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Pages 14



After Recording Return to:  
O'Neill, Heinrich, Damkroger,  
Bergmeyer & Shultz, P.C., LLO  
Attn: Tim O'Neill  
800 Lincoln Square  
121 S. 13<sup>th</sup> Street  
Lincoln, NE 68508

#### DECLARATION OF COVENANTS AND RESTRICTIONS

Heritage Lakes, LLC, a Nebraska limited liability company ("**Developer**"), is the owner of the following real property (the "**Property**"): 88-00

Outlots B, C and D, all in Hillcrest CC Addition, Lincoln, Lancaster County, Nebraska; and  
Lots 1-26, Block 1, Lots 1-6, Block 2, Lots 1-12, Block 3, Lots 1-18, Block 4 and  
Lots 1-8, Block 5 and Outlots A, B and C, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln,  
Lancaster County, Nebraska.

In order to provide for the preservation of the values and amenities of the lots within Property as well as for the maintenance of the character and residential integrity of the lots, the Developer hereby declares that each and all of such lots shall be held, sold and conveyed subject to the restrictions, covenants, conditions and easements contained in this Declaration of Covenants and Restrictions (the "**Declaration**"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the lots, and the enjoyment of the residents of the lots. These restrictions, covenants, conditions and easements shall run with such lots and shall be binding upon all parties having or acquiring any right, title or interest in each lot, or any part thereof. The Property, and each lot within the Property is, and shall be, subject to all and each of the following conditions and other terms.

1. **DEFINITIONS:** For purposes of this Declaration, except as otherwise defined or the context requires otherwise, the following terms shall have the meaning set forth below:

"**Additional Property**" shall mean any real property and improvements lying adjacent to or in close proximity to the Property, which Developer and any other party with the consent of the Developer may from time to time add to the provisions of this Declaration pursuant to Paragraph 28 below.

"**Association**" shall mean the Hillcrest Owners' Association, a Nebraska nonprofit

Hillcrest  
Hillcrest

corporation, which has been established for the purpose of enforcing and maintaining compliance with this Declaration.

**"Category AA House Properties"** mean Lots 6-16, Block 1, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Category A House Properties"** mean Lots 1-5, Block 1, Lots 9-12, Block 4 and Lots 1-8, Block 5, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Category B House Properties"** mean Lots 1-8, Block 4, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Category AA Townhome Properties"** mean Lots 21-26, Block 1 and Lots 1-6, Block 2, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Category A Townhome Properties"** mean Lots 17-20, Block 1, Lots 1-12, Block 3 and Lots 13-18, Block 4, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Category B Townhome Properties"** mean any Additional Property that may be added in accordance with Paragraph 28 below.

**"Commons"** shall mean: (a) Outlots B, C and D, all in Hillcrest CC Addition, Lincoln, Lancaster County, Nebraska; (b) Outlots B and C, all in Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska; (c) any other real estate [as defined in NEB. REV. STAT. § 76-201 (Reissue 1996)] or facility owned by the Association or designated by this Declaration to be maintained by the Association primarily or exclusively for the benefit of all the Lots; and (d) any Additional Property that may be added in accordance with Paragraph 28 below.

**"Green Area"** shall mean all of the Townhome Properties except that portion of the Townhome Properties on which any townhome structure, patio, garage, sidewalk, driveway and walkway are located.

**"House Properties"** mean Category AA House Properties, Category A House Properties, Category B House Properties and any Additional Property that may be added in accordance with Paragraph 28 below.

**"Lot"** or **"Lots"** mean any one or all, as applicable, of the House Properties and Townhome Properties.

**"Townhome Commons"** mean: (a) Outlot A, Hillcrest CC 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska; (b) the Green Area, (c) any other real estate [as defined in NEB. REV. STAT. § 76-201 (Reissue 2009)] or facility owned by the Association or designated by this Declaration to be maintained by the Association primarily or exclusively for the benefit of the Townhome Properties; and (d) any Additional Property that may be added in accordance with Paragraph 28 below.

