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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR FORTY9PLACE**

This Declaration of Covenants, Conditions, Easements and Restrictions for Forty9Place (this “Declaration”) is made this 26 day of July, 2019, by Design Development, LLC, a Nebraska limited liability company, hereinafter referred to as “Declarant.”

WHEREAS, Declarant is the owner of certain land located in Douglas County, Nebraska and more particularly described in Exhibit “A” attached hereto as a part hereof, said land together with such additional lands as shall be subjected to this Declaration being referred to as the “Property”; and

WHEREAS, the Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property;

NOW THEREFORE, the Declarant declares that the Property is hereby subjected to and shall be held, sold, occupied, and conveyed subject to this Declaration.

The Declarant further declares that this Declaration and all amendments and supplements thereto shall run with the Property and shall be binding upon the Declarant, the Association, each Owner, their heirs, successors, and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Declarant, the Association, each Owner, and all succeeding each Owner.

Forty9Place Homeowners Association, Inc., referred to herein as the “Association”, has been or will be established as a homeowners association incorporated in the State of Nebraska for the mutual benefit of the Owners and Residents of the Property.

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## Article I: Definitions

The terms used above or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article I of this Declaration.

**1.01 “Annual Assessments”** shall mean and refer to the Annual General Assessment and any Services Assessment which may be levied by the Association in each of its fiscal years pursuant to Article IV of this Declaration.

**1.02 “Annual General Assessment”** shall mean and refer to the annual charge shared by all Class “A” members established pursuant to Article IV of this Declaration.

**1.03 “Assessable Property”** shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

**1.04 “Association”** shall mean and refer to Forty9Place Homeowners Association, Inc., a Nebraska non-profit corporation, its successors and assigns.

**1.05 “Board of Directors” or “Board” or “Directors”** shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

**1.06 “Class A Members”** shall mean and refer to all Owners other than the Class B Member (during the Development Period).

**1.07 “Class B Member”** shall mean and refer to the Declarant.

**1.08 “Common Area”** shall mean and refer to all real property and the improvements thereon from time to time owned or leased by the Association for the common use and enjoyment of the Members. Such property may (but need not) include any common areas, outlots, recreational facilities, parks and other open space land, lakes and streams, storm water management and drainage facilities, private streets not dedicated to Douglas County, Nebraska or State of Nebraska, pathway and bikeway systems, and fencing on Common Area. The Association is responsible for management and maintenance of all Common Area.

**1.09 “Declarant”** shall mean and refer to Design Development, LLC, a Nebraska limited liability company, its successors and assigns, as long as it owns at least one (1) Lot or during the Development Period whichever is later. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are assigned by Declarant to a designated party, in writing, or which pass by operation of law.

**1.10 “Declaration”** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Forty9Place as it may be amended from time to time or supplemented in the manner provided herein.

**1.11 “Designated Builder”** shall mean any person granted permission by the Declarant, in

writing, to construct a Dwelling Unit on any Lot or Lots, unless such permission is revoked by the Declarant.

**1.12 “Development Guidelines or Guidelines”** shall mean the design and development guidelines and standards and the review and approval procedures prepared and issued from time to time by the Architectural Committee pursuant to Article V for the purpose of assisting the Owners and Residents in preparing building, landscaping, site and development plans for all of the real property and Improvements within the Holland Hilltop Addition Subdivision (commonly known as Forty9Place).

**1.13 “Development Period”** shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the later of: (a) the date the last Lot in each and every phase of the Property is conveyed to a third-party purchaser by Declarant, or (b) ten (10) years from the recording date of this Declaration, or (c) any earlier date specified by the Declarant in a written notice to the Association that the Development Period is to terminate on that date.

**1.14 “Dwelling Unit”** shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, detached housing, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

**1.15 “Exempt Property”** shall mean and refer to Outlot A, and any other property owned or controlled by the Association for so long as the Association shall be the owner or operator thereof.

**1.16 “Improvement”** shall mean and refer to:

(a) Any thing or object (other than trees, shrubbery, landscaping, and hedges less than two feet high) the placement of which upon any Lot may affect the appearance of such Lot, including, but not limited to, any building, villa residence, garage, porch, shed, greenhouse, outbuilding, covered or uncovered patio, permanent grills and outdoor kitchens, swimming pool, fence, retaining wall, awning, sunscreen, solar heating or cooling device, solar electrical panels, wind mills, exterior air conditioning equipment, antenna larger than 18 inches in diameter, gazebo, dog house or animal structure, play house, clothes-line, ponds, recreational facilities (including portable basketball goals (except for one freestanding basketball backboard and standard as long as it is not attached to any portion of the Dwelling Unit)), curbing, paving of any kind, wall, signboard, wishing well, bird bath, statues, synthetic or artificial flora or fauna, artwork of any type, or manufactured displays that are intended for long term affixing to the Lot, or any other temporary or permanent improvement on such Lot, and no partially completed dwelling or temporary building and no trailer, tent, storage shed, shack or garage/carport on any Lot or in the Common Area shall be used a temporary or permanent residence;

(b) Any excavation, fill, ditch, swale, retaining wall, dam, or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, and any Lot; and

(c) Any change of more than six inches in the grade of any lot.

**1.17 “Land Development Activity”** shall mean and refer to any building, construction, reconstruction, or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services, or any other Improvement on a Lot or any other portion of the Property by the Declarant or by any Designated Builder.

**1.18 “Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, or any subdivided portion thereof, which has been subjected to this Declaration and upon which a Dwelling Unit or other Improvement could be constructed in accordance with applicable zoning ordinances and applicable laws of the State of Nebraska in effect from time to time. “Lot” shall not mean and refer to Common Area.

**1.19 “Member”** shall mean the Class A Members, and the Class B Member of the Association.

**1.20 “Mortgagee”** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. “Mortgage,” as used herein, shall include deeds of trust. “First Mortgagee” as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term “Mortgagee” shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term “institutional mortgagee” or “institutional holder” shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term “holder” or “mortgagee” shall include the parties secured by any deed of trust or any beneficiary thereof.

**1.21 “Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of any Lots which is part of the Property but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

**1.22 “Person”** shall mean and refer to any individual, corporation, joint venture, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, or any other separate legal entity.

**1.23 “Property”** shall mean and refer to that certain real property located in Douglas County, Nebraska, more particularly described in Exhibit “A” attached hereto, together with such additional lands as may be subjected to this Declaration, commonly referred to as “Forty9Place”.

