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**AMENDED AND RESTATED  
 RESTRICTIVE COVENANTS  
 Crooked Creek Homes Association**

Birdie Creek, L.L.C. is the Developer ("Developer") of the Crooked Creek Addition development upon the following-described real estate:

Lots 1 through 40, Block 1, Crooked Creek Addition, Lincoln, Lancaster County, Nebraska (individually referred to as a "Crooked Creek Lot" and collectively referred to as the "Crooked Creek Properties"), and

Outlot A, Block 1, Crooked Creek Addition, Lincoln, Lancaster County, Nebraska ("Outlot A").

The titleholder of a Crooked Creek Lot is referred to as a "Crooked Creek Owner."

134<sup>th</sup> and O Street Partnership is the owner of the following property, surrounding the Crooked Creek Properties, and constituting a part of the Crooked Creek Addition development:

Lot 41, Block 1, Crooked Creek Addition, Lincoln, Lancaster County, Nebraska ("Golf Course Property").

On December 30, 2002, Developer filed restrictive covenants with the Lancaster County Register of Deeds as Instrument No. 02-095271, and filed an Amendment to Restrictive Covenants with the Lancaster County Register of Deeds on April 10, 2003 as Instrument No. 03-03289.

Crooked Creek Homes Association ("Corporation") has been incorporated in Nebraska for the purpose of enforcing the Restrictive Covenants established upon the Crooked Creek Properties, administering and maintaining the Commons, as defined in the Restrictive Covenants, and providing services to its members. The undersigned members of the Corporation, holding more than two thirds (2/3) of the membership interests entitled to vote, desire to amend and restate the Restrictive Covenants as provided herein.

**ESTABLISHMENT OF RESTRICTIVE COVENANTS**

These Restrictive Covenants are established upon the Crooked Creek Properties by the Developer on behalf of itself as a Crooked Creek Owner and on behalf of other Crooked Creek Owners pursuant to the Developer's contractual obligations with them.

Pierson, Fitchett

## COVENANTS

1. USE: No lot within the Crooked Creek Properties shall be used other than for residential purposes.

2. COMPLETION OF CONSTRUCTION: Any building placed or constructed upon the Crooked Creek Properties shall be completed within twelve months after the commencement of construction.

3. ANTENNAS: No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except within a building. One small satellite dish shall be permitted subject to the requirements of paragraph 11.d below.

4. APPROVAL OF PLANS: Developer, or its assignees, shall have the exclusive right to establish grades and slopes for the Crooked Creek Properties and to fix the grade at which any building or other improvement shall be placed or constructed upon any Crooked Creek Lot, in conformity with the general plan for the development of the Crooked Creek Properties. Plans for any dwelling structure to be placed or constructed upon any Crooked Creek Lot shall be submitted to Developer and shall show the design, size, and exterior material for the building or improvement and the plot plan for the Crooked Creek Lot. One set of plans shall be left on permanent file with Developer. Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from Developer. Written approval or disapproval of the plans shall be given by Developer 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. Developer shall have the exclusive right to disapprove the plans, if in Developer's opinion, the plans do not conform to the general standard of development of the Crooked Creek Properties. The rights and duties of Developer under this paragraph, except as to Crooked Creek Lots of which Developer is the titleholder, may be assigned by Developer in writing to the Corporation at any time.

5. LAWN SODDING AND IRRIGATION: Prior to the occupancy of any dwelling unit constructed on any Crooked Creek Lot, an underground lawn irrigation system and sod shall be installed on such Crooked Creek Lot by Developer, weather permitting. No portion of any Crooked Creek Lot shall be seeded. If weather conditions do not permit the installation of any underground lawn irrigation system and sod prior to occupancy of the dwelling unit, they shall be installed as promptly after occupancy of the dwelling unit as weather permits.

6. PARTY WALLS. Each wall which is built as a part of the original construction of a dwelling within the Crooked Creek Properties and placed on the dividing line between two adjoining Crooked Creek Lots shall constitute a party wall.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Crooked Creek Owners of the Crooked Creek Lots who make use of a party wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Crooked Creek Owner who has used the party wall may restore it. If any other Crooked Creek Owner subsequently makes use of the party wall, such Crooked Creek Owner shall contribute to the cost of restoration in proportion to such use.

Notwithstanding any other provision of this paragraph, a Crooked Creek Owner who by their negligence or willful acts or omissions causes the party wall to be destroyed, damaged or otherwise exposed to the elements, shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration.