**"Townhome Properties"** mean Category AA Townhome Properties, Category A Townhome Properties, Category B Townhome Properties and any Additional Property that may be added in accordance with Paragraph 28 below.

2. **CONSTRUCTION:** The exterior of any building or any other improvement placed or constructed upon any Lot shall be completed within twelve (12) months after the commencement of construction. In the event construction is not commenced (i.e. footings) within two (2) years from the date title to a Lot is transferred by the Developer, the Developer and its successors and assigns shall have the option to repurchase the Lot for the amount paid to the Developer for the Lot. Developer may exercise the option by sending written notice to the titleholder of the Lot and closing shall occur twenty (20) business days after the date such notice was sent by Developer. During construction on a Lot, the titleholder of such Lot shall protect the Commons, Townhome Commons, other Lots and adjacent property from damage arising out of its construction activities. In the event that any of the private roads constituting the Commons or Townhome Commons or any public roads are damaged during construction on a Lot, the titleholder of such Lot shall reimburse the Association for the actual costs incurred by the Association to repair such damage within thirty (30) days of receipt of an invoice therefore. If such assessment is not paid within thirty (30) of written notice of such assessment to the titleholder of such Lot, 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.

3. **GRADING:** The Developer shall have the exclusive right to establish grades and slopes for all Lots and to fix the grade at which any building or other improvement shall be placed or constructed upon any Lot, in conformity with the general plan for the development of the Property.

4. **APPROVAL OF PLANS:** Plans for any building or other temporary or permanent exterior improvement including, but not limited to, fences, pools, exterior remodeling, reconstruction or additions, together with the name of the contractor to be retained to construct such improvements, shall be submitted to the Developer and shall show the design, elevation, size and exterior material for the building or improvement and the plot plan and landscape plan for the Lot. One set of the approved plans ("**Plans**") shall be left on permanent file with the Association. Construction of the building or improvement shall not be commenced unless written approval of the plans and general contractor has been secured from the Developer. Written approval or disapproval of the plans and general contractor shall be given by the Developer within thirty (30) days after the receipt thereof and approval shall not be unreasonably withheld. The Developer shall have the exclusive right to disapprove the plans, if in the opinion of the Developer, the plans do not conform to the general standard of development for the Property considering the harmony of the design and location in relation to surrounding improvements. Upon disapproval, a written statement of the grounds for disapproval shall be provided. The rights and duties of the Developer under this Paragraph may be assigned to the Association, a representative, a committee or a third party or parties selected by Developer. The standards of development set forth below may guide Developer in evaluating any Plans. These standards shall not be relied upon, interpreted or applied as absolute requirements for approval of the Plans and may be modified as dictated by architectural style. The Developer shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its authority for approval of the Plans. The Developer shall have the right to reduce, increase, or otherwise modify these standards within other additions to the Property.

(a) **Minimum Floor Area.** The minimum square feet of floor area for any house or

one side of a town home exclusive of basements, garages, porches, patios, decks or enclosed decks shall be:

<b>House Properties</b>	CLASS "AA" & "A"	CLASS "B"
Single Story Ranch	1600	1500
Two Story	2800	2200
Single Story Ranch w/Walkout	1600	1500
1 1/2 Story	1500 main 800 up	1400 main 600 up
1 1/2 Story w/Walkout	1500 main 800 up	1400 main 600 up
<b>Townhome Properties</b>	1400	

- (b) Setbacks. The front yard and rear yard setbacks of houses in the House Properties and Townhome Properties from the property line shall be as follows:

<b>House Properties:</b>	CLASS "AA" & "A"	CLASS "B"
Front Yard: House	25'	25'
Front Yard: Garage	25'*	25'*
Side Yard:	10'*	7'6"
Rear Yard:	As required by city code on all lots	

\* Side yard setback may be reduced to 7'6" and the Front Yard (Garage) setback may be reduced to 20' if the house has a side entry garage

**Townhome Properties:** Setback distances shall be established according to city code.

- (c) Exterior Finish. The general theme of the development will be Spanish architecture and shall be subject to the following:

CLASS "AA" & "A" House Properties:

