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RESTRICTIVE COVENANTS

The undersigned (Owner) is the Owner of the following-described real estate:

Lots 2 through 17, Block 3, and Lots 1 through 12, Block 4, HiMark Estates Addition, Lincoln, Lancaster County, Nebraska, (collectively referred to as "the Golf Course Lots") and

Lots 1 through 9, Block 1, and Lots 1 through 6, ^{Block 2} HiMark Estates Addition, Lincoln, Lancaster County, Nebraska (collectively, "the Non-Golf Course Lots"); and

Lots to be designated in future additions by amendment to these Restrictive Covenants ("Townhouse Lots"); and Outlots A, B, C, and F, HiMark Estates Addition, Lincoln, Lancaster County, Nebraska ("Commons").

The Golf Course Lots, the Non-Golf Course Lots, and the Townhouse Lots are sometimes collectively referred to below as the "Properties".

These Restrictive Covenants are established upon the Properties.

HiMark Estates Homeowners, Inc., (Corporation) has been incorporated in Nebraska for the purposes of enforcing the Restrictive Covenants established upon the Properties and of administering and maintaining the Commons.

1. USE: Except for the Townhouse Lots, no lot within the Properties shall be used other than for single family detached residential purposes. Townhouse lots shall not be used other than for single family attached residential purposes.

2. COMMENCEMENT AND COMPLETION OF CONSTRUCTION: Construction of a dwelling shall commence on each lot within three years of the conveyance of such lot from the Owner to a new titleholder (Original Sale). If construction has not commenced within three years, Owner shall have the option to repurchase the lot at the same price as the Original Sale, less any real estate commissions or other closing costs paid by Owner at the time of the Original Sale.

Any building placed or constructed upon any lot within the Properties shall be completed within six months after the commencement of construction.

3. ANTENNAS: No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except within a building; however, upon request, the Owner may approve a dish-type satellite receiver not to exceed 24 inches in diameter which shall be attached to the dwelling in a manner and location to be approved by Owner.

4. APPROVAL OF PLANS: Owner shall have the exclusive right to establish grades and slopes for all lots within the Properties and to fix the grade at which any building shall be placed or constructed upon any lot, in conformity with the general plan for the development of the Properties. Plans for any building or other improvement to be placed or constructed upon

HiMark Development
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any lot within the Properties shall be submitted to the Owner and shall show the design, size, and exterior material for the building or improvement and the plot plan for the lot, and landscape plan. One set of plans shall be left on permanent file with Owner. **Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from the Owner and shown of record.** Written approval or disapproval of the plans shall be given by the Owner within 14 days after receipt thereof. Upon disapproval, a written statement of the grounds for disapproval shall be provided. The Owner shall have the exclusive right to disapprove the plans. As part of the review, the Owner shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of the review procedure. The Owner specifically reserves the sole discretion to deny approval of any improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

5. **MINIMUM STANDARDS:** The following general standards shall guide the Owner in the review of any plans for dwelling structures submitted for approval within the Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Owner shall have the right, in the Owner's sole and absolute discretion, to modify the application and interpretation of these standards when exercising plan approval authority.

- a. **Minimum Floor Area:** The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks or enclosed decks shall be as follows:
 - i. **"A" Lots (Golf Course Lots):**
 - (1) Single-story ranch style, 2,000 square feet;
 - (2) Two-story, 2,700 square feet;
 - (3) Multi-level, 2,700 square feet;
 - (4) Story-and-a-half, 2,600 square feet.
 - ii. **"B" Lots (Off Golf Course Lots):**
 - (1) Single story ranch style, 1,750 square feet;
 - (2) Two-story, 2,350 square feet;
 - (3) Multi-level, 2,350 square feet;
 - (4) Story-and-a-half, 2,250 square feet.
 - iii. **Townhouse Lots:**
 - (1) Single story ranch style, 1,600 square feet;
 - (2) Two-story, 2,200 square feet;
 - (3) Multi-level, 2,200 square feet;
 - (4) Story-and-a-half, 2,000 square feet.

Owner shall have the right to modify the strict application of these standards if, in the Owner's sole discretion, the dwelling will conform to the general standard of development within the Properties.

