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Lucie Kogals
REGISTER OF DEEDS
PLATTE COUNTY, NE

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Lincoln, NE 68508

DECLARATION OF RESTRICTIVE COVENANTS

Recitals

- A. WHO Development, LLC ("Declarant") owns that certain real property located in Columbus, Platte County, Nebraska legally described as:

Lots One (1) through Five (5), Legacy Square Subdivision, a Subdivision of Lots 1 and 2, Block A, Randall 3rd Addition to the City of Columbus, Platte County, Nebraska

(the "Property").

- B. Declarant, as the owner of all of the Lots located within the Property (individually each a "Lot," collectively the "Lots"), desires to develop the Property into a commercial center containing multiple uses and hereby adopts this Declaration of Restrictive Covenants ("Declaration") to govern the use, enjoyment and design of the Property.

NOW THEREFORE, the Declarant hereby creates, establishes, and imposes the following covenants and restrictions on the Lots located within the Property:

1. **Architectural Control.**

a. **Architectural Committee.**

- i. Committee Composition. During the Period of Declarant Control or until Declarant relinquishes its right provided herein, the Declarant shall serve as the Architectural Committee. Following the Period of Declarant Control or the relinquishment of Declarant's rights set forth above, an Architectural Committee shall be organized by the Declarant or the Association, as

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applicable, and shall consist of three (3) persons. There may also be two (2) alternate members to be designated by the Declarant or the Association, as applicable, to act as a substitute for any member of the Architectural Committee in the event of his or her unavailability or disability.

- ii. Appointment. The members of the Architectural Committee shall be selected as follows:
 - a. Until the expiration of the Period of Declarant Control, Declarant shall act as the Architectural Committee or, alternatively in the Declarant's sole determination, Declarant shall have the right to appoint and remove all members and alternate members of the Architectural Committee. The Declarant may temporarily or permanently relinquish its right to appoint all or some of the Architectural Committee members and alternates at any time prior to the expiration of the Period of Declarant Control.
 - b. If and when Declarant relinquished its appointment rights, the Association through its Board shall, without further act or deed of the Declarant, exercise all rights of Declarant provided herein to appoint and remove members and alternate members of the Architectural Committee, to enforce and implement the Development Guidelines and to perform Declarant's obligations under this Article; and at such time, all obligations of Declarant under this Article shall automatically terminate, and except as otherwise provided herein, all rights and obligations of Declarant under this Article shall vest in the Board.
- iii. Terms of Office. The term of all Architectural Committee members and alternates appointed by Declarant shall be set by Declarant. The term of all Architectural Committee members and alternates appointed by the Board shall be one year. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members whose terms have expired may be reappointed or re-elected. A member of the Architectural Committee shall not be required to satisfy any particular qualifications for membership and may be a member of the Board, an officer of the Association, an officer or employee of Declarant or a Person who is not a member or Lot Owner or Lessee or otherwise affiliated with the Property.
- iv. Resignations; Vacancies. Any member of the Architectural Committee may, at any time, resign from the Architectural Committee upon written notice to Declarant, so long as Declarant has the sole right to appoint any member, or upon

written notice to the remaining Architectural Committee members and to the Board when the right to appoint any members is vested in the Board. Vacancies on the Architectural Committee of members appointed by Declarant, however caused, shall be filled by Declarant so long as Declarant has the right to appoint members. Vacancies on the Architectural Committee of members appointed by the Association, however, caused, shall be filled by the Board.

- v. **Meetings.** The Architectural Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder. The vote or written consent of any two members or designated alternates shall constitute an act by the Architectural Committee. The Architectural Committee shall keep written records of all actions taken by it.

b. **Powers and Duties.** The Architectural Committee shall have all of the powers and authority conferred upon it by this Declaration and the Articles and Bylaws, and shall have the right to hire and retain services of engineers or other consultants and professionals as they deem necessary to perform the duties of the Architectural Committee. It shall be the duty of the Architectural Committee to perform the functions required of it by this Declaration; to consider and act upon all Applications and the plans, specifications and other documents submitted to it pursuant to the terms hereof; to adopt Development Guidelines; and to perform all other duties delegated to and imposed upon it by this Declaration.

