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DECLARATION OF USE RESTRICTIONS

Lots 1 and 2, West Village Pointe Replat 4 and
 Lot 7 West Village Pointe
 Douglas County, Nebraska

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 7/23/2007 11:39:39.30



2007083401

This **Declaration of Use Restrictions** (this "Declaration") dated as of July 19, 2007, is made by **Village West LLC**, a Nebraska Limited Liability Company ("Declarant"), with a mailing address c/o The Lerner Company, 10855 W. Dodge Road, Suite 270, Omaha NE 68154, for the benefit of **Village Development - 180th & Burke, L.L.C.**, a Nebraska Limited Liability Company, its successors and assigns ("Owner"), with a mailing address of 1045 Lincoln Mall, Suite 300, Lincoln NE 68508.

PRELIMINARY STATEMENT

Declarant is the record owner of Lot 2, West Village Pointe Replat 4 and Lot 7 West Village Pointe, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (collectively the "Restricted Parcels").

Contemporaneously with the execution of this Declaration, Owner acquired from Declarant ownership of Lot 1, West Village Pointe Replat 4, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded ("Owner's Parcel").

The Restricted Parcels, together with Owner's Parcel and certain other properties, constitute a portion of a shopping center known as West Village Point.

Declarant desires to hereby establish certain restrictions upon the Restricted Parcels for the benefit of Owner and its successors and assigns as owners, from time to time, of Owner's Parcel.

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 good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby agrees as follows:

PROFESSIONAL TITLE & ESCROW CO.
 5617 THOMPSON CREEK BLVD #12
 LINCOLN NEBRASKA 68516

return to

1213

3150

Pro Title / pd

1. (a) No portion of the Restricted Parcels shall be used for:

- (i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring the presence of a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed within the Restricted Parcels in conjunction with medical, dental, veterinarian or other services; and/or
- (ii) the sale of (a) so-called health and/or beauty aids and/or (b) drug sundries as that term is defined in the Retail Drug Control Act, except to the extent that the shelving devoted to such use measured horizontally on the floor does not exceed one hundred (100) lineal feet.

Notwithstanding the foregoing, the exclusive use restrictions contained in this Subsection 1(a) shall not apply to one (1) user occupying at least twenty-five thousand (25,000) square feet of building improvements on the Restricted Parcels, provided that the primary purpose of such user is not a drug store or prescription pharmacy such as CVS, Osco, or Rite-Aid. In addition, the exclusive use restrictions contained in this Subsection 1(a) shall terminate two (2) years following the date the building constructed on the Owner's Parcel is no longer utilized as a pharmacy, at which time such restriction shall be of no force and affect or binding upon the Restricted Parcels.

(b) Neither all nor any portion of the Restricted Parcels shall be used, directly or indirectly, for purposes of the operation of a bowling alley, skating rink, adult bookstore, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays (excluding video stores such as Blockbuster and Hollywood Video), second-hand store, odd lot, closeout or liquidation store, auction house, flea market, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a carnival, amusement park or circus, or any facility for the sale of paraphernalia for use with illicit drugs.

2. Neither all nor any portion of the Restricted Parcels shall be used, directly or indirectly, for the following prohibited uses:

- (i) Any use which emits or produces an obnoxious odor, noise, or other excessive or unreasonable sound which can be heard or smelled outside of any building within the Restricted Parcels;

(ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;

(iii) Any pawnshop, army surplus store, salvage store, or "second hand" store whose principal business is selling used merchandise, thrift shops, Salvation Army type stores and "goodwill" type stores;

(iv) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);

(v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors and containers located at the rear of any Building within the Restricted Parcels);

(vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) Any central laundry, dry cleaning plant or laundromat;

(viii) Any automobile, truck, trailer, boat, mobile home or recreational vehicle sales, leasing, display, storage or body shop repair operation;

(ix) Any bowling alley or skating rink;

(x) Any movie theater or live performance theater, banquet hall, auditorium or other place of public assembly;

