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Return to: Darrell K. Stock, P.C., L.L.O., 5533 S. 27th St., Suite 203, Lincoln, NE 68512

DECLARATION OF PROTECTIVE COVENANTS

PREAMBLE:

THIS DECLARATION made in the year 2016 by the undersigned shall become effective on its date of recording in the Office of the Register of Deeds of Lancaster County.

WHEREAS, Declarant is the owner of certain real property ("Property" "Properties") in the City of Lincoln, County of Lancaster, Nebraska, which is more particularly described as:

Legal Descriptions: The undersigned Developer developed to City requirements the following-described real estate:

Lots 1-8, Block 1, HiMark Estates 20th Addition, Lincoln, Lancaster County, Nebraska, (collectively referred to as "the Type A Lots"); and

Lots 1-9, Block 2, HiMark Estates 20th Addition, Lincoln, Lancaster County, Nebraska, (collectively referred to as "the Type B Lots"); and

Outlot B, HiMark Estates 20th Addition, Lincoln, Lancaster County, Nebraska ("Commons").

NOW, THEREFORE, the undersigned does hereby declare that all of the "Properties" described above shall be held, sold and conveyed subject to the following easements, covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and binding on all parties having any right, title or interest in the described "Properties" or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

SECTION 1. "Association", "HOA" and "HOA Board" shall mean and refer to the HiMark Lane Homeowners Association Phase 2 which will be managed by the Developer

until such time as it is incorporated under the Nebraska Nonprofit Corporation Act, and its successors.

SECTION 2. “Property” and “Properties” shall mean and refer to all of the real estate above described together with such additions as may be made thereto under the terms of this Declaration.

SECTION 3. “Common Area” and “Commons” shall mean that portion of the property designated as such, and which shall be held for the common use and enjoyment of all of the members of the Association. It shall include, but not necessarily be limited to, the property shown on the plats of the Properties as common area and as defined in this Declaration.

SECTION 4. “Lot” shall mean and refer to any designated portion of the properties as shown on the recorded subdivision plat, with the exception of the Common Area and streets.

SECTION 5. “Member” shall mean and refer to any person or entity who holds membership in the Association.

SECTION 6. “Owner” or “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Where such Ownership is joint, tenants in common or tenancy by the entirety, or otherwise consists of more than one person, the majority vote of such Owners shall be necessary to cast any vote to which the Owners of that Lot are entitled.

SECTION 7. “Board of Directors”, “HOA Board” or “Board” shall mean the Developer until the Association is incorporated and there is a corporate board of the Association.

SECTION 8. “Common Expense” shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area; the costs of maintaining any and all utilities located in the Common Area, if any; cost of management and administration of the Association including, but not limited to, sewer and water service, garbage removal, lawn and landscaping maintenance, snow removal, exterior painting and maintenance compensation paid by the Association to managers, accountants, attorneys and other employees, if any; the costs of fire, casualty and liability insurance, workman’s compensation insurance, any costs of bonding of the members of the Board or employees; all taxes paid by the Association, if any; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties for the benefit of all of the Owners.

SECTION 9. “Developer” shall mean HiMARK PROPERTY, L.L.C., a Nebraska limited liability company.

SECTION 10. “Common Assessment” or “Annual Assessment” shall mean the amount assessed against all Lots for the purpose of funding the common expenses.

SECTION 11. “**Special Assessment**” shall mean any assessment provided for herein which is not an annual assessment and may be assessed against all Lots or a specific Lot.

ARTICLE II RESIDENTIAL DEVELOPMENT ONLY

No building placed or constructed on any lot within the Properties shall be used other than for residential purposes.

ARTICLE III ARCHITECTURAL CONTROL

SECTION 1. General: No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior additions to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the Board, or by an architectural committee composed of three or more representatives appointed by the Board. In the event that the Board of Directors, or its designated committee, fails to approve or disapprove such design and location forty-five (45) days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully satisfied. The Board of Directors are authorized to adopt additional rules, regulations and restrictions, in the Bylaws which are consistent with this Article.

SECTION 2: Maintenance of Exteriors: The HOA Board may maintain the exterior of any improvements within the Properties, excluding glass surfaces, and shall have the right to enter upon any lot within the Properties, at reasonable times, to perform maintenance. The cost of maintenance shall be added to the next annual assessment.

ARTICLE IV CONFORMANCE WITH CITY REGULATIONS

All buildings within the Properties shall be constructed and maintained in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska, and public sidewalks shall be installed and maintained as required by the City of Lincoln, Nebraska.

ARTICLE V USE RESTRICTIONS

SECTION 1. The use of the Properties and the Commons shall be subject to the following:

- a. **Use of Common Area:** No use shall be made of the Common Area which in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over such Common Area.