Front Elevation: Brick, stone or stucco  
 Remaining Sides: Cement board siding, brick, stone or stucco  
 Fireplace Chases: Brick, stone or stucco

CLASS "B" House Properties:

Front Elevation: Cement board siding, brick, stone or stucco  
 Minimum 50% brick, stone or stucco.  
 Remaining Sides: Siding, brick, stone or stucco

All Lots:

Soffits, Fascia & Gutter: Maintenance-free products  
 Foundation Walls: No exposed foundation walls  
 Roofing: All roofing materials shall be concrete tile, wood shingles, or heavy asphalt and shall be a natural Spanish redtone, brown, weathered green, gray or

black tone selected in concert with the colors and textures of the structure

Substitutions must be approved.

Porches and decks shall be designed within the mass of the structure and be supported by substantial structural elements. Dormers, when used, shall be in scale and proportion with the structure.

- (d) Garage Doors and Driveways. Side-entry garages are encouraged for House Properties whenever possible. Garage door colors shall match or be complimentary to the predominant color of the structure. Driveway grades shall not exceed twelve percent (12%).
- (e) Solar Panels. Solar panels must be specifically approved.
- (f) Sprinkler Systems. All Lots shall have an underground sprinkler system installed on the Lot by the titleholder prior to sodding the Lot.
- (g) Exterior Lighting. Exterior lighting shall be minimized. When exterior lighting is desired, fixtures shall be covered so that no light is directly visible from the street at a height of five feet from the ground plane at the light source, with the exception of recessed soffit lighting. Lights that produce a warm effect rather than a cool effect should be utilized.

5. **CITY REQUIREMENTS:** All buildings and improvements within the Property shall be constructed in conformity with the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks shall be installed by the titleholder of each Lot as required by the City of Lincoln, Nebraska. Each individual Lot owner, other than Developer, shall indemnify and hold harmless Developer from any liability or cost incurred in connection with the timely installation or payment of any public sidewalk parallel to each street which abuts such owner's Lot.

6. **LANDSCAPING:** On all Lots, a landscape plan shall be submitted to Developer as a requirement of Paragraph 4. The plan must meet and exceed the landscape requirements of the City of Lincoln and at a minimum include required street trees. Deciduous trees shall have a trunk measuring at least two and one-half inches (2½") as measured by a caliper at a height of three feet from the ground and evergreens shall be at least six feet (6') in height. The balance of the yard not landscaped shall be sodded with low maintenance fescue or blue grass. The landscaping requirements shall be extensive and shall be commensurate with the area of the lot and the size of any building to be constructed. No landscaping will be installed or preparatory work undertaken until the Developer has approved the landscaping plan, including all appropriate phasing, and the owner has submitted the deposit (described below) to Developer. Within six (6) months after the substantial completion of construction on any Lot, the titleholder of each Lot shall install and continually maintain any landscaping required under the terms of this Declaration or the plan for the Lot. To secure performance of the approved plan, the owner shall deposit \$2,000 with the Developer. Within thirty (30) days after notice from the owner that such owner has completed the landscaping in accordance with the plan, the Developer upon confirmation of completion shall return such deposit, without interest, to the owner. Upon failure to comply with this Paragraph, the Developer may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual costs plus a 10% administrative charge (less the deposit if applicable) against the Lot. If not paid when due, assessments 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. The owner, by acceptance of the deed to a Lot, automatically grants the Developer the right to enter upon the real estate identified in such deed for purposes of enforcing the requirements of this Paragraph.

7. **MAINTENANCE OF LANDSCAPE SCREENS:** The titleholder of each Lot upon which a landscape screen is installed, whether composed of structural or live plant material, as required by the City of Lincoln, Nebraska, shall be deemed to covenant to maintain the screen. Upon failure to comply with this Paragraph, the Association may contract for the services reasonably necessary to maintain the screen and to bring the Lot into compliance with the design standards of the City of Lincoln, Nebraska. The actual costs of such services, plus a 10% administrative charge, may be assessed against the Lot by the Association. If not paid when due, assessments 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.