(xi) Any daycare center, church, school or religious reading room;

(xii) Any animal raising facility;

(xiii) Any mortuary or funeral home;

(xiv) Any establishment selling or exhibiting (a) pornographic materials; or (b) any merchandise or material commonly used with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons, or roach clips;

(xv) Any bar, tavern, liquor store, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business;

(xvi) Any flea market, laser tag or virtual reality facility, gameroom, amusement or video arcade, pool or billiard hall, car wash, gun range, dance hall, discotheque, or massage parlor;

(xvii) Any training or educational facility, including, but not limited to, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers;

(xviii) Any gambling activity, facility or operation, including but not limited to, off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall;

(xvix) Any living quarters, sleeping apartments or lodging rooms; or

(xvx) Traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fire works, and sales by transient merchandise using vehicles, booths, tents or other promotions of any nature excluding sidewalk sales and temporary sale promotions within common areas which are permitted.

3. The prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the other party the prevailing party's reasonable costs and expenses incurred in connection with such action including, without limitation, reasonable attorneys' fees and court costs (including any appeals).

4. No delay or omission of Owner in the exercise or enforcement of any right accruing upon any default by Declarant shall impair any such right to be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by Owner of a breach or a default of any of the terms and conditions of this Declaration shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration.

5. Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereunder shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

Declarant: Village West LLC
c/o The Lerner Company
10855 West Dodge Road, Suite 270
Omaha, NE 68154-2666
Attn: Salvadore Carta

Owner: Village Development - 180th & Burke, L.L.C.
1045 Lincoln Mall, Suite 300
Lincoln, NE 68508
Attn: Tamas R. Allan

With Copy to: Ms. Jennifer J. Strand, Esq.
Woods & Aitken L.L.P.
301 So. 13th Street, Suite 500
Lincoln, NE 68508

or to such other person or address as Declarant or Owner may direct from time to time by written notice forwarded to the other.

6. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Declaration, nor any portion hereof, shall be construed more strongly against any party who prepared it.

7. This Declaration shall not be modified, amended, or terminated in any respect except by a writing recorded in the records of Douglas County, Nebraska and signed by (i) the Declarant so long as it owns any interest in any part or all of the Restricted Parcels, otherwise the record owner of those parcels or lots comprising the Restricted Parcels which are the subject matter of such amendment, modification, or termination, and (ii) the record owner of Lot 1 Replat 4 West Village Pointe Subdivision in Douglas County, Nebraska.

8. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. The invalidity of any provision of this Agreement shall not in any way invalidate the remaining provisions of this Declaration.

9. This Declaration shall be binding against Declarant and its successors and assigns, as covenants running with the Restricted Parcels, and shall inure to the benefit of Owner and its successors and assigns, as appurtenant to their respective interests in Owner's Parcel.

VILLAGE WEST LLC,
a Nebraska limited liability company

By: [Signature]
Name: Jay R. Lerner
Title: Manager

VILLAGE DEVELOPMENT -
180TH & BURKE, L.L.C.,
a Nebraska limited liability company

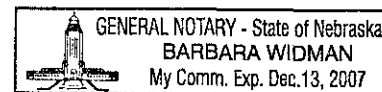
By: [Signature]
Name: Tamas R. Allan
Title: Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

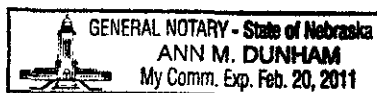
The foregoing instrument was acknowledged before me this 18th day of June, 2007 by Jay R. Lerner, Manager of Village West LLC, a Nebraska limited liability company, on behalf of such limited liability company.

[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



The foregoing instrument was acknowledged before me this 19th day of ^{July}~~June~~, 2007 by Tamas R. Allan, Manager of Village Development - 180th & Burke, L.L.C., a Nebraska limited liability company, on behalf of such limited liability company.



[Signature]
Notary Public