c. **Approval of Plans.** Plans for any building, parking area, sidewalk, or other temporary or permanent exterior improvement, including advertising devices signage, lighting, fences, exterior remodeling, color scheme, glass color, reconstruction or additions, shall be submitted to the Architectural Committee and shall show the design, size and exterior material for the roof, building or improvement, the plot plan and landscape plan for the Lot. One set of the approved plans ("Plans") shall be left on permanent file with the Architectural Committee. Construction of the building or improvement shall not be commenced unless written approval of the Plans has been secured from the Architectural Committee. The Architectural Committee shall have the exclusive right to disapprove the Plans, if in the Architectural Committee's reasonable discretion, the Plans: (i) do not conform to the Development Guidelines set forth in section 2 below, (ii) would adversely affect the aesthetic appearance of the Property, or (iii) would adversely affect the use and enjoyment of another Lot. In the event the Architectural Committee fails to give written approval or disapproval within thirty (30) days after receipt of the Plans, the Plans shall be deemed to be approved. Upon disapproval, a written statement of the grounds for disapproval shall be provided by Architectural Committee.

d. **Transfer of Declarant's Rights.** The rights and duties reserved to the Declarant under Section 1(a) above may be assigned to the Association (as

defined below) by Declarant at any time, but shall be assigned to the Association after the Period of Declarant Control.

e. **VariANCES.** The Architectural Committee is hereby authorized and empowered to grant variances for improvements or uses within the Property prohibited or regulated by this Declaration or the Development Guidelines and further to grant reasonable requests for relief from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein. Notwithstanding the foregoing, the Architectural Committee shall not grant such a variance to any Lot Owner unless:

- i. such Lot Owner has obtained all necessary governmental approvals,
- ii. the construction of Improvements or the uses which are called for under the request for the variance shall be consistent in design, character, appearance and quality of construction with the other Improvements and uses in the Property,
- iii. the variances do not materially injure, in the judgment of the Architectural Committee, any of the Lots or Improvements within the Property,
- iv. the variances do not violate any exclusive use rights granted to any other Lot Owner within the Property; and
- v. the construction of Improvements and/or the uses called for under the request for variance are otherwise subject to and conform with all applicable laws, ordinances, rules and regulations, including, but not limited to, zoning regulations of any governmental agency or political entity having jurisdiction over the Property.

No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person or portion of the Property, and the grant of a variance shall not obligate the Architectural Committee to grant other variances. In addition to the variance powers provided herein, the Architectural Committee shall be empowered to issue from time to time reasonable interpretations of the intent of the provisions of this Declaration or the Guidelines, which interpretations shall not constitute variances from the provisions of this Declaration, but shall be designed to further the implementation of this Declaration in a manner consistent with its provisions.

2. **Approval Standards.**

a. **Development Guidelines.** The Architectural Committee may, from time to time, and in its sole discretion, draft, propose, adopt and amend certain

standards and regulations to be known as Development Guidelines. Such Development Guidelines, and any amendments thereto, shall supplement, interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review, and (b) guidelines for improvements which shall include, but not be limited to, guidelines for architectural design of improvements, site plans, floor plans, setbacks and building envelopes, exterior elevations for improvements, height limitations, landscape plans, irrigation plans, color schemes, signage, exterior lighting, finishes and materials for use in the Property. The initial Development Guidelines are set forth below. Any Development Guidelines and/or any amendments thereto adopted by the Architectural Committee before Declarant relinquishes its Declarant rights shall be effective only after approval by Declarant in Declarant's sole discretion. If and when the Declarant relinquishes its Declarant rights, any amendment to the Development Guidelines must be approved by a majority of the outstanding votes of the Association. Amendments to the Development Guidelines need not be filed in order to be effective or enforceable against any Lot Owner having notice of the amendment. The intent of specific references to specifications and materials is to establish clear design standards, for which substitute, comparable, or equivalent alternative products, materials, or colors will be considered by the Declarant as a part of the Plan approval process set forth herein.

1. *Building Types.* Building types shall be limited to: retail, office, flex space, restaurants, hotel, residential living structures including apartment buildings, free standing exterior apartment garages, indoor mini-storage, recycling collection facilities, and civic uses such as a fire station. No rural, utility, or pole structures of any type will be permitted within the Property.

