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DECLARATION 9370  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
REGISTERED DEEDS  
OF LINCOLN PLACE, A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by LINCOLN DEVELOPMENT, L.L.C., a Nebraska limited liability company, hereinafter referred to as the "Declarant."

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 104 through 110, inclusive, in Lincoln Place, Second Platting, a subdivision in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot."

The Declarant desires to subjecting the Lots to the conditions, covenants, restrictions, and reservations hereinafter set forth to insure the proper use and appropriate development and improvement of the Property. The Declarant also desires to provide for the preservation of the values and amenities of Lincoln Place, for the maintenance of the character and integrity of Lincoln Place, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the patrons of Lincoln Place. As used herein, the term "Common Facilities" shall mean all recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Lincoln Place, as well as any and all other facilities acquired, constructed, improved, maintained, operated, repaired, or replaced by the Business Owner's Association for the general use, benefit and enjoyment of the members of the Business Owner's Association.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the patrons 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, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

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ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Lot 104 shall be used exclusively for multi-family purposes and Lots 105 through 110, inclusive, shall be used exclusively for commercial purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, or for other non-profit use.

2. All uses must conform to the Zoning Ordinances of the City of Gretna, Nebraska, as amended from time to time ("Zoning Regulations").

3. All Owners must use their property in a manner consistent with a first class development. No uses producing noise, objectionable conditions, trash, weeds, or activities which impair the use or value of other properties will be permitted.

4. Prior to any construction, Owner must install and maintain temporary silt fences around the perimeter of the lot at locations determined by Declarant. In addition, temporary ground cover as approved by Declarant shall be installed on the Lots and adjacent street rights-of-way prior to construction. Such silt fences and ground cover must be sufficient to present a neat and attractive appearance consistent with a first class development. Owners will be responsible for maintenance of the silt fences and also the ground cover, including mowing and trimming lawns and proper care of trees and shrubs. Maintenance of adjacent street rights of way and required building setback areas will be done at regular intervals consistent with permanent landscaping maintenance standards.

ARTICLE II.  
DESIGN REGULATIONS AND PERFORMANCE STANDARDS

1. All structures will be designed and built so as to present a credible appearance on all sides consistent with that of a first class development.

2. No Owner shall keep or maintain anything or permit any condition to exist upon such Owner's property which materially impairs or materially interferes with the reasonable enjoyment by other Owners of their respective parcels.

3. The Owner of each building will make provision for adequate off-street parking to serve the premises. Such parking may be in the form of hard surface parking lots or parking structures. No on-street parking will be permitted.

4. All loading areas, docks, service areas, antennae and exterior mechanical equipment (including roof top equipment) must be screened when viewed from adjacent street rights-of way. Such screening will consist of permitted building materials and/or landscaping.

5. Immediately upon completion of any building construction, or at the next available planting season, the Owner will install and maintain permanent landscaping as approved by

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Declarant. Such landscaping will consist of plant materials, paving materials, trees, ground cover and other landscaping features consistent with the overall development theme of the Subdivision. All permanent landscaping will include automatic underground irrigation systems sufficient to support the living plant materials used.

6. An Owner may install a sign or signs identifying the building and/or the businesses occupying the building. Sign regulations for each Lot are established by the Zoning Regulations.

7. No outdoor advertising signs or bill boards, no walking or message signs (other than time, temperature, and other public service information) and no signs incorporating flashing, pulsating or rotating lights will be permitted.

8. Owners will install sufficient exterior lighting so as to properly illuminate drives, sidewalks, and parking areas. No exterior lighting shall be placed so as to be directed or reflected on adjoining lots in excess of those amounts provided for in the applicable Zoning and Building Regulations.

9. No Owner will permit trash or debris to accumulate on their property. All trash and debris must be placed in proper receptacles, emptied at regular intervals and screened from view from adjacent public rights-of-way.

10. All utilities and transmission lines of any type must be installed underground.

ARTICLE III.  
BUSINESS OWNERS ASSOCIATION.

1. There shall be formed a Lincoln Place Business Owners Association ("Association") for the purposes of accepting the dedication of use easements on other Lots for the general benefit of all Owners and for improving and maintaining such areas. The Association shall be formed prior to the sale of any of the lots subject to these covenants except Lot 104. Prior to the formation of the Association, Declarant shall be considered the Association for purposes contained herein and shall have the same power and authority granted to the Association.

2. The Owner of each initial Lot created except for Lot 104, shall be a member of the Association. Such membership will automatically transfer on the sale or other conveyance of any of the initial Lots. Upon further subdividing of the property and/or any partial conveyance of an initial Lot, the Owner (Grantor) shall allocate its membership and voting rights to the various parcels created by such subdividing or conveyance by written notice to the Association.

