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CASS COUNTY, NE. COMPARED

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David John
REGISTER OF DEEDS

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**FIRST AMENDED PROTECTIVE COVENANTS AND RESTRICTIONS
OF
INDIAN HILLS ESTATES SUBDIVISION, CASS COUNTY, NEBRASKA**

The undersigned are the duly appointed officers of the Building Committee of the Indian Hills Estates subdivision, pursuant to the provisions of the "Protective Covenants and Restrictions," filed of record in the records of the Register of Deeds, Cass County, Nebraska, (hereinafter "the Building Committee"). Said real estate subdivision is comprised of the titleholders of record of one or more parcels of real estate situated in the below-described area known also as "Indian Hills Estates subdivision," situated at rural Louisville, Cass County, Nebraska, cumulatively referred to herein as "the Properties," and generally described as follows:

South Half of the NE1/4 East of the Country Road, excepting therefrom Lots 20, 23 and 24; AND Lot 12 in the North Half of the SE1/4 East of the Country Road, excepting therefrom Sublot 3 of 12, Sublot 4 of 12 and Sublot 5 of 12, containing 99.75 acres more or less, all in Section 21, Township 12 North, Range 11 East of the 6th P.M., excepting therefrom that part deeded to Lonnie Coonts and Mary Lennea Coonts, recorded in Book 127, Page 586 and excepting therefrom that part deeded to August C. Lempka, recorded in Book 147, Page 56, all in Cass County, Nebraska.

A. EXISTING COVENANTS:

1. Previously, "Protective Covenants and Restrictions" were duly established which affected the above-described real estate, also known as "Indian Hills Estates." Said document was recorded on June 26, 1990 at Misc. Book 38, Page 516 at the Office of the Register of Deeds, Cass County, Nebraska (herein referred to as the "Original Covenants").

2. These First Amended Protective Covenants and Restrictions are hereby established upon the Properties, amending the Original Covenants by replacing them in the whole pursuant to the power to do so as contained therein. These First Amended Protective Covenants and Restrictions shall be effective from and after the date of public recordation. These First Amended Protective Covenants and Restrictions shall run with the land on all properties within the "Indian Hills Estates Subdivision," as described above, and shall be perpetually binding upon, and

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enforceable by, all titleholders of all lots in the subdivision until terminated or amended pursuant to the processes provided herein. These First Amended Protective Covenants and Restrictions, and any future amendments thereto, may also be enforced by the Indian Hills Estates Homeowners Association, Inc. from and after the date of its inception.

B. PURPOSE OF THIS DOCUMENT:

1. These First Amended Protective Covenants and Restrictions constitute an amendment of, and entire substitution for, the original "Protective Covenants and Restrictions" effective as of the date of public recordation at the Office of the Register of Deeds of Cass County, Nebraska.

2. Prior to any vote being taken to officially amend the "Protective Covenants and Restrictions" as provided herein, all owners in the subdivision were: (1) given written notice of this proposed action, (2) furnished with written copies of the proposed First Amended Protective Covenants and Restrictions, (3) given a reasonable period of time to review these documents, (4) given an opportunity to respond with questions and/or opinions in writing by mail, orally in person to the Building Committee members, and/or orally at a meeting of the owners called for this purpose. All owners were given sufficient advance written notice of the time and place of said meeting, the means of voting and the deadline by which votes must be cast.

3. After consideration of all of the above, the following First Amended Protective Covenants and Restrictions were thereafter offered to the owners for a written vote. These First Amended Protective Covenants and Restrictions were duly passed by the affirmative written votes of the owners of 18 lots, which constitutes a majority of the lots contained within the Indian Hills Estates subdivision, and which constitutes a sufficient number of votes needed to adopt these First Amended Protective Covenants and Restrictions. The owner(s) of 7 lots cast a negative vote, and the owners of 7 lots did not cast a vote. The negative votes and non-voting lots collectively consisted of less than half of the lots entitled to a vote. These First Amended Protective Covenants and Restrictions are, therefore, duly adopted by the owners.