2. *Exterior Solid Wall Materials.* Walls shall be constructed with materials that emphasize the primary points of entry.

i. *Office Buildings* shall have solid wall materials consisting predominantly of brick, split face block, natural stone, natural look hardboard, architectural metal wall panels or other high quality products on all four elevations or as approved by the Declarant.

ii. *Retail and Flex Space Buildings* shall have (i) on the predominant street face side: face brick or natural stone beltline panels, face brick or stone panels interfaced with accent wall panels at all entrances on the predominant street facing sides, in colors approved by the Declarant, and (ii) on the less visible side and backside walls: (natural look hardboard siding), or insulated architectural metal wall panels.

3. *Windows and Storefront Systems.* Windows and storefronts shall have aluminum frames or otherwise approved by Declarant. All primary business entrances shall have an extended overhang or canopy beyond the door swing.

4. *Accent Colors.* Accent colors, details and materials will be considered and approved individually by the Declarant.

5. *Landscaping.* All landscaping shall be coordinated with and consistent with the overall landscape plan for the Property as approved by Declarant. See Section 3(e) below.

6. *Paving.* All paving, sidewalks, parking lots, etc. must be concrete, unless approved by Declarant.

7. *Fencing.* All fencing type and location must be approved by architectural committee.

8. *Trash.* All outdoor trash receptacles must be fully enclosed by trash enclosures and must be approved by the architectural committee.

b. **Compliance with Development Guidelines.** All Lot Owners shall be responsible for strictly complying with the Development Guidelines. Upon failure to comply with the Development Guidelines, the Declarant or the Association, as applicable, may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual costs plus a ten percent (10%) administrative charge against the Lot. When shown of record, such assessment shall be a lien upon the Lot and shall bear interest at the rate established by the Association for unpaid assessments. The Development Guidelines shall be available for review by all Lot Owners, mortgagees, and prospective Lot Owners.

c. **Pre-Existing Building Development Guidelines Exceptions.** A former Wal-Mart building ("Wal-Mart Building") existed on Lot 5, Legacy Square Subdivision, City of Columbus, Platte County, Nebraska ("Wal-Mart Lot") prior to the execution and filing of this Declaration. Declarant and/or third party owner of the Wal-Mart Lot intends to repurpose a portion of the Wal-Mart Building. Since the Wal-Mart Building has already been constructed prior to this Declaration, it cannot comply with certain Development Guidelines set forth herein. Therefore, notwithstanding anything to the contrary contained herein, the Wal-Mart Building shall not be subject to any of the Development Guidelines related to the design, construction or materials of a building. In particular, without limitation, the Wal-Mart Building is painted block, which shall be a permitted exterior for the Wal-Mart Building but no other buildings on the Property. If any new buildings are constructed on the Wal-Mart Lot, said buildings shall comply with all Development Guidelines.

d. **Temporary Construction Structures.** Temporary construction office or trailers and temporary equipment storage structures shall not be subject to the Development Guidelines.

3. **Construction & Maintenance - Lots**

a. **Covenant to Maintain Lot:** Each Lot Owner within the Property does hereby, and future Lot Owners, by acceptance of a deed to such Lot, covenant to repair and maintain the improvements and the landscaping on such Lot Owner's Lot.

b. **Exterior Maintenance:** All members of the Association covenant to maintain their Lot and improvements and to comply with the Design Covenants in a neat and attractive manner. In addition to the Design Covenants, the Association may adopt from time to time minimum exterior maintenance standards to establish the minimum acceptable standards for satisfaction of this covenant.

c. **Exterior Maintenance Assessment:** In the event a Lot Owner fails to maintain a Lot according to the maintenance standards, the Association may, upon ten (10) days' written notice to the Lot Owner, maintain the Lot and the exterior of any improvements and shall have the right to enter upon any Lot, at reasonable times, to perform such maintenance. The written notice shall specify the required maintenance and the time by which it must be completed. The actual cost of the maintenance, plus a ten percent (10%) administrative fee, shall be paid by the Lot Owner to the Association within ten (10) days of billing. Upon failure of the Lot Owner to remit payment, the cost of maintenance and administrative fees shall be specifically assessed against the Lot, shall bear interest at the rate provided for unpaid assessments and, when shown of record, shall be a lien upon the Lot.

