



After recording return to:
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 69508

DECLARATION OF COMMON DRAINAGEWAY COVENANTS

THIS DECLARATION OF COMMON DRAINAGEWAY COVENANTS ("Declaration") is made and entered into as of this 10th day of May, 2018 by and between **Austin Realty Company**, a Nebraska corporation ("Austin Realty"), **Southview, Inc.**, a Nebraska corporation ("Southview"), **Fund51, LLC**, a Nebraska limited liability company ("Fund51"), **S.B. Partners, LLP**, a Nebraska limited liability partnership ("SB Partners"), and **Northridge Partners II, LLP**, a Nebraska limited liability partnership ("Northridge"). Southview, Fund51, SB Partners, and Northridge may hereinafter jointly be referred to as the "Property Owners" or individually as a "Property Owner."

WHEREAS, the Property Owners are the owners of the parcels of real property legally described on Exhibit "A", which is attached hereto and incorporated herein by this reference (collectively the "Property"); and

WHEREAS, Austin Realty and Southview are the owners of the Drainageways, defined below; and

WHEREAS, the Property Owners desire to provide for the ongoing ownership, administration, insurance, maintenance, repair, replacement, improvement and use of the Drainageways.

NOW THEREFORE, the Property Owners do hereby create, establish and adopt this Declaration upon the Property for the purposes of administering, insuring, maintaining, repairing, replacing, improving, owning and governing the use of the Drainageways.

1. DEFINITIONS. Unless defined elsewhere in this Declaration, the following terms are defined below:

"**Association**" shall mean the North 27th Drainageway Association, a Nebraska nonprofit corporation, which has been established for the purpose of enforcing and maintaining compliance with this Declaration.

"**City**" shall mean the City of Lincoln, Nebraska, a political subdivision.

“Drainageways” shall mean Outlot C, Northridge Heights 2nd Addition, and Outlot B, Block 1, North Creek 1st Addition, all located Lincoln, Lancaster County, Nebraska

“Lot” or **“Lots”** shall mean all buildable Lots now or hereafter located on the Property, defined below, which are shown on any final plat of all or any portion of the Property that has been filed with the Lancaster County Register of Deeds.

“Lot Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding, however, those parties having any interest in any of such Lot merely as security for the performance of any obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgage). The purchaser of a Lot under land contract or similar instrument shall be considered to be the “Lot Owner” for purposes of this Declaration.

2. **DECLARATION.** In order to provide for the preservation of the value of the Property as well as for the ownership, administration, insurance, maintenance, repair, replacement, improvement and use of the Drainageways, the Property Owners hereby declare that each and every parcel of Property shall be held, sold and conveyed subject to the restrictions, covenants, conditions and easements contained in this Declaration. These restrictions, covenants, conditions and easements shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in any parcel or part thereof.

3. **DRAINAGEWAYS.** The Drainageways shall operate as open green space and stormwater drainage facilities for all of the Property in accordance with the design plans approved by the City and Property Owners in connection with the final platting of all or any portion of the Property and Drainageways. Ownership of the Drainageways shall be transferred to the Association upon the full execution and filing of this Declaration.

4. **EASEMENTS/RIGHTS.** The Association hereby grants to the Property Owners, for their mutual benefit and the benefit of their respective successors, heirs and assigns, a perpetual nonexclusive easement for the use of the Drainageways as open green space and stormwater drainage facilities for the benefit of the Property. The rights of the Property Owners shall be subject to the following:

(a) All easements shown upon any final plat of any portion of the Drainageways recorded with the Register of Deeds of Lancaster County, Nebraska.

(b) The right of the Association to dedicate or transfer all or any part of the Drainageways to any public agency, authority, or utility and subject to such conditions as may be agreed to in writing by Members of the Association holding a majority of the total votes allocated to Members of the Association.

(c) The right of the City of Lincoln to enter upon the Drainageways to maintain the Drainageways in the same manner as required of the Association in the event the Association fails to perform said maintenance or the Association dissolves and the Lot Owners fail to perform said maintenance.

