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*Lloyd J. Dowling*

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REGISTER OF DEEDS



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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR HEIMES SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HEIMES SUBDIVISION ("Declaration") is made effective on this 11<sup>th</sup> day of December, 2017, by J & H Investments, LLC (J&H), a Nebraska limited liability company, and LB Southwest, LLC ("LB Southwest"), a Nebraska limited liability company or their successors and assigns (collectively "Declarant").

RECITALS

A. Declarant are the owners of certain real property situated in the County of Sarpy, State of Nebraska, legally described as follows, to-wit:

Lots 1 through 5, Heimes Subdivision, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (referred to collectively as the "Property").

B. Declarant intends by this Declaration to impose upon the Lots covenants, conditions, restrictions and to create easements to establish a general plan for the improvement, development, maintenance, use and operation of the Lots consistent with a first class heavy industrial area zoned I-2 by City of LaVista, Nebraska, more commonly known as "Heimes Subdivision".

C. By virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof.

*RJR* Record & Return to: Adams & Sullivan, PC, LLO, 1246 Golden Gate Drive, Suite 1, Papillion, NE 68046

D. Declarant desires to form a Nebraska nonprofit corporation to be known as the Heimes Property Owners Association, Inc. for the purposes of, among other things, holding title to or otherwise controlling the Common Areas, preserving the values and amenities of the Lots in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing this Declaration, collecting, and disbursing and enforcing the Assessments created herein; subject to the powers, rights and duties reserved by Declarant as set forth in this Declaration.

E. Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all its successors and assigns and all subsequent owners of the Lots and Improvements (as defined below), together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions on the Lots, which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within Heimes Subdivision, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

ARTICLE I.  
DEFINITIONS

1.1 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or restated, which shall be filed with the Nebraska Secretary of State.

1.2 Assessments. "Assessments" shall mean all regular assessments described in Section 8.5, special assessments described in Section 8.6, reimbursement assessments described in Section 8.7 and capital improvement assessments described in Section 8.8 below.

1.3 Association. "Association" shall mean and refer to the Nebraska nonprofit corporation (and its successors and assigns) organized by Declarant to exercise the rights, powers and duties set forth in this Declaration. Declarant intends to name the Association the "Heimes Property Owners Association, Inc."

1.4 Board or Board of Directors. "Board" or "Board of Directors" may be used interchangeably herein and shall mean and refer to the Board of Directors of the Association.

1.5 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as they may from time to time be amended or restated.

1.6 City. "City" shall mean the City of La Vista, Nebraska.

1.7 Common Area or Common Areas. The terms "Common Area" or "Common Areas" shall mean and refer to those portions of the Heimes Subdivision owned by the Association in fee, or against which an easement has been imposed under this Declaration or another instrument in favor of the Association, the public improvements as contained in the Subdivision Agreement until such time as the City assumes some or all of those responsibilities as contained in the Subdivision Agreement, and any other areas with respect to which the Association has assumed in writing, at its election, administrative or

maintenance responsibilities. Notwithstanding the foregoing, or any other provision herein to the contrary, any unimproved portions of the Common Areas shall be maintained by the Owner of the Lot that such unimproved portions abut or are adjacent thereto.

1.8 Declaration. "Declaration" shall mean this "Declaration of Covenants, Conditions, Restrictions and Easements for Heimes Subdivision, as it may be amended or supplemented from time to time.

1.9 Exempt Property. "Exempt Property" shall mean (i) all Common Area owned in fee by the Association, and (ii) all land and improvements owned by or dedicated to and accepted by the City of La Vista, Nebraska or other governmental subdivision of the State of Nebraska for so long as the City or other public or governmental authority is the owner of beneficiary thereof, as shown on the Plat. In no event shall any Lot be considered as Exempt Property. Exempt Property shall be exempt from Assessments and from all rights and obligations of membership in the Association, but shall not be exempt from all other covenants, restrictions and easements contained herein, including but not limited to all use and development restrictions.

1.10 Improvements. "Improvements" shall mean all land preparation and excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainageways, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage or display areas, loading areas, docks, water retention areas, fountains, water features, ponds, recreational facilities, sediment erosion control and detention (or Post Construction Stormwater Detention/Retention), and all other structures, land development or landscaping improvements of every type and kind.

1.11 Lessee. "Lessee" shall mean the owner of a leasehold interest (including any subtenancy) or license or other occupancy right in any Lot or a portion thereof.

1.12 Lot or Lots. "Lot" or "Lots" shall mean Lots 1 through 5, inclusive, Heimes Subdivision, or any subsequent administrative subdivision, replat, revision or amendment thereof. If any Lot is hereafter lawfully subdivided by administrative lot split, lot line adjustment, lot combination or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificate or Replat (in the event of a replatting approved by the La Vista City Council) recorded in the office of the Sarpy County Register of Deeds.

1.13 Member. "Member" shall mean and refer to every person or entity who is a Member of the Association pursuant to Article IV.

1.14 Subdivision Agreement. "Subdivision Agreement" shall mean that certain Subdivision Agreement entered into by and among the City of La Vista, Nebraska, J & H and LB Southwest, dated \_\_\_\_\_, as it may be amended or supplemented from time to time.

1.15 Mortgage. "Mortgage" means any instrument recorded or filed in the office of the Sarpy County Register of Deeds encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or

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evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot or Lots (such as leasehold mortgage).

1.16 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust.

1.17 Owner. "Owner" shall mean the fee simple interest owner of any Lot or Lots, including, without limitation, one who is buying a Lot or Lots under a recorded contract, but excluding Mortgagees and others who hold such title merely as security. Owner shall not include a Lessee of a Lot or Lots, except where the fee simple interest owner has assigned its rights and obligations under the Declaration to a Lessee, and the Lessee has accepted such rights and obligations, pursuant to a written instrument signed by such fee simple interest owner and by such Lessee and recorded in the land records of Sarpy County, Nebraska, in which event the Lessee shall be an Owner for all purposes hereunder during the term of its lease.

1.18 Period of J&H Control. The "Period of J&H Control" shall commence with the recording of this Declaration and shall continue as long as J&H owns at least fifty percent (50%) of the memberships as computed under Section 4.1 below, unless and until J&H elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration in the manner set forth in Article XIV.

