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CASS COUNTY, NE.

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James R. Palmieri
REGISTER OF DEEDS
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Pages 7

Prepared by, and when recorded return to: Nicholas F. Sullivan, Erickson | Sederstrom, P.C., 10330 Regency Parkway Drive, Suite 100, Omaha, NE 68114

EASEMENT, COVENANT, AND RESTRICTION AGREEMENT

THIS EASEMENT, COVENANT, AND RESTRICTION AGREEMENT (this “Agreement”) is made effective as of the 31st day of December, 2018 (the “Effective Date”), by and between **WESTSIDE DEVELOPMENT, INC.**, a Nebraska corporation (“Developer”), **KOMCON REAL ESTATE, LLC**, a Nebraska limited liability company (“Komcon”), and **MAKOVICKA/HARMS GROUP, P.C.**, a Nebraska professional corporation (“Harms”). Komcon and Harms are collectively referred to in this Agreement as “Makovicka Physical Therapy”. Developer, Komcon, and Harms may be referred to in this Agreement each individually as a “Party,” and collectively as the “Parties.”

WHEREAS, Developer is the owner of those tracts of real estate legally described as follows (collectively the “Developer Tracts”):

Lot 8, Westside Commercial Subdivision, an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska; and

Lots 1 and 3, Westside Commercial Subdivision Replat 2, being an administrative replatting of Lots 4 through 6, Westside Commercial Subdivision, a subdivision located in the SW 1/4 of the NW 1/4 of Section 13, Township 12 North, Range 13 East of the 6th P.M., an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska;

WHEREAS, Komcon is the owner of the real estate legally described as follows (the “Komcon Tract”):

Lot 2, Westside Commercial Subdivision Replat 2, being an administrative replatting of Lots 4 through 6, Westside Commercial Subdivision, a subdivision located in the SW 1/4 of the NW 1/4 of Section 13, Township 12 North, Range 13 East of the 6th P.M., an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska;

WHEREAS, the Developer and Makovicka Physical Therapy desire that the Developer Tracts and the Komcon Tract (collectively the "Shopping Center") be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center and further desire that the Shopping Center be subject to the easements, covenants, conditions, and restrictions set forth in this Agreement; and

WHEREAS, Komcon purchased the Komcon Tract from Developer, and as a condition to the purchase of the Komcon Tract, the Parties agreed to enter into and record this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises, easements, covenants, conditions, restrictions, and encumbrances contained in this Agreement, the Parties mutually agree as follows:

1. **Exclusive Use**. Other than the Komcon Tract, no portion of the Shopping Center shall be used for any type of physical therapy services or business without the prior written consent of Makovicka Physical Therapy, and that Makovicka Physical Therapy may withhold such written consent in its sole and absolute discretion.

2. **Competing Business**. Other than the Komcon Tract, no space in, or any portion of the Shopping Center, and no space in, or portion of any other real property located within a two (2) mile radius of the Shopping Center that is owned by Developer or its affiliate as of the Effective Date, or as may subsequently be acquired by Developer or its affiliate, may be leased to, occupied by, or otherwise conveyed to any other third-party for the operation of a physical therapy facility or business on said property so long as Makovicka Physical Therapy, or any affiliate of Makovicka Physical Therapy, either as an owner or lessee, operates a physical therapy facility or business on the Komcon Tract without the termination of normal business operations caused solely by Makovicka Physical Therapy for a period lasting longer than ninety (90) consecutive days.

3. **Expansion of Shopping Center**. The Parties agree that in the event the Shopping Center is expanded by ownership, control of the Parties, or agreement with a third-party, the provisions of this Agreement shall apply to the expanded area including, but not limited to, the restrictions on use set forth in paragraphs 1 and 2 of this Agreement.

4. **Release from Liability**. Any person acquiring fee or leasehold title to any real estate within the Shopping Center, or any expansion of the Shopping Center pursuant to Paragraph 3 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person will be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants, and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

5. **Signage.** Developer shall not permit and shall prohibit the owner of and any tenant or subtenant located on Lot 7, Westside Commercial Subdivision, an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska ("Lot 7), from constructing and/or placing any and all signage or other advertising that names, lists or otherwise advertises any physical therapy services or businesses located on, in, or operating out of Lot 7 on the Developer Tracts without the prior written consent of Makovicka Physical Therapy, and Developer agrees and acknowledges that Makovicka Physical Therapy may withhold such consent in its sole and absolute discretion.