5. COVENANT TO MAINTAIN THE DRAINAGEWAYS. The Association, Property Owners and all subsequent Lot Owners of any Lot within the Property, by the acceptance of a deed to any Lot, hereby covenant and agree to administer, insure, maintain, repair, replace, improve, own and govern use of the Drainageways. However, each Lot Owner's responsibility as it pertains to any and all requirements per these covenants and the maintenance of the Drainageways in general shall be limited to its respective Assessment Responsibility as defined in Paragraph 11 below. The Association and all Lot Owners of any Lot within the Property, by the acceptance of a deed to any Lot, shall be deemed to covenant to assume the obligations of the Property Owners to comply with the requirements of any final plat regarding continuous and permanent maintenance of the Drainageways. This covenant shall be satisfied by the payment of a general annual assessment and/or special assessments to the Association which shall be levied by the Board of Directors of the Association against the Property for purposes of administering, insuring, maintaining, repairing, replacing, improving, owning and governing use of the Drainageways, which shall include, but is not limited to:

(a) Maintaining, repairing, replacing and/or preserving the structural integrity of the components of the Drainageways, as well as any improvements now or hereafter located on the Drainageways; and constructing new or additional structural components or improvements to the Drainageways, if deemed necessary by the Board of Directors of the Association in order to preserve the use of the Drainageways as open green space and stormwater drainageway for the Property in accordance with this Declaration.

(b) Maintaining public liability and property damage insurance covering the Drainageways, in an amount to be determined by the Association, which shall not be less than the respective amounts of \$1,000,000 per person and \$2,000,000 per occurrence, or as required by statute (or in such other amounts that a prudent property owner would maintain for such insurance); and paying any and all real estate taxes and/or special assessments which may be levied and/or assessed against the Drainageways after the date on which the use of the Drainageways are transferred to the Association.

(c) Mowing, cleaning, noxious weed removal, debris removal, and otherwise maintaining the Drainageways.

(d) Paying for any additional expenses reasonably incurred by the Association in connection with the performance by the Association of any of the duties set forth in this Paragraph, including, but not limited to, management services and book keeping services.

Each Lot Owner of any Lot within the Property, hereby covenants by the acceptance of a deed to any Lot by which the interest requisite for membership in the Association is acquired, shall be deemed to covenant that, in the event the Association dissolves, each Lot Owner shall be liable

based upon each Lot's Assessment Responsibility as defined in Paragraph 11 below for the cost of administering and maintaining the Drainageways in the same manner as required of the Association. In the event such Lot Owners fail or refuse to perform any required maintenance and upkeep of the Drainageways, the City of Lincoln after seven (7) days' notice to such Lot Owners, may perform the required maintenance and assess each Lot and Lot Owner for the cost of the performance of such maintenance based upon each Lot's Assessment Responsibility set forth in Paragraph 11 below. Each assessment of the City's actual costs of performing the maintenance shall be the personal obligation of each Lot Owner who is the owner of the Lot at the time of assessment and shall be a lien upon the Lot assessed. To evidence such lien for unpaid assessments, the City shall prepare a written notice setting forth the amount, the name of the Lot Owner, and a legal description of the Lot. Such notice shall be signed on behalf of the City by the Mayor and shall be recorded with the Register of Deeds of Lancaster County, Nebraska. Each Lot Owner shall pay the Lot Owner's pro-rata share (said Lot's Assessment Responsibility as set forth in Paragraph 11 below) of the City's actual cost of maintaining the Drainageways within thirty days following receipt of an assessment therefor. Delinquent payments shall be subject to a late charge of 10% of the delinquent payment or twenty dollars (\$20) whichever is greater.

6. ASSESSMENTS. The Board of Directors of the Association shall fix the annual assessments and allocate said assessments among the Lots based upon each Lot's Assessment Responsibility set forth in Paragraph 11 below. The Lot Owners shall pay assessments to the Association as billed. Each Lot Owner's assessment shall be determined on an annual basis for each fiscal year, prorating fractional years. An estimate of the Association's cost for administration, insurance, maintenance, repair, replacement, improvement, and ownership of the Drainageways shall be made annually. The Association may elect to bill each Lot Owner for their estimated assessment annually or biannually. Each Lot Owner shall pay their estimated assessment in advance within thirty (30) days of the date of the billing statement from the Association which shall be the due date. The Bylaws of the Association may detail more specifically the assessment procedure.