4. The owners are desirous of continuing to subject the Properties to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, all of which are for the benefit of the Properties and for each owner thereof, and shall inure to the benefit of, and pass with each and every parcel of, said properties, and shall apply to and bind the successors in interest and any present or future owners thereof.

5. The previous "Protective Covenants and Restrictions" are hereby replaced in the whole by these First Amended Protective Covenants and Restrictions as to any matter arising on or after the date that said First Amended Protective Covenants and Restrictions are filed of record in the Office of the Register of Deeds of Cass County, Nebraska. The Restrictive Covenants herein set out are to run with the land and shall be binding upon all parties owning tracts of land in

Indian Hills Estates subdivision and their heirs, successors and assigns in perpetuity, or until duly and properly amended or terminated.

6. The Building Committee is hereby authorized to take all necessary steps to establish a non-profit homeowners association corporation, which shall be called, "Indian Hills Estates Homeowners Association, Inc." or such other name as may be acceptable to the owners and to the Nebraska Secretary of State, corporations division. The cost of said incorporation process shall be assessed proportionately to all the lots in the subdivision as part of the annual assessment or as a special assessment and collected as all other assessments. "Indian Hills Estate Homeowners Association, Inc." ("Corporation") shall be incorporated in Nebraska at the earliest possible time for the purposes of enforcing the First Amended Protective Covenants and Restrictions established upon the Properties, administering and maintaining any common roads constructed therein and providing such other services to its owner members as may be determined from time to time.

7. The current members of the Building Committee shall continue to govern the activities of this residential subdivision as provided herein until such time as the homeowners association is established as a legal entity. Thereafter, the members of the Building Committee shall serve as the initial and temporary Board of Directors of said corporation and shall proceed to the election of the members of the permanent Board of Directors to serve terms of office as may be provided in the Bylaws of the corporation. Unless and until said incorporated homeowners association is legally established, the Building Committee shall be entitled to act in the same manner and in the full capacity the same as a "Board of Directors," and as "the Corporation," or any other governing authority mentioned herein, to further the collective interests of the owners pursuant to this governing instrument.

8. Matters specifically pre-dating the recording of these covenants shall be governed by the previous restrictive covenants, except for any violations of those covenants which may constitute a daily on-going violation which may, therefore, be declared as a new violation by the Corporation to which these First Amended Protective Covenants and Restrictions shall thereafter apply prospectively.

9. Any on-going, current or future violations of these First Amended Protective Covenants and Restrictions shall be noted by the corporation on or after the effective date of these Restrictive Covenants. These First Amended Protective Covenants and Restrictions, and the rights and remedies herein provided, shall be applicable to all such violations, and the corporation shall notify the respective lot owner of any violation in writing. Said written notice shall grant to said lot owner a reasonable period of time to remedy said violation before the corporation takes any further self-help action as may be authorized herein. The corporation, in its sole discretion, shall determine what actions or failures to act shall constitute a violation of these covenants and shall determine what actions must be taken to cure said violation and what reasonable time, including

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possible extensions thereof upon request, should be granted to allow the lot owner to remedy any such violation to the satisfaction of the Corporation.

C. ADDITIONAL PROVISIONS:

1. HOMEOWNERS ASSOCIATION: In addition to being subject to these First

Amended Protective Covenants and Restrictions, every person or entity owning a lot within the Properties shall, by virtue of their status as an owner or owners, be a member of the homeowners association corporation (hereinafter "the Corporation"). However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member, unless and until said person or entity takes possession and control of said lot by virtue of foreclosure, Trustee's sale, or otherwise.

2. MEMBERSHIP: The Corporation shall have only one class of membership,

which shall include all titleholders of record of any lot in the Properties and any heirs, successor in interest and assigns of any titleholder. Each member of the Corporation shall be entitled to all the rights of membership, shall be responsible for all duties herein imposed upon the members and the owners shall be entitled to cast one vote for each lot owned in the Properties by said member or members.

3. USE. The lots within the Properties shall be used for no purpose other than for

single-family residential purposes. No lot shall be less than one (1) acre in size, nor shall any such lot be subdivided.

