



MISC 2010072037



AUG 13 2010 09:51 P 2

Fee amount: 14.50
FB: 0C-04510
COMP: MB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
08/13/2010 09:51:01.00



2010072037

[Space above for Register of Deeds]

FILED AS RECEIVED

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

FILED AS IS

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Amendment") is made and entered into as of the ___ day of June, 2010 by 168th and Blondo L.L.C., a Nebraska limited liability company (the "Declarant").

0c-04510

WHEREAS, the Declarant recorded the Declaration of Covenants, Conditions, Restrictions and Easements in the office of the Register of Deeds of Douglas County, Nebraska, on May 6, 2008, as Instrument No. 2008044516 (the "Declaration"), encumbering the property legally described as Lots 1, 2, 3, 4, 5, 7 and 8 of Briar Square, a subdivision as surveyed, platted and recorded in Douglas County Nebraska (being a replat of Lot 331 Briar Hills and Lot 2, Briar Hills Replat 3, each subdivisions in Douglas County, Nebraska) and Lots 1 and 2, Briar Hills Replat 1, a subdivision as surveyed platted and recorded in Douglas County, Nebraska (being a replat of Lot 6 of Briar Square); and

0c-04495

WHEREAS, pursuant to Section 16.2 of the Declaration, the Declarant has the right to unilaterally amend the Declaration as long as Declarant owns at least 10% of the membership interests in the Association; and

WHEREAS, Declarant currently owns 90% of the membership interests in the Association; and

WHEREAS, the Declarant is entering into this Amendment to modify certain provisions of the Declaration regarding permitted uses.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Declarant hereby agrees as follows:

1. Day Care Restriction.

(a) Notwithstanding any provision contained in the Declaration to the contrary, no portion of the Property, other than Lot 5 of Briar Square (said Lot and any subsequent replattings thereof, "Lot 5"), may be used for the operation of a child day care center (the "Day Care Restriction").

0242801

Return to:
Jacqueline A. Pueppke
Baird Holm LLP
1500 Woodmen Tower
Omaha, NE 68102
DOCS/978277.1

(b) Notwithstanding any provision contained in the Declaration to the contrary, the Day Care Restriction shall automatically terminate upon the earlier of (i) the failure of any Owner or tenant of Lot 5 to commence operation of a child day care center within 12 months after the recording of this Amendment, (ii) after commencing operations, any Owner or tenant of Lot 5 ceases to operate a child day care center on the Lot 5 for a period in excess of three hundred sixty-five (365) consecutive days (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner or tenant of Lot 5); or (iii) thirty (30) years after the date the Declaration was recorded in the Office of the Register of Deeds of Douglas County, Nebraska. In the event the Declaration is not terminated pursuant to 1(b)(i), 1(b)(ii) or 1(c) herein, then the Day Care Restriction will automatically extend for successive periods of ten (10) years each. No further instrument shall be required to be placed of record affecting the above described parcels to effectuate such automatic expiration and termination of this Declaration.

(c) During the Period of Declarant Control, the Day Care Restriction may be terminated, modified or amended in whole or in part by the terms of a recorded document executed by the then Owner of Lot 5 and the Declarant. Thereafter, the Day Care Restriction may be terminated modified or amended in whole or in part by the vote of at least two-thirds (67%) of the Memberships in the Association, including the Memberships held by the then Owner of Lot 5.

2. In the event of a conflict between this Amendment and the Declaration, the terms of this Amendment will control. Capitalized terms used in this Amendment which are not defined herein shall have the same definition as set forth in the Declaration. Unless specifically amended herein, all terms and conditions of the Declaration shall remain in full force and effect as originally executed. This Amendment shall run with the land and be binding on the successors and assigns of the parties hereto.

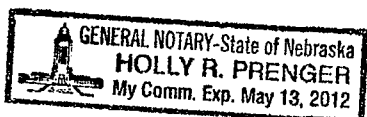
IN WITNESS WHEREOF, the parties hereto have executed this Amendment the date first above written.

168TH AND BLONDO L.L.C., a Nebraska limited liability company

By: *John T. Spustat* Member/Manager
Name: John T. Spustat
Its: MANAGER

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 12th day of August, 2010, by John T. Spustat, the Member/Manager of 168th and Blondo L.L.C., a Nebraska limited liability company, on behalf of the company.



Holly R. Prenger
Notary Public