1.19 Person. "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, a trust or any other legal entity.

1.20 Plat. "Plat" shall mean the final subdivision plat for Heimes Subdivision recorded on \_\_\_\_\_ as Instrument No. 2017-\_\_\_\_\_, in the official records of Sarpy County, Nebraska, and any amendments, administrative subdivisions, minor plats or other modifications thereof.

1.21 Prime Rate. "Prime Rate" shall mean the prime commercial lending rate announced by First National Bank of Omaha (or any successor) as its "prime rate", as the same may be changed from time to time. If for any reason any such institution shall at any time discontinue quoting or charging a prime rate in the manner set forth above, the Association shall, in the exercise of reasonable judgment, substitute another means of determining the annual lending rate of interest charged by major commercial banks in the Omaha metropolitan area on 90-day unsecured commercial loans to their most creditworthy borrowers, and the rate so determined shall thereafter be the Prime Rate as defined herein.

1.22 Heimes Subdivision. "Heimes Subdivision" shall mean and refer to all of the Property located within the subdivision known as Heimes Subdivision.

ARTICLE II  
GENERAL PROVISIONS

2.1 Establishment of Restrictions. Declarant hereby declares that the Property and any other property hereafter annexed hereunder is now held, and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the restrictions herein set forth, each and all of which is and are for, and shall inure to, the benefit of and pass with each and every portion of the Property and shall apply to and bind the heirs, assignees and successors in interest of any Owner thereof.

2.2 Purpose of Restrictions. The purpose of these covenants and restrictions is to promote proper development and use of the Property, to protect the Owner of each Lot against any improper

development and use of any Lot, to prevent the erection on the Property of structures built of improper design or materials, to encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements, to enhance and protect the value, desirability and attractiveness of all the Property, and in general to provide for high quality improvements on the Property in accordance with a uniform plan of development.

### ARTICLE III THE ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles. Upon the incorporation of the Association by Declarant, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made by a majority of the members of the Board. The Board may also appoint various committees at its discretion and may contract with a Person to serve as a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager and any employees of the Association.

3.3 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nebraska concerning nonprofit corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any lawful acts that may be authorized, required, or permitted to be done by the Association under this Declaration (including any rights, duties and responsibilities assigned by Declarant from time to time pursuant to Article XIV), the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

- 3.3.1 commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration and enforce by mandatory injunction or otherwise any of the provision of this Declaration;
- 3.3.2 pay taxes, special assessments and other liabilities which are or would become a lien on the Property;
- 3.3.3 levy assessments and perfect and enforce liens as hereinafter provided;
- 3.3.4 enter into contracts to perform the duties set forth herein, including, without limitation, the maintenance and repair of the Common Areas and enforce said contracts;
- 3.3.5 adopt, amend and repeal rules and regulations as its deems reasonable;

3.3.6 enter onto the Lots to enforce the provisions of this Declaration in accordance with the provisions of Article XII;

3.3.7 enter into contracts with Owners or the City or such other governing authority regarding the maintenance of landscaped areas, parking areas or other areas;

3.3.8 elect to landscape and maintain any areas within or adjoining Heimes Subdivision;

3.3.9 purchase such insurance as the Board deems necessary or appropriate; and

3.3.10 borrow funds to pay costs of operation, secured by Assessments revenues due for succeeding years or by assignment or pledge of rights against delinquent Owners; provided, however, that a majority of the outstanding votes of the Owners, and the vote of J&H during the Period of J&H Control, shall be required to borrow in excess of one year's budgeted expenses of the Association.

3.4 Rules and Regulations. The Board may adopt, amend and repeal rules concerning all aspects of the Association's rights, activities and duties. The rules and regulations may govern and restrict the use of any area in Heimes Subdivision; provided, however, that the same shall not discriminate among Members except to reflect their different rights as provided herein, shall not be inconsistent with this Declaration, the Articles or the Bylaws, and shall not impair the use of any Lot that has been approved in accordance with the terms and conditions of this Declaration. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein. Any amendment to the rules and regulations must be approved by a majority of the outstanding votes of the Members.

3.5 Disclaimer of Liability. No member of the Board, or of any committee of the Board or Association, nor any officer or employee of the Association or any manager, or the Declarant, or any agent employee or officer of Declarant, shall be personally liable to any Owner, or to any Lessee, contract purchaser, or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may possessed by such person, acted in good faith without willful or intentional misconduct.

3.6 Articles and Bylaws. Neither the Articles nor the Bylaws shall be amended or interpreted in a manner that is inconsistent with this Declaration.

ARTICLE IV  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Memberships. Each Owner, including the Declarant, shall have a number of memberships equal to the total number of Lots owned by such Owner (but specifically excluding any Exempt Property). In the event of a subdivision or re-subdivision of any Lot or portion thereof, the number of memberships attributable thereto will change to the new total of Lots.

4.2 Transfer of Memberships. An Owner shall, upon becoming the record Owner of a Lot, automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. The membership

shall not be transferred, pledged or alienated in any way, except as appurtenant to a transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records.

4.3 Voting; Multiple Owners; Appointment of Agent. Each Owner shall have one vote for each membership owned as provided in Section 4.1 above. All voting pursuant to the terms of this Declaration shall be made in accordance with the provisions of this Section 4.3. Each vote must be cast as a single unit. If an Owner consists of more than one Person, then all persons constituting an Owner of such Lot shall, simultaneously with or immediately after their acquisition of such Lot, deliver to the Association a written instrument appointing one Person as the agent for all Persons constituting the Owner of such Lot, which agent shall thereupon receive notices of Assessment and other notices, demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this Declaration. An Owner may change its designated agent by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. An Owner may assign all, but not less than all, of its voting rights to a Lessee, which shall be effective only upon actual receipt of such notice by the Association. If more than one Person casts or attempts to cast a vote for a particular Lot, all such votes shall be deemed void.