A. Initial voting rights will be in proportion to the size of the Lots determined at the time of final platting.

B. Except as otherwise provided, actions of the Association will require a simple majority of the votes.

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C. The Association will carry sufficient amounts of property damage, liability, and other forms of insurance for the benefit of protecting itself and its members.

D. If the Owner of any Lot fails to maintain the Lot in accordance with this declaration, then the Association may enter onto the property and perform such maintenance at the Owner's expense after reasonable notice to that Owner.

E. The Association may incur reasonable expenses in the course of conducting its business.

F. The Association shall, from time to time, assess its members to pay for the cost of its operations. All costs incurred as a result of actions taken in accordance with item Article III, Section 2, Paragraph D, shall be assessed directly to that Owner. All common area improvement costs, regular operating expenses, and other expenses of the Association shall be assessed to the Property Owners in accordance with prorata shares determined at the time of final platting. Upon the further subdividing and/or partial conveyance of any portion of any initial Lot, that initial Lot's share shall be reallocated on a pro-rata acreage basis to the new Lots then created

G. Past due assessments will be charged interest at the rate of First National Bank of Omaha's Regional Prime Interest Rate plus 4% and late charges not to exceed 10% as determined by the Board.

H. The Association may suspend the voting rights of any Owner owing past due assessments or charges.

I. The Association may place and foreclose a lien on any of the Lots for past due assessments, interest, late charges and reasonable attorney's fees.

J. The Association may grant easements to the general public over, under or through those properties owned by it or controlled by it through easements.

K. The Association may enter into agreements with other organizations or governmental subdivisions regarding the installation, operation and maintenance of those facilities and improvements located on property owned by it or controlled by it.

L. The Association may create reasonable rules and regulations regarding the use of the Outlots or other property controlled by it.

3. The Association will establish a Commercial Property Architectural Control Committee ("ACC") which shall exercise jurisdiction for the Lots subject to these Covenants including Lot 104. Each Owner or group of Owners will designate in writing their respective representatives to the committee. In the event the Association is not established, Declarant shall act as the ACC and shall have the same obligations, powers and authority granted to it herein.

A. No Owner of any Lot shall permit site preparation, grading, landscaping, or construction of any type (other than interior building completion or renovation) or the installation of any improvement or sign without first submitting plans for such work to the ACC and receiving prior written approval.

B. In addition to the Design Regulations and Performance Standards contained in Article 3, hereof, the Committee, from time to time, may establish additional or supplemental criteria or more restrictive standards regulating development of its respective Lots.

C. The Committee shall establish reasonable procedures and requirements for the submission of plans and specifications for its consideration. The Committee shall establish reasonable periods for its consideration and response to plans submitted for its approval.

D. The Committee may retain the services of outside experts to assist in establishing building and landscaping standards and in its review of plans and specification.

E. The Committee may charge reasonable fees for its review of plans and specifications.

F. Approval of properly submitted plans and specifications by the Committee requires the affirmative vote of a majority of its representatives.

G. The Committee may grant reasonable exceptions to the Design Regulations and Performance Standards during periods of building construction or reconstruction.

H. The Committee may grant waivers to the Design Regulations and Performance Standards for its respective Lots upon the unanimous vote of its representatives.

ARTICLE IV.  
MAINTENANCE.

1. Each Owner shall be solely responsible at its expense for the construction, repair, maintenance, operation, insuring, replacement and restoration of any building located on that Owner's Lot.

2. Each Owner shall maintain its Lot in good and clean condition and repair, such maintenance to include but not be limited to the following:

A. Maintaining the surface of roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or substitute as shall in all respects be equal to or superior in quality, use and durability.

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B. Removing all snow, paper, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition.

C. Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers or lines.

D. Repairing or replacing when necessary such artificial lighting facilities as shall be reasonably required.

E. Maintaining all landscaped areas and making replacement of shrubs and other landscaping material as is necessary.

F. Maintaining the exterior of all buildings in good condition consistent with the overall quality of the property in the Subdivision. Such requirement includes the restoration of any buildings damaged by fire, flood, storm or other hazard, within a reasonable period of time.

ARTICLE V.  
MISCELLANEOUS.

1. Declarant, or its successors or assigns, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant with the Sarpy County Register of Deeds. Upon such filing, Declarant shall appoint the Association to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

2. This Declaration is intended to be a master covenant to establish general guidelines and an overall framework for development of the Property. In the event additional development occurs, including the further subdividing of the initial Lots of the preliminary plat, subsequent Owners or groups of Owners may wish to add further detail and clarification to this Declaration in the form of additional covenants or amendments to this Declaration.

3. Such additional covenants or amendments to these covenants are permitted. In no event shall any subsequent declaration or amendment abridge the intent and purposes of these covenants, unless such amendment is enacted in accordance with these covenants.

4. Each Owner shall indemnify and hold all other Owners harmless from any and all liability, damage or expense in connection with any cause of action, lawsuit, claim or judgement arising from personal injury, death or property damage arising out of the use of the Parcel owned by such Owner, unless caused by the negligence or intentional act of such other Owner or its employees, agents or invitees.