- b. **Setbacks:** Setbacks of dwellings from the lot lines are established as follows:
 - i. Interior lots, 25 feet from the front lot line;
 - ii. Corner lots, 25 feet from street side front lines;
 - iii. The setback from the side lot line for Non-Golf Course Properties shall be 7.5 feet and for Golf Course Properties shall be 10 feet; however, side setbacks for Townhouse Lots shall be as established by the approved Community Unit Plan for HiMark Estates.

Owner shall have the right to vary setbacks within the limits established by the zoning ordinance of the City of Lincoln, Nebraska.

- c. **Exterior Finish:**
 - i. **Approval:** All exterior finish materials and colors shall be approved by the Owner. The first floor of the front elevation of any dwelling shall be faced with brick, natural stone, or stucco. The balance of any exterior elevation shall be faced with permanent vinyl, steel, aluminum, or other approved permanent maintenance-free siding.
 - ii. **Exposed foundations:** Exposed foundation walls shall be faced with brick, natural stone, stucco, or permanent siding to match the exterior of the dwelling.
- d. **Roofs:** All roof pitches shall be a minimum of 6:12, or as may dictated by a unique architectural style. Roofing materials shall be built up asphalt shingles, shakes, wood shingles, tile or slate.
- e. **Lawn Irrigation System:** All lots within the Property shall be equipped with underground lawn irrigation systems.
- f. **Landscaping:** A landscape plan shall be submitted for approval along with the plans for construction of any dwelling. Such landscape plan shall include deciduous shade trees and coniferous trees, together with shrubs or other ornamental plants to be placed in the front yard. Rear yard landscaping of the Golf Course Lots shall be designed in such a way as to minimize obstruction of views to the golf course from neighboring properties.
- g. **Fences:** No fence shall be constructed on the lot line or within any required setback on any Golf Course Lot. Galvanized chain-link fences are strictly prohibited. Chain-link fence shall be black in color.
- h. **Accessory Buildings:** No accessory buildings shall be permitted on any lot within the Properties.

- i. Dog Runs: Dog runs shall be located immediately adjacent to the dwelling structure, and shall not be located in any required setback.
- j. Erosion Control During Construction: Plans shall include erosion control measures which will contain erosion of soil on the lot during construction. Adequacy of erosion control measures shall be subject to continuous review during construction and the Owner shall have the right to require maintenance of silt fences, straw bales or other additional measures if soil is observed to be eroding onto the golf course or abutting lots, or into the street. If, upon notice from Owner to repair, maintain or take additional measures to control erosion, the titleholder of any lot or his contractors fails to comply within 48 hours of deliver of such notice, Owner may take such measures as may be necessary and charge the cost of the measures to the titleholder. Such charges, when shown of record, shall be a lien upon the property and shall bear interest at the rate of 14 percent per annum until paid.
- k. Swimming Pools: Swimming pools shall be fenced and have set backs as follows:

Golf Course Lots:

- i. Pools shall be fenced with a black wrought-iron fence to be approved by Owner;
- ii. The fence surrounding the pool shall be located a minimum of 10 feet from the rear lot line and shall be located outside of any side yard set back;
- iii. Owner shall have the right to vary set backs within the limits established by the zoning ordinance of the City of Lincoln, Nebraska.

Non-Golf Course Lots:

- i. Location of fences and pools shall be governed by the ordinances of the City of Lincoln, Nebraska.

6. CITY REQUIREMENTS: All buildings within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks and street trees shall be installed as required by the City of Lincoln, Nebraska.

7. TEMPORARY STRUCTURES: No partially completed dwelling or temporary building and no trailer, tent, shack, or garage on any lot within the Properties shall be used as either a temporary or permanent residence.

8. EASEMENTS RELATING TO GOLF COURSE LOTS: Purchasers and title holders of the golf course lots are hereby notified that golfers will from time to time hit golf balls from the golf course on to the Golf Course Properties and normal operation and maintenance of the Golf Course will involve operation of mowers and other power equipment during the evening and early morning hours. The Owner hereby reserves and establishes easements on the Golf Course

Properties in favor of the Golf Course, for (i) intrusion of errant golf shots on to the Golf Course Properties; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night.

The easements granted in this paragraph are for the use and benefit of the Owner and operator of the Golf Course, their successors and assigns, including any lessee, licensee, permittee, or invitee ("Grantee"). Grantee shall also include any person or entity which contracts to operate a golf course or driving range and any golfer who is duly authorized to play golf on the Golf Course.