4. APPROVAL OF PLANS: The Board of Directors of the Corporation (hereinafter

"the Board" or "the Corporation") shall have the exclusive right to establish grades and slopes for all lots within the Properties 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 Properties. Plans for any dwelling structure to be placed or constructed upon any lot within the Properties shall be submitted to the Board of Directors and shall show the design and size of the building or improvement and the plot plan for the lot. Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from the Corporation. Written approval or disapproval of the plans shall be given to the member by the Board of Directors within thirty (30) days after receipt thereof. Approval of the plans shall not be unreasonably withheld and, upon disapproval, a written statement of the grounds for disapproval shall be provided. The Board shall have the exclusive right to disapprove the plans if, in the Board's opinion, the plans do not conform to the general standard of development in the Properties, or fail to qualify for a building permit from the City of Louisville, Nebraska.

5. COMPLETION OF CONSTRUCTION: The construction of any building placed

or constructed upon any lot within the Properties shall be completed within twelve months after the commencement of construction.

6. GENERAL STANDARDS FOR DWELLING STRUCTURES: The following general standards of development shall guide the Board in the review of any plans for dwelling structures submitted for approval within the Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Board shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority. The Board shall have the right to reduce, increase or otherwise explicitly modify these standards within other additions to the Properties.

Minimum Floor Area. The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks or enclosed decks shall be as follows:

- I. Single story ranch style: 1,200 sq. ft.
- ii. Two story: 1,000 sq. ft. or more on first floor
- ii. Multi-level/split entry: 1,300 total sq. ft.

7. SETBACK STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS: No building or any part thereof, including garages and porches, shall be erected on any tract closer than 40 feet from the front road line, nor closer than 20 feet from either side boundary line, nor closer than 30 feet from the rear boundary line. Notwithstanding these provisions, the Corporation shall have the right to permit reasonable modifications. The Corporation and members of the Corporation shall have the right to enforce these standards by any means necessary.

8. CITY REQUIREMENTS: All buildings and other improvements within the Properties shall be constructed in conformity with the requirements of the applicable building codes and the roads, common areas and the lots within the Properties shall be governed by all other applicable ordinances and regulations of the City of Louisville, Nebraska and the County of Cass, to the extent said laws and regulations legally apply to the Properties.

9. SIGNS: No advertising signs, billboards, or other advertising devices shall be permitted on any lot within the Properties larger than 24 inches by 36 inches. However, a sign advertising a single lot for sale may be erected upon any lot at any time.

10. HIRING INDEPENDENT CONTRACTORS:

a. The Corporation may enter into one or more contracts with any entity or individual for the performance of any of the Corporation's obligations or responsibilities. Said entity or individual shall at no time or for any purpose be an employee of the Corporation, but shall be considered an independent contractor at all times and for all purposes. The fees paid to said independent contractor shall be a common expense of the members. However, nothing herein shall prevent the Corporation from seeking reimbursement from a non-complying member for the cost of remediation work performed by any independent contractor on said member's non-complying lot by direction of the Corporation.

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a. In the event any member fails or refuses to perform any required maintenance or upkeep of any building, improvement, landscape or lawn in a reasonable and timely manner, or conditions on a lot cause damage to the road right of way adjacent to said lot, the Corporation may perform the required work or maintenance, but not until after seven (7) days written notice to the

13. FAILURE TO MAINTAIN:

c. The appropriate residential portion of each lot shall be regularly and periodically maintained by the lot owner, including, but not limited to, mowing, weed control, storage, removal or disposal of underbrush, refuse piles, other unsightly plant growth or other unsightly objects. Loose debris and materials shall be disposed of in a timely manner so as to prevent them from being scattered and blown about throughout the Properties or becoming an eyesore. Each member shall be responsible for the enforcement and monitoring of these obligations for said member's own lot(s) and shall timely comply with all notices to do so which may be served upon said member by the Corporation.