4.4 Initial Board of Directors. The initial Board of Directors of the Association shall consist of not less than three Directors and shall be appointed by the Declarant upon the incorporation of the Association. During the Period of J&H Control, the Declarant shall have the sole right, in its absolute discretion, to appoint and remove the Directors of the Board; however, the Declarant may temporarily or permanently relinquish its right to appoint or remove some or all of the Directors at any time as provided in Article XV. If the Declarant relinquishes its appointment rights, the Members (including the Declarant) shall then elect all Directors as provided in the Bylaws.

4.5 Subsequent Board of Directors. After the expiration of the Period of J&H Control the Members (including the Declarant) shall elect the Directors as provided in the Bylaws, and the Bylaws may provide for staggered terms and lengths of terms for Directors chosen by the Association Members which are different than those initially set forth in this Declaration and may provide for a greater number of Directors to be chosen by the Members than is set forth herein; provided, however, that in no event shall there be fewer than three Directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members.

4.6 Administration and Compliance. If the Articles or Bylaws are in any way inconsistent with the Declaration, then this Declaration shall prevail and control. Each Owner and Lessee of a Lot shall comply with, and shall cause their respective invitees to comply with the provisions of this Declaration, the Articles and Bylaws, the Subdivision Agreement, and rules of the Association, if any, as amended from time to time, and failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in additions to any other available remedy.

ARTICLE V  
RESERVATION OF EASEMENTS

5.1 Easements for Common Areas. Declarant hereby reserves to itself, its successors and assigns, and to the Association, and their respective employees, contractors and other authorized designees, an easement over, upon, under and across all Common Areas, together with a nonexclusive easement for ingress and egress over and upon the Lots and all other areas within Heimes Subdivision, for the following purposes: installation, repair, reconstruction, restoration, replacement, public improvements as contained in the Subdivision Agreement, landscaping and maintenance of the Common Areas (including without limitation entryway signs, walls, utilities, landscaping and other features, and all landscaping corridors), and for other maintenance, rights and duties permitted to or required of the Declarant or the Association in this Declaration.

5.2 Reservation of Utility Easements. Declarant hereby reserves for its own use and benefit, and for the use and benefit of each Owner, easements for the location, installation and maintenance of utilities of convenience or necessity as may be requested or required by J&H, or by an Owner with the prior written approval of J&H during the Period of J&H Control, or the Board thereafter. However, any such easement shall only be within the building setbacks of the lot lines. Upon approval of an easement area, the benefitted Owner shall have the right at all reasonable times to enter upon the land covered by said easements and to install, maintain, repair, replace and service utilities thereon for the use and benefit of the benefitted Lot or Lots; provided, however, that any such Owner shall comply with any requirements imposed by Declarant or the Board as the case may be, as a condition to its approval, and shall promptly restore said land and any Improvements, at said Owner's expense, in a good and workmanlike manner and free of liens to substantially the same condition as existed prior to such entry. The Owner of any Lot shall have the right to assign the benefit and use of any such easement to any electric company, gas company, telephone company, flood control district, or other utility company for the purpose of installing, operating and maintaining utilities and enforcing the current easement rights. For the purpose hereof, "utilities" or "utility" shall include electricity, gas mains and lines, water distribution lines, storm water sewers, sanitary sewers, cable television lines and cables, telephone cables and lines, and other similar or related facilities commonly regarded as utilities. No conveyance by Declarant of any Lot, or any interest therein, shall be deemed to be or construed as a conveyance or release of the easements herein reserved. Notwithstanding the foregoing, Declarant reserves the right unto itself, by express language to such effect from time to time in any deed or other recorded instrument, to release any Lot or portions thereof from any of the above reserved easements. No utility easement shall unreasonably interfere with the operation and use of any Lot; (ii) no permanent building, structures, tree or other improvements (excluding improvements typically found in common areas of heavy industrial areas, such as surface parking and drive-lanes) shall be placed over or encroach upon such installations; (iii) relocation of such installations shall be allowed where the work will be at the requesting Owner's sole cost and expense, utility services are not interrupted, and no relocation affecting any Lot or utility services thereto shall be performed without the consent of the Owner of such affected Lot; (iv) once commenced, any construction shall be diligently prosecuted to completion to minimize any interference with the business at a parcel; (v) except in an emergency, the right of entry upon a Lot of another Owner or to prosecute work if the same interferes with utility or other easements, shall be conducted in a manner to minimize interference with the business at any such Lot; (vi) no monetary obligation shall be imposed upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost any damage caused by such work and restore the affected portion of the Lot; and (vii) the Owner undertaking such work shall pay all costs associated therewith and shall indemnify the other Owners from all damages attributable to such work.



ARTICLE VI  
REGULATION OF IMPROVEMENTS

6.1 Completion of Work. All construction, refinishing, alteration or excavation of any Improvements approved under this Section 6.1 shall be undertaken and pursued diligently to completion, but in any event shall be completed within two years after the date of issuance of a building permit.

6.2 Maintenance.

6.2.1 General. Notwithstanding the existence of any insurance covering an Owner, the Association, or both, against loss, damage and destruction, the Association and each Owner shall have the affirmative reasonable obligation for maintenance, repair and restoration as set forth in this Article.

6.2.2 Maintenance of Undeveloped Lots. Except as otherwise provided herein, all undeveloped portions of each Lot shall be maintained at all times by the Owner in a well-maintained condition, free of unsightly or unattractive weeds or other growth or the accumulation of rubbish, junk, and debris thereon. Once construction is commenced and Improvements are completed, then the respective provisions of Subsections 6.2.3 and 6.2.4 shall apply with respect to construction activities and completed Improvements, as the case may be.

6.2.3 Maintenance During Construction. All construction activities of any kind on any Lot shall be governed by the provisions of this Subsection and any corresponding provisions in the Subdivision Agreement. All construction activities shall be carried out in an orderly and timely manner and all partially completed Improvements shall be kept in an orderly condition during construction. Dust from all construction sites shall be controlled at all times. If trucks entering and leaving the Lot deposit mud or dust on any streets or walkways, the Owner of the Lot on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean condition on a daily basis, as determined by the Committee. If the provisions hereof conflict with the provisions of the Subdivision Agreement with respect to construction activities, the more restrictive provision shall control.