The right of any Crooked Creek Owner to contribution from any other Crooked Creek Owner under this paragraph shall be appurtenant to the land and shall pass to such Crooked Creek Owner's successors in interest.

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

7. ENCROACHMENTS: When a building shall be constructed on a Crooked Creek Lot so as to encroach upon the adjoining Crooked Creek Lot, the Crooked Creek Owner of the Crooked Creek Lot with the encroaching building shall have an easement upon the adjoining Crooked Creek Lot to the extent of the encroachment. Any expense of maintenance, repair or replacement of the encroaching building shall be borne by the Crooked Creek Owner of the Crooked Creek Lot with the encroaching building. The provisions of this paragraph shall not operate to relieve any Crooked Creek Owner from any liability which the Crooked Creek Owner may incur by reason of negligent or willful acts or omissions resulting in damage to the encroaching building.

8. COMMON UTILITY LINES. When any utility line shall be constructed on two or more adjoining Crooked Creek Lots, each Crooked Creek Owner of one of the adjoining Crooked Creek Lots shall have an easement for the maintenance, repair and replacement of the utility line upon all of the adjoining Crooked Creek Lots, which easement shall be appurtenant to the interest requisite for membership. Any expense of maintenance, repair or replacement of the utility line shall be borne equally by the Crooked Creek Owners of such adjoining Crooked Creek Lots. The provisions of this paragraph shall not operate to relieve any Crooked Creek Owner from any liability which such Crooked Creek Owner may incur by reason of negligent or willful acts or omissions resulting in damage to the utility line.

9. MAINTENANCE. Each Crooked Creek Owner shall be responsible for the proper upkeep, care, maintenance and exterior appearance of the improvements located upon their Crooked Creek Lot for the purpose of maintaining a high quality and attractive development. Specific rules, regulations, requirements and specifications further implementing this provision may be adopted by approval of not less than two-thirds (2/3) of the Crooked Creek Owners, and with written notice, shall be binding upon and enforceable by the Corporation and any Crooked Creek Owner against all Crooked Creek Properties. In the event any Crooked Creek Owner fails or refuses to perform any required maintenance, Developer or the Corporation, after seven (7) days notice to the Crooked Creek Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the Crooked Creek Owner who is or was the owner of the Crooked Creek Lot failing to perform their maintenance

obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Crooked Creek Lot assessed.

10. GENERAL STANDARDS FOR DWELLING STRUCTURES. The following general standards of development shall guide Developer in the review of any plans for dwelling structures submitted for approval within the Crooked Creek Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. Developer 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. Developer shall have the right to reduce, increase or otherwise explicitly modify these standards within other additions to the Crooked Creek Properties.

- 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. Single story ranch style      1,410 sq. ft.
  - ii. Townhome                              1,410 sq. ft.
- b. Setbacks. Setbacks of dwellings from the lot line shall be within the limits established by the Lincoln Zoning Ordinance.
- c. Exterior Appearance.
  - i. Approval. All exterior finish materials and colors shall be approved by the Corporation.
  - ii. Front Elevation. The front elevation of any dwelling shall be faced with sixty percent (60%) brick or natural stone.
  - iii. Roofing Materials. Roofing materials shall be thirty (30) year high profile shingles.
  - iv. Solar Panels. Any active solar panels shall be flush with the roof or sidewall of a dwelling and shall not be located in any yard or upon any accessory structure.
- d. Roof Pitches. All roof pitches shall be a minimum of 5:12 or as may be dictated by a unique architectural style.

11. GENERAL STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS. The following general standards shall be satisfied in the construction and installation of improvements and structures other than the dwelling. Written approval for other improvements and structures is not required but shall comply with these standards. The Corporation and members of the Corporation shall have the right to enforce these standards:

- a. Fencing. Fencing shall not be constructed closer to the street than the front elevation of the dwelling and shall be constructed with the finished side facing the lot line. Galvanized chain link fences are strictly prohibited.
- b. Accessory Structures. No accessory structures such as storage sheds and playhouses shall be constructed on the Crooked Creek Properties. All other accessory improvements such as swing sets and sand boxes shall be compatible with the quality of the overall development and shall be maintained in good order and an attractive condition.
- c. Dog Kennels. Dog runs and kennels shall not be permitted within the Crooked Creek Properties.
- d. Satellite Dish. Any satellite dish shall be located and screened so as to be as unobtrusive as is reasonably possible.
- e. Landscaping. All front, side and rear yard areas shall be sodded as promptly after completion of any dwelling constructed within the Crooked Creek Properties as weather conditions allow. Backyard landscaping of Crooked Creek Lots having backyards that abut the Golf Course Property shall be designed in such a way as to minimize obstruction of views to the Golf Course Property from the Crooked Creek Properties, including neighboring Crooked Creek Lots.
- f. Lawn Irrigation System. All Crooked Creek Lots shall be equipped with underground lawn irrigation systems.