d. **Sprinkler Systems:** All Lots within the Property shall have an underground sprinkler system installed on the Lot by the Lot Owner prior to seeding or sodding the Lot. The Declarant shall have the right to name the designer of the sprinkler system in order to assure continuity and compatibility of the individual systems with the overall system of water distribution. Plans for the sprinkler system shall be approved by the Declarant prior to installation. The Lot Owners are also responsible for maintaining and repairing the underground sprinkler systems on their respective Lots. Provided, however, this provision shall not apply to the Wal-Mart Lot unless and until said owner(s) of any portion of the Wal-Mart Lot undertake new construction on said lot.

e. **Landscaping:** A landscape plan for each Lot shall be submitted to Declarant as a part of the Plans required to be approved under Section 1(c) of these covenants. No landscaping will be installed or preparatory work undertaken until the Declarant has approved the landscaping plan in writing, including all appropriate phasing. Within six (6) months after the completion of construction on any Lot within the Property, the Lot Owner of each Lot shall install and continually maintain any landscaping required under the terms of these Covenants, or the Plans for the Lot, including but limited to the planting of trees, evenly spaced and consistent with surrounding landscapes. All Lot Owners shall be responsible for maintaining the landscaping in an attractive and healthy manner, including but not limited to, maintaining the grass between the curb and the sidewalk. These responsibilities include but are not limited to: watering, weeding, trimming and replanting. Upon failure to comply with this requirement, the Association may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual costs plus a ten percent (10%) administrative charge against the Lot. When shown of record, such assessment shall be a lien upon the Lot and shall bear interest at the rate established by the Association for unpaid assessments.

f. **Maintenance of Landscape Screens:** The Lot Owner of each Lot within the Property upon which a landscape screen is installed, whether composed of structural or live plant material, shall be deemed to covenant to maintain the screen. Upon failure to comply with this requirement, the Association may contract for the services reasonably necessary to maintain the screen. The actual cost of such services, plus a ten percent (10%) administrative charge, may be assessed against the Lot by the Association. When shown of record, such assessment shall be a lien upon the Lot and shall bear interest of the rate established by the Association for unpaid assessments.

g. **Erosion Control:** During construction on any Lot in the Property, the Lot Owner shall control soil erosion in accordance with the City of Columbus, Nebraska requirements including, but not limited to, the use of an erosion control mat, straw bales, and fencing. Upon failure to do so, the Association may enter upon the Lot and contract for the services necessary to control erosion and bring the Lot into compliance with this section and assess the actual costs plus a ten percent (10%) administrative charge against the Lot. When shown of record, such assessments shall be a lien upon the Property and shall bear interest at the rate established by the Association for unpaid assessments.

h. **Grading:** The Declarant shall have the exclusive right to establish grades and slopes of all Lots within the Property and to fix the grade at which any building or other improvement shall be placed or constructed upon any Lot, in conformity with the general plan for the development of the Property.

i. **Signage:** No advertising sign, billboard, or other advertising device shall be permitted on any part of the outside of a building or inside if visible from the exterior, unless the color, size, style and material thereof have been approved in writing by the Declarant pursuant to section 1.a. above. The Declarant shall have the exclusive right to disapprove or remove any sign, billboard or advertising device, if in the Declarant's sole discretion it does not conform to the general standard of development of the Property. In addition, a Lot Owner shall be responsible for obtaining all permits for sign installation from the local municipal jurisdiction. A Lot Owner and its contractors shall be permitted to install construction signs during the construction process but such signs shall be removed upon substantial completion. All signage must be attached to the building or included as a monument sign.

j. **Lighting:** Lot Owners shall be responsible for exterior lighting that illuminates immediately adjacent parking areas. All exterior lighting fixtures and poles must be approved by the Architectural Committee.

k. **Setbacks:** The buildings of all Lot Owners, at minimum, must comply with the setback requirements of the municipal zoning ordinance of the City of Columbus.