- b. **Access to Common Area:** No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which would temporarily or permanently deny free access to any part of the Common Area to all members
- c. **Activity:** No noxious or offensive activity shall be carried on or permitted upon any lot within the Properties, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood or shall endanger the health or unreasonably disturb the quiet of the owners or occupants of adjoining lots.
- d. **Signs:** No Advertising signs, billboards, or other advertising device shall be erected, placed or permitted on any lot within the Properties, with the exception that a sign, not to exceed 3' x 3' in dimension, advertising a single lot for sale may be placed upon such lot by the owner thereof.
- e. **Maintenance:** The Common Area and the Properties shall be kept free and clear of rubbish, debris, junk, non-yard-related property and other unsightly materials. Owners shall maintain and keep trimmed all grass areas, bushes, shrubs and trees within the Owner's Lot.
- f. **Restrictions on Parking:** No tractor-trailers, other trailers, commercial vehicles or any vehicles covered with tarps or car covers in driveways (except uncovered operational passenger automobiles, vans or similar vehicles used in the Lot Owner's business), construction equipment not being currently used for the construction, motor homes, recreational vehicles, junk or scrap vehicles which are not operational, or boats, jet skis or other personal water craft, shall be permitted to be permanently parked in or on any street or private driveway or on any Lot, or in any common area. Other restrictions regarding parking shall be as set forth in the Bylaws of the Association. Recreational vehicles may be temporarily parked or stored upon a lot for a period of time not to exceed 7 days per year. If the Owner fails to comply after written notification from the HOA Board of the violation after 7 days, the HOA Board has the right to arrange to tow the vehicle at the owner's expense.
- g. **Unauthorized Parking:** Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the property shall be towed from the premises at the expense of the respective owner of such vehicle so parked. The Board of Directors, or any authorized employee, may order such removal on behalf of the Board of Directors after giving reasonable notice to the Owner of the vehicle to remove such unauthorized parked vehicle, if such Owner is known, and shall not be liable for any costs, loss or damage of any nature whatsoever, directly or indirectly, resulting therefrom or connected therewith. Notice is not required prior to removing a vehicle blocking a roadway or impeding access by emergency vehicles.
- h. **Animals:** A maximum combined count of three (combination of cats and/or dogs) will be allowed otherwise NO animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot within the Properties for personal pleasure or any

commercial purpose. Owner's dogs must be walked with leashes within the neighborhood and droppings must be immediately recovered anytime on common area or another neighbor's property. Owners specifically agree not to trespass on neighboring golf course property and walk their dogs. Exceptions may be granted by the HOA Board if Owner requests and receives from HOA a written exception to these animal restrictions. The Association may adopt rules and regulations with regard to the activities of pets in the Commons.

i. **Business Use:** No commercial in-home business will be allowed if it in any way requires walk-in customer traffic and/or places any demand for customer parking on HiMark Lane.

j. **Temporary Structures:** No partially completed dwelling or temporary building and no trailer, tent, shack, outbuilding, or detached garage on any lot within the Properties shall be used as either a temporary or permanent residence.

k. **Antennas:** No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except within a building; however, upon request, the HOA Board may approve a single dish-type satellite receiver not to exceed 24 inches in diameter which shall be attached to the dwelling in a manner and location to be approved by HOA Board.

l. **Flags and Flag Poles:** Flags or Flagpoles that will be erected or flown in any permanent capacity (more than 7 days annually) must first be approved by the HOA Board at their sole discretion. Size of flag and size of pole being at the HOA Board sole discretion as well as banner and content of flag as to whether it is appropriate for the neighborhood.

m. **Outdoor Lighting:** Any unusual or excessive lighting for holidays or other purposes must first be approved by the HOA Board at their sole discretion to approve/disapprove or make the determination that lighting is unusual or excessive.

n. **Encroachments:** When a building, trees or landscape shall be constructed on any lot so as to encroach upon an adjoining lot within the Properties, the Owner of the lot with the encroaching building or vegetation shall have an easement only upon the adjoining lot to the extent of the encroachment. Any expense of maintenance, repair or replacement of the encroachment shall be borne by the Owner of the lot which is encroaching. The provisions of this paragraph shall not operate to relieve any Owner from any liability which the Owner may incur by reason of negligent or willful acts or omissions resulting in damage to the encroachment.

o. **Residential.** No dwelling may be occupied by more unrelated persons than allowed by the Lincoln Municipal Code.

- p. **Rules and Regulations:** In addition to the foregoing, the use of the Common Area shall be subject to the Bylaws and such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

ARTICLE VI EASEMENTS AND COMMON SERVICE LINES

SECTION 1. General Easements: The Association reserves to itself, its successors and assigns, easements over and upon each lot within the Properties as shown on their recorded plat of the Properties.