**1.24 “Resident”** shall mean and refer to:

(a) Each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board of Directors, has delivered proof of such lease agreement to the Board of Directors;

(b) Members of the immediate family of such individual Resident or of an Owner who

actually resides within the Property and in the same household with each such individual or Owner;  
and

(c) Any person who has a fixed place of habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

**1.25 “Services Assessment”** shall mean and refer to the charge or charges imposed upon a section, neighborhood, housing type, or subdivided parcel of the Property for certain services rendered pursuant to Article IV of this Declaration.

**1.26 “Special Assessment”** shall mean and refer to any special charge established pursuant to Article IV of this Declaration.

## **Article II: Property Rights of Common Area**

**2.01 Rights of Enjoyment of Common Area.** Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his Lot. Each Owner is bound by the terms of the governing documents of the Association. Each Resident shall have a nontransferable right to use and enjoy the Common Area, which right shall terminate when such person ceases to have the status of a Resident. Such easements and rights shall be subject to the provisions below.

(a) The right of the Board of Directors to adopt, promulgate, enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Common Area which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such rules and regulations may include limitations on the number of guests of Owners and Residents who may use the Common Area at any one time.

(b) The right of the Board of Directors to establish and charge reasonable admission and any other fees for certain types of extraordinary uses of the Common Area.

(c) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use all or any portion of the Common Area (with the exception of any streets or access ways) for a violation of this Declaration or for an infraction of the Board’s rules and regulations for period(s) not to exceed 60 days or until such violation is cured.

(d) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use the Common Area (with the exception of any streets or access ways but including parking areas) for so long as any Annual General Assessment, Services Assessment, or Special Assessment for such Lot remains unpaid and overdue.

(e) The Association may at any time mortgage, dedicate, or transfer all or a part of the Common Area to any public agency, authority, or other entity upon such terms and conditions as shall be agreed upon by such agency, authority, entity, or organization and the Board of Directors, including, without limitation, terms and conditions providing for the use of such Common Area by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Area and the assessments of Owners and/or Residents for the costs of such maintenance

and repair. No such dedication or transfer shall be effective, however, unless approved by 66 2/3% of the vote of the Class A Members at a meeting at which a quorum is present and, during the Development Period, by the Class B Member, except for the following which shall not require any Members' consent:

- (i) Granting easements which do not interfere with the intended Common Area use;
- (ii) Dedicating Common Area to a public authority;
- (iii) Conveying Common Area as part of boundary line adjustments with Lots; or
- (iv) Transferring Common Area pursuant to a merger or consolidation with a non-profit entity.

### **Article III: Association Membership, Voting Rights, Board of Directors**

**3.01 Organization of the Association.** The Association has been organized as a nonprofit corporation under the laws of Nebraska to:

- (a) Provide for the acquisition, construction, management, maintenance, and care of the Common Area, and the exterior areas of each Lot (other than with respect to any Buildings or Improvements located on a Lot), including but not limited to maintenance related to lawn mowing, subdivision landscaping, and driveway and sidewalk snow removal;
- (b) Obtain, manage and maintain services for the Property, or sections thereof including, as necessary, and deemed by the Board of Directors, refuse collection, grass mowing and maintenance of the Common Area;
- (c) Adopt, amend and repeal rules and regulations as it deems reasonable;
- (d) Take other acts or action which would promote the health, safety or welfare of the Owners and Residents.

The Association is charged with such further duties and invested with such powers as are prescribed by law and set forth in the Articles of Incorporation of the Association and herein as all of the same may be amended from time to time. The Articles of Incorporation and Bylaws of the Association shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Common Area, and other than by a rebate of any excess Annual Assessment, Special Assessment or other dues, fees, or assessments) to the benefit of any Member or individual.

**3.02 Membership in the Association.** The Association shall have the following classes of membership:

- (a) **Class A.** Class A Members shall be all Owners (with the exception of the Declarant as provided in Section 3.03(b) or any Designated Builder as provided in Section 3.03(c), below). A

Person shall automatically become a Class A Member upon becoming an Owner and shall remain a Class A Member for so long as he or she is an Owner; and

(b) **Class B.** The Class B Member shall be the Declarant prior to the time a Lot is sold to a third party. The Class B Member shall be exempt from paying any and all assessments which may be levied against a Lot within the Property.

**3.03 Voting Rights of Members.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(a) Each Class A Member shall be entitled to one (1) vote on each matter submitted to the members for each Lot owned by such Class A Member which is not Exempt Property. If more than one Dwelling Unit is located on any Lot (which is not Exempt Property), the Class A Member owning such Lot shall be entitled to one (1) vote for each Dwelling Unit located on such Lot. Any Class A Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Class A Member as to such Lot and shall collectively be entitled to a single vote for such Lot (or for each Dwelling Unit located on such Lot) as to each matter properly submitted to the Members.

(b) The Class B Member shall be entitled initially to thirty (30) votes for each Lot owned. The Class B membership shall terminate and become converted to a Class A membership upon the sale of the last Lot to any third-party purchaser, or (ii) such earlier time as Declarant in its sole discretion determines.

(c) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with this Declaration and the Articles of Incorporation or Bylaws of the Association.

**3.04 Board of Directors.** The business and affairs of the Association shall be managed by a Board of Directors elected by the Members without regard to class of membership. During the Development Period, Declarant shall have the right to appoint the Directors. After the Development Period, the Directors shall be elected by the Members in accordance with Article IV of the Bylaws of the Association. The number of Directors shall be determined in accordance with the provisions of the Bylaws of the Association, however, the number of Directors shall always be an odd number and shall in no instance be less than three (3) Directors and no more than five (5) Directors.

**3.05 Adoption of Further Rules and Regulations.** The Board of Directors may make such rules and regulations consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy, and other matters concerning the Association's operations. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and other matters, including any matters requiring the

approval of the Class A Members as provided in this Declaration, may be conducted by mail, ballot, or reliable electronic means. The rules and regulations may govern and restrict the use of any area within Holland Hilltop Addition Subdivision; provided, however, that the same must be reasonable (both on their face and in the method of their enforcement) and also 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 of the Association, and such rules and regulations shall not affect 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. Such rules and regulations shall be uniformly enforced against all applicable Persons.

**3.06 Limitation of Liability.** Neither the Association, nor the Declarant nor the Board of Directors shall be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any Lot or portion of the Common Area or its facilities, or from any wire, pipe, drain, conduit, or the like. Neither the Association, the Directors nor the Declarant, or its members, employees or agents, shall be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area or its facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

#### **Article IV: Covenant for Assessments**

**4.01 Creation of the Lien and Personal Obligation of Assessments.** The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual General Assessments, Services Assessments, and Special Assessments (the "Assessment" or collectively the "Assessments") as are established and are to be paid and collected as hereinafter provided. The Assessments, together with interest thereon, late fees, and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest thereon, late charges, and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessments fell due. The personal obligation for delinquent Assessments shall pass to successors in title and both parties (seller and purchaser) shall be jointly liable therefor. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot or any Dwelling Unit thereon.