l. **Outside Storage:** No materials that could potentially harm the soil will be permitted to be stored outside on any Lot. No other storage of materials outside on a Lot shall be permitted except upon the prior written approval of the Declarant

and the maintaining of appropriate screening that has been approved by Declarant pursuant to Section 1(c) of these Covenants. In the event a Lot Owner stores materials outside in violation of this covenant, the Declarant may, upon ten (10) days written notice to the Lot Owner, enter the Lot, at reasonable times, to remove such materials. The written notice shall specify the required removal and the time by which it must be completed. The Lot Owner shall pay the actual cost of the removal, plus a ten percent (10%) administrative fee, to the Declarant within ten (10) days of billing. Upon failure of the Lot Owner to remit payment, the cost of removal and administrative fees shall be specifically assessed against the Lot, shall bear interest at the rate provided for unpaid assessments and, when shown of record, shall be a lien upon the Lot.

4. **Use Restrictions.**

a. **Prohibited Uses.** No portion of the Property shall be used for the following purposes:

1. The operation of any private or commercial massage parlor, hot tub facility, suntan facility, any race track or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
2. Pawn shops, pawn brokers, car title lenders (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity;
3. The sale of any firearms, ammunition or weapons, or a shooting gallery of any type;
4. Any type of sexually oriented business, adult entertainment or adult bookstore; including, but not limited to, any facility selling or displaying adult or pornographic books, literature, videotapes or materials in any medium, or any facility providing adult entertainment or other adult services (for purposes of this limitation, materials or activities shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality);
5. pay day lending activities, pay day advances, pay check advances, check cashing services, or any similar type of lending activity, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift
6. Debt collection activities, debt consolidation services, credit repair or credit restoration activities, except as such activities are incidental to banking activities conducted by a state or federally chartered bank or thrift;
7. Any use that involves a noxious odor, excessive emission of smoke, steam, or vapor, an excessive noise level, or vibration;
8. Agricultural uses, including animal husbandry, commercial breeding businesses or feed lots;

9. Auto wrecking and salvage; junk yards; auto storage or wrecking yards; or recycling operations;
10. Broadcast towers or free standing cell towers;
11. The sale, distribution, or manufacture of any type of drug paraphernalia;
12. tattoo parlors or any establishment that performs tattooing;
13. Industrial or manufacturing uses (excluding recycling collection facilities, which are a permitted use); or
14. Any use that is contrary to law or violates any part of this Declaration.

b. **Temporary Structures.** No partially completed or temporary building and no trailer, tents, shack or garage on any Lot within the Property shall be used as either a temporary or permanent place of business, other than as a temporary construction office or temporary equipment storage during the construction period described in Section 2.a. of this Declaration.

5. **Easements.** Each Lot Owner does hereby establish, give, grant, and convey to the Declarant, the Association and to all Lot Owners for their mutual benefit and the benefit of their respective successors, heirs, assigns, tenants, customers, officers, employees, and invitees, the following easements and the benefits and corresponding burdens shall be appurtenant to and run with the Property and each Lot therein:

a. Perpetual nonexclusive easements upon and across all the parking lots, sidewalks, driveways, entrance and exit ways, and roadways on the Property which are now or hereafter from time to time used for pedestrian and vehicular traffic and parking for the purpose of allowing pedestrian and vehicular ingress and egress access to and from the adjacent public streets to and from each Lot within the Property and parking upon each Lot within the Property. Notwithstanding anything to the contrary contained herein, each Lot Owner shall have the right to designate up to ten (10) parking stalls on its Lot that shall not be subject to this parking easement, and those ten (10) parking stalls per Lot may be designated for exclusive use by the Lot Owner or its employees, agents, guests, or other designated individuals.

b. Perpetual nonexclusive easements as may be necessary to install, maintain, repair, reconstruct or replace underground utilities serving any portion of the Property over and across any such portion of the Property that is not within the building areas on the Property; provided, that such easements shall (i) be only for the most direct route or smallest space reasonably feasible and in conformity with applicable codes and regulations, and (ii) be limited to areas or routes so as not to interfere with the operation of permitted activities in the areas in or adjacent to such easement and specifically be located solely in the setback or yard requirements under the City of Columbus Zoning Ordinance, (iii) permit reasonable maintenance, repair, reconstruction and replacement in such a manner as to not interfere with the use of areas adjacent to such easement, and (iv) shall be subject to the Lot Owner of the benefited property being responsible for payment of any construction, maintenance, repair, reconstruction or replacement costs related to same, and (v)

shall be to the extent and duration necessary to assure the benefited property to be in compliance with applicable codes and laws, and to provide a reasonable and beneficial use to the benefited property for the required purposes.

