

DEVELOPMENT AND USE AGREEMENT

This Development and Use Agreement ("Agreement") dated October 13, 2021, is between VILLAGE WEST LLC, a Nebraska limited liability company ("Developer"), and Williquors Holding Company, LLC, a North Dakota limited liability company ("Owner").

PRELIMINARY STATEMENT

Contemporaneously with the execution of this Agreement, Owner acquired from Developer ownership of Lots 4 and 5, West Village Pointe Replat 8, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (collectively, the "Property"). As a condition precedent to such acquisition, Owner and Developer agreed to execute and exchange this Agreement evidencing their agreement and understanding with respect to the development and use of the Property.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement, which is repeated in its entirety in this portion of this Agreement, and other valuable consideration, the receipt of which is acknowledged, Developer and Owner agree as follows:

1. **Development Agreement with City of Omaha.** The Property and any development and use of the Property is subject to the terms and provisions of that certain (i) unrecorded Development Agreement dated July 27, 2004 by and among the City of Omaha, Village West LLC, Pointe 180 LLC, and 180 West LLC, as amended (collectively the "City Development Agreement"), and (ii) unrecorded Subdivision Agreement dated July 27, 2004, as amended (collectively the Subdivision Agreement"). Owner acknowledges having received from the Developer true and complete copies of the City Development Agreement and the Subdivision Agreement. From and after the date of Owner's acquisition of the Property, Owner and its successors and assigns agree to assume and perform all of the obligations under the City Development Agreement and the Subdivision Agreement, if any, imposed on the owner of the Property or which are applicable to the Property.

2. **Plans.** Prior to the commencement of any building or any other improvements on the Property, Owner shall deliver to Developer or its designee (i) a Site Plan of the Property depicting any building and all other improvements to be constructed on the Property (such building and other improvements are referred to collectively as the "Project"); and (ii) architecturally certified Plans and Specifications of the Project ("Plans"), including elevations of the building, landscaping plans, grading plans, and exterior signage drawings. Developer shall

have a period of ten (10) business days after receipt within which to review and either (a) approve, (b) partially approve and suggest revisions with respect to the balance, or (c) reject such Plans, which approval by the Developer will not be unreasonably withheld or conditioned provided such Plans are consistent with and reflective of the other provisions of this Agreement.

3. **Restrictions**. The Property shall be subject to the following restrictions which may be deleted or modified only with the prior consent of Developer which may be withheld in its sole discretion:

A. **Use of Property**. No more than two (2) buildings may be constructed within the Property each of which shall be used for the construction and operation of a first class office building or a commercial building utilized only for retail purposes; either building may including structured parking incident to such uses; any such office building shall not exceed three stories (excluding any levels below ground level) and any such retail building shall not exceed thirty (30) feet in height above existing ground level and in no event shall the size of any building constructed on the Property exceed the size and/or height permitted by the City Development Agreement and applicable governmental laws and regulations (collectively the "City Code").

B. **Prohibited Uses**.

(1) Any use which emits an obnoxious odor, noise, or other excessive or unreasonable sound which can be heard or smelled outside of any building within the Property;

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

(3) 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;

(4) 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);

(5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of approved enclosed garbage containers located at the rear or side of any Building within the Property);

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

(7) Any central laundry, dry cleaning plant, laundromat, or laundry pick-up facility, but a drop/off pick up laundry business such as Max I Walker or Camelot Cleaners is a permitted use provided no cleaning is performed on the Property;

- (8) Any automobile, truck, trailer, boat, mobile home or recreational vehicle sales, leasing, display, storage or body shop repair operation or gas station;
- (9) Any bowling alley or skating rink;
- (10) Any movie theater or live performance theater, banquet hall, auditorium or other place of public assembly;
- (11) Any church, school or religious reading room;
- (12) Any animal raising facility;
- (13) Any mortuary or funeral home;
- (14) Any establishment selling or exhibiting (a) pornographic, 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, water pipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons, or roach clips;
- (15) Any bar, tavern, restaurant or other establishment whose reasonably projected annual revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty (40%) of the gross revenues of such business.
- (16) Any flea market, laser tag or virtual reality facility, game room, amusement or video arcade, pool or billiard hall, car wash, gun range, dance hall, discotheque, or massage parlor;
- (17) 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; provide, however, this prohibition shall not be applicable to on-site employee or customer training by the Owner of the Property incidental to the conduct of its business; and
- (18) 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; or bingo hall.