8. **TEMPORARY STRUCTURES:** No temporary building, trailer, tent, shack, or garage shall exist on any Lot, other than as a temporary equipment storage or sanitary facilities maintained by the Developer during development or a contractor during construction on a Lot.

9. **NUISANCE:** Neither noxious or offensive activity shall be conducted or permitted upon any Lot, nor anything which is or may become an annoyance or nuisance to neighbors or which endangers the health or unreasonably disturbs the quiet of the occupants of the adjoining Lots.

10. **STORAGE:** No trailer, mobile home, motor coach, boat, jet ski or similar recreational vehicle or devise may be stored or parked in any front of or on any Lot.

11. **ANIMALS:** No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except household pets; provided, however, (a) such household pet or pets shall not be raised, bred or kept for any commercial purpose whatsoever and (b) a fee may be imposed by the Association as a condition precedent to raising or keeping such household pet. No kennels shall be detached from any dwelling.

12. **EXTERIOR RESTRICTIONS:** No exterior solar heating or cooling device, or wind powered electric generators of any sort shall be permitted on any Lot unless such apparatus is approved in accordance with Paragraph 4 hereof. All outdoor wiring for any Lot shall be place underground. No wires for electrical power, telephone, radios, television or any other use shall be placed or permitted above the ground on any Lot, except inside a residence. No poles (including, but not limited to flag poles), aerials, antennas, television dishes, towers or receiving or sending devises shall be placed or permitted above the ground on any Lot, unless such apparatus is approved in accordance with Paragraph 4 hereof.

13. **EROSION CONTROL:** During construction on any Lot, the titleholder shall control soil erosion. Upon failure to do so, the Association may enter upon the Lot and contract for the services necessary to control erosion and bring the Lot into compliance with this Paragraph and assess the actual costs plus a 10% administrative charge against the Lot. If not paid when due, 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 such assessment shall be a lien upon the Lot.

14. **SIGNS:** No advertising sign, billboard or other advertising devise shall be permitted on any Lot, except (a) a yard sign placed by the owner of the Lot adverting such Lot is for sale, (b) a yard sign placed by the owner for political purposes, which sign must be removed within

thirty (30) days after the political event and (c) a yard sign placed by the general contractor during construction on a Lot; provided such permitted signs may not be larger than 24 inches by 36 inches.

15. **OWNER'S ASSOCIATION:** Every person or entity who becomes a titleholder of a fee or undivided fee interest in any Lot shall be a member of the Association. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

16. **MEMBERSHIP & VOTING:** The Association shall have the following two classes of membership:

Class 1 membership shall include all members of the Association except the Developer and any successor in interest. Each Class 1 member of the Association shall be entitled to all the rights of membership and the Class 1 members shall have one vote per Lot.

Class 2 membership shall include only the Developer and any successor in interest. The Class 2 member shall be entitled to eight votes per Lot. However, the Class 2 membership shall be converted to Class 1 membership when the total number of votes entitled to be cast by Class 1 members equals the total number of votes entitled to be cast by the Class 2 member.

17. **CONVEYANCE:** The Developer shall convey its interest, if any, in the Commons and the Townhome Commons to the Association, free from liens, prior to the date on which the Developer's Class 2 membership in the Association is converted to Class 1 membership. The Association will accept a deed from Developer to the Commons and the Townhome Commons and, by acceptance of the deed to the Commons and the Townhome Commons, the Association assumes the obligations of the Developer regarding the Commons and the Townhome Commons including, but not limited to, continuous and permanent maintenance of the Commons and the Townhome Commons and all private improvements thereon.

18. **CONTROL:** The Association shall exercise exclusive control over any Commons and the Townhome Commons conveyed to it by Developer. The Association may limit access to the Commons and the Townhome Commons. The Association shall have the right from time to time to establish, revoke, modify and enforce reasonable rules and regulations with respect to all or any part of the Commons and the Townhome Commons.

