improvement of the Outlots will be at no cost to the Association and solely at the expense of Village West. Village West shall transfer and convey title to the Outlots to the Association upon completion of the improvements to the Outlots contemplated by the Development Agreement and Subdivision Agreement.

4. **Maintenance of Outlots and Public Facilities.** The repair, replacement and maintenance of the Outlots and Public Facilities within the West Village Pointe Subdivision shall be performed consistently by the Association and shall include, but not be limited to:

(a) maintenance, repair, replacement and care of all trees, grass, shrubs, landscaping, storm water detention facilities and systems, storm and sanitary sewers, and street and/or landscape lighting within the Outlots, including, but not limited to, the fertilizing, weeding, watering, mowing, trimming, and the replacement of shrubs, trees and other landscaping, all as is necessary to maintain the Outlots and such betterments in a first class and aesthetically pleasing condition;

(b) removal of papers, debris, ice, snow, refuse and filth within the Outlots including graffiti and the removal of any hazards to persons using or exposed to the Outlots;

(c) maintenance, repair and replacement of any Public Facilities in a manner which presents the Public Facilities in a first class condition; and

(d) any repair, maintenance and replacement of the Outlots required or contemplated by the Development Agreement or Subdivision Agreement.

5. The Association. To ensure the prompt and satisfactory performance of the repair, replacement and maintenance responsibilities described in Section 4 of this Declaration, the Declarant will cause the incorporation of the Association. The Association shall be responsible for (i) the maintenance, repair and replacement of the Outlots and Public Facilities as described in Section 4 above, and (ii) the cost and expense of the ownership and operation of the Outlots. Except as provided in Section 3 above, as long as the Association is in existence, the owners of the Outlots shall be deemed to have delegated and assigned to the Association their respective maintenance and replacement responsibilities.

(a) The Owner of each Lot shall be a member of the Association. For the purposes of determining voting privileges in the Association only, the term "Owner" shall not include those parties having an interest in any Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered the "Owner" for purposes of the Association. Membership shall be appurtenant to and may not be separated from the ownership of each Lot.

(b) The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote per gross square foot of the Owner's Lot (such gross square feet may be converted at the direction of the Board of Directors to a per acre and any portion of an acre calculation to two decimal points) on each matter properly coming before the members of the Association. Notwithstanding the foregoing, until such time as Village West has transferred record fee title to all of the Lots, or December 31, 2011, whichever is earliest, Village West shall be the sole voting member of the Association. Provided, however, in no event shall Village West exercise such voting privileges to terminate the Association unless the Village West is the Owner of all of the Lots.

(c) The Association shall have the powers conferred upon nonprofit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors, by the officers shall include, but shall not be limited to, the following:

(i) the maintenance, repair, replacement, landscaping, improvement, ownership, operation and upkeep of the Outlots and Public Facilities;

(ii) the fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration;

(iii) the expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to the

purchase of liability insurance coverages for the Association, its Board of Directors, officers, employees, agents, and members;

(iv) the exercise of all the powers and privileges, and the performance of all the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time;

(v) the deposit, investment and reinvestment of Association funds in bank accounts, government securities, money market funds or accounts, and certificates of deposit;

(vi) the employment of professionals (including property managers or property management companies) and consultants to advise and assist the officers and Board of Directors of the Association in the performance of their duties and responsibilities;

(vii) the acquisition by purchase or otherwise and disposition of personal property necessary for the conduct of the affairs of the Association;

(viii) general administration and management of the Association and execution of such documents and performance of such acts as may be necessary or appropriate to accomplish such administration or management;

(ix) the promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Outlots, provided always that such rules are uniformly applicable to all Owners; and

(x) the exercise, promotion, enhancement and protection of the privileges and interests of the Owners.

(d) The Board of Directors of the Association shall fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "Dues and Assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the Dues and Assessments shall be fixed by the Board of Directors of the Association and shall be payable at the time and in the manner prescribed by the Board of Directors.

(i) Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the Dues and Assessments due in respect of any undeveloped Lot (no completed structure located thereon).

(ii) The Dues and Assessments, together with interest thereon, if any, shall be the personal obligation of the Owner of each Lot at the time when the Dues and Assessments first become due and payable. The Dues and

Assessments, together with interest thereon, if any, shall also be charged against and constitute a continuing lien upon the Lot in respect of which the Dues and Assessments are charged. Personal obligation for delinquent Dues and Assessments shall pass to the successors in title to the Lot and such successors shall take title subject to the lien for such Dues and Assessments.

(iii) The Dues and Assessments collected by the Association shall be committed and expended to accomplish the purposes and to perform the powers and responsibilities of the Association.

(iv) The Dues and Assessments which may become due and payable in any year shall be based on a budget adopted at least annually by the Board of Directors. The Board of Directors shall adopt and fix, in reasonably itemized detail, the annual budget for the then anticipated expenses, expenditures and general operational costs of the Association for said upcoming fiscal year. The Board of Directors shall provide a summary of the budget and the time and manner of payment therefor to all Owners.

(v) In addition to the budgeted Dues and Assessments, the Board of Directors may levy excess or additional Dues or Assessments, after notice to the members, for the purposes of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Outlot or Public Facility, including fixtures and personal property related thereto, and related facilities.

(vi) Each of the Lots shall be charged the Dues and Assessments based on a fraction, the numerator of which is the gross square feet of the Owner's Lot and the denominator of which is the aggregate gross square feet of Lots 1 to 11 in West Village Pointe Subdivision (including Lots created as a result of a lot split, administrative plat or subdivision or replat).