6. **Breach.** In the event of breach or threatened breach of this Agreement, only all record owners of the Developer Tracts as a group, or the record owner of the Komcon Tract, or so long as Developer or any affiliate of Developer has an interest as an owner or lessee of any lot within the Developer Tracts, or Komcon so long as it or any affiliate has an interest as an owner or lessee of the Komcon Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, including temporary or permanent injunctive relief. The unsuccessful party in any action must pay to the prevailing party a reasonable sum for attorney's fees, which will be deemed to have accrued on the date such action was filed.

7. **Rights of Successors.** The easements, restrictions, benefits, and obligations in this Agreement create mutual benefits and servitudes running with the land. This Agreement is binding upon, and inures to the benefit of, the Parties hereto, their respective heirs, representatives, lessees, successors, and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

8. **Document Modification and Cancellation.** This Agreement may be modified or canceled only by the mutual agreement of Developer, as long as it or its affiliate has any interest as either owner or lessee of any lot within the Developer Tracts, and Makovicka Physical Therapy, as long as it or its affiliate has any interest as either owner or lessee of the Komcon Tract.

9. **Non-Merger.** So long as Developer or its affiliate is the owner or lessee of any lot within the Developer Tracts, even though the underlying fee is owned by one person or entity, this Agreement shall not be subject to the doctrine of merger.

10. **Duration.** Unless this Agreement is otherwise canceled or terminated as provided herein, all the easements, covenants, rights, restrictions, and provisions in this Agreement create an equitable servitude upon the respective tracts, constitute covenants running with the land, are binding upon every person or entity having any fee, leasehold, or other interest in or encumbrance on any portion of the Shopping Center at any time, and will continue in full force and effect perpetually.

11. **Recording.** Upon full execution of this Agreement, Developer shall record a fully executed copy of this Agreement in the office of the Register of Deeds of Cass County, Nebraska against all real property owned by Developer or its affiliate within the Shopping Center and within a two (2) mile radius of the Shopping Center. If after the Effective Date of this

Agreement Developer or its affiliate acquires any additional real property within the Shopping Center or within a two (2) mile radius of the Shopping Center while this Agreement is still in effect between the Parties, Developer shall record a fully executed copy of this Agreement in the office of the Register of Deeds of Cass County, Nebraska against such subsequently acquired property on the day that Developer or its affiliate closes on its acquisition of said property.

12. **Headings.** The headings in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement, nor in any way affect the terms and provisions hereof.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto. The Parties do not rely upon any statement, promise, or representation not expressed in this Agreement, and this Agreement once executed and delivered may not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this Agreement.

[REMAINDER INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

WESTSIDE DEVELOPMENT INC.,
a Nebraska corporation,

BY: 

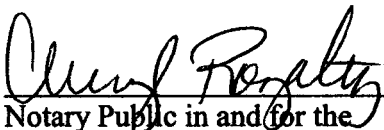
PRINTED NAME: Steven K. Willey

TITLE: President

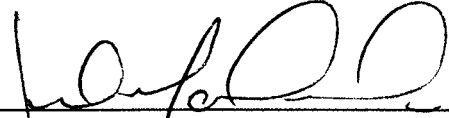
STATE OF NEBRASKA)
) ss.
COUNTY OF ~~CASS~~ Douglas)

On this 9th day of April, 2019, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Steven K. Willey, who being by me duly sworn, did say that he is the President of Westside Development, Inc., a Nebraska corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Steven K. Willey as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

State of Nebraska - General Notary
CHERYL ROYALTY
My Commission Expires
August 30, 2020


Notary Public in and for the
State of Nebraska
My Commission Expires: 8/30/20

**KOMCON REAL ESTATE, LLC, a Nebraska
limited liability company,**

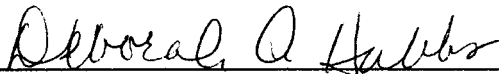
BY: 

PRINTED NAME: Joel P. Makovicka

TITLE: Sole Member

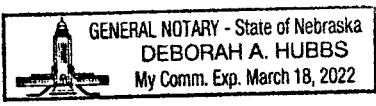
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 12 day of April, 2019, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Joel P. Makovicka, who being by me duly sworn, did say that he is the Sole Member of Komcon Real Estate, LLC, a Nebraska limited liability company, that said instrument was signed on behalf of said company by authority of its Sole Member; and that the said Joel P. Makovicka as such Member acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by them voluntarily executed.




Notary Public in and for the
State of Nebraska

My Commission Expires: 3-18-22



**MAKOVICKA/HARMS GROUP, P.C., a
Nebraska professional corporation,**

BY: 

PRINTED NAME: Joel P. Makovicka

TITLE: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 12 day of April, 2019, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Joel P. Makovicka, who being by me duly sworn, did say that he is the President of Makovicka Harms Group, P.C., a Nebraska professional corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Joel P. Makovicka as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Notary Public in and for the
State of Nebraska

My Commission Expires: 3-18-22

