



After recording return to:
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

THIRD AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS ("Third Amendment") is effective this 23 day of September, 2019.

RECITALS

WHEREAS, a Declaration of Covenants and Restrictions dated March 21, 2008, was recorded in the office of the Register of Deeds of Lancaster County, Nebraska as Instrument No. 2008018540, together with an Amendment to Declaration of Covenants and Restrictions dated March 7, 2010, and recorded in the office of the Register of Deeds of Lancaster County, Nebraska as Instrument No. 2010015385, and a Second Amendment and Addition to Declaration of Covenants and Restrictions dated September 26, 2011, and recorded in the office of the Register of Deeds of Lancaster County, Nebraska as Instrument No. 2011045973 (collectively, the "Covenants"), with respect to the real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Properties"), and

WHEREAS, pursuant to Paragraph 30 of the Covenants, the holders of more than two-thirds of the total voting rights established under the Covenants have agreed via written vote to amend the provisions of the Covenants set forth below, subject to the terms and provisions set forth herein.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth in the Covenants, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the undersigned hereby agree to amend the Covenants as follows:

1. The following terms are added to Paragraph 1. **DEFINITIONS**:

“Maintenance Agreement” shall mean that certain Maintenance Agreement dated November 17, 2006, and recorded in the Office of the Register of Deeds of Lancaster County as Instrument No. 2006058821, as amended by the Amendment to Maintenance Agreement dated April 27, 2007, and recorded in the Office of the Register of Deeds of Lancaster County as Instrument No. 2007020634, the Second Amendment to Maintenance Agreement dated October 21, 2008, and recorded in the Office of the Register of Deeds of Lancaster County as Instrument No. 2008048491, and the Third Amendment to Maintenance Agreement dated March 22, 2016, and recorded in the Office of the Register of Deeds of Lancaster County as Instrument No. 2016011171.

“FUSC Private Roadways” shall mean the private roadways located upon property now or hereafter owned and/or controlled by FUSC that serve the Firethorn residential development, including Firethorn Lane from 84th to Doonbeg Road, but excluding Pioneer Court and Thorn Court.

2. The term “Commons” in Paragraph 1. **DEFINITIONS** is hereby amended to delete reference to Outlot A, Firethorn 32nd Addition and Outlot A, Firethorn 44th Addition, Lincoln, Lancaster County, Nebraska, which contain private roadways that are being deeded to Firethorn Utility Service Co.

3. The term “Corporation” in Paragraph 1. **DEFINITIONS** is hereby amended and restated as follows:

“Corporation” means The Reserve and Terraces at Firethorn Homeowners’ Association, a Nebraska nonprofit corporation, which has been established for the purposes of enforcing these Covenants established upon the Properties and administering, maintaining and, to the extent applicable, owning the Commons and Townhome Commons.

4. Paragraph 27. **SERVICES OF FUSC** is hereby deleted and replaced with the following:

27. **SERVICES OF FUSC:** By its signature below, Firethorn Utility Service Co. (“FUSC”) has agreed (a) until and unless assumed by the City, to maintain, repair and, if necessary, replace the private sanitary sewer system and all related improvements and equipment servicing the Properties; and (b) to remove snow, maintain, repair and, if necessary, replace the private roadways serving the Properties, including Kilkee Road, Firethorn Terrace, Doonbeg Road, Trailee Road, Connemara Circle, and that portion of Firethorn Lane from 84th Street to Doonbeg Road, all for the benefit of members of the Corporation. In exchange, the members of the Corporation covenant to pay assessments by FUSC with respect to costs incurred in connection with (i) the use, maintenance, repair and replacement of the private sanitary sewer system and all related improvements and equipment; (ii) snow removal, maintenance, repair and replacement of the FUSC Private Roadways, provided such costs are subject to reduction for any contribution to be received by FUSC under the Maintenance Agreement, as the same may be hereafter amended by the parties to the Maintenance Agreement, provided any said amendment shall not increase the

responsibility allocated to the Firethorn Residential Development in Section 3 above 25% without the written consent of the Corporation; (iii) a reasonable allocation of the operating costs of FUSC for the sanitary sewer system and FUSC Private Roadways including, but not limited to, overhead, direct and indirect labor, contract labor, supplies, interest costs, equipment, utilizes and similar expenses; and (iv) reasonable reserves for capital expenditures associated with the maintenance or repair of the sanitary sewer system and FUSC Private Roadways.