6.2.4 Maintenance of Completed Improvements. Each Owner shall maintain or cause to be maintained, at its expense, its Lot and all Improvements completed thereon (except those Common Area Improvements to be maintained by the Association pursuant to Section 6.3) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Such maintenance requirements shall include, without limitation, the following:

6.2.4.1 maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Committee and then installed, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;

6.2.4.2 removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

6.2.4.3 placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

6.2.4.4 operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted Signs) as shall be required or permitted during the Application approval process;

6.2.4.5 maintaining all signs and all perimeter walls and exterior building walls (including but not limited to all retaining walls) and other exterior surfaces in a good condition and state of repair in compliance with the approved Application;

6.2.4.6 except as otherwise provided herein, maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis; dead or dying plants shall be removed and replaced within thirty days; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions; and

6.2.4.7 promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements.

6.2.5 Alteration and Repair of Common Areas. If any act, omission or condition caused by any Owner or its Lessees, or their agents, employees, customers or invitees, results in the destruction or removal of any landscape or other improvements within Common Areas maintained by the Association hereunder, such Owner shall repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Improvements in such Common Areas. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind.

6.2.6 Lateral Support. Each Owner shall maintain its Lot with sufficient landscaping and plantings to prevent any erosion upon its Lot that will result in damage to that Lot or to any adjacent Lot.

6.3 The Association's Obligation for Common Areas. The Association shall maintain the Common Areas, including Improvements within the Common Areas thereon and all landscaping within the Common Areas, in good condition and repair, and replace the same as may be necessary from time to time, subject to the following:

6.3.1 The Board shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Common Areas and other properties maintained by the Association (including without limitation removal of graffiti

and repair of other damage caused by vandalism); however, the Board shall be the sole judge as to the appropriate maintenance thereof.

6.3.2 The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be assessed as part of the regular assessments in accordance with the provisions of Section 8.5 hereof; provided, however, that the cost of any maintenance, repair or replacement of the Common Areas for which an Owner is responsible pursuant to Section 6.2.5 shall be reimbursed by such Owner as a reimbursement assessment as provided in Section 6.2.5 and in accordance with Sections 12.1.1 and 8.7 hereof.

6.4 Excavation. No excavation shall be permitted except in connection with construction of an Improvement, and upon completion thereof, exposed openings shall be backfilled, and disturbed ground shall be graded and leveled. No Owner shall perform any excavation upon its Lot that will result in damage to any adjacent Lot.

6.5 Damage and Destruction Affecting Lots - Duty to Rebuild. If all or any portion of a Lot or any Improvement on any such Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to do the following:

6.5.1 rebuild, repair or reconstruct the Lot and the Improvements thereon in a manner which will restore them to a condition and appearance approved by the board and the City;

6.5.2 raze and remove the damaged Improvements, restoring the Lot substantially to its original unimproved condition; or

6.5.3 any combination of the above in a manner satisfactory to the Board.

The Owner of any Lot on which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause cleanup and removal and/or reconstruction to commence within three (3) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond its reasonable control, as determined by the Board.

6.6 Insurance Obligation of Owners. Each Owner shall purchase such liability, fire or other casualty insurance as such Owner desires or as may be required by any mortgagee of a Mortgage encumbering its Lot. The Association shall not be obligated to insure any Lot or any portion thereof or any Improvements thereon.

6.7 Leases. Any agreement for the lease of all or any portion of a Lot must be in writing and must provide by its terms that it is subject to this Declaration, the rules of the Association, the Subdivision Agreement, the Articles and the Bylaws, and that any violation of the Declaration or other documents listed above shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases. However, the Owner of the Lot shall remain liable for any violations of this Declaration, the rules of the Association, the Subdivision Agreement, the Articles and the Bylaws. All notices hereunder shall be sent to the Owner, and it shall be such Owner's obligation to provide notices to Lessee, if applicable.

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ARTICLE VII  
DEVELOPMENT STANDARDS

7.1 Utility Lines and Antennas. No utility lines or wires or other devices in Heimes Subdivision for the communication or transmission of electric current, gas, power or signals (including telephone, television, microwave or radio signals), shall be constructed, placed, or maintained anywhere upon any common area without the approval of the Board or its desinee other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other structures. No core drilling shall be allowed in the street in the common area without prior written consent. Any core drills shall be replaced with full panel concrete sections or epoxy core back in place and all joints sealed against moisture. Antenna dishes or other services for the transmission or reception of telephone, television, microwaves, or radio signals may be placed on any building or other Improvement on any Lot. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of Improvements on any Lot.

7.2 Restriction on Further Subdivision; Property Restrictions and Rezoning.

7.2.1 No Further Subdivision Without Approval. Subject to the provisions of Section 13.3 herein, no Lot shall be subdivided or separated into smaller Lots by any Owner by deed, ground lease or otherwise, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner by deed, ground lease or otherwise, without the prior written approval of J&H during the Period of J&H's Control, and thereafter by the Board. This provision shall not apply to transfers of an undivided ownership interest in the whole of any Lot.

7.2.2 Plats; Site Plans and Subsidiary Declarations to be Approved. Subject to the provisions of Section 13.3 herein, no subdivision plat or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any property in Heimes Subdivision unless the provisions thereof have first been approved in writing by J&H during the Period of J&H's Control, and thereafter by the Board. All conditions, covenants, restrictions and easements so approved shall constitute Subsidiary Declarations. Any other plat or other covenants, conditions, restrictions or easements recorded, or any site plan filed, without such approval being evidenced thereon shall be null and void.

7.2.3 Rezoning, Variances, and Use Permits to be Approved. Subject to the provisions of Section 13.3 herein, no application for rezoning of any area in Heimes Subdivision, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the property has been approved by the J&H during the Period of J&H's Control and thereafter by the Board, and unless the proposed use otherwise complies with this Declaration and the general plan of development of Heimes Subdivision.

7.2.4 J&H Exempt. Any portion of the Property owned by J&H is exempt from the restrictions on subdividing, platting, rezoning, the recording of Subsidiary Declarations and other restrictions set forth in this Section 7.1

7.3 Retention and Drainage. This Section shall govern all Lots. An Owner shall not at any time fill, block or obstruct any drainage facilities or drainage structures on its Lot and each Owner shall repair and maintain all drainage facilities and drainage structures located on its Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within any drainage areas which may impede the flow of water under, over or through said areas.