12. PETS. Domestic pets have the potential to create significant nuisance problems within the Crooked Creek Properties. Each Crooked Creek Owner shall be responsible for controlling all domestic pets and preventing them from becoming an annoyance, nuisance, or unreasonably disturbing the quiet of any other Crooked Creek Owner. Specific rules, regulations, and requirements further implementing this provision (including the banning of individual animals, types of animals, or specific breeds) may be adopted by not less than fifty-three percent (53%) of Crooked Creek Owners and with written notice shall be binding upon and enforceable by the Corporation and any Crooked Creek Owner against all Crooked Creek Properties.

13. CITY REQUIREMENTS: All buildings within the Crooked Creek Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks shall be installed during the construction of the dwelling as required by the City of Lincoln, Nebraska. Street trees shall be installed as required by, and in the time required by, the City of Lincoln, Nebraska.

14. TEMPORARY STRUCTURES: No partially completed dwelling or temporary building and no trailer, tent, shack, or garage on any Crooked Creek Lot shall be used as either a temporary or permanent residence.

15. NUISANCE: No noxious or offensive activity shall be conducted or permitted upon any Crooked Creek Lot, nor anything which is or may become an annoyance or nuisance to the

neighborhood or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining Crooked Creek Lots.

16. SIGNS: No advertising signs, billboards, or other advertising devices shall be permitted on any Crooked Creek Lot. However, Developer may erect signs of any size advertising Crooked Creek Lots for sale, and a sign advertising a single Crooked Creek Lot for sale may be erected upon any Crooked Creek Lot.

17. ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Crooked Creek Lot for any commercial purpose.

18. RECREATIONAL AND OTHER VEHICLES: No recreational vehicle, as defined by the Lincoln Municipal Code, shall be parked or stored upon any Crooked Creek Lot, except within an enclosed structure. Recreational vehicles may be temporarily parked or stored upon a Crooked Creek Lot or upon Outlot A for a period of time not to exceed fourteen (14) days per year. No motor vehicle may be parked or stored outside on any Crooked Creek Lot or on Outlot A, except properly licensed and registered vehicles driven on a regular basis by the occupants of the dwelling located on such Crooked Creek Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. This paragraph shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction.

19. REPAIR ON LOT. No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Crooked Creek Lot or on Outlot A at any time; nor shall vehicles offensive to the neighborhood or Developer be visibly stored, parked or abandoned on any Crooked Creek Lot or on Outlot A.

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

21. TRASH AND RUBBISH. No garbage, trash can or container, or fuel tank shall be permitted on a Crooked Creek Lot unless completely screened from view, except for pickup purposes. No lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Crooked Creek Lot. No clothes line shall be permitted outside of any dwelling at any time. No garden shall be permitted on any Crooked Creek Lot. No compost pile may be constructed or maintained on any Crooked Creek Lot.

22. HOMEOWNERS ASSOCIATION: Every person or entity who owns a Crooked Creek Lot shall be a member of the Corporation ("Crooked Creek Member"). Additionally, the

owner of the Golf Course Property shall be a member of the Corporation ("Golf Course Member"). However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member of the Corporation.

23. MANAGING AGENT. Developer or the Corporation may contract for the performance of any of the Corporation's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by Developer or Corporation. The fee charged by the Managing Agent shall be a common expense of the members of the Corporation.

24. MEMBERSHIP: The Corporation shall have three classes of membership:

- a. Class A Membership. Class A membership shall include all members of the Corporation except the Developer and the Golf Course Member and any successor in interest to the Developer and the Golf Course Member. Each Class A member of the Corporation shall be entitled to all the rights of membership and to one vote for each Crooked Creek Lot.
- b. Class B Membership. Class B membership shall include only the Developer and any successor in interest to the Developer. The Class B member shall be entitled to five votes for each Crooked Creek Lot. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.
- c. Class C Membership. Class C membership shall include only the Golf Course Member. The Class C member shall not be entitled to vote except as otherwise specifically provided herein. The Class C member shall have the same right to use and enjoy Outlot A except that part of Outlot A known as Peeble Beach Drive, as do other members, and such other areas of the Commons only as specifically provided herein. The Class C member shall not have any other rights or privileges nor any duties, obligations, or liabilities associated with membership except as otherwise specifically provided herein as being applicable to the Class C member.