No Grantee shall have any liability, obligation, or expense to the owner of a lot within the Golf Course Properties in respect of any personal injury or property damage occurring as a result of an errant golf shot which is not negligently, intentionally or recklessly hit, or hit in violation of the rules established by the operator of a golf course or driving range on the Golf Course. The title holder of each lot within the Golf Course Properties, by acceptance of the deed conveying title, hereby covenants not to sue any grantee of the easements granted in this paragraph for property damage or personal injury which results directly or indirectly from an errant golf shot. All title holders of lots within the Golf Course Properties assume all risks associated with errant golf balls and waive any claim or cause of action against Owner, the golf course designer, the golf course builder, the golf course titleholder or operator, and the builder of the residential dwelling for personal injury or property damage arising from any errant golf shots, or for any alleged defect in the golf course design or construction, or in the design or siting of the dwelling.

9. **NUISANCE**: No noxious or offensive activity shall be conducted or permitted upon any lot within the Properties, nor anything which is or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining lots.

10. **SIGNS**: No advertising signs, billboards, or other advertising devices shall be permitted on any lot within the Properties. However, Owner may erect signs advertising lots for sale within the Properties, and a sign advertising a single lot for sale may be erected upon any lot.

11. **ANIMALS**: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot within the Properties for any commercial purpose.

12. **PARTY WALLS**: Any wall constructed on any common lot line between two adjoining lots within the Properties shall be a party wall. Any expense of structural repair, replacement or reconstruction of a party wall, or of the protection of a party wall against the natural elements, shall be borne equally by the members who are the titleholders of the adjoining lots. The provisions of this paragraph shall not operate to relieve any member from any liability which the member may incur by reason of negligent or willful acts or omissions resulting in damage to a party wall.

13. **ENCROACHMENTS**: When a building shall be constructed on any lot so as to encroach upon an adjoining lot within the Properties, the member who is the titleholder of the lot with the encroaching building shall have an easement upon the adjoining lot to the extent of

the encroachment. Any expense of maintenance, repair or replacement of the encroaching building shall be borne by the member who is the titleholder of the lot with the encroaching building. The provisions of this paragraph shall not operate to relieve any member from any liability which the member may incur by reason of negligent or willful acts or omissions resulting in damage to the encroaching building.

14. RECREATIONAL VEHICLES: No recreational vehicle, as defined by the Lincoln Municipal Code, shall be parked or stored upon any lot within the Properties, except within an enclosed structure. Recreational vehicles may be temporarily parked or stored upon a lot for a period of time not to exceed 14 days per year.

15. WALKWAYS: Each member of the Corporation, who is the titleholder of a lot which is subject to an easement for a public walkway, shall maintain the walkway.

16. HOMEOWNERS ASSOCIATION: Every person or entity who becomes a titleholder of a fee or undivided fee interest in any lot or living unit within the Properties shall be a member of the Corporation. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

17. MEMBERSHIP: The Corporation shall have two classes of membership:

Class A membership shall include all members of the Corporation except the Owner and any successor in interest. Each Class A member of the Corporation shall be entitled to all the rights of membership and to one vote for each lot or living unit in which the interest requisite for membership is held. However, no more than one vote shall be cast with respect to any lot or living unit.

Class B membership shall include only the Owner and any successor in interest. The Class B member shall be entitled to ten votes for each lot or living unit in which the interest requisite for membership is held. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member, or on January 1, 2009, whichever first occurs.

18. CONVEYANCE OF COMMONS: Owner shall convey the Commons (except those portions of the Commons in public rights of way) to the Corporation, free from encumbrance, prior to the date Class B Membership in the Corporation converts to Class A Membership.

19. USE OF COMMONS: Each member of the Corporation shall have the right to use and enjoy the Commons and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership.

20. RIGHTS IN COMMONS: The rights and easements of the members of the Corporation shall be subject to:

- a. The right of the Corporation to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the

mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed mortgage is contained in the notice of the special meeting.

- b. The right of the Corporation to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Corporation to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed 30 days for any infraction of the published rules and regulations governing the use of the facilities.
- d. The right of the Corporation to charge reasonable admission and other fees for the use of the facilities.
- e. The right of the Corporation to dedicate or convey all or any part of the Commons to any public entity. Any dedication or conveyance shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed dedication or conveyance is contained in the notice of the special meeting.