7.4 Subdivision Agreement. Each Owner and Lot shall comply with the Subdivision Agreement. In the event of a conflict between this Declaration and the Subdivision Agreement, the more restrictive provision shall control.

7.5 Effect of Other Limitations. Any limitations on Improvements in Heimes Subdivision contained herein or in the Subdivision Agreement are supplemental to any controls established by zoning, subdivision, building, health, fire or other jurisdictional codes and regulations, and the more restrictive controls shall apply in each instance.

## ARTICLE VIII FUNDS AND ASSESSMENTS

8.1 Creation of Lien; Personal Obligation for Assessments. Declarant, for each Lot owned within Heimes Subdivision, hereby covenants, and each successive Owner, by acceptance of a deed therefor, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association the Assessments which the Board is authorized to levy pursuant to the provisions of this Declaration. All Assessments, which shall include all late charges, interest, costs and reasonable attorneys' fees due with respect thereto, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which each Assessment is levied. Each Assessment, including interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment became due and owing. The personal obligation for delinquent Assessments shall not pass to said Person's successors in title, unless expressly assumed by them. If more than one Person was the Owner of a Lot, the personal obligation to pay such Assessment respecting such Lot shall be both joint and several.

8.2 Purpose of Assessments. The Assessments shall be used to enhance, maintain and protect the desirability, attractiveness and safety of Heimes Subdivision; for the improvement and maintenance of the Common Areas; to reimburse the Association for the costs incurred in bringing an Owner into compliance with this Declaration, the Articles, Bylaws, Subdivision Agreement and/or rules adopted by the Board; and for the common good and benefit of Heimes Subdivision, the Association and the Members, as determined by the Board.

8.3 Budgets and Financial Statements of the Association. The following financial information shall be regularly prepared and distributed by the Board to all Members of the Association:

8.3.1 Within seventy-five (75) days after the end of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, and distribute to all Members of the Association an operating budget for the next fiscal year setting forth the estimated revenues and expenses for said fiscal year and the total cash reserves of the Association currently available for expenditures.

8.3.2 After the close of the Association's fiscal year, the Board shall prepare and distribute to each Member a balance sheet and a statement of actual expenses and income for the preceding fiscal year.

8.4 Accounts. The Association shall maintain one operating account into which the Board shall deposit all funds paid to the Association as Assessments or otherwise received by the Association as provided in this Declaration. All funds shall be held in trust by the Association for the use and benefit of its Members.

8.5 Regular Assessments.

8.5.1 Purpose. Regular assessments shall be used for all expenses incurred by the Association for (i) the administration of all other Association costs (on an annual basis), operation, maintenance, repair and replacement of the Common Areas and any Improvements therein, including all taxes and insurance; (ii) maintaining the landscaping on all of the Common Areas as set forth in Section 6.2.5 herein, and (iii) carrying out the duties, rights and obligations of the Association, including the Board, as provided for in this Declaration.

8.5.2 Date of Commencement of Regular Assessments. The regular assessments provided for in this Article VIII shall commence as to all Lots, including any Lot owned by the Declarant, on the first day of the month following the incorporation of the Association, provided, however, that J&H may, at its option, delay the start of regular assessments so long as J&H elects to perform all maintenance and other obligations of the Association at its sole cost and expense. The first regular assessment shall be adjusted according to the number of months remaining in the fiscal year.

8.5.3 Budget. Within sixty (60) days after the end of each fiscal year of the Association, beginning with the first full fiscal year after regular assessments commence, the Board shall meet for the purpose of establishing the regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review an operating statement showing income and expenses for the preceding fiscal year and a preliminary budget, any written comments received from any Member, and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Members of the Association, shall establish an operating budget and the regular assessment for the forthcoming year.

8.5.4 Payment of Assessments. Regular assessments shall be due and payable by the Owners to the Association in four equal quarterly installments on or before the first day of April, July, October and January, or in such other manner as the Board shall designate.

8.5.5 Failure to Fix Regular Assessments. Failure by the Board to fix regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

8.6 Special Assessments.

8.6.1 Purpose. Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the estimated total amount of funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Declaration, costs of construction or unexpected repairs, replacements or reconstruction of Improvements in the Common Areas if funds are otherwise required for any activity or purpose of the Association permitted under this Declaration.

8.6.2 Budgeting. The Board shall determine the approximate amount necessary to defray the expenses set forth in Subsection 8.6.1 above, and, if the amount is approved by a majority vote of the Board, it shall become a special assessment.

8.6.3 Time and Manner of Payment. The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot. Special assessments shall be due and payable within ten (10) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

8.7 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner who fails to comply in any respect with this Declaration, the Articles, Bylaws, the rules promulgated by the Board or the Subdivision Agreement, or as otherwise permitted elsewhere in this Declaration, in an amount equal to any monies expended by the Association in remedying an Owner's failure to comply under this Declaration or in the amount of a fine or penalty imposed pursuant to this Declaration. All such reimbursement assessments shall be paid to the Association within five (5) days after demand.

8.8 Capital Improvement Assessment.

8.8.1 Purpose. Capital improvement assessments may be levied by the Association for the purpose of defraying, in whole or in part, the cost of construction of any Improvements deemed reasonably necessary by the Board for the benefit of Heimes Subdivision, except those public improvements in the Subdivision Agreement which specifies the obligatory party to make the same. Capital improvements in excess of \$50,000.00 shall require the consent of 2/3rds of the membership interest of the Owners.

8.8.2 Time and Manner of Payment. Capital improvement assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate for the payment thereof.

8.9 Rate of Assessment. All Assessments (other than a reimbursement assessment levied against an Owner pursuant to Section 8.7) shall be fixed at a uniform rate and levied based upon the proportion of memberships owned by each Owner in relationship to the total memberships in the Association at the time the Assessment is levied or imposed, as reflected in the records of the Association.

