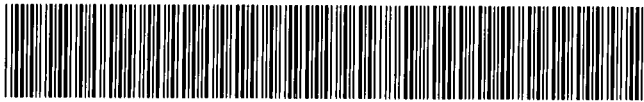




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**AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS**

**THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS** (this "Declaration") is made this 10<sup>th</sup> day of April, 2017, by Father Flanagan's Boys' Home, a tax exempt Nebraska nonprofit corporation (the "Declarant) and terminates in its entirety and restates the Declaration of Restrictive Covenants made by Declarant on October 28<sup>th</sup>, 2008 and filed October 28, 2008 in the Douglas County Register of Deeds as instrument number 2008105080.

WHEREAS, the Declarant is the owner of certain real estate legally described on Exhibit A attached hereto and incorporated herein by this reference, which Declarant uses in connection with its public charitable mission.(the "Boys Town Campus"); and

WHEREAS, Declarant is also the owner of certain real estate legally described on Exhibit B attached hereto and incorporated herein by this reference, which is adjacent to the Boys Town Campus (the "West Farm"); and

WHEREAS, in conjunction with the sale and transfer of the West Farm to New West Farm Holdings, LLC, a Nebraska limited liability company (the "Purchaser"), the Declarant desires to impose certain use and development restrictions on the West Farm to promote development on the West Farm that is consistent with the Declarant's use and operations on the Boys Town Campus; and

WHEREAS, the Declarant is executing this Declaration to memorialize such use and development restrictions.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant hereby declares, covenants and agrees as follows:

- DECLARATION. Each and every one of the covenants, conditions and restrictions set forth in this Declaration is for the benefit of the Declarant as the owner of the Boys Town Campus and each of the successor owners of the Boys Town Campus or any portion thereof. All of the covenants, conditions and restrictions set forth in this Declaration are imposed upon the West Farm and are to be construed as restrictive covenants running with the land and with each and every part thereof and shall bind all owners and the respective assigns and successors in interest of such owners and any lessees, tenants and other occupants of any building thereon.

✓ 002001

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## 2. USES.

(a) Permitted Uses. The West Farm shall only be used generally for office, residential, restaurant, retail and other related purposes in compliance with zoning laws and regulations then applicable to the West Farm.

(b) Prohibited Uses. Notwithstanding the description of the permitted uses described in Section 2(a) to the contrary, no portion of the West Farm shall be used for any of the following purposes:

(i) Gambling. Casino, off-track betting, gambling or other gaming activities.

(ii) Sexually Oriented Businesses. The sale or display of any sexually oriented or pornographic materials; operation of any sexually oriented business or pornographic business, including without limitation, massage parlors, adult book, novelty or video stores, adult cabaret, night club, gentlemen's club, go-go club or strip bars, adult theaters, and nude model studios.

(iii) Tobacco; Marijuana; Head Shops. Shops, the principal purpose of which is the sale of cigarettes, cigars and other tobacco products or any shop selling marijuana products. Shops or so called "head shops" engaged primarily in the sale of rolling paper and other drug paraphernalia.

(iv) Tattoo Parlors. Shops providing tattoos.

(v) Pawn Shops. Pawn shops and other businesses offering payday advances, cash advances or payday loans.

(vi) Gun Shops. Gun shops providing for the sale or discharge of firearms.

(vii) Certain Medical Facilities. Medical facilities of the types set forth below are not permitted:

A. Hospital;

B. Ambulatory surgical center providing any procedure requiring the use of general anesthesia or post procedure recovery time of more than four hours or which requires the facility or provider to obtain an ambulatory surgical center license;

C. Radiation therapy services or procedures that involve applying or implanting ionizing radiation for the treatment of any medical conditions;

D. Emergency medical services offered via unscheduled appointments for the purpose of diagnosing or treating patients with urgent medical conditions; any promotion of such services including, without limitation, signage and advertising;

E. Medical imaging services including diagnostic and treatment exams or procedures, including without limitation, angiography, cardiac catheterization, magnetic resonance imaging, fluoroscopy, nuclear medicine, positron emission tomography, computed tomography, ultrasound, general radiology or mammography; and

F. Without the written consent of Declarant, which consent will not be arbitrarily withheld, medical offices or clinics utilizing medical professionals primarily providing specialized medical or health care service or ancillary health service offices of the following types:

- (1) Ear, nose and throat, including but not limited to, balance disorder treatment, audiology and dispensing hearing aids;
- (2) Pediatric—general and specialty.
- (3) Psychology and psychiatric; and
- (4) Allergy and immunology.

