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Register of Deeds, Douglas County, NE
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2012072922

DECLARATION OF RESTRICTIONS AND COVENANTS

Lot 2 West Village Pointe Replat 7; (0C-43363)
Lots 2 and 3 West Village Pointe; and (0C-43331)
Lots 1 to 9 inclusive and Lot 11 West Village Pointe Replat 5, (0C-43336)
Douglas County, Nebraska

This **Declaration Of Restrictions and Covenants** (this "Declaration") dated as of July 20, 2012, is made by **Village West LLC**, a Nebraska Limited Liability Company, with a mailing address c/o The Lerner Company, 10855 W. Dodge Road, Suite 270, Omaha NE 68154 ("Declarant"), for the benefit of **Driving Force LLC**, a Nebraska Limited Liability Company ("Owner") with a mailing address of c/o Best Construction, 18124 Tammy Trail, Omaha NE 68135.

PRELIMINARY STATEMENT

Declarant is the record owner of Lot 2 West Village Pointe Replat 7, Lots 2 and 3 West Village Pointe, and Lots 1 to 9 inclusive and Lot 11 West Village Pointe Replat 5, all situated in West Village Pointe, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (collectively the "Restricted Parcels").

Owner is the record owner of or is about to acquire Lot 1, West Village Pointe Replat 7, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded ("Owner's Parcel").

(0C-43363)

The Restricted Parcels, together with Owner's Parcel and certain other properties, constitute a mixed use development commonly known as "West Village Pointe".

As a condition precedent to Owner's acquisition from Declarant of the Owner's Parcel, Declarant agreed to 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 establishes the following restriction and creates the following covenants:

1. (a) The Restricted Parcels shall not be used for the operation of a child day care center or as a pre-school facility. For the purposes of this Declaration, a "child day care center" shall mean a full-time facility which offers its services to the public and whose primary use and business is the day care of children. For purposes of this Declaration, a "pre-school facility" shall mean a full-time facility which provides training or education of any sort to children having an age of fewer than five (5) years. Child day care and/or pre-school services and activities or education of any sort provided to the employees of a business located within the Restrictive Parcels or the West Village Pointe Subdivision, as platted and replatted, shall not be considered a violation of the restrictions established in this Declaration.

(b) The restrictions set for in Section 1.(a) immediately above shall terminate and no longer be binding upon or restrict the Restricted Parcels upon the occurrence of the following: in the event the Owner's Parcel is not operated, as its primary use, as a child day care center or pre-school facility for a period of six (6) consecutive months (excluding periods of restoration due to casualty or reasonable periods of remodeling and after the earlier of (A) such child day care center's or pre-school facility's opening with the public, and (B) a construction period of eighteen (18) months following the date of the Owner's acquisition of Owner's Parcel, as evidenced by the recordation date of Owner's deed of conveyance.

Declarant's recordation against the Owner's Parcel and the Restricted Parcels of its affidavit, to the effect that the conditions precedent for the termination of such restrictions have occurred, shall be deemed conclusive evidence of such termination and the effective date of such termination reflected in such affidavit.

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

3. 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.

4. 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

Owner: Driving Force LLC
c/o Best Construction
18124 Tammy Trail
Omaha NE 68135

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

5. 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.

6. This Declaration shall not be modified or amended in any respect except by a writing executed by Owner and Declarant and recorded in the miscellaneous records of the Register of Deeds of Douglas County, Nebraska.

7. 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.

8. 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: 

Name: Jay R. Lerner

Title: Manager

DRIVING FORCE LLC
a Nebraska limited liability company,

By: 

Name: Ricky Bergholz

Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 19th day of July, 2012, by Jay R. Lerner, Manager of Village West LLC, a Nebraska limited liability company, on behalf of such limited liability company.

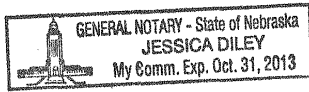


Dee Muesel
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 20th day of July, 2012 by Rick Bergholz, member* Driving Force LLC, a Nebraska limited liability company, on behalf of such limited liability company.

* President



Jessica Diley
Notary Public