19. **MAINTENANCE:** The Association covenants and each member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons, which covenants by the members shall be satisfied by the payment of regular and special assessments for the administration, maintenance or improvement of the Commons and the assessments contemplated by Paragraph 27 hereof. The Association covenants and each member of the Association owning Townhome Property, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Townhome Commons, which covenants by the members shall be satisfied by the payment of regular and special assessments solely against the Townhome Properties for the administration, maintenance or improvement of the Townhome Commons. The covenant to maintain the Commons and the Townhome Commons shall include insuring such property against public liability and property damage. Such insurance shall be in commercially reasonable amounts. Except as set forth in Paragraph 27 hereof, regular and special assessments shall be based upon the Assessment Units allocated to the Lots as provided in Paragraphs 21 and 23. Each assessment shall be the

personal obligation of the member who is, or was, the titleholder of the Lot assessed at the time of the assessment. If not paid when due, assessments 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.

**19.1 Maintenance of Townhomes Commons.** The Association's maintenance of the Green Area located upon each Lot shall include lawn fertilizing and mowing, but shall not include maintenance of any landscaping and plantings installed on any Lot. Each owner Lot within the Townhome Properties shall be responsible for maintaining any and all landscaping and plantings located upon their Lot and shall be responsible for watering the Green Area located upon their Lot. All driveways and walkways located on the Townhome Properties shall be constructed, maintained, repaired and replaced by the owner of the Lot. The Association shall be responsible for snow removal from all driveways and walkways located upon the Townhome Properties.

**19.2 Party Walls.** Each wall which is built as a part of the original construction of a dwelling within the Townhome Properties and placed on the dividing line between two adjoining Lots shall constitute a party wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners of the Lots who make use of a party wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner of a Lot who has used the wall may restore it. If any other owner subsequently makes use of the party wall, they shall contribute to the cost of restoration in proportion to such use. Notwithstanding any other provision of this Paragraph, an owner who by their negligence or willful acts or omissions causes the party wall to be destroyed, damaged or otherwise exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration. The right of any owner to contribution from any other owner under this Paragraph shall be appurtenant to the land and shall pass to such title holder's successors in interest.

**19.3 City of Lincoln Maintenance.** The City of Lincoln has approved the final plats for Hillcrest CC Addition and Hillcrest CC 1<sup>st</sup> Addition upon the condition that the Commons be maintained by the Developer on a continuous basis. The Association covenants and each Member of the Association, by acceptance of a deed to a Lot shall be deemed to covenant to assume the obligations of the Developer to comply with the requirements of the final plats regarding continuous and permanent maintenance of the Commons. Each owner of Lot by acceptance of a deed to the Lot shall further be deemed to covenant that in the event the Association dissolves, such owner of the Lot shall remain jointly and severally liable with all other owners of a Lot for the cost of administering and maintaining the Commons in the same manner as required by the Association under this Section. In the event the owners of such lots fail or refuse to perform any required maintenance and upkeep of the Commons, the City of Lincoln may, after seven (7) days' notice to such owners, enter and perform the required maintenance and assess each Lot owner thereof for the cost of the performance of such maintenance. Each assessment of the City of Lincoln's actual cost of performing the maintenance shall be the personal obligation of the owner who is the owner of the Lot at the time of assessment and shall be a lien upon the Lot assessed. To evidence such lien for unpaid assessments, the City of Lincoln shall prepare a written notice setting forth the amount, the name of the owner of the Lot, and a legal description thereof. Such notice shall be signed on behalf of the City of Lincoln by the Mayor and shall be recorded with the Register of Deeds of Lancaster County, Nebraska. Each owner of a Lot shall pay the owner's share of the City of Lincoln's actual cost of maintaining the Commons within thirty (30) days following the receipt of an



assessment therefore. Delinquent payments shall be subject to a late charge of 10% of the delinquent payment or Twenty and No/100 Dollars (\$20.00), whichever is greater.