**4.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to carry out the business and responsibilities of the Association including, but not limited to:

- (a) The acquisition, construction, management, maintenance, and care, repair, or



replacement of the Common Area and services;

(b) Obtaining, managing, and maintaining services for the Property, or sections thereof including, as necessary, refuse collection;

(c) Promoting the recreation, health, safety, and welfare of the Members; and

(d) Providing for grass cutting, lawn and landscaping maintenance of all Common Area and Lots, maintenance of all recreational areas and facilities, maintenance (including snow removal) of all private streets located on the Property, and snow removal of all driveways and sidewalks that may be located on a Lot.

#### **4.03 Establishment of Annual General Assessment and Services Assessment.**

(a) The Association shall levy in each of its fiscal years an Annual General Assessment and a Services Assessment if applicable, (hereinafter collectively referred to as the "Annual Assessments") against each Lot owned by Class A Members, which is not Exempt Property. The amounts of such Annual Assessments shall be established by the Board of Directors, subject to the limitations imposed by Section 4.04, at least thirty (30) days in advance of each Annual Assessment Period. The first Annual Assessments on each Lot imposed pursuant to this section 4.03(a) shall be prorated from the date of conveyance to the end of the fiscal year of the Association.

(b) The amount of the Annual General Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots subject to the provisions of Section 4.04.

(c) A Services Assessment may be levied by the Board of Directors against certain Lots owned by Class A Members in sections or neighborhoods of the Property or against any particular housing type, for special services which the Association provides such areas. The amount of the Services Assessment shall be determined by the Board of Directors according to the estimated cost of providing services or rights of use to the Lots in such section, which services or rights are not enjoyed by all of the Members of the Association. The amount of a Services Assessment shall be the same to each Lot owned by Class A Members in any section but need not be uniform with the Services Assessment imposed upon Lots in other sections.

**4.04 Special Assessments.** In addition to the Annual General Assessment and Services Assessment authorized above, the Board of Directors may levy in any fiscal year of the Association, a Special Assessment against Lots owned by Class A Members for the purpose of defraying, in whole or in part, the cost of any construction, maintenance, reconstruction, repair, or replacement of the Common Area including fixtures and personal property related thereto, or for any other purpose for which the Association is responsible. Such Special Assessment may be rescinded if, at a meeting called within 60 days of notice of the Special Assessment, the majority of the votes of each class of membership who are voting in person or proxy agrees. Special Assessments shall be imposed against Lots which are not Exempt Property in the same proportions as Annual General Assessments as provided in Sections 4.03(a), (b), and (c).

**4.05 Date of Commencement of Assessments.** The Annual General Assessment and Services

Assessment, if any, provided for in this Article IV shall commence for each Lot owned by a Class A Member and subjected to this Declaration from the date of conveyance to the end of the fiscal year of the Association.

**4.06 Repair and Replacement Reserve.** As a part of any Annual Assessment the Board of Directors shall obtain from Class A Members contributions to capital on a regular basis, which contributions will be used to establish a replacement and repair reserve. Such contributions shall be paid monthly or at such time as regular assessments are due and shall be in an amount to be designated from time to time by the Board of Directors. All of the funds shall be deposited in an account with a lending institution, the accounts of which are insured by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America or certificates of deposit in a federally insured lending institution. Such funds also may, in the discretion of the Board of Directors, be invested in money market funds which, although they themselves are not guaranteed by the United States Government, invest solely in United States Government securities (or in State bonds which are backed in principal by the State). The replacement reserve may be expended only for the purpose of the replacement and repair of the Common Area.

**4.07 Initial Working Fund.** The Board of Directors may collect a working capital contribution against the initial Owner of a Lot (other than the Declarant or any Designated Builder purchasing from Declarant) at the time of closing on the Lot. Such contribution, if collected, shall not exceed two (2) months of the Annual General Assessments and shall be utilized for commencing business of the Association and providing the necessary working fund for it.

**4.08 Notice and Due Dates.** Written notice specifying (a) the amount of each Annual General Assessment, Services Assessment and Special Assessment, and (b) the number and amounts of the installments by which each such Assessment is to be paid, shall be given to the Class A Members of each Lot subject thereto. Each installment of an Annual General Assessment, Services Assessment or Special Assessment shall be due on the first day of each month, unless the Board of Director provides for a separate due date.

**4.09 Effect on Nonpayment of Assessments: Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall be delinquent and the Association may exercise any or all of the following remedies:

(a) Upon notice to the Owner declare the entire balance of any Annual General Assessment or Special Assessment due and payable in full;

(b) Charge interest and a late fee (as determined by the Board) for assessments which are not received by the thirtieth (30th) day of the assessment period;

(c) Bring an action at law or in equity against the Owners of the Lot to collect the same; and

(d) Record a lien against the Lot in the Office of the Douglas County Register of Deeds. Such lien may be enforced by the Association in the same manner and to the same extent and subject to the same procedures as in the case of a foreclosure of a real property mortgage under

the laws of Nebraska.

(e) Deny use of the Common Area and/or cease to provide any services furnished by the Association on behalf of the Owner for the benefit of the delinquent Owner's Lot.

The Owner personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment.

**4.10 Certificate of Payment.** The Association shall, upon written request by owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Annual General Assessments, Services Assessments and Special Assessments, if any, on a specified Lot have been paid. The Association shall furnish said certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**4.11 Subordination of the Lien to Mortgages.** The lien of the Annual General Assessments, Services Assessments and Special Assessments provided for herein shall be subordinate only to the lien of any mortgage or deed of trust. The sale or transfer of any Lot shall not affect the lien of such Assessments. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof for the benefit of any Mortgagee shall extinguish the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any Mortgagee shall be deemed to extinguish any mortgage or lien which the Association has itself placed upon any property owned by the Association.

## **Article V: Architectural Review and Architectural Committee**

**5.01 Composition and Appointment.** An Architectural Review and Covenants Committee (the "Architectural Committee") shall be appointed and/or removed only by the Declarant during the Development Period and thereafter by the Board of Directors of the Association. The Architectural Committee shall initially consist of three (3) members, but may thereafter be increased or decreased in size by the Declarant during the Development Period and by the Board of Directors thereafter, from time to time. Members of the Architectural Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Architectural Committee shall be filled by the Declarant during the Development Period and by the Board of Directors to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Architectural Committee may continue to act until the vacancy has been filled. Except for members who have been designated by the Declarant during the Development Period, any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate an Architectural Committee after the expiration of the Development Period, the Board of Directors shall serve as the Architectural Committee.