SECTION 2. Easements as to Driveways and Sidewalks: Each member of the Association, who is the record owner of a lot which has access to a street or dwelling unit by way of a common driveway or common sidewalk, shall have an easement over and upon such common driveway or sidewalk for ingress and egress from and to such street or dwelling unit, which shall be appurtenant to and shall pass with the interest requisite for membership.

ARTICLE VII CONSTRUCTION PROVISIONS

SECTION 1. Commencement and Completion of Construction:

- a. Construction of a dwelling shall commence on each lot within two years of the conveyance of such lot from the Developer to a new titleholder (Original Sale) without written extension from HOA Board.
- b. If construction has not commenced within three years, Developer shall have the option to repurchase the lot at the same price as the Original Sale, less any bank interest or real estate commissions or other closing costs paid by the Lot Owner at the time of the Original Sale.
- c. Any building placed or constructed upon any lot within the Properties shall be completed within nine months after the commencement of construction without permission from Developer.
- d. Instruction roll off trash containers or dumpsters on wheels in construction phase containers shall not be placed in the street during construction and must be placed only on the Owner's lot. Construction debris will be cleaned up daily and deposited in the trash containers in such a way that wind will not dislodge and litter other lots in the area.
- e. Contractors or Owner's construction vehicles may not be left overnight in the street without prior written approval from the HOA Board.
- f. Erosion Control: Construction plans shall include erosion control measures which will contain erosion of soil on the lot during construction.

Adequacy of erosion control measures shall be subject to continuous review during construction and the HOA Board shall have the right to require maintenance of silt fences, straw bales or other additional measures if soil is observed to be eroding onto the golf course abutting lots, or into the street. If, upon notice from HOA Board to repair, maintain or take additional measures to control erosion, the Owner or Owner's contractors fails to comply within 48 hours of delivery of such notice, HOA Board may take such measures as may be necessary and charge the cost of the measures to the titleholder. Such charges, when shown of record, shall be a lien upon the property and shall bear interest at the rate of 14 percent per annum until paid.

SECTION 2. Approval of Plans:

- a. The HOA Board 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 shall be placed or constructed upon any lot, in conformity with the general plan for the development of the Properties. Any grades disturbed by an Owner in a manner that impacts original drainage installed by Developer on Owner's lot after closing must have prior HOA Board written approval. Absent HOA Board consent if drainage is impacted adversely solely at the discretion of HOA Board, then Owner can be compelled to return drainage to the original lot conditions. If Owner does not comply, Owner grants the HOA Board the right to access Owner's lot(s) and contract with a landscape contractor to return drainage to original condition at the sole cost of Owner. Any costs for these services will be borne by Owner and if not paid by Owner then Owner agrees to allow the HOA Board to place a lien on Owner's property that covers legal and landscaping costs until reimbursed to HOA Board.
- b. Plans for any building or other improvement to be placed or constructed upon any lot within the Properties shall be submitted to the HOA Board and shall show the design, size, and exterior material for the building or improvement and the plot plan for the lot, and landscape plan.
- c. One set of plans shall be left on permanent file with HOA Board. Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from the HOA Board and shown of record. Written approval or disapproval of the plans shall be given by the HOA Board within 14 days after receipt thereof. Upon disapproval, a written statement of the grounds for disapproval shall be provided. The HOA Board shall have the discretionary right to disapprove the plans.
- d. As part of the review, the HOA Board shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of the review procedure.

e. The HOA Board specifically reserves the sole discretion to deny approval of any initial or secondary downstream improvements which it determines will not conform to the general character, plan and outline for the development of the Properties. Any additional building permits submitted to city planning for approval should also simultaneously be submitted to HOA Board for HOA Boards written approval/disapproval which shall be returned to Owner in no more than 14 days after receiving application for improvements.

f. The HOA Board may designate and enforce locations through and over which all construction vehicles shall enter and exit the Properties during development. HOA Board shall also have the exclusive right to designate a single provider of rolloff service within the Properties. The purpose of designating a single provider is to limit and control the number of service trucks operating within the Properties. The rights of the HOA Board under this paragraph to designate a rolloff provider shall be assigned to the Corporation when residences shall have been placed or constructed upon all of the lots within the Properties.