20. **ASSESSMENTS:** Regular and special assessment for the administration or other charges contemplated hereby or for the benefit of the Association or for maintenance or improvement of the Commons and the Townhome Commons and for other special assessments specifically provided for in this Declaration, other than for capital improvements, may be levied by the Board of Directors of the Association. Any special assessment for capital improvements to the Commons shall be approved by the affirmative vote of the members entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting. Regular and special assessments, other than for capital improvements to the Townhome Commons, may be levied by the Board of Directors of the Association only to the owners of the Townhome Properties. Any special assessment for capital improvements to the Townhome Commons shall be approved by the affirmative vote of the members owning Townhome Properties entitled to vote, at a regular of the members or at a special meeting of the members owning Townhome Properties, if notice of a special assessment is contained in the notice of the special meeting. Except as contemplated by Paragraph 34, the members shall pay assessments to the Association within ten (10) days after notice of such assessment is mailed.

- (a) Budgets: Each year the Board shall prepare, approve and make available to each member upon request a pro forma operating statement (budget) for expenses other than contemplated by Paragraph 27. The total amount shall be charged against the Properties according to the allocation of Assessment Units. If the Board fails to determine the budget for any year, then until such time as a budget is approved, the budget in effect for the immediately preceding year shall continue for the current year.
- (b) Additional Charges: In addition to any amount due or any other relief or remedy obtained against a member who is delinquent in the payment of any assessment, each member agrees to pay such additional costs, fees, charges and expenditures ("**Additional Charges**") as the Association may incur or levy in the process of collecting from that member monies due and delinquent or enforcing the obligations. Additional Charges, to the fullest extent allowed by law, shall include, but not be limited to, the following:
  - (i) Attorney's Fees: To the fullest extent allowed by law, reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due or enforce the obligations hereunder, whether by suit or otherwise;
  - (ii) Late Charges: A late charge in an amount to be fixed by the Board to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater;
  - (iii) Costs of Suit: Costs of suit and court costs incurred as allowed by the court;

- (iv) Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds;
- (v) Interest: Interest on all assessments at the rate of 16% per annum, commencing ten (10) days after the assessment becomes due; and
- (vi) Other: Any other cost that the Association may incur in the process of collecting delinquent assessments or enforcing the obligations hereunder.

21. **ALLOCATION OF ASSESSMENTS**: Except as contemplated by Paragraph 27, regular and special assessments involving the Commons shall be borne by the Properties based upon the ratio which the number of Assessment Units allocated to each Lot pursuant to Paragraph 23 bears to the total number of Assessment Units, calculated as of the date of the assessment. The regular and special assessments involving the Townhome Commons shall be borne by the Townhome Properties based upon the ratio which the number of Assessment Units allocated to each Lot within the Townhome Properties pursuant to Paragraph 23 bears to the total number of Assessment Units for Townhome Properties, calculated as of the date of the assessment.

22. **COSTS OF ADMINISTRATION, MAINTENANCE OR IMPROVEMENT**: Costs of administration, maintenance or improvement of the Commons and the Townhome Commons shall mean the total cost and expense incurred by the Association in operating, maintaining, repairing, and replacing any facility or improvement within the Commons and the Townhome Commons, as applicable, but excluding costs related to the services provided by Hillcrest Country Club ("HCC") pursuant to that certain Hillcrest Agreement, dated April 3, 2018, between the Developer and HCC, as amended (the "**HCC Agreement**"). Such costs may include, without limitation, real estate taxes and the cost of maintaining, stripping, dredging, lining, landscaping, lighting, maintenance of erosion control, removal of snow, ice, drainage, rubbish and other refuse, signs, public liability and property damage insurance premiums, repairs, reserves for capital replacements, depreciation on equipment and machinery used in such maintenance, cost of postage, photocopies, telephone and fax charges, or other expenses and personnel required to provide such services and management, together with a reasonable charge for overhead, or amounts paid to independent contractors for any or all of such services. The Association shall keep accurate records of the costs associated with the administration, maintenance and improvement for the purpose of making assessments as provided by this Declaration. Reasonable allocations may be made by the Association with respect to costs and expenses applicable to both the Commons and the Townhome Commons.