(viii) Prohibited Activities. No portion of the West Farm shall be used for any of the following activities:

- A. Abortion, including provision of or administration of drugs, chemicals or pharmacological agents intended to prevent or end a pregnancy resulting from a previous act, including the so-called “morning after pill”;
- B. Sterilizations;
- C. In vitro fertilization, artificial insemination, cloning, and sperm or egg donation, storage, or sale;
- D. Research or procedures involving embryonic stem cells;
- E. Assisted suicide, euthanasia, or withholding food or fluids from patients who are not dying;
- F. Elective cosmetic procedures related to any sexual organ or sexual transformation, including reconstruction, augmentation, prosthetic insertion, or elective breast reductions or enhancements;
- G. Overnight patient stays; or
- H. The use of space in the building by any person or entity, whose primary business or purpose is the advocacy of, promotion of, or referral for any of the items listed in items (viii) A. through F above.

### 3. SITE DEVELOPMENT REGULATIONS.

(a) All buildings, structures, signs, landscaping, light poles and other improvements on the West Farm shall be constructed, installed and maintained in accordance with (i) the standards for the "Areas of Civic Importance Overlay District" as set forth in the Omaha Municipal Code, as the same may be amended from time to time (the "ACI District Standards").

(b) No building or tenant of any building, nor any person or entity who uses any a building or part of a building, shall use any of the names "Boys Town", "Father Flanagan", "Father Flanagan's Boys' Home", "Boys' Home", or any variation thereof, in print, electronic form, or in any media, websites, whether in describing an exit, the area of town, the building, the activity, or the neighborhood, in naming or advertising, or for any other reason.

(c) All electrical lines, communication lines, water and sewer lines, cable television lines, gas and other pipelines and associated utility services, including metering devices, located on or through the West Farm, other than those located within any enclosed structure, shall be buried underground, except temporary above-ground service shall be allowed when necessary, but only during construction or repair of buildings and improvements.

(d) The West Farm shall at all times be kept reasonably free from debris, paper, leaves, fallen branches and trash of all kinds.

(e) Nothing shall be done on any building site that interferes with natural drainage of surface waters or with existing drainage facilities unless adequate alternate provisions are made therefor.

4. WAIVER, MODIFICATION OR AMENDMENT BY DECLARANT. Purchaser or its successors may petition the Declarant to waive compliance with or grant a variance to any requirements of this Declaration. The Declarant shall have the power to grant such waiver or variance upon such request.

5. TERM: RULE AGAINST PERPETUITIES.

(a) This Declaration, and all covenants, conditions, and restrictions herein shall continue and remain in full force and effect for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Thereafter, this Declaration shall be automatically extended for successive terms of ten (10) years each, unless the Declarant elects to terminate this Declaration effective as of the end of the then current term, which election shall be evidenced by a by written declaration, signed and acknowledged by it and duly recorded with the Register of Deeds for Douglas County, Nebraska.

(b) In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective being contrary to applicable law or prohibited by the "rule against perpetuities" or any similar law, then in that event only the term hereof shall be reduced to the maximum period of time which does not violate such law or the rule against perpetuities as set forth in the laws of the State of Nebraska.

6. AMENDMENT. This Declaration may be amended by Declarant and Purchaser or their respective successors and any such amendment or modification shall be evidenced by a written document signed and acknowledged by the parties required for such amendment or modification and duly recorded with the Register of Deeds for Douglas County, Nebraska.

7. REMEDIES FOR VIOLATIONS. Upon a violation or breach of any of the covenants, conditions or restrictions set forth herein, the Declarant shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them and to recover damages resulting from any violation thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

8. DECLARATION SHALL CONTINUE NOTWITHSTANDING BREACH. It is expressly agreed that no breach of this Declaration shall (i) entitle any party to cancel, rescind or, otherwise terminate this Declaration or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

9. NOTICES. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be (i) hand delivered, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid or (iii) delivered via facsimile transmission, confirmation of transmittal received, and addressed to the Declarant at its address as set forth below:

Father Flanagan's Boys' Home  
Attn: General Counsel  
14100 Crawford Street  
Boys Town, NE 68010  
Facsimile (402) 498-1024

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand delivery, one (1) business day after being deposited with a nationally recognized overnight courier, or upon confirmation of the facsimile transmittal as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

10. ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant from time to time, in its discretion, to any person or entity that will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such person or entity assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Declaration. Any assignment made under this Section 10 shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

11. MISCELLANEOUS. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Nebraska, without reference to principles of conflicts of law. No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the covenants, conditions and restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein. In the event any one or more of the foregoing covenants, conditions and restrictions are declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions and restrictions not specifically declared to be void or unenforceable, but all of the remaining covenants, conditions and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

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IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants to be executed as of the day and year first written above.