C. Hazardous Uses. The Property shall not be used nor shall the Owner of the Property permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in the Property, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws.

For the purpose of this paragraph (C), the term (i) "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean all federal, state, county, municipal, local and other

statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, or both, all as may be amended from time to time.

D. Restricted Temporary Uses. No portion of the Property shall be used for: traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants using vehicles, booths, or tents, or any other outdoor promotions of any nature.

E. Restricted Uses. The Property shall not be occupied or used for any of the following uses (i) for any purpose or use which violates the provisions of Article 5 of the Declaration dated February 21, 2005 recorded on February 22, 2005 in the Miscellaneous records of the Douglas County Register of Deeds as Instrument No.; 2005019508; or (ii) as a discount store; or (iii) as a supermarket or grocery store; or (iv) for the operation of a drug; or (v) or a so called pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any purpose requiring the presence of a qualified pharmacist or other person authorized by law to dispense medical drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed in conjunction with medical, dental, veterinarian or other services; or (vi) as a facility dispensing gasoline or petroleum products or as a convenience food mart, or combination of both; or (vii) any clinic or facility providing abortion services; or (viii) as a general merchandise store that exceeds five thousand (5,000) square feet or as a department store; or (ix) as an automobile or truck repair or services (including lubrication) facility; or (x) any health spa, fitness center or workout facility that exceeds five thousand (5,000) square feet which is open to the public; or (xi) as a beauty school or barber school or technical school or other place of instruction; or (xi) intentionally omitted; or (xii) child day care center or pre-school facility which is open to the public.

F. Buildings and Site Improvements. The Property shall be developed under the following standards unless otherwise approved by the Developer in its sole discretion:

(1) The design and construction of any building or any remodeling, reconstruction or permitted expansion thereof shall be of high quality. Any building constructed within the Property shall have a glass, brick, stone, or EIFS exterior (or combination thereof).

(2) No detached facilities, buildings or structures (except approved signage, structured parking, and approved dumpster enclosures) of any kind shall be constructed on the Property.

(3) Intentionally Omitted

(4) Any rooftop equipment or building components shall be screened from public view from all directions.

(5) No rooftop sign shall be erected on any building constructed within the Property.

(6) Subject to governmental approval and the City Development Agreement, (i) no more than one (1) freestanding monument style (as defined by

applicable City Code) identification signs may be erected within each of the two (2) lots comprising the Property in a design, height, size, and locations approved by the Developer (which approval will not be unreasonably withheld or delayed) and otherwise compliant with City Code and the City Development Agreement, and (ii) any building with individual tenant spaces having storefronts and devoted solely to retail uses may have one (1) exterior fascia sign for each tenant identifying the name and/or logo of such tenant. Developer agrees it shall be unreasonable for it to withhold, condition or delay its approval of the design, height, size or location of any of the Owner's exterior signs if such signs are otherwise consistent with the types of signs situated in the West Village Pointe Subdivision on the date of this Agreement. Any sign permitted in this subsection (6) may advertise only the name of the building and any of its tenants and their logos; such identification sign shall not exceed any limitations set by City Code or the City Development Agreement. Notwithstanding the foregoing, there may be erected by Owner directional signs to facilitate the free flow of traffic, which signage shall be of a monument style, not to exceed four feet (4') in height and three feet (3') in width.

(7) No additional building or other exterior improvements not contemplated on the initial Plans approved by Developer shall be constructed, erected, expanded or altered within the Property until the plans for same (including site layout, elevations, exterior building materials and colors, landscaping, grading plans, signage and parking layout) have been approved in writing by Developer. Developer shall deliver written notice approval or rejection of such plans within ten (10) business days after receipt of the same from Owner, and Developer's failure to deliver notice of rejection within such time shall be deemed approval of such plans. Notwithstanding the provisions of this Agreement, Owner shall have the right to make such alterations, additions or improvements to the interior of the building on the Property, without the prior written approval by Developer.

(8) Until such time as the Property is developed and improved by its Owner, such Owner shall keep the same mowed and in a clean and sightly condition.

Upon the completion of the first of two buildings within the Property, that portion of (i) the 179th Street right of way which adjoins the Property at its westerly property line, and (ii) that portion of the Davenport Plaza easement drive which adjoins the Property at its southerly property line which has not been improved as a paved street or drive shall be seeded, fertilized, watered and mowed by the Owner and maintained in the same condition as the grass areas within the Property.

(9) The Owner of the Property shall continuously provide and maintain a parking ratio which satisfies applicable City Code and the City Development Agreement.