23. **ALLOCATION OF ASSESSMENT UNITS**: The Assessment Units are allocated to the Lots on the following basis:

- (a) Townhome Properties: Each Lot within the Townhome Properties, excluding only such Lots within the Townhome Properties that are owned by the Developer, shall be allocated one (1) Assessment Unit.
- (b) House Properties: Each Lot within the House Properties, excluding only such Lots within the House Properties that are owned by the Developer, shall be allocated two (2) Assessment Units.

Notwithstanding any other provision of this Declaration, no dues and assessments of any kind or character (including, but not limited to, any assessment under Paragraph 27) shall be due or payable with respect to any Lot during the period of time such Lot is owned by the Developer.

24. **LIEN OF ASSESSMENTS:** The lien for any regular or special assessment and any other lien authorized by this Declaration shall, until shown of record, be subordinate to the lien of any mortgage or deed of trust placed upon the Lot against which the assessment is levied.

25. **EXTERIOR MAINTENANCE:** Each titleholder of each lot within the Properties covenants to maintain their Lot and improvements in a neat and attractive manner. No Lot may be utilized as a dumping ground for rubbish including, but not limited to, leaf or grass clippings. No compost pile may be constructed or maintained on any Lot. All waste, garbage and trash must be kept in sanitary containers and removed on a weekly basis. No incinerator may be constructed or maintained on any Lot. All Lots shall be kept free of debris and weeds.

26. **EXTERIOR MAINTENANCE ASSESSMENT:** In the event a member fails to maintain a Lot according to this Declaration, the Association may, upon 10 days written notice to the member, maintain the Lot and the exterior of any improvement and shall have the right to enter upon any Lot, at reasonable time, to perform such maintenance. The written notice shall specify the required maintenance and the time in which it must be completed. The actual cost of the maintenance, plus a 10% administrative fee, shall be paid by the member within 10 days of billing. Upon failure of the member to remit payment, the cost of maintenance and administrative fee shall be specially assessed against the Lot, shall bear interest at the rate provided for unpaid assessments and, when notice of nonpayment is filed with the Lancaster County Register of Deeds, shall be a lien upon the Lot.

27. **SERVICES OF HCC:** Pursuant to the HCC Agreement, HCC has agreed to provide certain services and benefits to the Association commencing on the sale of the first Lot ("**First Lot Sale**"). In exchanges for these services by HCC and for so long as the HCC Agreement remains in effect, the Association shall assess and each member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, agrees to pay the Association the following monthly assessment:

<u>Property Category</u>	<u>Amount of Monthly Assessment</u>
<i>Townhomes Properties</i>	
Category AA	\$45 per month
Category A	\$35 per month
Category B	\$30 per month
<i>House Properties</i>	
Category AA	\$55 per month
Category A	\$40 per month
Category B	\$30 per month

provided, however, in the event Additional Property is added to the House Properties or the Townhome Properties and at least \$3,750 is collectively assessed monthly against the Lots and paid to HCC by the tenth (10<sup>th</sup>) of the following month, the amount of the monthly assessment set forth above may be reduced by the Association. Each such assessment shall be the personal obligation of the member who is, or was, the titleholder of the Lot assessed at the time of the assessment. If not paid when due, assessments 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.

28. **ADDITIONS:** Developer and any other party with the consent of the Developer may, from time to time, add Additional Property to any category of the House Properties and Townhome Properties, the Townhome Commons and the Commons without the consent of the members of the Association. Such addition(s) shall be made by the execution by Developer or, if applicable, Developer and the owner of the additional real estate and recordation of covenants upon the additional real estate, making the addition(s) subject to this Declaration.

29. **FINAL PLAT AMENDMENT:** Developer shall have the right at any time to amend the final plat in which the Lots, Townhome Covenants and Commons may be located. Members of the Association, other than the Developer, may not amend the final plat of any party of the Property without the prior written consent of the Developer. Each member of the Association covenants not to object to any amendment of the final plat by the Developer, provided the amendment does not change such member's Lot configuration. Upon approval by the City of Lincoln of any amendment to the final plat, the amended lot configurations shall govern interpretation of this Declaration.

