

FILED SARPY CO. NE  
INSTRUMENT NUMBER  
2005-11844

2005 AP 15 AM 8:37

*Glenn J. Dowling*  
REGISTER OF DEEDS

COUNTER LM C.E. AG  
VERIFY AG D.E. JS  
PROOF P  
FEES \$ 138.50  
CHECK# 20616  
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS OF HARRISON HILLS (INDUSTRIAL LOTS),  
SARPY COUNTY, NEBRASKA**

THIS DECLARATION is made and executed as of the 7th day of April, 2005, by HARRISON I-80 LLC, a Nebraska limited liability company (hereinafter referred to as the "Declarant").

**PRELIMINARY STATEMENT**

The Declarant is the owner of the following described real property:

Lots nine (9) through fifteen (15), Harrison Hills, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot", as defined below.

The Declarant desires to provide (i) for the preservation of the values and amenities of the Lots, and (ii) for the maintenance of the character and industrial/commercial integrity of the Lots.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability, attractiveness, and enjoyment of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots shall be subject to all and each of the following conditions and other terms:

**I. DEFINITIONS**

(a) "Declarant" shall mean and refer to Harrison I-80 LLC, a Nebraska limited liability company.

Return to:

John Q. Bachman  
PANSING HOGAN ERNST & BACHMAN LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114

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- (b) The "Lots" shall mean and refer to Lots nine (9) through fifteen (15), Harrison Hills, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, or as any of such Lots may hereafter be subdivided, replatted or reconfigured, in whole or in part. References to individual Lots may be made by their respective Lot numbers.
- (c) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract seller, but excluding those persons having such interest merely as security for the performance of an obligation (including the trustee under a deed of trust). "Owner" shall include Declarant when the Owner of a Lot.
- (d) "Subdivision" shall mean Harrison Hills, as surveyed, platted and recorded in Sarpy County, Nebraska.

## II. LIMITATIONS AS TO TYPE OF CONSTRUCTION

- (a) All buildings constructed within the Subdivision shall be of approved construction, such as brick, stone, painted concrete, decorative block or architectural concrete over a steel frame. No metal buildings of any type shall be constructed. No painted or unpainted concrete block (except decorative block) or metal is allowed on any facade or front elevation, without the express written consent of Declarant, which may be withheld in its sole discretion.
- (b) No building shall be moved from outside the Subdivision onto any Lot.

## III. BUILDING SET-BACKS/LANDSCAPE AREAS

- (a) All improvements on the Lots shall comply with all applicable set-back requirements of the zoning code of the City of LaVista, Sarpy County, Nebraska, as the same may be amended from time to time.
- (b) The front yard and all other landscaped areas, including that area between the street paving and the property line of all built upon Lots shall be planted with grass and properly maintained as a lawn area, except that part used for driveways or parking. Deciduous trees shall be a minimum two inch (2") caliper and evergreens shall be at least six feet (6') tall. The front yard shall contain an underground water sprinkler system. Parking and paving shall not be permitted closer than fifteen feet (15') from the street curb line. All parking areas and access points must have concrete curbing.

## IV. LIMITATIONS AS TO PERCENTAGE OF LAND COVERED BY BUILDINGS

The total coverage of buildings and structures, including docks and loading platforms, shall not exceed sixty-five percent (65%) of the area of each Lot.

## V. PARKING FACILITIES

All vehicular parking (customer, visitor and employee) shall be off-street. The minimum number of vehicular parking spaces required shall equal at least forty percent (40%) of the number of employees normally engaged at any one time in the business or industry conducted on each individual Lot. Parking areas shall not be used for any purpose other than the parking of automotive or truck vehicles belonging to the Owner of such Lots and its visitors, contractors, agents, and employees. In no event shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operation, be permitted in the parking areas. All parking areas shall be hard surfaced with either concrete or asphalt. Automobiles, trucks and other self-propelled vehicles parked out of doors within the Subdivision must be in operating condition.

## VI. LOADING AREA

All loading and unloading operations shall be off-street. In no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will unreasonably interfere with ingress or egress thereto. All loading areas shall be hard surfaced with concrete or heavy duty asphalt. No loading areas shall be constructed facing any public street or highway without prior written approval of Declarant, which may be withheld in Declarant's sole discretion.

## VII. OUTSIDE STORAGE

No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be so screened by fences, walls or plantings that it cannot be seen from any public street. In no event shall any part of the required parking or lawn areas be used for the storage or abandonment of any property. No area outside the confines of a walled building shall be used to display any article of merchandise held for the purpose of sale. No outside storage shall be permitted closer to any public street than the building set-back requirement without prior written approval of Declarant, which may be withheld in Declarant's sole judgment.

## VIII. ERECTION OF SIGNS

No Owner, lessee or occupant of any Lot shall use, or permit to be used, any portion of the property under its control for the erection of signs, billboards or displays, other than permitted pylon or "monument type" signs directly connected with the business operated on such Lot which advertise only the name of its business and its logo, without the prior written consent of Declarant, which may be withheld in its sole discretion. No flashing signs or lights, revolving beacons, strobe lights or similar electrical or mechanical mechanisms, whether permanent or temporary in nature, shall be permitted. No signs shall be erected or maintained on the roof of any building. Written approval by the Declarant is required prior to the erection or modification of any sign, other than a sign attached to a building and identifying the address and/or the occupant thereof. All pylon or "monument type" signs must be less than twenty-five (25) feet in height; the pole of any pylon sign must be clad with the principal material of the sign itself.