c. Perpetual nonexclusive easement along the public right of way frontage for the purpose of installing, maintaining, operating, repairing, replacing and removing signage, flags and other entrance features used to identify the Property as permitted pursuant to this Declaration.

d. All Lot Owners covenant and agree that they will cause the easement areas defined in this Section 5 ("Easement Areas") to be used in a manner so as to minimize any damage, injury or destruction of such Easement Areas. Each Lot Owner covenants and agrees that it will promptly (at its sole cost and expense) repair any damage, injury or destruction (other than ordinary wear and tear) to any portion of the other party's Lot, buildings or other improvements that may be caused by or result from its respective use or the use by its respective Lot Owners of the Easement Areas, as applicable, and such party shall (at its sole cost and expense) restore the damaged property to substantially the same condition as existed prior to any such damage, injury or destruction. Each party will cooperate with the other party in good faith and use commercially reasonable efforts to minimize disruption to other party's access to and use of its property, the Easement Areas, and other easement rights granted herein in performing any work described in this Section 5, including, but not limited to, providing commercially reasonable advance notice prior to commencing any such work and coordinating such work with the other party.

6. **Business Owners Association.**

a. **Association; Membership.** Declarant shall have the right to establish a business owners association for the Property (the "Association") to assist in governing the Property and enforcing this Declaration. The Association may be established as a Nebraska nonprofit corporation or an unincorporated association. Each Lot Owner shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot and ownership of such Lot shall be the sole qualification for membership; provided that, a Lot Owner may delegate or assign his or her vote and obligations, liabilities and duties hereunder to a tenant(s) in possession of a Lot. In case of a delegation or assignment to a tenant(s) in possession of a Lot, prompt written notice shall be given to the Association. Any such delegation or assignment shall not terminate the obligations, liabilities and duties of the Lot Owner to perform and comply with this Declaration. At its first meeting, the Association shall adopt Bylaws for its organization and the conduct of its business, which Bylaws shall include a provision for the election of directors and officers. Each Lot Owner shall be subject to the obligations, assessments and duly enacted Articles, Bylaws and rules of the Association.

b. **Assignment from Declarant to Association.** Any or all rights and duties of the Declarant under this Declaration, except as to Lot(s) of which the Declarant is the titleholder, may be assigned in writing to the Association at any

time in the Declarant's sole discretion. The Declarant shall establish the Association and assign its rights pursuant to this section no later than the termination of the Period of Declarant Control.

c. **Maintenance of Common Areas.** The Association shall install, maintain, repair and replace the Property's common areas, including without limitation any private roadways on any Lot (the "Common Areas"). If approved by eighty percent (80%) of the Lot Owners, the Association shall provide snow removal services over and across the Common Areas together with the parking lots and driveways on each Lot. The costs and expenses for the services listed in this section shall be paid by each Lot Owner through assessments, as provided in Section 7 below.

7. **Assessments.**

a. **General and Special Assessments.** The Association shall have the right to levy assessments for the costs of operating and maintaining the Common Areas. The general assessments shall be allocated between the Lot Owners on a pro rata basis based upon the square footage of each Lot in the Property. Each Lot Owner's general assessment shall be determined on an annual basis for each fiscal year, prorating fractional years and changes in the ratios and percentages which may occur by issuance of occupancy certificates. An estimate of the Association's costs shall be made annually and each Lot Owner shall pay the general assessment(s) pursuant to the Bylaws of the Association. At the end of each year a statement of the total year's operating costs shall be presented to the Lot Owners and the Lot Owners shall pay any excess charge to the Association within thirty (30) days of the statement. In addition, the Association may levy special assessments at any time during the fiscal year for emergency matters or material matters not included within the budget. Each Lot Owner shall pay the special assessment(s) pursuant to the Bylaws of the Association. Special assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. Any special assessment for capital improvements shall be approved by the affirmative vote over sixty-six percent (66%) of the Lot Owners as measured by square footage of properties within the Property.