8.10 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request and for a reasonable fee to be established from time to time by the Board, shall execute, acknowledge and deliver to the party making such request a written statement certifying whether or not, to the knowledge of

the Association with no duty to investigate or make further inquiry, a particular Owner is in default as to its Lot under the provisions of this Declaration, and further stating the dates to which installments of Assessments have been paid as to such Lot. Any such certificate may be relied on by a prospective purchaser of the Lot or a Mortgage, but reliance on such certificate shall not extend to any default (except one involving the payment of Assessments) of which the signer had no actual knowledge.

8.11 Exempt Property. The foregoing notwithstanding, all Exempt Property shall be exempt from paying Assessments and the Assessment liens provided for in Article VIII, but an Owner of Exempt Property shall not be a Member and shall have no voting rights.

## ARTICLE IX COLLECTION OF ASSESSMENTS; ASSESSMENT LIENS

9.1. Right to Enforce. The right to collect and enforce Assessments, including all related interest, late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Owner's Lot by judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid Assessments, together with all other amounts described in this Article IX, may be maintainable with or without foreclosing or waiving the lien rights.

9.2 Notice of Default: Interest: Late Charges: Creation of Lien. Failure to make payment of any Assessment or installment thereof related to any Lot on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to five percent (5%) more than the Prime Rate on the date of default (and shall fluctuate thereafter as the Prime Rate changes from time to time) and, if not paid within ten (10) days, a late charge of five percent (5%) (or such lower interest and late charges as the Board shall determine in its discretion) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the Assessment past due and the full Assessment shall be a lien against such Lot. The lien created pursuant to this Article shall not be foreclosed until the Board or its authorized representative has delivered written notice to the delinquent Owner or Owners not less than fifteen (15) days before commencement of any proceedings to enforce such lien, which shall set forth notice of default and a demand for payment, and unless such delinquency has not been cured in full within said 15-day period, including payment in full of all interest and late charges.

9.3 Notice of Lien; Foreclosure. Upon the giving of notice and failure to cure as provided in Subsection 9.2, the Association may record a notice of assessment lien against the Lot of the defaulting Owner. In addition, the Association may proceed to foreclose the Recorded Assessment Lien provided for in this Article in any manner provided or permitted for the foreclosure of realty mortgages in the State of Nebraska (including the right to recover any deficiency). The Association shall not be obligated to release any Recorded Assessment Lien until all delinquent Assessments, including interest, late charges, attorneys' fees and collection costs, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any Assessments or installments thereof, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of his Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.



9.4 No Offsets. All Assessments shall be payable in the amounts covered by the particular Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, nonuse or abandonment of a Lot or a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

9.5 Priority; Subordination of Lien to First Mortgages.

9.5.1 Priority of Lien. The Assessment lien herein shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in Section 9.5.2 below), federal and state tax liens, judgment liens, and liens for labor or materials, which may be hereafter imposed against any portion of the Property.

9.5.2 Subordinate to First Mortgages. Notwithstanding the foregoing, the Assessment liens provided for herein shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior hereto by applicable law and the lien of any first Mortgage encumbering a Lot which is recorded prior to the Recorded Assessment Lien referred to in Section 9.3, but only as to advances or payments made pursuant to said Mortgage prior to the time the Recorded Assessment Lien is placed of record, and provided further that each such first Mortgage must have been made in good faith and for value and duly recorded in the office of the Sarpy County Register of Deeds prior to the recording of the Recorded Assessment Lien. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any obligation to pay any Assessments thereafter becoming due nor from the lien securing any subsequent Assessments. Where the holder of a first Mortgage or other purchaser of a Lot obtains title to the same as a result of foreclosure, such title holder, its successors and assigns, shall not be liable for Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer, except for the share of Assessments resulting from a reallocation of Assessments which are made against all Lots. The Assessment lien herein shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

9.6 Transfer of Property. After the sale of any Lot within Heimes Subdivision, the selling Owner or Owners shall not be personally liable for any Assessment levied on its Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. However, except as provided in Section 9.3 with respect to a transfer of a Lot pursuant to foreclosure proceedings, the transferred Lot shall remain subject to the lien securing payment of all Assessments, including Assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally responsible for all Assessments and charges levied on his Lot prior to any such transfer. Upon the transfer of ownership of any Lot or Lot (excluding the initial sale by Declarant), the Board, in its discretion, may charge a reasonable transfer assessment to cover administrative costs associated with said transfer of ownership, which administrative costs shall not exceed the sum of \$250.00.



9.7 Other Enforcement Measures. In addition to the other remedies set forth in this Article, the Board shall have the right to suspend the right of any Owner who is in default on any Assessments to vote pursuant to Section 4.3 above or the Articles and the Bylaws during the period of any default.

9.8 Contracts with Owners. If the Association elects to enter into contracts with Owners for the performance of special maintenance or other services to that Owner's Lot, any fees charged to that Owner for such services shall be due within ten (10) days after billing, shall be an Assessment, shall be secured by the Assessment lien, shall be the Owner's personal responsibility, and shall be enforceable as provided herein with respect to the Assessments.

ARTICLE X  
DESTRUCTION OR CONDEMNATION OF COMMON AREAS

10.1 Repair. Within a reasonable time after the damage or destruction of all or any portion of the Common Areas, the Board shall cause the same to be repaired, reconstructed and restored substantially to the same condition as the same existed prior to such damage or destruction.

10.2 Insurance Proceeds Insufficient. If upon such damage or destruction the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Common Areas, the Board shall be authorized to specially assess all Owners and Lots for the additional funds needed pursuant to Section 8.6.

10.3 Eminent Domain. The Board shall represent all Members in connection with any condemnation proceeding regarding the Common Areas and shall be entitled to negotiate and settle with the condemning authority and to make a voluntary sale to the condemning authority in lieu of legal action. All condemnation proceeds regarding the Common Areas shall be paid to the Association to be used by the Board in its sole discretion for the purposes set forth in Section 8.2, after paying any costs or fees incurred by the Association in negotiating, settling and contesting the condemnation.

ARTICLE XI  
DURATION, MODIFICATION AND TERMINATION

11.1 Duration of Covenants. This Declaration, and all covenants, conditions, restrictions and easements herein, shall continue and remain in full force and effect at all times with respect to Heimes Subdivision and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 11.2 below) for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the County Register of Deeds of Sarpy County, Nebraska. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated as provided in Section 11.2 below.