30. **AMENDMENTS:** This Declaration shall run with the land and shall be binding upon and enforceable by Developer, the Association and all persons claiming under the Developer. This Declaration may be terminated or modified, in writing, by the holders of two-thirds of the total of voting rights established hereunder, except that said covenants regarding maintenance of the Commons, Townhome Commons and landscape screens and enforcement thereof by the City of Lincoln shall not be terminated or modified without prior written approval of the City of Lincoln. In the event the HCC Agreement is assigned to the Association, the Association may only amend, modify or terminate the HCC Agreement by an affirmative vote by the holders of a majority of the total of voting rights established hereunder. Developer and East O Realty Company, a Nebraska corporation, are parties to the East O Agreement, dated March 26, 2018, and recorded on April 4, 2018, with the Lancaster County, Nebraska Register of Deeds as Instrument No.: 2018012197 (the "**East O Agreement**"). In the event the East O Agreement is assigned to the Association, the Association may only amend, modify or terminate the East O Agreement by an affirmative vote by the holders of a majority of the total of voting rights established hereunder. Notwithstanding any other provision of this Declaration to the contrary, Paragraph 27 may not be amended prior to the expiration or termination of the HCC Agreement without the written consent of HCC.

31. **RULES & REGULATIONS:** By acceptance of title to a Lot, the owner agrees to abide by all rules and regulations adopted by the Board of Directors of the Association regarding the Commons, Townhome Commons and uniform policies which may be applicable to House Properties, Townhome Properties and/or Lots.

32. **ENFORCEMENT:** The enforcement of this Declaration may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation or to recover damages and, by the Association, may be to enforce any lien or obligation created hereby. The City of Lincoln, Nebraska, shall have the right to enforce by a proceeding at law or in equity all restrictions, conditions and covenants regarding the maintenance of the Commons, Townhome Commons and landscape screens. In the event the Association dissolves, the owners of the Lots shall remain jointly and severally liable for the cost of maintenance of the Commons, the owners of the Townhome Properties shall remain jointly and severally liable for the cost of maintenance of the Townhome Commons and each owner of a landscape screen shall be liable for the cost of maintenance of such screen.

33. **SEVERABILITY:** The invalidation of any provision of this Declaration shall not affect the validity of the remaining provisions hereof.

34. **AUTOMATIC DEPOSIT.** Each owner of a Lot agrees to take such action and execute such documents as the Association shall deem necessary or desirable to cause the timely automatic direct transfer of funds from such owner's bank account necessary to make the monthly assessments payable by such owner hereunder. The Association shall designate its bank account to which funds are to be transferred. Without the prior written consent of the Association, no owner shall for any reason withdraw its, his or her authorization pursuant to this Paragraph, or take any other action which could interfere with or stop such automatic transfers. Each owner agrees at all times to maintain funding in its, her or his bank account adequate to timely make such automatic payments. In the event an owner's account is not adequately funded to make said payments on the first business day of any calendar month, such owner shall be liable for any additional banking and administrative fees and/or penalties incurred by the Association. Each owner of a Lot agrees to cause such automatic transfers to commence within ten (10) days of the Association's written request.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date set forth below.

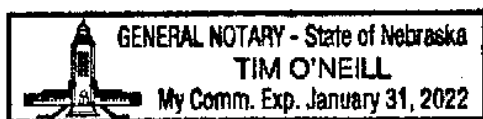
Heritage Lakes, LLC  
By: HB II, Inc., manager

By: Gary Kort  
Gary Kort, President

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me on August 27, 2019, by Gary Kort as President of HB II, Inc., a Nebraska corporation and manager of Heritage Lakes, LLC, a Nebraska limited liability company, on behalf of the company.

Tim O'Neill  
Notary Public



Pursuant to the Agreement between Heritage Lakes, LLC and the City of Lincoln, Nebraska, which was recorded in the office of the Register of Deeds of Lancaster County, Nebraska on July 3, 2019, as Instrument No. 2019023976, the undersigned Assistant City Attorney for the City of Lincoln, Nebraska hereby acknowledges his/her review and approval of the foregoing Declaration of Covenants and Restrictions this 26<sup>th</sup> day of August, 2019.



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Assistant City Attorney

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