b. **Self-help by the Declarant.** Upon failure by a Lot Owner to comply with any requirement of a Lot Owner stated in this Declaration after receiving thirty (30) days prior notice to cure, unless a shorter notice period is expressly provided herein, the Declarant may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual cost plus a maximum 10% administrative charge against the Lot. When shown of record, such assessment shall be a lien upon the Lot and shall bear interest at the rate established for unpaid assessments.

c. **Additional Charges.** In addition to any amounts due or any other relief or remedy obtained against a Lot Owner who is delinquent in the payment of any general or special assessment, each Lot Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Declarant may incur or

levy in the process of collecting from that Lot Owner monies due and delinquent, including, but not limited to, to the following:

- i. Late Charges: A late charge in an amount to be fixed by the Declarant or Association to compensate for additional collection costs incurred in the event any assessment or other sum is not paid when due. The late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater.
- ii. Costs of Suit: Costs of suit and court costs incurred as allowed by the court.
- iii. Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds.
- iv. Interest: Interest on all assessments at the rate of 16% per annum, or if less the maximum interest rate allowed by law, commencing after the assessment becomes due.
- v. Other: Any other costs that the Declarant or Association may incur in the process of collecting delinquent assessments.

8. **Nuisance**. No noxious or offensive activity shall be constructed or permitted upon any Lot, nor anything which is or may become an annoyance or nuisance to neighbors or which endangers the health or unreasonably disturbs the quiet of the occupants of any Lot.

9. **Enforcement**. This Declaration and the restrictive covenants contained herein shall run with the land and the Property and shall be binding upon and enforceable by the Declarant, the Association, and any Lot Owner. The enforcement of this Declaration may be as set forth in this Declaration or by proceedings at law or in equity against any person or persons violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation or to recover damages and, by the Association, may be to enforce any lien or obligation created hereby. No delay or omission by the Association, Declarant or any Lot Owner in exercising any rights, power or remedy herein provided in the event of any breach of this Declaration, shall impair any such right or power or be construed to be a waiver thereof. A waiver by the Association, Declarant or any Lot Owner of a breach of any of the covenants, conditions or agreements contained in this Declaration shall not be construed as a waiver of any succeeding breach thereof for or of any other covenant, condition or agreement contained in this Declaration. Nothing herein, however, shall require the Declarant to undertake to enforce this Declaration.

10. **Miscellaneous**.

a. **Period of Declarant Control**. The "Period of Declarant Control" shall commence with the recording of this Declaration and shall continue until the earlier of the date: (i) Declarant has transferred and conveyed at least ninety percent (90%) of the Lots to third party Lot Owners, or (ii) Declarant elects, in its discretion, to

transfer, relinquish and/or surrender all of its rights and obligations in this Declaration.

b. **Duration; Termination of the Declaration.** This Declaration shall run with the land and continue and remain in full force and effect at all times as against the Lot Owner of any Lot, regardless of how he or she acquired title, unless and until over sixty-six percent (66%) of the Lot Owners based on square footage of lot area shall by written instrument duly recorded declare a termination of the same.

c. **Amendments to the Declaration.** The provisions contained in this Declaration, may be modified or amended, in writing, by an affirmative vote over sixty-six percent (66%) of the Lot Owners based on square footage of lot area; provided that, any amendment that limits or restricts the current land use of any Lot must be approved by the Lot Owner of said Lot, which approval shall not be unreasonably withheld.

d. **Headings.** The section and any subsection headings herein are for convenience and reference only and in no way define or limit the scope and content of this Declaration or in any way affect its provisions.

e. **Severability.** The invalidation of any provision of this Declaration shall not affect the validity of the remaining provisions hereof. 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, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Nebraska.

This Declaration of Restrictive Covenants is effective as of this 25 day of September, 2018.

DECLARANT:

WHO DEVELOPMENT, LLC,
a Nebraska limited liability company

By: [Signature]
Mike Works, Manager

STATE OF NEBRASKA)
) ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 25 day of September, 2018 by Mike Works, Manager of WHO Development, LLC, a Nebraska limited liability company, on behalf of the Company.



[Signature]
Notary Public

4824-2032-1625, v. 5