b. During construction on any lot, the lot owner shall, if required by law or because of the actual potential for soil erosion, be responsible to erect and maintain adequate erosion control measures, including silt fences, straw bales or other measures to prevent soil runoff upon adjoining lots, streets, creeks, or streams. At all other times, the Corporation may require lot owners to take measures to prevent, remedy or repair erosion damage to a road or roads within the Properties. Notice and reasonable time for such action shall be at the discretion of the Corporation and damage which may jeopardize the safety of the users of the road shall be remedied by the Corporation in the event the lot owner fails to act immediately. The Corporation may assess the cost thereof against the lot owner in the event the lot owners actions or inaction are the cause of the road or right of way damage.

a. Each lot owner shall be responsible for the proper storage or removal and disposal of all debris, including but not limited to construction debris and materials associated with the construction or maintenance of any improvement upon said lot.

12. GENERAL MAINTENANCE OBLIGATIONS:

b. Unless specifically approved by the Corporation's board of directors in advance, no credit against association dues shall be granted to any party for any work performed for the Corporation whether voluntarily or for hire. The Corporation shall not pay for any work performed for the Corporation unless the board of directors has, in advance, approved such work or entered into an agreement with a contractor to provide such work as needed.

lot owner in default. Road damage which jeopardizes the safety of the users of the road shall be an exception to this notice requirement.

b. In the event the Corporation shall take such action, there shall be a special assessment levied against the non-complying lot and a billing statement shall thereafter be tendered to the lot owner, seeking reimbursement of the Corporation's costs incurred for the following: (1) the actual cost to the Corporation of having the necessary work performed on said lot or the road right of way adjacent to said lot, (2) an administrative fee of ten percent (10%) of the bill or \$20.00, whichever is less, (3) interest on the cost of the work at the rate of fourteen percent (14%) per annum which shall begin to accrue thirty (30) days after the first billing and (4) all costs incurred by the Corporation to collect said sums from said lot owner, including court costs and attorney fees.

c. Said sums shall be due and payable within thirty (30) days of the billing date. If said special assessment is not paid by the owner of the non-complying lot within thirty (30) days after the first billing by the Corporation, the amount of said special assessment, administrative fee and all accrued interest shall be a lien upon the lot in the manner of a statutory Construction Lien for services performed on the non-complying lot. Each member/lot owner shall be deemed to be a contracting owner for such statutory lien purposes from and after the effective date of these Restrictive Covenants.

14. **UTILITIES.** Each lot owner shall be responsible for the cost of obtaining electrical, telephone and other available utilities from the utility companies from which such services are available. Each lot owner shall be required to install and maintain (unless rural water authority is in charge of maintenance), at his or her own expense, a water source to supply potable water to the owner's premises. Each lot owner shall be required to install, maintain and repair at his own expense, a sanitary sewer system, consisting of septic tank and laterals. Each lot owner shall pay his proportionate share of any common sanitary sewer system required by any governmental authority. Each lot, whether developed or not, shall bear a proportionate share of this construction expense. On-going user fees shall thereafter be charged only against those lots which are connected to said system.

15. **CORPORATION RESPONSIBILITIES:** The Corporation shall provide such services to its members as the Corporation may from time to time determine by the affirmative votes of the owners of at least a majority of the lots in the Properties. These services and responsibilities of the Corporation presently include the following:

a. **Repair and Maintenance of Roads:** The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to repair and maintain the roads, ditches and rights-of-way within the Properties, including snow removal as determined by the Corporation, to the extent not

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otherwise provided for by these Covenants, the costs of which shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the roads.

b. Approval of Building Plans. The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to have agreed to submit all building plans to the Corporation's Board of Directors for approval as provided elsewhere herein. Refusal of said approval of plans and specifications may be based on any ground, including purely aesthetic ground, which, in the sole discretion of the Board, shall seem sufficient. In the event the plans are not approved or disapproved within thirty (30) days after they are submitted to the Board, such approval shall not thereafter be required, provided that no building or other structure shall violate any provision within these Restrictive Covenants.

c. Other Services: The Corporation may provide to its members such other services as, from time to time, the Corporation may determine after notice to, and majority vote of, the members. The cost of these services shall be paid for cumulatively by the members as determined by the Corporation. Annual dues and special assessments for said services provided to the members shall be uniform as to each lot within the Properties, except for the reimbursements to the Corporation for the costs of abating nuisances and other non-compliances as described elsewhere herein.