### **5.02 Powers and Duties.**

(a) The Architectural Committee shall serve as an architectural review board and shall regulate the external design, appearance, and location of the Lots and Improvements thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the recorded subdivision plats, deeds of subdivision, and to preserve and enhance values and to maintain a harmonious relationship among Improvements and the Property.

(b) The Architectural Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association. Any decision or determination of the Architectural Committee may be appealed by a Member affected thereby to the Board of Directors.

**5.03 Submission of Plans to Architectural Committee for Approval.** Except for such Improvements as may be constructed by the Declarant or Improvements constructed by any Designated Builder, pursuant to plans which have first been approved by the Declarant, no Improvement of any kind whatsoever shall be commenced, erected, placed, moved onto, or permitted on any Lot, nor shall any existing Improvement upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefore shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as the Architectural Committee may reasonably require, but shall in all cases include:

- (a) A site plan showing the location of all proposed and existing Improvements on the Lot;
- (b) Exterior elevations for the proposed Improvements;
- (c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed buildings; and
- (d) Description of the plans or provisions for landscaping or grading.

**5.04 Approvals/Disapprovals.** Any approval or disapproval of a requested action by the Architectural Committee shall be in writing. In denying any application, the Architectural Committee shall specify the reasons for such denial. The Architectural Committee may approve an application subject to such conditions and qualifications as the Board deems appropriate to enforce the architectural provisions of this Declaration.

**5.05 Basis for Approvals/Disapprovals.** The Architectural Committee shall have the right to disapprove of any application submitted to it, if any part of it is:

- (a) Not in accordance with this Declaration or the Development Guidelines;
- (b) Incomplete;
- (c) Not in compliance with relevant approval requirements or regulations of local,

state, federal or other governmental agencies;

(d) Deemed by the Architectural Committee to be contrary to the best interests of Holland Hilltop Subdivision, the Owners or the Residents; or

(e) Incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements, based in part on the criteria set forth in subsections (i) through (vi) below in this Subsection 5.05.

During the Development Period, the Architectural Committee shall have the right to withhold its approval of an application submitted to the Architectural Committee in its reasonable discretion. Thereafter, the Architectural Committee shall have the right to withhold its approval of an application submitted to the Architectural Committee in its reasonable discretion. In this connection, the Architectural Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) the adequacy of the building locations and dimensions on the Lot; (ii) conformity and harmony of external design with neighboring Improvements; (iii) relation of topography, grade and finish ground elevation of the Lot being improved to that of neighboring Lots; (iv) proper facing of main elevations with respect to nearby streets; (v) adequacy of landscaping; and (vi) conformity of the application to the purpose and general plan and intent of this Declaration. Any decision of the Architectural Committee made after Declarant is no longer entitled to appoint the members of the Architectural Committee, may be appealed to the Board. The decision of the Board shall be final. As long as Declarant is appointing the members of the Committee, any decision of the Committee shall be final.

**5.06 No Liability.** Neither the Declarant, nor its employees, members, managers or agents thereof, the Architectural Committee, the Board or the Association shall be liable in any way for any damage, loss or prejudice suffered or claimed by an Owner who submits an application. Any person or entity who submits an application shall forever defend, indemnify and hold the Declarant and its employees, members, managers or agents, and the Architectural Committee, the Board and the Association and its members, officers, directors and agents, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by any third party on account of: (i) any defects in any plans, drawings, specifications or other documentation submitted in any application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any application, whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved application; or (iv) the development of any Lot within Holland Hilltop Addition Subdivision. In addition thereto, neither the Declarant, nor its employees, members, managers or agents thereof, the Architectural Committee, the Board or the Association shall be responsible or liable in any way for any damage, loss or prejudice suffered or claimed by an Owner as the result of any authority granted herein or as the result of any action or failure to act with respect to any Improvements proposed, rejected, approved or constructed without the approval of the Architectural Committee.

In no event shall an approval by the Architectural Committee of any application, or any written or oral statements made by the Board or any officer, director or employee of the Association and/or the Declarant or any employee, member, manager or agent of Declarant, be

deemed to constitute in any way any representations or warranties of any kind, express or implied, with regard to the application and any plans, drawings, specifications or other documentation constituting a part of the application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.

**5.07 Failure of the Architectural Committee to Act.** If the Architectural Committee shall fail to act upon any request submitted to it within thirty (30) days after a complete submission thereof in a form acceptable to the Architectural Committee, such request shall be deemed to have been disapproved as submitted, and no further action shall be required. Submission of incomplete plans shall not be considered valid submissions triggering the deadlines stated above and shall not be recognized by the Architectural Committee or the Board of Directors. Additionally, if any additional information is requested by the Architectural Committee, the approval time may be extended so as to allow for additional information and documentation to be presented to the Architectural Committee.

**5.08 Rules, Regulations, and Policy Statements.** The Architectural Committee may recommend, from time to time, subject to the approval and adoption of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on.

**5.09 Expenses of the Architectural Committee.** The Architectural Committee may charge reasonable fees for the processing of any requests, plans, and specifications including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Architectural Committee; provided, however no member of the Architectural Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association except upon authorization by the Board and upon approval by: (a) 66 2/3% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum of 15 percent is present; and (b) the Class B Member voting in person or by proxy at such meeting.

**5.10 Right of Entry.** The Association and the Architectural Committee through their authorized officers, employees, and agents shall have the right, but not the obligation, to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Improvement thereon is in compliance with the provisions of this Article and Article VI without the Association or the Architectural Committee or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

**5.11 Land Development Activity.** Notwithstanding any other provisions of this Declaration, any Land Development Activity (as defined in Section 1.17) shall not require the approval of or be subject to review by the Architectural Committee. This provision shall not be construed in any manner as a limitation upon the right of the Declarant to review and approve any plan or modification thereof of any home builder.

**5.12 Driveway Requirements.** Driveway approaches between the sidewalk and curb on each

Lot shall be constructed of concrete. Maximum driveway slope at the sidewalk intersections shall be no more than two percent (2%) cross slope within public right-of-way to provide for a tabled driveway cross slope that is compliant with ADA/PROWAG guidelines and City of Omaha Standards. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted. The Lot owner shall be responsible to provide adequate remedial measures to prevent street creep/driveway binding on any curved streets where the street abuts the driveway approach.