11.2 Termination or Modification. This Declaration, or any provisions hereof, may be terminated, modified, or amended with respect to all or any portion of Heimes Subdivision, by a vote of all Owners holding at least 2/3rds of the memberships in the Association.

ARTICLE XII  
ENFORCEMENT

12.1 Enforcement by Board; Right to Perform.

12.1.1 Failure to Maintain Improvements and Lots. Upon a failure to maintain and repair in accordance with Sections 6.2 and 6.3 above, or to perform any other obligations thereunder, the Board shall notify the respective Owner in writing pursuant to Section 15.7 of such default. If such default is not cured by the Owner or its Lessee within thirty (30) days from the date such notice is given to the Owner, the Board, or its designated agent or contractors, shall have the right, in addition to Section 12.2, to enter upon the Lot for the purpose of maintaining, restoring or repairing said Improvement or Lot. The costs incurred by the Board in restoring, maintaining or repairing said Improvement or Lot, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25%) of such costs, shall be paid by such Owner as a reimbursement assessment in accordance with Section 8.7 hereof.

12.1.2 Off-Site Parking. No parking shall be allowed on any public streets within the subdivision. Adequate off-street parking shall be provided by each Owner. If the vehicles of any employee, visitor or business invitee of an Owner or any Lessee or any company vehicles thereof are parked on any street, the Board shall have the right, in addition to Section 12.2, to immediately have such vehicles towed at the Owner's expense, and/or to assess a reasonable fine against said Owner for each day such on-street parking continues. All such amounts shall be paid by said Owner to the Board or to such other person or entity designated by the Board, and shall be paid as a reimbursement assessment in accordance with Section 8.7 hereof.

12.1.3 Other Covenants. Declarant and/or the Board or their duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner, to enter upon the Lot where such violation or breach exists, and summarily remove, at the expense of the Owner thereof who shall pay all such expenses within five (5) days after demand, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration.

12.1.4 Inspection Rights. Declarant and/or members of the Board, or authorized representatives thereof, have the right from time to time, during reasonable hours, to enter upon and inspect any Lot and the Improvements thereon for the purpose of determining whether or not the provisions of this Declaration have been, or are being, complied with, and the exercise of such rights shall not be deemed a trespass upon such Lot.

12.1.5 Other Enforcement Measures. In addition to other remedies set forth herein, the Board shall have the right to suspend a defaulting Owner's right to vote under Section 4.3 and the Articles and Bylaws during the period of any default.

12.2 Additional Remedies: Rights of Other Owners. In addition to the rights and remedies set forth in Article IX and Section 12.1 above, in the event of any breach, default, non-compliance, violation

or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration by an Owner or by a Lessee or other Person with respect to the Lot of an Owner (collectively referred to herein as a "default"), and the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by Declarant (or if any such default is not reasonably capable of being cured within such 30-day period, then if such Owner has not commenced to cure the default promptly after such notice is given and does not thereafter diligently continue to prosecute such cure to completion), then Declarant, the Association or any Owner with the right to enforce this Declaration under Section 15.3 below may enforce any one or more of the following rights or remedies in this Section 12.2, or any other rights or remedies available at law or in equity, whether or not set forth in this Declaration. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

12.2.1 Damages. Declarant, the Association or any such Owner may bring a suit for damages arising from or with respect to any such default.

12.2.2 Declaratory Relief. Declarant, the Association or any such Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

12.2.3 Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Declarant, the Association and/or any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.

12.2.4 Fines. This Subsection may be enforced only by the Association. Upon a default that is defined in this Section 12.2, the Board may assess fines based on a schedule of fines adopted from time to time by the Board for various types of defaults that may arise under this Declaration, or as the Board may assess for defaults not covered by existing schedule of fines, provided that the Board shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.

12.3 Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any Mortgage or similar instruments securing a loan made in good faith and for value with respect to the development or permanent financing, or any refinancing, of any Lot or portion thereof, or any Improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such Mortgage or similar instrument.

12.4 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties and/or to enforce or restrain the violation of this Declaration, the losing party or parties, as determined by the court for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties, as fixed by the court in such proceedings.

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12.5 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed to be a duty upon Declarant or the Board a duty to take any action to enforce the provisions of this Declaration.

12.6 No Liability Regarding Enforcement. Neither Declarant, the Board or any member thereof, the Committee or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without willful or intentional misconduct) shall be liable to any Owner or Lessee of any real property subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration, or any part hereof. Each Owner and Lessee acquiring an interest in Heimes Subdivision agrees that it will not bring any action or suit against Declarant, the Board or any member thereof, or the Committee or any member thereof, from time to time, or their successors and assigns, to recover any such damages or to seek equitable relief relating to their duties under the operation of this Declaration, except any such damages or equitable relief caused by such party's bad faith, willful misconduct or gross negligence.

ARTICLE XIII  
RESERVED RIGHTS OF DECLARANT

13.1 Right to Use Common Areas to Promote Heimes Subdivision. J&H shall have, and hereby reserves the right to, reasonable use of the Common Areas and services offered by the Association in connection with the promotion and marketing of Lots and Lots within the Property. The rights of J&H shall include, without limitation, the right (i) to erect and maintain on any part of the Common Areas and on any portion of the Property owned by J&H, such signs, temporary buildings and other structures as J&H may reasonably deem necessary or proper from time to time in connection with the promotion, development and marketing of Lots and Lots within Heimes Subdivision; (ii) to use vehicles and equipment on the Common Areas or any portion of the Property owned by J&H for promotional purposes; and (iii) to permit purchasers of Lots against which a Subsidiary Declaration has been recorded which permits further subdivision thereof, to use the Common Areas in a manner reasonably designated by J&H, at its sole election, to promote, develop and market subdivided portions of said Lot to Persons interested in purchasing the same.

13.2 Right to Construct Additional Improvements Within Common Areas. J&H shall have, and hereby reserves the right, to construct additional Improvements within the Common Areas from time to time for the improvement and enhancement of the Common Areas and of Heimes Subdivision and for the benefit of the Association and its Members, and the same shall thereafter be maintained by the Association pursuant to Section 6.3.