21. MAINTENANCE OF COMMONS: The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons, which covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons. Annual and special assessments shall be uniform as to each lot or living unit within the Properties. Each assessment shall be the personal obligation of the member who is, or was, the titleholder of the lot or living unit assessed at the time of the assessment, shall bear interest at the rate of 14 percent per annum until paid, and when shown of record shall be a lien upon the lot or living unit assessed. In the discretion of the Board, assessments may be billed annually, quarterly or monthly, and shall be due immediately and delinquent 30 day after billing.

22. MAINTENANCE OF LANDSCAPE SCREENS: The Corporation covenants to maintain any landscape screen, whether composed of structural or live plant material, which is installed as required by the City of Lincoln, Nebraska. Each member of the Corporation who is the titleholder of a lot or living unit on a lot on which a screen is installed shall be deemed to covenant to maintain the screen. The covenants by such members may be satisfied by the payment of annual and special assessments for the maintenance of the screen. Each assessment shall be the personal obligation of the member who is, or was, the titleholder of the lot assessed at the time of such assessment, shall bear interest at the rate of 14 percent per annum until paid shall be a lien upon the lot assessed.

23. MAINTENANCE OF EXTERIORS: The Corporation may maintain the exterior of any improvements within the Townhouse Lots, excluding glass surfaces, and shall have the right to enter upon any lot within the Townhouse Lots, at reasonable times, to perform maintenance. The cost of maintenance shall be added to the next annual assessment.

24. INSURANCE: Each member of the Corporation who is the titleholder of a Townhouse Lot shall be deemed to covenant to maintain fire and extended coverage insurance on improvements in an amount equal to the full insurable value thereof. Any proceeds of insurance shall be applied, to the extent required by the Corporation, to the repair or reconstruction of the improvements. The Corporation may maintain such insurance and add the cost thereof to the next annual assessment.

25. REFUSE SERVICES: The Corporation shall provide to each member refuse collection services through a single designated provider. The cost of these services shall be paid for by the members as a part of their annual dues and assessments. Annual dues and special assessments for the services provided to the members shall be uniform as to each lot within the Properties, except that no charge shall be made for Refuse Services until an occupancy permit has been issued for such lot.

26. LIEN OF ASSESSMENTS: The lien of any annual or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

27. ANNUAL AND SPECIAL ASSESSMENTS: Annual and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Corporation. Any special assessment for capital improvements shall be approved by the affirmative vote of two-thirds of each class of members affected and entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting.

28. CONSTRUCTION VEHICLES AND ROLLOFF SERVICE: Owner may designate and enforce locations through and over which all construction vehicles shall enter and exist the Properties during development. Owner shall also have the exclusive right to designate a single provider of rolloff service within the Properties. The purpose of designating a single provider is to limit and control the number of service trucks operating within the Properties. The rights of the Owner under this paragraph to designate a rolloff provider shall be assigned to the Corporation when residences shall have been placed or constructed upon all of the lots within the Properties.

29. ADDITIONS: The Owner may add additional contiguous or adjacent real estate to the Properties or the Commons, at any time, without the consent of the members of the Corporation. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants.

30. AMENDMENTS: These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Owner and all persons claiming under the Owner. These Restrictive Covenants may be terminated or modified, in writing, by the owners of two-thirds of the lots within the Properties, at any time. However, the provisions of these Restrictive

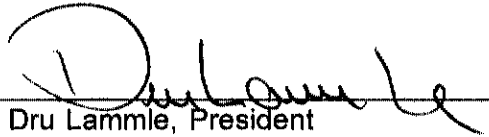
Covenants governing membership in the Corporation and the maintenance of the Commons shall not be terminated or modified without the consent of the City of Lincoln, Nebraska.

31. **ENFORCEMENT:** The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages and, by the Corporation, may be to enforce any lien or obligation created hereby.

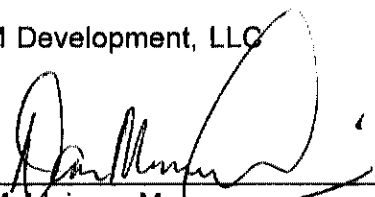
32. **SEVERABILITY:** The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

Dated: 6/17, 1999.

HiMark Development, Inc., a Corporation

By: 
Dru Lammle, President

D & M Development, LLC


Dan Muhleisen, Manager