25. COMMONS: The "Commons" shall include Outlot A; all sidewalks located parallel to Outlot A; all private utilities serving the Crooked Creek Properties, whether located on or in the Crooked Creek Properties, Outlot A or in any easement areas; and all easement areas described or defined in any easements granted to the Corporation, including, without limitation, the Utility Access Easement, the Water Main and Well Easement and the Sanitary Sewer Easement all granted to the Corporation by 134<sup>th</sup> and O Street Partnership

26. CONVEYANCE OF COMMONS: Developer shall convey to the Corporation any Commons held in the Developer's name, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the City of Lincoln, Nebraska within one year after the conversion of Class B membership to Class A membership.

27. USE OF COMMONS: Each Class A and Class B member of the Corporation shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Corporation and shall have an easement upon the Commons, which shall be appurtenant to the interest requisite for membership. The Class C member shall have the right to use and enjoy the Commons only as provided in paragraph 24.c and shall have an easement on the Commons for such purpose.

28. RIGHTS IN COMMONS: The rights and easements of the members of the Corporation shall be subject to:

- a. The right of the Corporation to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds (2/3) 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, if notice of the proposed mortgage is contained in the notice of the special meeting.
- b. The right of the Corporation to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Corporation to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the published rules and regulations governing the use of the facilities.
- d. The right of the Corporation to charge reasonable admission and other fees for the use of the facilities.
- e. The right of the Corporation to dedicate or convey all or any part of the Commons to any public entity.

29. MAINTENANCE OF LANDSCAPE SCREENS: Each Crooked Creek Owner of any Crooked Creek Lot on which any landscape screen, whether composed of structural or live plant material, which is installed as required by the City of Lincoln, Nebraska, shall be deemed to covenant to maintain the screen.

30. GENERAL MAINTENANCE OBLIGATIONS. Each Crooked Creek Owner shall be responsible for the proper storage and disposal of all construction debris and materials associated with the construction of any improvements upon a Crooked Creek Lot. During construction on any Crooked Creek Lot, a Crooked Creek Owner shall 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, sidewalks, the Commons and the Golf Course Property. Lots shall be periodically mowed and loose debris and materials picked up and properly stored to prevent them from being spread and blown throughout the Crooked Creek Properties. Each Crooked Creek Owner shall be responsible for the enforcement and



monitoring of these obligations for all contractors and suppliers performing work upon their Crooked Creek Lot.

31. FAILURE TO MAINTAIN. In the event any Crooked Creek Owner fails or refuses to perform any required maintenance and upkeep of any landscape screen or the general maintenance obligations, the Developer or Corporation after seven (7) days notice to the Crooked Creek Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the Crooked Creek Owner of the Crooked Creek Lot failing to perform their maintenance obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Crooked Creek Lot assessed.

32. CORPORATION RESPONSIBILITIES: The Corporation shall provide such services to its members as they may determine. These services and responsibilities of the Corporation shall include, but are not limited to, the following:

- a. Maintenance of Commons. 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 maintain the Commons to the extent not otherwise provided for by these Restrictive Covenants, which Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons.
- b. Refuse Services. The Corporation shall provide to each member refuse collection services ("Refuse Services") through a single designated provider. The cost of these services shall be paid for by the members as a part of their dues and assessments.
- c. Water and Sewer System Maintenance. The Corporation specifically 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 specifically covenant to maintain and repair:
  - i. The private water system ("Water System") providing water to the Crooked Creek Properties and Outlot A, including, without limitation, water mains, wells, controls, storage tanks, piping, plumbing and all other equipment and devices for obtaining and supplying water to Crooked Creek Properties and Outlot A, as well as testing the water supply and system; and
  - ii. The private sewer system ("Sewer System") serving the Crooked Creek Properties and Outlot A, including, without limitation, the sewer lines, tile, pumps and all other equipment and devices for providing sewer service to the Crooked Creek Properties and Outlot A.
- d. Grounds Maintenance. The Corporation shall provide to the Crooked Creek Properties grounds maintenance which shall include mowing and maintenance