SECTION 3. Minimum Standards for Construction: The following general standards shall guide the HOA 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 HOA Board shall have the right, in the HOA Board's sole and absolute discretion, to modify the application and interpretation of these standards when exercising plan approval authority.

a. **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. **"A" Lots (Type A Lots):** Lots 1-8, Block 1, HiMark Estates 20th Addition, Lincoln, Lancaster County, Nebraska

- (1) Single-story ranch style, 1,950 square feet
- (2) Two-story, 2,700 square feet
- (3) Multi-level, 2,700 square feet
- (4) Story-and-a-half, 2,600 square feet

ii. **"B" Lots (Type B Lots):** Lots 1-9, Block 1, HiMark Estates 20th Addition, Lincoln, Lancaster County, Nebraska

- (1) Single-story ranch style, 1,950 square feet
- (2) Two-story, 2,700 square feet
- (3) Multi-level, 2,700 square feet
- (4) Story-and-a-half, 2,600 square feet

- b. **Setbacks:** Setbacks of dwellings from the lot lines are established as follows:
- i. Interior lots, 25 feet from the front lot line
 - ii. Corner lots, 25 feet from street side front lines
 - iii. The setback from the side lot line for Lot Type A and B shall be a minimum of 7.5'

The HOA Board shall have the right to vary setbacks within the limits established by the zoning ordinance of the City of Lincoln, Nebraska.

c. **Exterior Finish:**

i. **Approval:** All exterior finish materials and colors shall be approved by the HOA Board. The first floor of the front elevation of any dwelling shall be faced with brick, natural stone, or stucco. The balance of any exterior elevation shall be faced with permanent steel, aluminum, or other approved permanent maintenance-free siding. No Vinyl siding is allowed. Developer or HOA Board has the sole discretion to allow variances with prior written permission to use materials not matching these required.

ii. **Exposed foundations:** Exposed foundation walls shall be faced with brick, natural stone, stucco, or permanent siding to match the exterior of the dwelling.

d. **Roofs:** All roof pitches shall be a minimum of 6:12, or HOA Board at HOA Boards sole discretion can approve variance to this pitch as may be dictated by a unique architectural style. Roofing materials shall be built up asphalt shingles, tile or slate.

e. **Lawn Irrigation System:** All lots within the Property shall be equipped with underground lawn irrigation systems.

f. **Landscaping:**

i. A landscape plan shall be submitted for approval along with the plans for construction of any dwelling. Such landscape plan shall include deciduous shade trees and coniferous trees, together with shrubs or other ornamental plants to be placed in the front yard. Rear yard landscaping of the shall be designed in such a way as to minimize obstruction of views to the golf course from neighboring properties with particular consideration to long term growth impacts to proposed trees that may exceed 20' in height at some point in the future.

ii. Any modification or additional landscape changes or improvements will also require HOA Board approval before Owner is authorized to begin planting of trees or landscape improvements.

g. **Fences:** Any plans to install fencing must first be submitted for HOA Board's written approval with location and material used being specified to HOA Board who in HOA Board's sole discretion for any reason may deny or approve application for fencing

h. **Owner Required Privacy fences on Western Lot Lines:** All lot types A have golf course exposures. To minimize trespassing from golfers wishing to retrieve errant golf shots, the HOA Board for privacy and security reasons plans to install 5' tall black aluminum fence on the western back property line of all Phase 2 lots. Adjacent Lot Owners desiring to enclose their back yards will be allowed to attach their side yard fences to the black aluminum fence as long as the materials match color and style of the HOA Board installed back yard fence. Owners shall submit plans to the Board prior to installation and request permission for the construction.

i. **Accessory Buildings:** No detached whether temporary or permanent accessory buildings shall be permitted on any lot within the Properties.

j. **Dog Runs:** Dog runs shall not be allowed without prior written approval on proposed location and materials.

k. **Swimming Pools:**

i. Swimming pools shall be fenced completely with 5' tall Black Aluminum fence matching the HOA Board installed fence on the rear lot lines of all lots. Swimming pool setbacks from rear and side lot lines will be a minimum of 20'.

ii. Owners are strictly prohibited from exhausting excess or fouled pool water onto the golf course property. Any instance or occasion where this takes place will be grounds by HOA to add a \$250 penalty to the Owner's next annual assessment as reimbursement to the HOA Board or operator of the golf course. Alternatively, excess pool water shall all be diverted to the street where it will eventually end up in the holding pond currently on the HiMark Golf Course.

iii. HOA Board shall have the right to vary setbacks within the limits established by the zoning ordinance of the City of Lincoln, Nebraska. Location of fences and pools shall be governed by the ordinances of the City of Lincoln, Nebraska.

ARTICLE VIII

EASEMENTS RELATING TO TYPE A AND TYPE B LOTS

SECTION 1. Lot Owners acknowledge that golfers will from time to time hit golf balls from the golf course onto the Properties and that normal operation and maintenance of the Golf Course will involve operation of mowers and other power equipment during the evening and early morning hours.