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IX. MAINTENANCE OF UNDEVELOPED AREAS

That portion of each Lot which is not improved through the construction of buildings, parking facilities, loading facilities and lawn area, as hereinbefore provided, shall be seeded to a cover planting which grows to a height not to exceed approximately twelve (12) inches and shall be continuously and attractively maintained. In no event and at no time shall any Lot be planted to cultivated row crops. Each Lot Owner shall be responsible for the maintenance of the property beyond the lot line up to the edge of the pavement of the abutting street or streets.

X. OFFENSIVE USES

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is, becomes or produces, an annoyance, nuisance or hazard to the Owner or occupant of other property within the Subdivision, including, but not limited to, unsightliness or the emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke, noise or "Hazardous Substance," as defined in §101(14) of CERCLA (42 U.S.C. §9601 (14)) or any applicable present or future state or local law, rule, regulation or ordinance, as amended from time to time.

XI. ZONING AND BUILDING REGULATIONS

In addition to the foregoing, the use and building regulations, as now or hereafter imposed by the provisions of the zoning and building regulations of all governmental entities having jurisdiction shall apply throughout the Subdivision, except as such may be modified by duly constituted authority.

XII. APPROVAL OF PLANS

- (a) No building, fence, wall, driveway, parking area, landscaping, signage or other external improvements, above or below the surface of the ground, shall be built, erected, placed, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading or excavation be commenced without the express written approval of the Declarant, which will not be unreasonably withheld or delayed. "Approval of Declarant" shall also mean approval by another person designated by Declarant in a writing duly recorded in the Office of the Register of Deeds of Sarpy County, Nebraska, and indexed against the Subdivision as approving authority in lieu of Declarant.
- (b) Documents submitted to Declarant shall be clear, concise, complete, consistent and legible. Samples of materials to be included in the improvement may be required of the applicant at the discretion of Declarant. Submittals shall be made in duplicate and comments and actions of Declarant will be identically marked on both copies of said submittals. One copy will be returned to the applicant and one copy will be retained as part of the permanent records of Declarant. Each applicant shall submit to Declarant (i) a site plan, indicating specific improvement and indicating Lot number, street address, grading, surface drainage, pylon or "monument type" signage, and sidewalks; (ii) complete set of construction plans, including, but not limited to, floor areas of each level, wall sections, exterior elevations clearly indicating type and extent of exterior materials and color, roofing and landscaping (herein collectively the "Plans"). Concurrently with submission of

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the plans, the Owner shall notify the Declarant of the Owner's mailing address.

- (c) Any notice of approval shall be in writing and mailed to the Owner at the address specified by Owner upon submission of the plans. Failure of Declarant to give written approval of submitted plans within thirty (30) days after receipt of all the plans shall operate as disapproval of the plans submitted.

### XIII. COMPLIANCE WITH GOVERNMENT REGULATIONS, ETC.

The Owner of each Lot shall, at all times, keep the premises, buildings, improvements and appurtenances in a safe, clean, and high standard condition and in all respects in compliance with applicable rules, regulations, ordinances and statutes of all governmental authorities having jurisdiction. All Lots shall be kept free of rubbish, debris, merchandise and building material except during reasonable construction periods for the main structures. Vacant Lots shall not be used for dumping of earth or other waste materials and shall be maintained level and smooth enough for machine mowing. A building upon which construction has begun must be completed within one year from the date the foundation was dug for such building.

### XIV. DURATION

- (a) The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, and shall be automatically renewed and extended for successive periods of five (5) years each, unless and until the then Owners of seventy-five percent (75%) of the Lots within the Subdivision execute and record an instrument terminating this Declaration. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Provided, however, any such amendment shall not impose any greater burden or standard than is expressed in this Declaration with respect to any Lot or Lots which have been transferred from Declarant prior to the recordation date of such amendment. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.
- (b) The Declarant, or any Owner or contract purchaser of a Lot, shall have the right to enforce, by proceeding at law or in equity, all restrictions and covenants now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation. Failure by the Declarant, any Owner or contract purchaser to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

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XV. SEVERABILITY

If any term or provision of this Declaration, or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Declaration and the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision thereof shall be valid and shall be enforced to the extent permitted by law.

XVI. NOTICES

All notices to be given pursuant to this Declaration shall be in writing and must be given by United States mail, certified or registered, postage prepaid, properly addressed to the Owner of each Lot by name and address as shown on the then current property tax rolls in Sarpy County, Nebraska. All notices to Declarant shall be sent to it at the following address, or the address as requested by Declarant:

Harrison I-80 LLC  
c/o The Lerner Company  
10855 West Dodge Road, Suite 270  
Omaha, Nebraska 68154

XVII. ATTORNEY'S FEES

In the event any entity which is entitled to the benefits of this Declaration brings any action at law or equity to enforce this Declaration, the prevailing party of such action shall be indemnified by the other party for all of the reasonable attorney's fees and all court costs incurred by such prevailing party in connection with such enforcement action in addition to all other appropriate relief.

XVIII. SUCCESSORS AND ASSIGNS

The Declaration created hereby shall inure to the benefit of, and be binding upon, the Owners of all Lots within the Subdivision and their respective successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner relating to the Lot or Lots sold arising out of this Declaration from and after the sale and conveyance of title.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first set forth above.

HARRISON I-80 LLC, a Nebraska limited liability company

By:   
Jay R. Lerner, Manager

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STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of APRIL, 2005, by Jay R. Lerner, Manager of HARRISON I-80 LLC, a Nebraska limited liability company, on behalf of the limited liability company.



*Karen T. Rodis*  
\_\_\_\_\_  
Notary Public