**5.13 Drainage Easements.** Each Lot Owner hereby grants to each and every other adjacent Lot Owner a mutual benefit drainage easement over each other's Lot and each Owner agrees that no Owner of a Lot shall construct any improvement, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, without the express written approval of the Association. In no event shall any Owner of a Lot divert, alter or diffuse surface waters across another Lot Owner's Lot in a negligent manner.

**5.14 Construction Methods to Avoid "Drive-way Creep".** The driveway constructed on each Lot that is located on a public street which may be susceptible to street creep, including but not limited to curved streets, steeply sloped streets, T intersections, and/or cul-de-sacs, shall be constructed to accommodate the potential for street creep. The construction measures taken to accommodate for street creep may include, by way of illustration, larger expansion joints in areas susceptible to creep, placing full-depth expansion material at additional locations throughout the driveway and at the edge along any foundation or other concrete slab, such as a garage floor or sidewalk. In addition, the Owner of a Lot abutting a section of public street that may be susceptible to street creep may also address the street creep issue by placing two (2") inches of full-depth expansion material between the public street curb and the private driveway.

## **Article VI: General Restrictions on the Use of Lots and Improvements to be Made Thereon**

**6.01 Zoning Regulations.** The Property shall not be used for any purpose other than as permitted in the applicable zoning ordinances or the laws, rules, or regulations of any governmental authority in force and effect on the date of recording of this Declaration as the same may be hereafter from time to time amended. No building shall be erected, altered, placed, or permitted to remain on any such Lot other than one used as a villa dwelling. This restriction shall not apply to any use for which a special exception under local government zoning ordinances or other governing regulations, as the same may be hereafter from time to time amended, is finally granted provided such use is approved in writing by the Architectural Committee. The right, however, to further limit or restrict the use of a particular Lot is reserved under the provisions hereof. Each Owner acknowledges and agrees that the Development is subject to certain "tax increment financing" with the City of Omaha, a condition of which restricts each Owner's ability to protest real property valuations for the Property, the Lots and each Dwelling Unit, and requires each Owner to pay any and all real estate taxes levied against the Lot or Dwelling Unit, as further referenced on **Exhibit B** attached hereto. As such, each Owner agrees to take title to their Dwelling Unit and Lot subject to the terms of that certain Redevelopment Agreement dated April 11, 2019, entered

into by and between Declarant and the City of Omaha (the “Redevelopment Agreement”), and agrees to pay all real estate taxes levied against their respective Lot or Dwelling Unit pursuant to the terms of the Redevelopment Agreement, regardless of if an Owner is otherwise considered a tax exempt entity, or is otherwise not required to pay such real property taxes due to its tax exempt or not-for-profit status.

**6.02 Improvements.** The architectural character of all “Improvements”, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of a Improvement) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Architectural Committee, harmonious in terms of type, size, scale, form, color, and material. The repair, replacement, repainting, resurfacing, or restoration of any Improvement originally approved by the Architectural Committee or the Declarant shall not be subject to the review or approval of the Architectural Committee provided that, following any such repair, replacement, repainting, resurfacing, or restoration of any such Improvement, the external appearance of such Improvement shall be substantially identical with the appearance of said Improvement as originally approved. Except as otherwise herein provided, no Improvement shall be painted, surfaced, or resurfaced with any material unless and until approved in writing in accordance with objective Development Guidelines established by the Architectural Committee.

**6.03 Screens and Fences.** Except for any fence installed by the Declarant, all fencing shall be black, wrought iron style with a maximum height of 42 inches. “Invisible” underground fencing shall be allowed. Except as provided for herein, no other fence or screen shall be installed on a Lot except in accordance with the Development Guidelines established by the Architectural Committee and with the prior written approval of the Architectural Committee. Any fencing which may be installed by the Declarant or the Association in the Common Area shall be maintained by the Association. Owners may be subject to additional dues or charges relating to the lawn service on the Lots, should they choose to install a fence in accordance with the above. All fence gates shall be a minimum of 50” wide.

**6.04 Signs and Lighting.** The location, color, nature, size, design, and construction of all private signs or private outdoor lights shall be approved in writing by the Architectural Committee before the installation thereof.

**6.05 Vehicles and Parking.** No commercial truck, construction equipment, commercial bus, taxicabs, or other commercial vehicle of any kind, boats, trailers, campers, recreational vehicles, motorcycles, or motor homes shall be parked in any visible location on the Property without the prior written approval of the Architectural Committee. Commercial vehicles shall be deemed to include cars and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding five (5) square feet per side or containing visible commercial materials, cargo, tools, or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No visually offensive vehicle as determined of the Architectural Committee or disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be visibly parked on any Lot or on Common Area. The light repair or routine maintenance of vehicles, boats, motorcycles, campers, trailers, or similar vehicles shall not be carried out in a manner that is visible from any Lot for longer than twenty-four (24) hours, and may never be carried out on the Common Area. The heavy repair or extraordinary maintenance shall not be carried out in a manner that is



visible from any Lot or from any Common Area. The Association may enforce the provisions of this Section by towing any non complying vehicle at the vehicle owner's sole risk and expense. This provision shall not preclude commercial vehicles located on the property temporarily (less than 24 hours) to provide services to the Association or a resident or to trucks, construction equipment, commercial vehicles which are necessary for the construction of Improvements during the period of construction.

**6.06 Animals and Animal Shelters.** The maintenance, keeping, boarding, or raising of animals, livestock, or poultry regardless of number, is prohibited on any Lot or upon the Common Area, except for the keeping of guide animals and reasonable number of orderly domestic pets (e.g. fish, nonpoisonous reptiles, dogs, cats, or caged birds), not to exceed two (2) properly licensed pets which can regularly leave the Lot, subject to the rules and regulations adopted by the Board of Directors. Such pets or animals shall be permitted subject to the condition that they are not allowed to reasonably annoy and/or disturb the normal residential occupancy of the neighborhood or constitute a hazard to public health or safety. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Animals shall not be permitted upon the Common Area except for orderly domestic pets accompanied by someone who can control the animal and unless carried, leashed, or under other positive control. Animal droppings shall be cleaned up by the Resident responsible for the animal being on the Property. If an animal's owner fails to clean up after his or her pet or fails to comply with leash laws or the requirements of the rules and regulations of the Association charges may be levied against the responsible party as allowed by law. Any Resident who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. The appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances. No shelters, or dog runs (of any kind) for any animal shall be erected on any Lot. No pit-bull dogs shall be permitted on any Lot.

**6.07 Garages.** No garage shall be utilized for any purpose other than the parking and storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. No garage may be converted into or used for living or commercial space.