7. LIENS AND PERSONAL OBLIGATIONS FOR ASSESSMENTS. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Lot Owner at the time when the assessments first become due and payable. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Lot Owner at the time the dues and assessments become delinquent unless such assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. EFFECT OF NONPAYMENT OF ASSESSMENT; REMEDIES OF THE ASSOCIATION. Any assessment which is not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any

other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Lot Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Drainageways or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Lot Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

9. SUBORDINATION OF THE LIEN TO MORTGAGEE. The lien of any annual or special assessment shall, until shown of record, be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

10. MEMBERSHIP IN ASSOCIATION – VOTING RIGHTS. Every Lot Owner, whether one or more persons or entities, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of each Lot and ownership of such Lot shall be the sole qualification for membership. Each Member shall be entitled to a certain number of votes based upon their Assessment Responsibility identified in Paragraph 11 below. When more than one (1) person holds an interest in a given Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine among themselves; however, the number of votes for any Lot shall never exceed the number of votes allocated to that Lot.

11. ALLOCATION OF ASSESSMENT RESPONSIBILITY. Assessment Responsibility is allocated among the Lots within the Property based upon the amount of square footage included within each Lot. The Assessment Responsibility for each Lot is set forth on Exhibit "B", which is attached hereto and incorporated herein by this reference. In the event a Lot is further subdivided, the Assessment Responsibility for such Lot shall be apportioned among the newly platted lots. Upon completion of any such subdivision of a Lot, written notice of the new apportionment of the Lot's Assessment Responsibility shall be given to the Association for record keeping purposes.

12. DURATION AND AMENDMENTS. The covenants and restrictions of this Declaration shall run with the Property and shall bind the Property Owners and their successors, assigns, heirs and devisees. Except as otherwise provided herein, this Declaration may be amended by the agreement in writing of Members holding at least three-fourths (3/4) of the total votes allocated to the Members of the Association pursuant to the terms and provisions of Paragraph 11 above.

13. ENFORCEMENT OF DECLARATION. The enforcement of this Declaration 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 Association or any Lot Owner, may be to enforce any lien or obligation created hereby. The City shall have the right to enforce all restrictive covenants regarding maintenance of the Drainageways by proceedings at law or in equity against any person violating or

attempting to violate said provisions. The City proceedings may be to restrain violation of the duty to maintain the Drainageways, to recover a money judgment upon the personal obligation and debt of the Lot Owner to pay the Lot Owner's pro-rata share of the City's cost to maintain the Drainageways or to foreclose upon the defaulting Lot Owner's lot in a like manner as mortgages on real property. In any such foreclosure or lawsuit, the Lot Owner shall be required to pay the cost and expenses of such proceedings, including reasonable attorney fees, costs of suit, and court costs incurred as allowed by the court. Suit to recover a money judgment for unpaid assessments for the cost to maintain the Drainageways shall be maintainable without foreclosure of the Lot Owner's Lot or waiving the lien securing the assessment.

14. CITY APPROVAL. Notwithstanding the foregoing provisions, any instrument amending, modifying, abrogating, or terminating this Declaration pertaining to the structure, existence or financing of the Association, maintenance of the Drainageways, enforcement of this Declaration by the City and City approval of amendments to this Declaration must be approved by the City of Lincoln City Attorney's office in writing and recorded with the Lancaster County Register of Deeds before it shall be effective.

IN WITNESS WHEREOF, the Property Owners have caused this Declaration to be executed as of the dates written below.

APPROVED AS TO FORM FOR THE LIMITED PURPOSE OF TRANSFERRING
MAINTENANCE OF THE DRAINAGEWAYS TO THE ASSOCIATION:



Assistant City Attorney

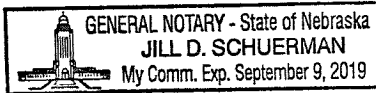
Date: April 12, 2018


SOUTHVIEW, INC., a Nebraska corporation, Member

By: 
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10th day of May, 2018, by Thomas G. Schleich, President of **Southview, Inc.**, a Nebraska corporation, on behalf of the corporation.