16. LIEN OF DUES AND ASSESSMENTS: The lien of any unpaid costs or reimbursements, unpaid dues and assessments, or unpaid special assessments shall, until shown of record, or until reduced to judgment against the owner(s), be subordinate to the lien of any Deed of Trust or mortgage filed against the lot against which the assessment is levied.

17. ANNUAL ASSESSMENT AND LIENS:

a. Annual dues, assessments and special assessments may be levied by the Board of Directors of the Corporation annually or as the need arises. Any special assessment for capital improvements may be rejected by the members at any time within 30 days of the notice of the levy by the vote of the owners of at least a majority of the lots owned by the members affected thereby and 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.

b. The members, consisting of the owners of each lot, whether developed or undeveloped, shall pay annual dues and special assessments to the Corporation as billed. Each member's dues shall be determined on an annual basis for each fiscal year. The annual dues are established at the commencement of these First Amended Protective Covenants and Restrictions at \$200.00 per year per lot. Changes in the amount of future annual dues shall be based upon an estimate of the Corporation's costs for administration, maintenance and improvement of the roads and other common services. Each member shall pay the annual dues so established in advance. At the end

of each fiscal year, a statement of the total year's operating costs may be presented to the members of the Corporation and the members shall pay any excess charges to the Corporation within thirty (30) days of the date of the billing statement.

c. The Corporation may prepare, approve and make available to each member a pro forma operating statement (budget) containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Corporation currently available for replacement or major repair of the roads and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the roads; and (4) a general statement setting forth the procedures used by the Corporation in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the roads.

d. Additional Charges. In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Corporation may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but are not limited to, the following:

- i. Attorneys Fees: Reasonable attorneys fees and costs incurred in the event an attorney is employed by the Corporation to collect any dues, assessments, special assessments, or other sums due, whether before suit or otherwise;
- ii. Late Charges: A late charge in an amount to be fixed by the Corporation to compensate the Corporation for additional collection costs incurred in the event any dues, 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 twenty dollars (\$20), whichever is less;
- iii. Costs of Suit: Costs of suit and court costs incurred as allowed by the Court;
- iv. Filing Fees: Cost of filing liens and notices of liens in the Office of the Register of Deeds;
- v. Interest: Interest on all dues and assessments at the rate of fourteen percent (14%) per annum, commencing thirty (30) days after the assessment becomes due and payable; and
- vi. Other: Any other cost that the Corporation may incur in the process of collecting delinquent dues and assessments against any member.

e. Lien. The dues and assessments shall be the personal obligation of the member who is the owner of the lot assessed at the time of the assessment and when shown of record shall be a lien upon the lot assessed as herein provided.

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Mary K Long
Mary Long

Dennis Duin
Dennis Duin

Cora Duin
Cora Duin

Gregory Manley
Gregory Manley

Michael Gobber
Michael Gobber

BUILDING COMMITTEE:

Dated: July 12, 2010

21. **SEVERABILITY:** The invalidation of any provision of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

20. **ENFORCEMENT:** Enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person(s) violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages and/or to enforce any charge, lien or obligation created hereby.

19. **AMENDMENTS:** These Restrictive Covenants shall run with the land and shall be binding upon all owners of record and enforceable by the Corporation. These Restrictive Covenants may be terminated or modified, in writing, by the affirmative vote of the owners of at least a majority of the lots within the Properties at any time, except to the extent that the City of Louisville, Nebraska or the County of Cass may require otherwise, pursuant to the zoning authority either may legally exercise over the Properties.

18. **ADDITIONS:** Additional contiguous or adjacent real estate may be added to the Properties at any time, with the consent of the owners of at least a majority of the lots in the Properties. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants; provided, however, that the general standards set forth herein may be reduced, increased, or otherwise modified within any such addition.