(vii) The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Dues and Assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding Dues and Assessments. The Dues and Assessments shall be a lien as of the date the Dues and Assessments are established by the Board of Directors.

(viii) Any installment of Dues and Assessments which is not paid when due and payable shall be delinquent. The delinquent Dues and Assessments shall bear interest from such due date to the date of payment at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law or in equity against the Owner personally obligated to pay

the same, foreclose the lien against the appropriate Lot or Outlots, and pursue any other legal or equitable remedy. The Association shall be indemnified by the Owner involved in any collection effort or legal action against the costs and reasonable attorney's fees incurred by the Association with respect to such collection effort or action. No Owner may waive or otherwise escape liability for this obligation and lien provided for in this Section 5 except by transfer of title, in which event the successor in title shall be solely liable. The mortgagee or beneficiary under a deed of trust (collectively "Mortgagee") of any Lot shall have all the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. Upon written request, the Association shall assign to such mortgagee or beneficiary all of its rights with respect to such lien and such mortgagee or beneficiary thereupon shall be subrogated to any rights of the Association.

(ix) The lien of any Dues or Assessments permitted in this Declaration shall be subordinate to the lien of any mortgage or deed of trust recorded against a Lot.

6. Duration, Amendment and Termination of Roadway Easement. Unless otherwise modified, terminated or extended, as permitted in this Section 6 or in this Declaration, the easements, rights, obligations, covenants and restrictions contained in this Declaration shall continue for a period of eighty-nine (89) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, seventy-five percent (75%) of the Lot Owners execute a written instrument of termination, in which event, the Declaration shall expire at the end of the Primary Period or Extension Period then in effect.

Except as otherwise specifically provided in this Declaration, this Declaration and any provision herein contained may be terminated, extended, modified or amended during the Primary Period or any extended period as to the Lots, only with the express written consent of both the Owner of the Lot or Lots which are the subject matter of and are specifically affected by such termination, extension, modification or amendment and the Declarant. No modification or termination of this Declaration will be effective against any mortgagee or beneficiary under a deed of trust subsequent to such mortgagee's or beneficiary's acquiring title to a portion or all of a Lot by foreclosure or deed in lieu of foreclosure, unless such mortgagee or beneficiary has so consented in writing. No tenant, subtenant, licensee or other person having only a possessory interest in a Lot is required to join in the execution of any agreement of any type entered into or consent to any action of the Declarant taken pursuant to this Declaration.

7. Miscellaneous.

(a) Notices. All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid or by recognized courier service to the Owners at the addresses on file with the office of the Douglas County Assessor for delivery of ad valorem tax statements relating to their respective Lots or Outlots. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner. All such notices which are delivered by recognized courier service shall be deemed delivered the business day next following the date of deposit with such courier service.

(b) Waiver of Default. No waiver of any default by any Owner will be implied from the failure by any other Owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

(c) No Partnership. Nothing contained in this Declaration and no action by the Owner of any Lot will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Lots.

(d) Legal Effect. Each of the easements, restrictions, covenants, and rights created by this Declaration are appurtenant to the Lot and/or Outlot to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Lot or Outlot. For the purpose of each such easement and right, the Benefited Tract will constitute the dominant estate and the Burdened Tract will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) constitutes a covenant running with the land; (b) binds every Owner now having or hereafter acquiring an interest in any Outlot or Lot; and (c) will inure to the benefit of each Owner and each Owner's successors, assigns, mortgagees and beneficiaries under deeds of trust.

(e) Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the

remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

(f) Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

(g) Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

(h) Time. Except as otherwise provided in this Declaration, time is of the essence.

(i) Estoppel Certificates. The Owner of any Lot shall, from time to time upon not less than twenty (20) days written notice from any other Owner, execute and deliver to such other Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect, or if modified, indicating the modifications and stating whether or not, to the best of its knowledge, any Owner is in default under the Declaration, and if so, specifying such default.

(j) Merger. This Declaration and the easements and rights created herein shall not be subject to the doctrine of merger.

(k) Binding Effect. The provisions of this Declaration will be binding on the Owners and their respective successors, assigns, heirs, personal representatives, mortgagees, and beneficiaries under deeds of trust to the extent herein provided.

Executed as of February 21, 2005.

POINTE 180 LLC, a Nebraska limited liability company

By: 
Jay R. Lerner, Manager

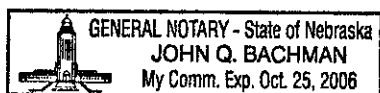
VILLAGE WEST LLC, a Nebraska limited liability company

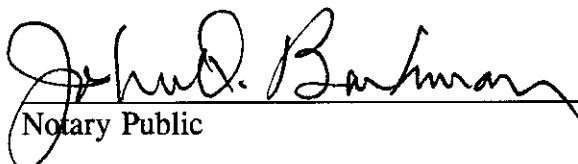
By: 
Jay R. Lerner, Manager

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

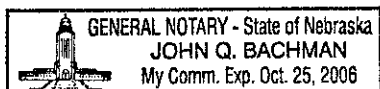
The foregoing instrument was acknowledged before me this 21st day of February, 2005, by Jay R. Lerner, Manager of Pointe 180 LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21st day of February, 2005, by Jay R. Lerner, Manager of Village West LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public