Notary Public

S.B. PARTNERS, LLP, a Nebraska limited liability partnership

By: JTS ENTERPRISES, LLC, a Nebraska limited liability company, Partner

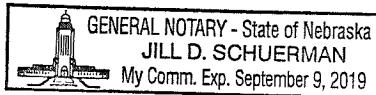
By: [Signature]
Thomas G. Schleich, Member

By: BRESTER CONSTRUCTION, INC., a Nebraska corporation, Partner

By: [Signature]
Ronald B. Brester, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

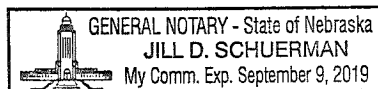
The foregoing was acknowledged before me this 10th day of May, 2018, by Thomas G. Schleich, Member of JTS Enterprises, LLC, a Nebraska limited liability company, Partner of **S.B. Partners, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10th day of May, 2018, by Ronald B. Brester, President of Brester Construction, Inc., a Nebraska corporation, Partner of **S.B. Partners, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



[Signature]
Notary Public

NORTHBRIDGE PARTNERS II, LLP, a
Nebraska limited liability partnership

By: JTS ENTERPRISES, LLC, a Nebraska
limited liability company, Partner

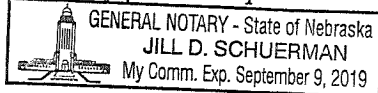
By: [Signature]
Thomas G. Schleich, Member

By: RE
BRESTER CONSTRUCTION, INC., a [Signature]
Nebraska corporation, Partner

By: [Signature]
Ronald B. Brester, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

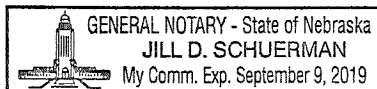
The foregoing was acknowledged before me this 10th day of May, 2018, by Thomas G. Schleich, Member of JTS Enterprises, LLC, a Nebraska limited liability company, Partner of **Northridge Partners II, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



[Signature]
Notary Public


STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10th day of May, 2018, by Ronald B. Brester, President of Brester Construction, Inc., a Nebraska corporation, Partner of **Northridge Partners II, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



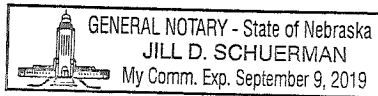
[Signature]
Notary Public


AUSTIN REALTY COMPANY, a
Nebraska corporation

By: 
John F. Schleich, President
Thomas G.

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 10th day of May, 2018, by Thomas G. ~~John F.~~ Schleich, President of **Austin Realty Company**, a Nebraska corporation, on behalf of the corporation.



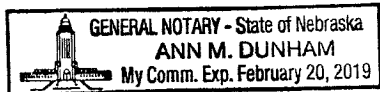

Notary Public

FUND51, LLC, a Nebraska limited liability company

By: John Decker
Title
Manager of TJ's Creations, L.L.C., Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 19th day of April, 2018, by John L. Decker, Jr., Manager of T.J.'s Creations, L.L.C., Manager of **Fund51, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Ann M. Dunham
Notary Public

Exhibit "A"

PROPERTY

1
no CR 1
no
no CR 2
no
no CR 5
no CR 7
no
no CR 11
Lots 1 and 2, Block 1, North Creek 1st Addition, Lincoln, Lancaster County, Nebraska

no
no CR 2
no
no CR 5
no CR 7
no
no CR 11
Lot 1, Northridge Heights 2nd Addition, Lincoln, Lancaster County, Nebraska

no
no CR 5
no CR 7
no
no CR 11
Lot 1, Northridge Heights 5th Addition, Lincoln, Lancaster County, Nebraska

no CR 7
no
no CR 11
Lot 1, Block 7, Northridge Heights 7th Addition, Lincoln, Lancaster County, Nebraska

no
no CR 11
Lots 1 and 3, Northridge Heights 11th Addition, Lincoln, Lancaster County, Nebraska, expect that part conveyed to the City of Lincoln, Nebraska by Warranty Deed recorded November 9, 2005 as Instrument No. 2005-66772 in the records of Lancaster County, Nebraska

Exhibit "B"

**ALLOCATION OF ASSESSMENT RESPONSIBILITY
AND NUMBER OF VOTES**

Description of Lot	Square Feet	Percent Assessment Responsibility	Number of Votes
Lot 1, Block 1, North Creek 1 st Addition	62,627	3.97%	397
Lot 2, Block 1, North Creek 1 st Addition	54,609	3.46%	346
Lot 1, Northridge Heights 2 nd Addition	514,327	32.58%	3258
Lot 1, Northridge Heights 5th Addition	507,512	32.15%	3215
Lot 1, Block 7, Northridge Heights 7th Addition	221,392	14.02%	1402
Lot 1, Northridge Heights 11 th Addition, except City ROW	174,718	11.07%	1107
Lot 3, Northridge Heights 11 th Addition, except City ROW	43,499	2.76%	276
TOTAL	1,578,684	100%	10,000