All costs set forth above related to the private sanitary sewer system shall be shared by all homeowners within the Firethorn development served by the sanitary sewer system and any assessments for such costs must be allocated proportionately by FUSC among all homeowners within the Firethorn development served by the sanitary sewer system. All costs set forth above related to the FUSC Private Roadways shall be shared by all homeowners within the Firethorn development served by the FUSC Private Roadways and assessments for such costs must be allocated proportionately by FUSC among all homeowners within the Firethorn development served by the FUSC Private Roadways. Such assessments shall begin at such time as a certificate of occupancy is issued for a lot within the Properties and all FUSC charges billed will be prorated for the first year beginning on the first day of the month in which a certificate of occupancy is issued. If such assessment is not paid within thirty (30) of written notice of such assessment to a Lot Owner, such assessment shall bear interest at the rate of 16% per annum and, when notice of nonpayment is filed with the Lancaster County Register of Deeds, shall be a lien upon the Lot Owner's lot. The Lot Owners hereby grant FUSC reasonable access to the Properties to maintain, repair and, if necessary, replace the sanitary sewer system and FUSC Private Roadways; provided (x) any and all damage caused by FUSC's access or construction, maintenance, inspection or repair thereon shall be promptly repaired by FUSC and to the extent practical, restored, replaced or rebuilt to the condition as it existed before such construction, maintenance, inspection or repair; and (y) any activity allowed by the terms hereof upon the Properties shall be performed by FUSC in an expeditious manner consistent with accepted construction practice so as to minimize interference with the Lot Owners' use and occupancy of the Properties.

5. The following sentence is added to the end of Paragraph 28. **ADDITIONS:**

FUSC may add additional contiguous property to the Class A Properties or Class B Properties ("Contiguous Property") without the consent of the members of the Corporation; provided said Contiguous Property can be served by the sanitary sewer system and FUSC Private Roadways. The Contiguous Property may be added by the execution by FUSC and the owner of the Contiguous Property and recordation of Covenants upon the additional real estate, making the Contiguous Property subject to these Covenants.

6. Except as modified by this Third Amendment, each of the conditions, covenants, restrictions and reservations set forth in the Covenants shall continue and be binding upon the parties thereto and upon their successors and assigns and upon each of them and all parties and all persons claiming under them.

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment to the Declaration of Covenants and Restrictions as of the 23 day of September 2019.

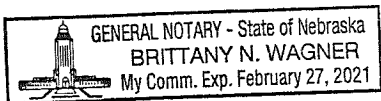
The undersigned, ^{President}~~Secretary~~ of the Corporation, hereby certifies that directors of the Corporation and the holders of more than two-thirds of the total voting rights in the Corporation established under the Covenants agreed via written vote to amend the provisions of the Covenants as set forth above.

**THE RESERVE AND TERRACES AT
FIRETHORN HOMEOWNERS'
ASSOCIATION**, a Nebraska nonprofit corporation

By: Anthony Sibert
Anthony Sibert, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 14th day of August, 2019 by Anthony Sibert, President of **THE RESERVE AND TERRACES AT FIRETHORN HOMEOWNERS' ASSOCIATION**, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.



Brittany N. Wagner
Notary Public

Agreement to be Bound

For good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the undersigned hereby agrees to the foregoing amendments and agrees to be bound by the terms and conditions set forth in Paragraph 27 of the Covenants.

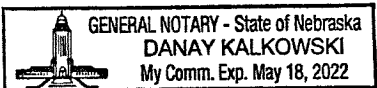
"FUSC"

FIRETHORN UTILITY SERVICE CO., a
Nebraska corporation

By: *Mark A. Wible*
Mark A. Wible, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23 day of September, 2019 by Mark A. Wible, President of **FIRETHORN UTILITY SERVICE CO.**, a Nebraska corporation, on behalf of the corporation.



Danay Kalkowski
Notary Public

Agreement to be Bound

For good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the undersigned hereby agrees to the foregoing amendments and agrees (a) to be bound by the terms and conditions set forth in Paragraphs 27 and 34 of the Covenants, and (b) not terminate or amend the Maintenance Agreement in any manner that increases the responsibility allocated to the Firethorn Residential Development in Section 3 of the Maintenance Agreement above 25% without the written consent of the Corporation.

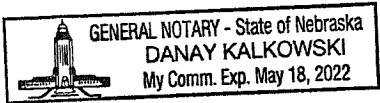
“FGC”

**FIRETHORN GOLF COMPANY, LLC, a
Nebraska limited liability company**

By: *Mark A. Wible*
Mark A. Wible, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23 day of September, 2019 by Mark A. Wible, Manager of **FIRETHORN GOLF COMPANY, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Danay Kalkowski
Notary Public

EXHIBIT "A"

Properties

Lots 1-10 and 12-20, Block 1, Firethorn 27th Addition;
Lot 1, Firethorn 35th Addition;

Lots 1-16 Block 1, and Lots 1-3 and 6-18, Block 2, Firethorn 32nd Addition;
Lots 1 and 2, Firethorn 39th Addition;

Lots 1-5, Block 1, Lots 1-4 Block 2, and Lots 1-29, Block 3, Firethorn 44th Addition,

FI 27
FI 35

FI 32
FI 39

FI 44