**6.08 Air, Water and Other Pollution.** No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards, which standards shall at a minimum meet the requirements of federal and state law and any regulations thereunder applicable to the Property, to be established by the Architectural Committee, and approved by the Board of Directors. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of any private or public body having jurisdiction. No person shall dump garbage, trash, yard waste or other refuse, or any polluting and/or harmful gaseous, liquid or solid waste into any waterway or onto any Common Area or Lot owned by Owner, another Owner, the Declarant or any Designated Builder within the Property.

**6.09 [intentionally omitted].**

**6.10 Landscaping.** The land area not occupied by Improvements, hard-surfacing, vehicular driveways, or pedestrian paths, shall be kept planted with grass, trees, or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Committee and approved by the Board of Directors. Such standards will take into consideration the need for providing effective site development to:

- (a) Enhance the site and building;
- (b) Screen undesirable areas or views;
- (c) Establish acceptable relationships between buildings and adjacent properties; and
- (d) Control drainage and erosion.

As required by the Architectural Committee, existing trees shall be retained, buffer areas maintained, and the natural contour of the land respected. Class A Owners shall be responsible for maintenance and replacement of any front and side yard trees. In the event an Owner fails, neglects or refuses to replace and/or maintain any front and side yard trees within such Owner's Lot, the Association shall have the right but not the obligation to replace and/or maintain the subject tree and levy a Special Assessment against such Lot and Owner for the cost of replacing or maintaining any such tree. The Architectural Committee reserves the right to require special treatment of slopes, and construction of retaining walls. Notwithstanding the foregoing, any clearing, grading, or other development work performed pursuant to any site development plan by the Declarant and approved by all appropriate governmental authorities for Declarant or for any Participating Builder shall not be subject to the review or approval of the Architectural Committee.

**6.11 Sidewalks.** Other than the Declarant, each Lot Owner and Designated Builder does hereby assume any and all responsibility for the construction, installation and maintenance, at Owner's or Designated Builder's expense, of public sidewalks parallel to each street which abuts the Lot or Lots owned by such Lot Owner or Designated Builder. All sidewalks shall be constructed, installed, maintained and replaced in accordance with the Development Guidelines and the rules and regulations of the Architectural Committee. Such sidewalks shall be constructed within thirty (30) days of substantial completion of the dwelling on the Lot, weather permitting.

**6.12 Maintenance and Use of Dwelling Unit, Lot and Improvements.** Each Owner or Resident shall at all times keep their Dwelling Unit, Lot, premises, buildings, improvements, and appurtenances in a safe, clean, neat, and sanitary condition. Appropriate maintenance shall include, but not be limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements all in a manner and with such frequency as is consistent with good property management, with the exception of those Lots on which the Association may provide maintenance of landscaping. All Owners of Lots on which stormwater management or storm drainage easements exist must keep such area free of debris, landscaping, or fences so as not to impede drainage. The Owner or Resident shall comply with all laws, ordinances, and regulations pertaining to health, safety, and pollution, and shall provide for storage and removal of trash and rubbish from his premises in a manner to be approved by the Architectural Committee or as provided for in the Rules and Regulations of the Association. No noxious or offensive activity shall be carried on or

upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet enjoyment of other Owners or Residents of the Lots.

**6.13 Trash and Garbage.** No garbage or trash cans or containers shall be permitted, unless they are completely screened from view, except on the designated day each week for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Dwelling Unit except when in actual use.

**6.14 [intentionally omitted].**

**6.15 Above-Ground Swimming Pools.** No above-ground swimming pools shall be placed upon any Lot within the Subdivision. Provided however, an Owner shall be allowed to locate one outdoor hot-tub on the 3<sup>rd</sup> level of a Dwelling Unit under the outdoor wood trellis, provided such outdoor hot-tub is fully screened from public view, is not visible from the street level, and is otherwise approved by the Architectural Committee.

**6.16 Outbuildings.** There shall be no "outbuildings" or "sheds" constructed upon any Lot within Holland Hilltop Addition Subdivision.

**6.17 Solar Panels:** Solar panels will be permitted as long as they are not visible from the front of the home. Solar panels must be approved by Architectural Committee.

**6.18 [intentionally omitted].**

**6.19 Nuisance.** No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the Residents of adjacent Lots.

**6.20 Enforcement of Maintenance.** The Architectural Committee, or its agent, during normal business hours, shall have the right (after 10 days' notice, by regular or certified mail or posted on door with a witness, to the Owner or Resident of any Lot involved, setting forth the maintenance action to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner or Resident) to do any and all maintenance work reasonably necessary in the written opinion of the Architectural Committee, to keep such Lot, whether unimproved, improved or vacant, in neat and good order, such cost and expense to be paid to the Association upon demand and collected in accordance with Article IV of this Declaration (the foregoing shall not apply to any Lot owned by the Declarant). The Architectural Committee, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Owner or Resident, any hedge, tree or any other planting that, in the written opinion of the Architectural Committee, by reasons of its location on the Lot, or the height to or the manner in which it is permitted to grow, is detrimental to the adjoining Lots contrary to the rules and regulations of the Architectural Committee, or is unattractive in appearance. The Association shall have the right to record a lien against any Lot for any expense incurred in maintaining any such Lot in accordance with this Section. Any lien recorded pursuant to this Section shall not be valid against a bona fide

purchaser for value (or bona fide mortgagee) of the Lot in question unless a suit to enforce such lien shall have been filed in the court of record and notice thereof shall have been filed in the appropriate records of Douglas County, Nebraska before the recordation among the records of Douglas County, Nebraska of the deed (or mortgage or deed of trust) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage or deed of trust).

**6.21 Maintenance During Construction.** During construction it shall be the responsibility of each Owner and Designated Builder to ensure that construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot. All Owners and Designated Builders shall install adequate silt fencing and/or erosion control measures and shall use his, her or its best efforts to keep trash, refuse, yard waste, debris and pollutants of any and every type from being transferred to other Lots, Common Area or water way within the Property.

**6.22 Land Development Activity.** The foregoing provisions of Article VI shall not be applicable to Land Development Activity. Without limiting the generality of the foregoing exclusion, the Declarant and all Designated Builders shall have the right to carry on the following activities in connection with Land Development and construction and sale of Dwelling Units:

(a) To construct, install, operate, and/or maintain on the Property one or more construction or management control offices in Dwelling Units, field office trailers, or other temporary facilities; and

(b) To construct, install, operate and/or maintain one or more model homes (or Dwelling Units) and sales offices on the Property. Such models and offices may be owned or leased by the Declarant, by a Designated Builder or by any Person designated by the Declarant. Land Development and sales activity shall in all events be subject to the local zoning ordinances, building codes and all other applicable laws, rules, and regulations of governmental authorities.