SECTION 2. An easement is hereby reserved and established on the Properties in favor of the Golf Course, for:

- (i) The intrusion of errant golf shots on to the Properties; and
- (ii) The intrusion of noise from mowing and other power equipment during all hours of the day and night.

SECTION 3. The easements granted in this paragraph are for the use and benefit of the operator of the Golf Course, their successors and assigns, including any lessee, licensee, permittee, or invitee ("Grantee"). Grantee shall also include any person or entity which contracts to operate a golf course or driving range and any golfer who is duly authorized to play golf on the Golf Course. It is the responsibility of the Lot Owner to include provisions in their homeowner's or renter's insurance policies to cover the cost of damages as a result of errant golf shots.

SECTION 4. Each Lot Owner, by acceptance of the deed conveying title, hereby covenants not to sue or seek damages from the HOA Board, Developer, golf course owner or any future assignee of the golf course operation, for property damage or personal injury which results directly or indirectly from an errant golf shot.

SECTION 5. Lot Owners and their guests, invitees, lessee and permittees assume all risks associated with errant golf balls and waive any claim or cause of action against the HOA Board, Developer or the golf course designer, the golf course builder, the golf course titleholder or operator, and the builder of the residential dwelling for personal injury or property damage arising from any errant golf shots, or for any alleged defect in the golf course design or construction, or in the design or site of the dwelling.

SECTION 6. A Lot Owner is not excluded from seeking relief and/or a judgment from the person or persons who may have hit the errant shot.

ARTICLE IX OPERATION OF THE ASSOCIATION

SECTION 1. Organization: At such time as the Association is organized as a Nebraska non-profit corporation, the Association is charged with the duties, and invested with the powers, prescribed by law and set forth in the Articles of Incorporation and Bylaws of the Association and this Declaration. Neither the Articles of Incorporation nor the Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Until such time as the Association is organized as a corporation, the Developer shall function as the Board of Directors of the HOA and shall function as the HOA Board.

SECTION 2. Membership Eligibility: Every Lot Owner shall automatically, upon becoming the Owner of a Lot, be a Member of the Association whether or not it has been formally incorporated. Such Lot Owner shall remain a Member of the Association until such time as his/her Ownership of his/her Lot ceases for any reason, at which time his/her membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for membership in the Association. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. A Lot Owner shall be entitled to one membership and one vote for each Lot owned by the Lot Owner.

SECTION 3. Transfer of Membership: The membership held by any Owner in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of his/her Lot, and then only to the purchaser. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his/her name to the purchaser of such Lot, upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner, and his/her Lot, equal to the cost of the Association of effectuating any such transfer of his/her membership upon the books of the Association

SECTION 4. Duties and Powers: The duties and powers of the Association are those set forth in its Articles of Incorporation and Bylaws, generally to do any and all things that an Association may lawfully do in operating for the benefit of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its Bylaws and in this Declaration.

SECTION 5. Association Actions: All agreements and determinations lawfully made by the Association in accordance with the voting procedures established in this Declaration, or in the Bylaws, shall be deemed to be binding on all Owners of Lots, their successors and assigns.

SECTION 6. Limitation on Association's Liability: Notwithstanding the duty of the Association to maintain and repair parts of the properties, the Association shall not be liable for any failure of water service or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the properties, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Properties, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making or repairs, maintenance, or improvements to the properties or any part thereof, or from any action taken to comply with any law, ordinance, or orders of a governmental authority.

SECTION 7. Classes at HOA Voting for Members:

- a. The HOA shall have two classes of votes for the 17 platted lots in Phase 2 HiMark Lane. Class A shall include all Lot Owners and any successor in interest. Each Class A Owner shall be entitled to one vote for each lot or living unit.
- b. Class B shall include only the Developer's unsold lots and any successor in interest to Developer. The Developer shall be entitled to 2 votes for each lot or living unit in which the interest requisite for lot ownership is held.
- c. The Class B votes shall be converted to Class A votes when Owner elects to convert or on January 1, 2030, whichever first occurs.
- d. Until Developer converts Class B votes to Class A votes, Developer shall be the sole member of the HOA Board. When Developer elects to convert all Class B lots and/or votes to Class A, an HOA Board elected by the Lot Owners consisting of Three members shall occur. The election and replacement of Board Members shall be governed by duly adopted By-Laws.

SECTION 8. Common Area Defined: The Common Area is specifically defined as: (a) Sidewalks on the side of HiMark Lane; (b) Black aluminum fence on the western lot lines of Lots 1-8, Block 1; (c) Those rights to Outlot B conveyed to the Association by the Developer, plus any areas designated on the plat of the Properties, as outlots or vacant areas not designated as building lots, shall constitute the "Commons", and shall be used for the enjoyment of all of the members of the Association for recreation, park and esthetic purposes.