5. In the event that any buildings on the Property shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence repair, rebuild

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and restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if such building is totally destroyed, the Owner of such building shall be required to clear, clean and raze the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed building shall have the right to make reasonable alterations as part of the reconstruction.

6. If an Owner defaults in any of its obligations or covenants hereunder, any other Owner or any mortgagee holding a first lien against any of the Parcels in the Premises (a "First Mortgagee") shall be entitled to enforce this Declaration by all remedies available at law or in equity, including, but not limited to, seeking an injunction and maintaining an action for damages.

7. These covenants can only be amended by LINCOLN DEVELOPMENT, L.L.C., a Nebraska limited liability company, until such time as Notice of Termination of Status of Declarant is filed with the Sarpy County Register of Deeds as set forth in Article V, Paragraph 1 herein. Upon the filing of the Notice of Termination of Status of Declarant, the Association may amend the Covenants upon a two-thirds (2/3) affirmative vote of the Members of the Association.

8. Any member in good standing of the Association may bring an action to enforce any provision of these covenants. If an Owner defaults in any of its obligations or covenants hereunder, any other Owner or any mortgagee holding a first lien against any of the Parcels in the Premises (a "First Mortgagee") shall be entitled to enforce this declaration by all remedies available at law or in equity, including, but not limited to, seeking an injunction and maintaining an action for damages.

9. This Declaration shall run with the legal and equitable title to the Parcels for an initial period of twenty (20) years and shall automatically extend for successive ten (10) year periods.

10. Nothing contained in this Declaration shall be deemed to create a gift of all or any portion of the Premises to the general public or as a dedication for public use or public purpose, it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Property, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements deemed necessary by the City of Gretna to serve the Property as contemplated by the Subdivision Agreement.

11. The failure of the Owner or First Mortgagee of any Owner to enforce the covenants, conditions, and restrictions of this Declaration for any period of time or at any time shall not be construed or deemed to be a waiver of any such covenants, conditions or restrictions, and nothing herein contained, or anything done (except an express written waiver signed by the party against whom enforcement of the waiver is sought) or admitted to be done by the Owner or First Mortgagee pursuant to this Declaration or the laws of the state where the Premises are located, shall be construed or deemed to constitute a waiver, and such Owner or First Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by the other Owner obligated hereunder. An enforcement of any right or remedy hereunder by the Owner, either prior to,

simultaneously with or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

12. All notices required or permitted to be delivered under this Declaration shall be made in writing and delivered to an Owner at the official notice address or addresses established by that Owner. The present address of Declarant for receipt of notices is 1925 North 120<sup>th</sup> Street, Omaha, Nebraska 68154. Each Owner may, by notice to all other Owners, establish its official notice address or addresses and may, by subsequent notice, change same from time to time. If an Owner fails to establish an official notice address, its notice address shall be the address to which the real property tax bills for the Owner's Parcel are sent as listed in the county tax assessor's office. Notices shall be sent by United States mail or by nationally utilized overnight delivery service, postage prepaid and return receipt requested. Notices shall be deemed given on the date upon which delivery is received or refused, as the case may be, as indicated on the return receipt.

13. If any easement, covenant, condition or restriction contained herein, or application thereof to any entity, person or circumstance, is held to be invalid or void by an court of competent jurisdiction, such invalidity shall in no way affect the remainder of such easements, covenants, conditions, or restrictions to other entities, persons or circumstances.

14. In the event the covenants, conditions and restrictions contained in this Declaration address or fail to address issues also addressed by applicable laws, regulations or ordinances, the more restrictive shall apply.

15. The easements, covenants, conditions and restrictions contained in this Declaration shall be binding upon and inure to the benefit of each Owner and its heirs, executors, administrators, successors and assigns.

16. The headings used in this Declaration are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Declaration.

17. By written consent of the Declarant, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver modification or amendment will have on the Lincoln Place Subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.



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22<sup>nd</sup> IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this day of August, 2000.

LINCOLN DEVELOPMENT, L.L.C., a Nebraska limited liability company, "Trustor"

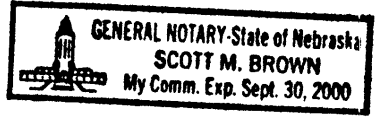
By: Maurice M. Udes  
Maurice M. Udes, Manager

By: Paul S. McCune  
Paul S. McCune, Manager

By: Paul M. Brown  
Paul M. Brown, Manager

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS   )

The foregoing instrument was signed before me this 22<sup>nd</sup> day of August, 2000, by Maurice M. Udes, Paul M. Brown, and Paul S. McCune, Managers of Lincoln Development, L.L.C., a Nebraska limited liability company, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed as Managers of the limited liability company.



Scott M. Brown  
Notary Public