FATHER FLANAGAN'S BOYS' HOME, a tax exempt Nebraska nonprofit corporation

By: Philip Ruden

Name: Philip J. Ruden

Its: Executive Vice President, Investments, Chief Investment Officer

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )



This before me on the 11 day of April, 2017, by Philip J. Ruden, the Executive Vice President, Investments, Chief Investment Officer of Father Flanagan's Boys' Home, a tax-exempt Nebraska nonprofit corporation, on behalf of the corporation.

Melissa R. Reiner  
Notary Public

**EXHIBIT A**

**Legal Description of the Boys Town Campus**

All of Section 24, Township 15 North, Range 11 East of the 6<sup>th</sup> P.M., in Douglas County, Nebraska; except those portions taken for road purposes.

NENE  
NWNE  
SENE  
SWNE

NE NW  
NW NW  
SE NW  
SW NW

NE SE  
NW SE  
SE SE  
SW SE

NE SW  
NW SW  
SE SW  
SW SW

## EXHIBIT B

### Legal Description of the West Farm

The East Half (E½) of Section 23, Township 15 North, Range 11 East of the 6th P.M., in Douglas County, Nebraska, EXCEPT the Southeast Quarter of the Southeast Quarter (SE¼ SE¼);

NE NE  
NW NE  
SW NE  
SE NE  
NE SE  
NW SE  
SW SE

AND, EXCEPT the South 10 Acres of the Northeast Quarter of the Southeast Quarter (NE¼ SE¼) being more particularly described as follows:

Beginning at the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 23; thence South 89°58'40" West (assumed bearing), for 1,323.72 feet, to the Southwest corner of said Northeast Quarter of the Southeast Quarter; thence North 00°10'42" West, for 329.03 feet, along the West line of said Northeast Quarter of the Southeast Quarter; thence North 89°58'40" East, for 1,324.05 feet, to the East line of said Northeast Quarter of the Southeast Quarter; thence South 00°07'15" East, for 329.03 feet, to the Point of Beginning;

AND, EXCEPT that part thereof being more particularly described as follows:

Beginning at the Northeast corner of said Quarter Section; thence Westerly, a distance of 2,652.55 feet, to the Northwest corner of said Quarter Section; thence Southerly, deflecting 90°05'12" left, a distance of 545.00 feet, along the West line of said Quarter Section; thence Northeasterly, deflecting 124°00'35" left, a distance of 713.54 feet; thence Easterly, deflecting 27°34'36" right, a distance of 352.28 feet; thence Easterly, deflecting 06°31'11" right, a distance of 400.00 feet; thence Easterly, deflecting 05°42'38" right, a distance of 1,004.99 feet; thence Southeasterly, deflecting 20°51'16" right, a distance of 212.43 feet; thence Southeasterly, deflecting 30°09'26" right, a distance of 83.75 feet; thence Southerly, deflecting 33°15'40" right, a distance of 780.00 feet; thence Southerly, deflecting 09°27'44" right, a distance of 91.24 feet; thence Southerly, deflecting 08°50'22" left, a distance of 460.03 feet; thence Southerly, deflecting 10°40'05" left, a distance of 355.45 feet, to a point on the Westerly 144th Street right-of-way line; thence Easterly, deflecting 79°57'17" left, a distance of 33.00 feet, to a point on the East line of said Quarter Section; thence Northerly, deflecting 90°00'00" left, a distance of 2,050.00 feet, along said line, to the Point of Beginning;

AND, EXCEPT that part thereof being more particularly described as follows:

Commencing at the Southeast corner of said Section 23; thence North, along the East line of the Southeast Quarter of said Section 23, for a distance of 1,653.51 feet; thence West and perpendicular to the East line of the Southeast Quarter of said Section 23, for a distance of 33 feet, to the Point of Beginning; thence continuing West and perpendicular to the East line of the Southeast Quarter of said Section 23, for a distance of 16 feet; thence North and parallel with the East lines of the Southeast and Northeast Quarters of said Section 23, for a distance of 1,683.34 feet, to a point; thence South 10°25'07" East, for a distance of 91.73 feet, to a point, said point being 33 feet West of the East line of the Northeast Quarter of said Section 23; thence South and parallel with the East lines of the Northeast and Southeast Quarters of said Section 23, for a distance of 1,593.03 feet, to the Point of Beginning;

AND, EXCEPT that part thereof being more particularly described as follows:

Beginning at the Southeast corner of Lot 21, Piedmont Addition, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska; thence East and parallel to the North right-of-way line of Pacific Street, a distance of 1,323.39 feet; thence South, a distance of 17.00 feet, to the North right-of-way line of Pacific Street; thence West, along the North right-of-way line of Pacific Street, a distance of 1,323.39 feet; thence North, a distance of 17.00 feet, to the Point of Beginning;

Subject to public roads and/or highways