of each Crooked Creek Owner's lawn, trees and shrubs; repair, street cleaning, maintenance and operation of the underground lawn irrigation system and snow removal from Outlot A, the public sidewalk, front stoop and driveways ("Grounds Maintenance Services"). In the event any improvements, such as fences, planters or similar obstructions or plantings, such as gardens, shrubs, plants or trees, increase the cost to the Corporation of performing Ground Maintenance Services for any Crooked Creek Lot, the additional cost shall be paid by the Crooked Creek Owner of the Crooked Creek Lot, or the improvements or plantings shall be removed by the Crooked Creek Owner of the Crooked Creek Lot, or the Corporation may discontinue this service without any reduction to the dues or assessments paid by the Crooked Creek Owner of such Crooked Creek Lot. The cost for these Grounds Maintenance Services shall be allocated as determined by the Corporation, on a fair and equitable basis.

The Grounds Maintenance Services shall be provided to the Corporation by the Golf Course Member. Additionally, the Golf Course Member shall provide snow removal and street cleaning services for Outlot A ("Snow Removal Services"). The Snow Removal Services and Grounds Maintenance Services shall be performed at such time intervals and shall be of such quality as typically and customarily provided to developments such as the Crooked Creek Addition development. The fees charged to the Corporation by the Golf Course Member shall be fair and reasonable and comparable to fees charged by other providers for like services in the area. If the Golf Course Member contracts with a third party for Snow Removal Services, the Golf Course Member shall obtain at least three (3) annual competitive bids for the Snow Removal Services and shall select the lowest bid from a reliable and reputable third party. The Golf Course Member may elect to discontinue providing the Snow Removal Services and Grounds Maintenance Services on not less than sixty (60) days advance written notice to the Corporation.

The Corporation and the Golf Course Member shall have a perpetual easement on the Crooked Creek Properties for the purpose of providing the services and performing their responsibilities as provided in these Restrictive Covenants with respect to the Crooked Creek Properties.

33. LIEN OF DUES AND ASSESSMENTS: The lien of any dues or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the Crooked Creek Lot against which the assessment is levied.

34. ASSESSMENTS AND LIENS: Dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Corporation. Any special assessment for capital improvements may be rejected at any time within thirty (30) days of the notice of the levy by the vote of a majority of each class of members affected 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.

The members shall pay dues and special assessments to the Corporation or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any dwelling. The initial dues are established at \$80.00 per month for each Crooked Creek Lot. Changes in the amount of future dues shall be based upon an estimate of the Corporation's costs for administration, maintenance and improvement of the Commons, including the Water System and Sewer System, as well as the cost of providing Refuse Services, Grounds Maintenance Services and Snow Removal Services, and each member shall pay the dues so established in monthly installments or as otherwise determined by the Corporation. At the end of each fiscal year, a statement of the total year's Commons' operating costs may be presented to the members of the Corporation and the members shall pay any excess charge to the Corporation within thirty (30) days of the statement. Dues and special assessments for the services provided to the members shall be uniform as to each Crooked Creek Lot, except as provided in paragraphs 32.d and 35.

- a. Budgets. The Corporation or Managing Agent shall 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 Commons 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 Commons, including the Water System and Sewer System; 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 Commons, including the Water System and Sewer System.
- b. 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 or Managing Agent 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 not be limited to, the following:
  - i. Attorney's Fees: Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by 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 (\$20.00), whichever is greater.

- iii. Costs of Suit: Costs of suit and court costs incurred as allowed by the court;
  - iv. Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds;
  - v. Interest: Interest on all dues and assessments at the rate of fourteen percent (14%) per annum, commencing thirty (30) days after the assessment becomes due; and
  - vi. Other: Any other costs that the Corporation may incur in the process of collecting delinquent dues and assessments.
- c. 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.
  - d. Fines. The Corporation may create a schedule of fines for violation of Corporation rules and regulations which fine shall be treated and billed as a special assessment to the offending member's lot.

35. UNDEVELOPED LOT FEE AND FIRST YEAR PRORATE. Upon the initial sale of a Crooked Creek Lot from Developer, the purchaser shall pay to the Corporation the sum of fifty dollars (\$50.00) in lieu of any dues or assessments. The fifty dollar (\$50.00) annual fee shall be due and owing from Developer or any other Crooked Creek Owner on January 1st of each and every year until such time as a residence is constructed and occupied. No portion of this fee shall be credited to the dues or assessments.