**ARTICLE X
COMMON AREAS**

SECTION 1. Use and Enjoyment. Each member of the Association shall have the right to use and enjoy the Commons and shall have an easement over and upon the Commons for the use and enjoyment thereof, which shall be appurtenant to and shall pass with the interest requisite for membership, subject to the restrictions set forth herein.

SECTION 2. Use and Cost of Maintenance of Commons: The maintenance of the Outlots, snow removal and repairs of sidewalk on the south side of HiMark Lane will be paid for out of annual HOA assessment. Repair of black aluminum fence on the western lot lines of Lots 1-8, Block 1, if for some reason damage occurs, will be paid for out of the annual HOA assessment.

SECTION 3. Fence Costs: Developer will loan interest free funds to the HOA to build the western lot line fence. The cost incurred by HOA Board to install the 5' tall Black Aluminum fence on the back lot lines of Lots 1-8, Block 1, will be reimbursed to the Developer from surplus proceeds available from the Annual HOA assessment until the entire amount incurred by HOA Board has been reimbursed. If after 2022 surplus proceeds have not

extinguished monies required to reimburse HOA Board a special assessment may be required to pay off that balance owed to Developer.

SECTION 4. Outlot B Areas Designated for Cart Paths and Roadways: The use and enjoyment of Outlot B shall be as granted by Developer and subject to the roadways and cart path areas designated by Developer. Developer, or its successor, shall have the exclusive right to determine, and/or modify, the location of the cart paths and roadways on Outlot B. The areas designated for cart paths and roadways shall be for the non-exclusive, but primary, use by the HiMark Golf Course Owner or Subsequent Assignees. The use of the areas designated for cart paths and roadways shall not in any manner be obstructed, encroached upon, or interfered with, by the Association or a Member. Developer and/or HiMark Golf Course shall be responsible for the construction, maintenance and repair of the paths and roadways located in the easement areas.

SECTION 5. Outlot B Management: Every member shall have the right and easement of enjoyment in and to Outlot B, subject to the following provisions:

- a. Use of the Outlot Area shall be restricted to members and their guests, and the HOA Board shall have the right to limit the number of guests of members and to adopt reasonable regulations applicable to use by members and guests.
- b. The HOA Board shall manage the use of any recreational facility situated upon Outlot B, and shall also have the right to contract with any other person, persons or entity for the management, development, maintenance and improvement of Outlot B.
- c. HiMark Golf Course shall supply the maintenance and mowing for the golf putting green practice areas for \$1,000.00 per year and water for a flat fee of \$500.00 per year. Such fees shall be in effect until Developer turns over the management to the HOA Board elected by the members. At such time, the HOA Board may contract for the maintenance and mowing services from another person or entity. At such time, the cost of water from HiMark Golf Course shall be renegotiated.
- d. The HOA Board shall have the right to suspend the voting rights and rights to use the Common Area and recreational facilities therein by a member for the period during which any assessment against the Lot of the Owner remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

ARTICLE XI

ASSOCIATIONS RIGHTS AND RESPONSIBILITIES AS TO COMMONS

SECTION 1: The rights and easements of the members of the Association in and upon the Commons shall be subject to the following:

- a. The right of the Association to borrow money for the purpose of developing, creating and improving the Commons and said Properties.

b. The right of the Association to dedicate or transfer all or any part of the Commons to any public agency, authority or utility and subject to such conditions as may be agreed to by the members, provided, however, that any such dedication or transfer shall be approved by the affirmative vote of two-thirds of the members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, provided notice of the proposed dedication or transfer be contained in the notice of such special meeting.

c. The right of the Association, as provided in its Articles of Incorporation and Bylaws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of the published rules and regulations governing the use of the Commons.

d. The right of the HOA Board to charge reasonable fines and recovery fees for any violations to HOA Restrictive Covenants.

SECTION 2. Walkways: Each Owner of a lot which is subject to an easement for a public walkway, shall maintain the walkway. If the HOA Board is required to maintain the walkway, costs for snow removal or maintenance will be billed to Owner at 200% of costs to HOA Board for same as a special assessment. Owner agrees to allow HOA Board access for repair or removal of faulty areas as well as the option to impose a special assessment and file a lien on Owners property until billed costs are paid in full.