**6.23 Flags.** The Board of Directors of the Association is authorized and reserves the right to regulate the size and type of flags which may be displayed on the property, including the right to prohibit the display of flags on the Property or the right to require the removal of flags, banners or the like that the Board of Directors deems controversial or inappropriate in its sole discretion. The Board of Directors is also authorized to regulate, restrict or prohibit the erection and placement of flag poles on the Property and reserves the right to do so in its sole discretion.

## **Article VII: Withdrawable and Annexation of Real Estate**

During the Development Period, the Declarant has the unilateral right, without the consent of the Association or any Owner, Designated Builder or Mortgagee, to execute and record an amendment to the Declaration (i) withdrawing any portion of the Property which the Declarant owns from the operation of this Declaration; or (ii) annexing any portion of the Property that becomes a buildable Lot, including any outlot.

## Article VIII: Easements

**8.01 Blanket Easement.** An easement is hereby retained in favor of the Association over the Lots and any Common Area for the installation and continual maintenance of lawn and landscaping located thereon, construction of any subdivision signage, a common cable television system, a common sprinkler, any other item installed for the common enjoyment and/or benefit of the Owners (including, without limitation, electricity, gas, and telephone equipment), and the right to enter any Lot or Common Area to conduct any ongoing maintenance work, including but not limited to mowing and snow removal. An easement is further granted for the purpose of the repair and maintenance of any of the foregoing items so constructed. Any entry upon any Lot or any area owned, controlled, or to be owned or controlled by the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Owner and Resident covenants not to damage or destroy any portion of an item so constructed and shall hold the Association harmless from the cost of repairing or replacing any portion damaged or destroyed by such owner, his family, his guests or invitees. For the avoidance of doubt, Declarant hereby specifically establishes access easements for the general benefit of the Association, its permitted contractors, licensees, invitees, or other persons who reasonably need access to the improvements located in the following areas:

- (a) the electrical utility meters located on the north exterior wall of the garage of the Unit located on Lot 1. There is a screen fence and access sidewalk from the common driveway;
- (b) The water for the site irrigation facilities located in the basement of the Unit located on Lot 1;
- (c) The outlet in the building telephone service enclosure that is fed from the Unit located on Lot 1; and
- (d) Power supply for the site from the Unit located on Lot 9.

**8.02 Association Easement.** The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses, and similar interests over any part of the Common Area for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association. The Association, the managing agent, and any other Persons authorized by the Board of Directors, are hereby granted the right of access over and through any portion of the Property (excluding any dwelling), in the exercise and discharge of their respective powers and responsibilities, including, without limitation, the right but not the obligation, to make inspections, correct any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates the Association's governing documents. Each Owner and Resident shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness, or failure to comply with the Association's governing documents for which such Owner is responsible.

**8.03 Declarant Easement.** An exclusive perpetual easement, and reasonable access thereto, is hereby reserved in favor of the Declarant, and its successors and/or assigns, to erect, install, construct, operate, maintain, repair and remove poles, wires, cables, conduit, and other related

facilities and appurtenances thereof, above and below ground, and to extend thereto or therein wires and/or cables for the carrying or transmission of electric current for light, heat and power, and for the transmission of signals and sounds of all kinds, including signals provided by a cable television system, internet access system, telephone system, and/or any other communication system, and the reception related thereto, on, over, under, through and across a five foot (5') strip of land abutting all perimeter boundary lines of the Lot or any Lot-line easements set forth in the final plat of Holland Hilltop Addition which is filed in the Register of Deeds of Douglas County, Nebraska, and any replat thereof.

### **Article IX: Party Walls**

**9.01. General Rules of Law to Apply:** Each wall which is built as a part of the original construction of a Dwelling Unit on a Lot and placed on the dividing line between two adjoining Lots shall constitute a party wall (each a "Party Wall"). No Owner may alter or change a Party Wall in any manner, non-structural interior decoration excepted, and any Party Wall shall remain in the same location as originally erected. If an Owner's use of a Party Wall directly causes damage to another Owner's Dwelling Unit, the Owner which causes the damage shall be liable for the cost and expense required to repair the damaged property to substantially the same condition that existed prior to the damage being caused. If it becomes necessary or desirable to maintain, repair or rebuild the whole or any part of a Party Wall, including any areas lying immediately below or above the Party Wall (expressly including the roof of the buildings), the maintenance, repair or rebuilding expense shall be borne equally by the two Owners, except as such maintenance repair or rebuilding expense arises from the actions of a single Owner, or their respective agents or Residents, in which event the responsible party shall bear such expense. Unless otherwise agreed to by the then Owners, the rebuilding or reconstruction of a Party Wall shall be at the same location, and of the same size, as the original wall or portion thereof and be of the same or similar material of the same quality as that used in the original wall or portion thereof. If an Owner shall neglect or refuse to pay their share, or all of such costs in case of negligence, the other Owner may have the Party Wall repaired or restored and shall be entitled to have a construction lien on the Lot and Dwelling Unit of the Owner so failing to pay, for the amount of such defaulting Owner's share of the repair or replacement costs together with interest at the maximum rate allowable. The Owner having the Party Wall repaired shall, in addition to the construction lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The construction lien granted herein is effective only if filed in the real property records of Douglas County. Except as otherwise specifically provided in this Agreement, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto.

**9.02. Proof of Insurance.** Each Dwelling Unit Owner shall provide homeowners insurance with respect to the Dwelling Unit in an amount equal to at least one hundred percent (100%) of the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, flood and other perils covered by standard extended coverage endorsement and insurance against such other hazards in amounts as are normally carried by owners of like units. Owners sharing a Party Wall will exchange proof of homeowner's insurance annually. The Association reserves the right, from to time, to request written evidence of this insurance coverage.

**9.03. Sharing of Repair and Maintenance.** The cost of reasonable repair, maintenance and restoration of a Party Wall shall be shared by the Owners who make use of such Party Wall in proportion to such use.

**9.04. Destruction by Fire or Other Casualty.** If such Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used such Party Wall may restore it, and if the Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any Owner to call for a large contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**9.05. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes such Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**9.06. Right to Contribution Runs With the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

**9.07. Binding Arbitration.** Should a dispute arise concerning a Party Wall under these Covenants, the parties are encouraged to resolve their dispute pursuant to the Dispute Resolution Act, Neb. Rev Stat §25-2901 to 25-2920 prior to filing a lawsuit. No legal action with respect to Party Wall dispute shall be commenced or maintained unless and until the parties have utilized the Dispute Resolution Act.