13.3 Right to Complete Development of Heimes Subdivision. Notwithstanding anything contained herein to the contrary, J&H shall have, and hereby reserves, the right: (i) without the approval of the Association or the Board to subdivide or re-subdivide or otherwise split or combine any portion of the Property owned by J&H in order to complete development of such Lots owned by J&H; (ii) to amend the Subdivision Agreement, but only with respect to matters and issues relating to Lots owned by the J&H; or (iii) without the approval of the Association or the Board to maintain an office for construction, sales, promotion or leasing purposes or other similar facilities on any Lot owned by J&H within the Property.

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13.4 Right to Approve Conveyance or Change in the Use of Common Areas. During the Period of J&H Control, the Association shall not, without first obtaining the prior written consent of J&H, which consent shall not be unreasonably withheld, convey, change or alter the use of the Common Areas, record a Mortgage against the Common Areas or use Common Areas other than for the benefit of the Members.

13.5 Declarant's Right to Grant Additional Easements. During the Period of J&H Control, J&H shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time to time for construction, access, utilities, drainage and other purposes for the development and sale of the Property in, on, under, over and across any Lots or other portion of the Property owned by J&H, and the Common Areas. The foregoing notwithstanding, with respect to Common Areas located within a Lot, Declarant shall not grant an easement which adversely impairs the use of such Common Areas for the purposes originally intended without the approval of the Owner of such Lot.

13.6 Amending Plat. J&H shall have, and hereby reserves, the right to record amendments to the Plat relating only to Property owned by J&H from time to time.

13.7 Reserved Rights Do Not Create Obligations. Anything in this Article XIII to the contrary notwithstanding, the foregoing rights in favor of J&H shall not in any way be construed as creating any obligation on the part of J&H to exercise any such rights or to perform any of the activities, construct any Improvements, convey any property or grant any easements referred to in this Article.

ARTICLE XIV  
ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES

Any and all of the rights, powers and reservations of either Declarant herein contained may be assigned by either Declarant from time to time, in its discretion, to any Person who will assume the duties of said Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by said Declarant in this Declaration. Any assignment made under this Article shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Sarpy County, Nebraska. Notwithstanding any provision of this Declaration to the contrary, either Declarant may, at any time and from time to time without the consent of the Board or other Owners, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the Register of Deeds of Sarpy County, Nebraska, a notice stating that said Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and obligations so specified shall immediately vest in the Board of Directors unless otherwise specified therein.

Notwithstanding anything herein to the contrary, neither Declarant shall be relieved of or shall lose any of its liabilities or rights as an Owner provided they are the Owner.

ARTICLE XV  
ADDITIONAL PROVISIONS

15.1 Constructive Notice and Acceptance of Declaration. Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of Heimes Subdivision is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this

Declaration is contained in the instrument by which such person or entity acquired an interest in said Heimes Subdivision.

15.2 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Sarpy County, Nebraska, and each Person with rights hereunder hereby waives the right to sue or be sued in any other place.

15.3 Mutuality and Reciprocity. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot within Heimes Subdivision; shall create mutual, equitable servitudes upon each Lot within Heimes Subdivision in favor of every other Lot of Heimes Subdivision; and shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in Heimes Subdivision, their heirs, successors and assigns.

15.4 Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of Heimes Subdivision can or will be carried out, or that any Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of Heimes Subdivision or the enforcement of this Declaration.

15.5 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

15.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

15.7 Notices.

15.7.1 To Declarant or Board. Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant or the Board, as the case may be (a) when personally delivered against receipted copy, or (b) four (4) business days after being mailed by certified or registered mail, postage prepaid; in either case to the Declarant at the following address:

To Declarant: J & H Investments, LLC  
9144 S. 147<sup>th</sup> Street  
Omaha, NE 68138

AND

LB Southwest, LLC  
c/o Paul Cech  
2171 S. Hwy 30  
Box 546  
Blair, NE 68008

W

To Board: J & H Investments, LLC  
9144 S. 147<sup>th</sup> Street  
Omaha, NE 68138

Declarant and/or the Board may change its address by (i) giving notice to all Owners, or (ii) giving notice to the Board at the principal office of the Association, or (iii) recording a Notice of Change of Address in the Office of the Register of Deeds of Sarpy County, Nebraska.

15.7.2 To Owners. A notice to any Owner shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, or (b) four (4) business days after mailing by certified or registered mail, postage prepaid; in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Association.

15.8 Exhibits. All Exhibits attached hereto are incorporated herein by this reference and shall constitute a part of this Declaration.

15.9 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City on Heimes Subdivision. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City applicable to Heimes Subdivision, then the more restrictive requirement shall govern.

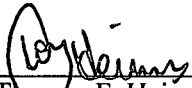
[SIGNATURE PAGE TO FOLLOW]



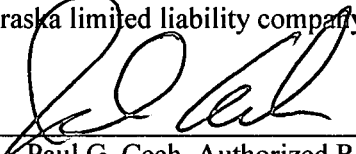
IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANTS:

J & H Investments, LLC,  
a Nebraska limited liability company

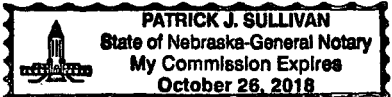
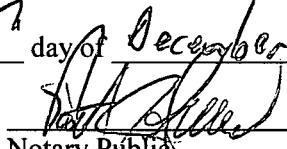
By:   
Thomas F. Heimes, Manager

LB Southwest, LLC,  
a Nebraska limited liability company

By:   
Paul G. Cech, Authorized Representative


STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SARPY     )

Before me, the undersigned Notary Public in and for said county and state, appeared Thomas F. Heimes, Manager of J & H Investments, LLC, a Nebraska limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of said company.

WITNESS my hand and Notarial Seal this 17<sup>th</sup> day of December, 2017.  
   
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SARPY     )

Before me, the undersigned Notary Public in and for said county and state, appeared Paul G. Cech, Authorized Representative of LB Southwest, LLC, a Nebraska limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of said company.

WITNESS my hand and Notarial Seal this 17<sup>th</sup> day of December, 2017.  
  
Notary Public