SECTION 3. Sidewalk Maintenance, Snow Removal and Refuse Services:

a. Owners will be required to ONLY use refuse service providers authorized by HOA Board. Refuse provider may be changed at any time for all Owners by an affirmative vote of 2/3rd's of the Owners. The use of a single exclusive chosen Refuse Provider minimizes for Owners the noise and large vehicle intrusions on HiMark Lane and minimizes the number of days this activity will take place on HiMark Lane.

b. Owners are solely responsible for the adequate and timely removal of snow and ice on sidewalks between their side lot lines. HOA Board shall contract with a contractor for snow removal from the common sidewalks. Cost for snow removal will be paid from the HOA annual assessment.

**ARTICLE XII
COVENANT FOR ASSESSMENTS**

SECTION 1. Creation of the Lien and Personal Obligation Assessments: Each Owner of any lot by acceptance of a deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable

attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Any delinquent assessment shall draw interest at fourteen percent (14%).

SECTION 2. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, including sidewalks, driveways and streets, and of homes situated upon the Properties. The purposes for which such assessments may be levied shall include, but not be limited to, the common expense as defined herein, the construction, operation and maintenance of guest parking space, parking islands, sidewalks, drives, open drainage ways and other structures and for taxes and special assessments upon the Common Area which may be incurred or imposed by the City, County or other governmental authorities, to provide adequate insurance of any and all types and amounts deemed necessary by the directors of the Association with respect to the Common Area and public ways and to provide such reserves as may be deemed necessary in order to accomplish the objectives and purposes of the Association.

SECTION 3. Annual Assessment set for the Next Year: Prior to November 30th of each year, the Board of Directors shall fix a monthly assessment applicable to the next calendar year. The Annual Assessment shall initially be set at \$300.00 per year for Block 1 and Block 2 lots.

SECTION 4. Special Assessments:

a. **Special Assessments for Capital Investments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a regular annual meeting of the members or a special meeting duly called for this purpose.

b. **Special Assessments for Repairs or Maintenance to Individual Residences:** In the event the HOA, at its discretion, shall undertake to repair, replace, or maintain, to any residence unit under the authority granted by these protective covenants, the Association may levy a special assessment on the specific Lot on which the improvement or repair was made and assess the Owner, of such residence. In such event the provisions of this Article regarding the assessment and enforcement of such assessment shall be applicable to such special assessment.

SECTION 5. Notice and Quorum for Any Action Authorized Under SECTION 4(a) of this Article: Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The first session being called, the presence of

members or of proxies entitled to cast Two-thirds (2/3%) per cent of all of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. Annual or special assessments: Other than for capital improvements, may be levied by the HOA Board for maintenance of common area as set forth herein. As the assessment is adjusted, each lot's assessment shall be increased or decreased by the same percentage. Special assessments shall be levied based on each lot's percentage of the total dues owed by all Lot Owners.

SECTION 7. Date of Commencement of Annual Assessments: Due Dates: The Board of Directors shall fix the amount of the annual assessment against each lot prior to November 30th of each year. Written notice of the annual assessment shall be sent to every owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

SECTION 8. Late Payment: Any assessment not paid within ten (10) days after the due date may be subject to a late penalty and shall bear interest from the due date in an amount and at the rate set forth herein but in no case will be less than \$20 per month until balance paid in full.

SECTION 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall not be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 10: All Properties dedicated to and accepted by the City of Lincoln and the Common Area shall be exempt from all annual and special assessments of the Association.

ARTICLE XIII NON-PAYMENT OF ASSESSMENTS

SECTION 1. Liens, Enforcement: All sums assessed by the Association, but unpaid, for the share of the Common Expense, admission assessment, or special assessments chargeable to any Lot, shall constitute a lien on such Lot prior to all other liens. Such assessment liens may be foreclosed by suit by the Board of Directors or the Association, acting on behalf of the owners of the other Lots, in like manner as a mortgage of real property. Suit to recover a money judgment for unpaid Common Expense shall be maintainable without foreclosing or waiving the lien securing the same. Any recovery resulting from a suit in law or equity initiated pursuant to this

Article may include reasonable attorney's fees as fixed by the court. The lien is effective as set forth under Nebraska law.

ARTICLE XIV INSURANCE

SECTION 1. Duty to Obtain Insurance, Types: The Board of Directors or the Association shall maintain, to the extent reasonably available, unless otherwise waived by all Lot Owners:

- a. Property insurance on the common property including the common elements insuring against all risks of direct physical loss commonly insured against. The policy shall be in an amount equal to One Hundred Percent (100%) of current replacement costs, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- b. Liability insurance, in an amount determined by Board, covering all occurrences commonly insured against for death, bodily and property damage arising out of or in connection with the use, Ownership, or maintenance of the common elements.
- c. Workers compensation insurance on employees.

SECTION 2. Premiums: Insurance premiums for any blanket insurance coverage and any other insurance coverages, shall be a Common Expense to be paid by assessments levied by the Association.