**9.08. Requirement to Re-build.** Following any event of casualty, condemnation or other force majeure event which causes damage to a Lot or Dwelling Unit, each Owner shall re-construct the Dwelling Unit to the same condition as existed prior to the event which caused such damage. All re-construction plans shall be approved by the Architectural Committee prior to an Owner commencing construction. All re-construction activities shall commence no later than 60 days after the event which caused such damage.

## **Article X: Insurance**

**10.01 Insurance.** The Association's Board of Directors or its duly authorized agent shall obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and if reasonably available, directors' and officers' liability insurance, fidelity bond coverage and such other insurance as may be deemed reasonable and necessary by the Board of Directors of the Association. Cost of insurance coverage obtained for the Common Area shall be included in the Annual General Assessment, as defined in Article IV, Section 4.01. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties.

## **Article XI: Condemnation**

**11.01 Notice.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed in accordance with the direction of the Board of Directors or retained as working capital of the Association.

**11.02 Replacement Improvements.** If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class A Members shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association.

## **Article XII: Amendment**

**12.01 General Amendments.** Subject to the other limitations set forth in this Declaration, this Declaration may be amended by an instrument approved by not less than seventy-five percent (75%) of the vote of the Owners at a duly convened meeting. The amendment instrument shall be recorded with the Douglas County, Nebraska Register of Deeds. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

**12.02 Declarant Amendments.** Notwithstanding anything to the contrary herein contained, the Declarant reserves the right to amend this Declaration during the Development Period without the consent of any Owners, or any other persons claiming an interest in the Property or the Association if such amendment is necessary to: (a) bring this Declaration into compliance with any rule, regulation, or requirement of the Federal Housing Administration, The Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, Government National Mortgage Association or any federal, state or local governmental requirements; (b) make non-substantive, corrective changes; and/or (c) subdivide or create a lot line adjustment to reflect the relocation of boundary lines between the Common Area and any Lots or among any Lots, provided, however, that an approved resubdivision of the affected property is properly recorded.

## **Article XIII: General Provisions**

**13.01 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless amended or terminated as provided in this Article.

**13.02 Enforcement.** The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed



a waiver of the right to do so thereafter. The provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in other Sections of this Declaration.

**13.03 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof, which provisions shall remain in full force and effect.

**13.04 Construction.** The Board of Directors shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding on all persons and entities benefited or bound by the provisions of this Declaration.

**13.05 Declarant's Disclaimer.** Declarant makes no warranties or representations that any plans regarding any future phases will be carried out, or that any Lot within any such phase or future phase 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 the Property or the enforcement of this Declaration.

**13.06 Headings.** The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

**13.07 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

**13.08 Termination of Declaration.** This Declaration may only be terminated by an instrument approved by not less than eighty percent (80%) of the vote of the Owners at a duly convened meeting.

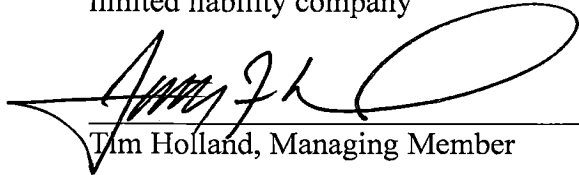
**13.09. Leasing.** No Owner shall enter into any short term lease arrangement for their Dwelling Unit (i.e. no VRBO, Airbnb, or other similar short term lease marketing platforms). All Dwelling Unit leases shall be for a term of not less than 12 months. All proposed Dwelling Unit leases shall be approved by the Association in writing before an Owner enters into such lease agreement. Notwithstanding an Owner entering into a lease agreement for a Dwelling Unit, nothing shall relieve an Owner from its obligations to conform, comply and otherwise be bound by the terms and conditions of this Declaration, and Owner shall cause each tenant to comply and adhere to the terms and conditions contained in this Declaration.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the 26 day of July, 2019.

**DECLARANT:**

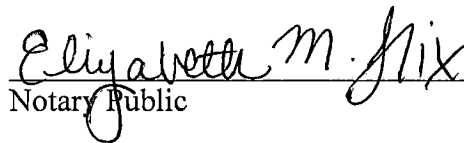
**DESIGN DEVELOPMENT, LLC**, a Nebraska limited liability company

  
\_\_\_\_\_  
Tim Holland, Managing Member

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 26 day of July, 2019, by Tim Holland, known to me to be the Managing Member of Design Development, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

{Seal}

  
\_\_\_\_\_  
Notary Public



**Exhibit "A"**

**Legal Description of Property**

Lots 1 thru 9, Inclusive and Outlot A, Holland Hilltop Addition a, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

## Exhibit "B"

The Owner shall:

3.5.1 not protest for a reduction in the real estate improvement valuation on the Redevelopment Site certified as of January 1, 2019 (Base Year) or less prior to and during construction; and not protest for a reduction in the real estate improvement base valuation on the Redevelopment Site certified as of January 1, 2019 (Base Year) **plus \$4,463,000.00 (excess valuation) or less after substantial completion or occupancy of the Redevelopment Project. The covenant agreed to herein is for the benefit of, and binding upon, both the City and the Owner and any successors and assigns, but all parties acknowledge that the excess valuation agreed to herein is not binding on the Douglas County Assessor and that any partial or full valuation designated by the Douglas County Assessor may not be an amount sufficient to produce Excess ad valorem Taxes necessary on an annual basis to amortize the Redevelopment Promissory Note;**

3.5.5 in the event of casualty, apply such insurance proceeds to the reconstruction of the Redevelopment Project, to the extent permitted by Owner's mortgage lender,

3.5.6 cause all real estate taxes and assessments levied on the Redevelopment Site to be paid *prior to* the time such become delinquent. The Owner acknowledges and agrees that any portion of the Excess ad valorem Taxes levied in the fifteenth year under this Redevelopment Agreement that become delinquent shall be forfeited and returned to the appropriate public bodies.

In the event the Owner violates or breaches any of the agreements, representations or covenants in this section, the Owner may be required by the City to surrender any remaining amount outstanding of the Redevelopment Promissory Note, after reasonable notice and opportunity to cure. Each of the foregoing covenants shall be referenced in a Notice of Redevelopment Agreement to be recorded by the Owner with the Douglas County, Nebraska Register of Deeds within sixty (60) days of the execution of this Redevelopment Agreement. The Owner shall include the same covenants and restrictions agreed to above in any conveyance of the Redevelopment Site, or any portion thereof, including but not limited to, any sale, assignment, sale-leaseback or other such transfer of the property, but shall not be responsible otherwise for the actions of the third parties if these covenants are breached by such third parties if the Owner no longer owns the Redevelopment Site.