(10) No outdoor satellite shall be installed on the roof of any building or within or on any portion of the Property unless the view of any proposed outdoor satellite is substantially obstructed from public view.

(11) Any area within the Property which houses refuse dumpsters or garbage containers shall be completely surrounded on three (3) sides with a wall the exterior of which shall be constructed of the same materials as the building(s) constructed on the Property; the entrance to such area shall be gated with wrought iron painted black or metal resembling wrought iron and painted black.

(12) No barricades, fences (excluding fences surrounding an inground swimming pool or outdoor mechanical equipment serving and attached to an approved building(s)), or perimeter boundary fences of any kind shall be constructed on the Property except as approved by Developer in its sole discretion.

(13) (Omitted)

(14) All utilities and sewers serving and located within the Property shall be installed underground. Nothing in this Agreement shall be construed to require a cover over any portion of the Property which serves as a necessary storm water detention cell; the surface of any such in ground detention cell shall be covered with grass and/or landscaping which shall be maintained in the manner as other grass and landscaped areas within the Property.

(15) The roof (excluding canopies and ornamental coverings) of an approved building within the Property which is visible to the Public may not be metal, whether or not painted.

4. **Indemnity.** Owner, its successors and assigns shall indemnify, defend and save Developer and its agents, employees, members, directors and officers harmless from all loss, damages, liability, costs or expenses, including, but not limited to, reasonable attorney's fees and all other sums incurred by or threatened against Developer, its agents, employees, members, directors and officers because of any claim or assertion of liability arising or alleged to have arisen out of any act or omission of Owner, its agents, employees and contractors, for any work to be performed by or at the direction of the Owner pursuant to this Agreement.

5. **Miscellaneous.**

A. All notices, requests, demands or other communications ("Notices") hereunder shall be in writing and given by certified mail, return receipt requested or by national overnight courier (e.g., Federal Express, UPS, Airborne) and, in the case of courier service, shall be effective as of the date of delivery to the intended recipient as shown on the courier's records, and in the case of mail, shall be effective three (3) days (excluding weekends and holidays) after mailing. Notices shall be addressed as shown below or to such other address as may be specified from time to time in writing by either party:

To Developer: Village West LLC
c/o The Lerner Company
10855 West Dodge Road, Suite 270
Omaha, NE 68154

To Owner:

Williquors Holding Company, LL C
3025 Yorktown Drive
Bismarck, ND 58503
Attention: William Klein

With copy to:
Scott Blount
101 S. Reid St. Ste. 201
Sioux Falls, SD 57103

B. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

C. The captions heading the various sections of this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of their respective sections.

D. This Agreement, and all of its exhibits and incorporated documents, constitutes the entire integrated agreement between Owner and Developer relating to the items described herein, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral.

E. This Agreement shall be interpreted according to Nebraska law. The invalidity of any provision of this Agreement shall not affect the remaining provisions. One or more waivers of a default shall not be deemed a waiver of a later default.

F. In the event Developer does not respond to Owner's written requests for approvals or consents of Developer as required by this Agreement, within ten (10) business days of the effective date of delivery to Developer of such Owner's written request, such request shall be deemed approved.

G. This Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns. The obligations of Owner under this Agreement shall be deemed covenants running with the land and shall bind the Property, and every owner acquiring an interest in the Property, in perpetuity. The Owner acknowledges that the execution and delivery of this Agreement was a material inducement to and consideration for Developer's conveyance of the Property to Owner.

H. This Agreement may be amended only by written agreement of the Parties and their respective successors and assigns which amendment shall be deemed effective upon recordation against the Property with the Register of Deeds of Douglas County, Nebraska.

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SELLER:

VILLAGE WEST LLC

By: [Signature]
Name: Salvadore Carta
Title: Member
Date: October 13, 2021

BUYER:

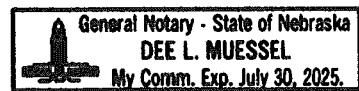
Williquors Holding Company, LLC

By: _____
Name: William Klein
Title: Managing Member
Date: October 13, 2021

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 7th day of October 2021, by Salvadore Carta, Member of VILLAGE WEST LLC, a Nebraska limited liability company, on behalf of such limited liability company.

[Signature]
Notary Public



STATE OF NORTH DAKOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of October 2021, by William Klein, Managing Member of Williquors Holding Company, LLC, a North Dakota limited liability company, on behalf of such limited liability company.

Notary Public