SECTION 3. Lot Owner Insurance: Each Lot Owner shall be deemed to covenant to maintain fire and extended coverage insurance on improvements in an amount equal to the full insurable value thereof. Any proceeds of insurance shall be applied, to the repair or reconstruction of the improvements. In no instance shall repair or reconstruction exceed 1 year after the date of the event that caused the damage to the home. HOA Board and HOA Board may exercise the right to demolish any structure that was destroyed by fire if the home HOA Board has not done so within 6 months after the date of the event that caused the damage to the home. All costs for demolition if required will be borne by home HOA Board and immediately reimbursed to the HOA. If not immediately reimbursed as required HOA Board they shall have the right to file liens for demolition and legal costs plus 14% interest on these costs until repaid.

ARTICLE XV GENERAL PROVISIONS

SECTION 1. Enforcement of Covenants: The enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provision or provisions hereof. Such proceedings may be to restrain such violation, or to recover damages and, by the Association, may be to enforce any lien or obligation created hereof. The HOA Board shall be entitled to assess, file a lien and/or

collect any costs and attorney fees reasonably incurred to enforce any provision of these covenants.

SECTION 2. Effect of Invalidation of Covenants. The invalidation of any one of these covenants and restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

SECTION 3. Binding Effect of Covenants: Each member of the Association by the acceptance of a deed by which the interest requisite for membership in the Association is acquired, shall be deemed to be subscribed to and be bound by each and all of the terms, provisions and covenants of this instrument, and the acceptance of such deed shall constitute conclusive acceptance of the terms and provisions of this instrument.

SECTION 4. Enforceability: The covenants and restrictions of this Declaration shall run with the land and bind the same, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, or by their respective legal representatives, heirs, successors and assigns.

SECTION 5. Amendment: This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of all of the membership votes.

SECTION 6. Hold Harmless and Indemnification: Each Owner shall be liable to the Association for any damage to the Common Area of any type or to any equipment or facilities thereon which may be sustained by reason of the negligence of said Owner, his/her tenants, guests or invitees, to the extent that any such damage shall not be covered by insurance. Nothing herein shall be construed to relieve a tenant, guest or invitee of their liability to the Association for any damage.

SECTION 7. Non-liabilities and Indemnification: No right or power conferred on the Board of Directors, by virtue of this Declaration or by the Articles of Incorporation or Bylaws of the Association shall be construed as a duty, obligation or disability charged upon the Board of Directors or upon any individual member thereof, and except for injuries arising out of malicious acts of any director, no such director or member shall be liable to any person for his/her decisions or failure to act in making decisions as a director. The Association shall pay all expenses incurred by, and satisfy any judgment or fine rendered or levied against, any person who is or has been a director, officer, employee or committee member of the Association in any action brought by a third party against such person (whether or not the Association is joined as a party defendant) to impose a liability or penalty on such person while a director, officer, employee or committee member of the Association; provided that the Board of Directors of the Association determines in good faith that such director, officer, employee, or committee member was acting in good faith within what he reasonably believed to be the scope of his/her employment or authority and for a purpose which he reasonably believed to be in the best interests of the Association or its Members. Payments include amounts paid and expenses incurred, including attorney fees, in settling any such action or threatened actions. This provision shall be construed to provide for such payments and indemnification to the fullest extent permitted by the provisions of the applicable laws.

SECTION 8. Notices: Notices required or permitted to be given to the Board of Directors or any Lot Owner may be delivered to any member of the Board or such Lot Owner either personally or by mail addressed to such Board Member or Lot Owner at the mailing address provided to the Board or Association. Notices required to be given to any devisee or personal representative of a deceased Lot Owner may be delivered either personally or by mail to such party at his/her or its address appearing in the records of the court wherein the estate of such deceased Owner is being administered. Notice to first mortgage holders will be given if required, or if a request for notice has been filed with the Association. All such notices shall be by first class mail, postage prepaid.

SECTION 9. Additions: The HOA Board and/or Developer may add additional contiguous or adjacent real estate to the Properties or the Commons, at any time, without the consent of the Owners.

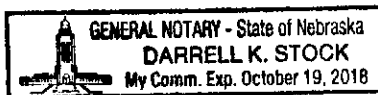
HiMARK PROPERTY, L.L.C., A Nebraska Limited Liability Company


By: 
Amy A. Wiesler, Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

Before me, a Notary Public qualified for said county, personally came Amy A. Wiesler, Managing Member of **HiMARK PROPERTY, L.L.C., A Nebraska Limited Liability Company, Developer**, and the identical person who signed the foregoing instrument and acknowledged the execution thereof to be her voluntary act and deed.

Witness my hand and Notary Seal this 12th day of Dec., 2016.




Notary Public