Upon the initial occupancy of a residence on a Crooked Creek Lot, the Crooked Creek Owner shall pay to the Corporation the prorated amount of the dues or assessments, prorated from the date of occupancy.

36. GOLF COURSE MEMBER USE OF WATER SYSTEM AND RISK OF LOSS. The Golf Course Member has granted the Corporation a Water Well and Main Easement and a Utility Access Easement (collectively the "Easements"). The Golf Course Member has certain rights to use and/or possess elements of the Water System as provided in the Easements. Each Crooked Creek Owner by acceptance of a deed to a Crooked Creek Lot, acknowledges the Golf Course Members' rights to use and/or possess elements of the Water System granted to the Golf Course Member by the Easements and that the risk of loss with regard to the Water System remains with the Corporation.

37. ASSUMPTION OF GOLF COURSE RISKS.

- a. The Golf Course Member owns, operates and maintains a golf course, driving range, clubhouse facility, practice facilities, and maintenance facilities on the Golf Course Property and may, in the future expand its business operations (collectively "Golf Course"). Developer anticipates that the proximity of the

Crooked Creek Lots to the Golf Course will enhance the desirability and value of the Crooked Creek Lots to Crooked Creek Owners. Nevertheless, Crooked Creek Owners should be aware that there are risks associated with the Crooked Creek Lots' proximity to the Golf Course. By acceptance of a deed to a Crooked Creek Lot, each Crooked Creek Owner acknowledges that owning property adjacent to or in proximity with the Golf Course is subject to the following risks and that the Crooked Creek Owner assumes each of these risks and the disturbance to or loss of privacy resulting from such: (i) the risk of damage to property or injury to persons and animals from golf balls hit on or over a Crooked Creek Lot; (ii) the entry by golfers onto Crooked Creek Lots to retrieve golf balls; (iii) overspray in connection with the watering or fertilizing of the Golf Course; (iv) noise from Golf Course maintenance and operation equipment (including, without limitation, compressors, blowers, mulchers, tractors, utility vehicles and pumps) all of which may be operated at all times of the day and night and/or continuously; (v) the use of fertilizers, pesticides and other chemicals on the Golf Course; (vi) odors arising from irrigation and fertilization of the turf situated on the Golf Course; and (vii) disturbance and loss of privacy resulting from golf cart traffic and golfers. Each Crooked Creek Owner acknowledges and understands that (i) pesticides and chemicals may be applied to the Golf Course throughout the year, (ii) reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the Golf Course, (iii) any portion of the Golf Course may be lit, and (iv) the right of privacy appurtenant to each Crooked Creek Lot shall be subject to such disturbance and invasion by noise, windblown debris and the like, as are normally associated with the operation of golf course construction, grass mowing and maintenance equipment.

- b. Each Crooked Creek Owner expressly assumes such detriments and risks and agrees that neither Developer, any builder of a residence on a Crooked Creek Lot, the Golf Course Member, the Golf Course designer, the Golf Course builder, or any director, officer, manager, employee or agent thereof, nor any of their successors or assigns, shall be liable to the Crooked Creek Owner or occupant of any Crooked Creek Lot, or any family member, guest, employee or agent, or anyone else claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, bodily injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the risks referenced in paragraph 37.a above and the proximity of the Crooked Creek Lot to the Golf Course or to adjacent golf paths that are located on private property, including the Golf Course Property.

38. **EASEMENTS.** Developer hereby declares, grants, and establishes the following easement on the Crooked Creek Properties in favor of the owner of the Golf Course Property, its successors and assigns in ownership of all or any part of the Golf Course Property, and any lessee, licensee, permittee or invitee of the owner of all or any portion of the Golf Course Property, (collectively the "Grantees"), which shall be appurtenant to and run with the land:

A perpetual easement for (i) overspray in connection with the watering and fertilizing of the Golf Course; (ii) the intrusion of golf balls onto or over the Crooked Creek Lots from the Golf Course; (iii) the entry of golfers at reasonable times and in a reasonable manner to retrieve golf balls; and (iv) the intrusion of noise from mowing and other power equipment during all hours of the day and night. Grantees shall not be liable to any Crooked Creek Owner for damage to person or property occasioned by such overspray, entry or intrusion unless occasioned by the intentional act of such person.

39. EASEMENTS BENEFIT GOLF PROPERTY. The rights and easements granted in paragraphs 37 and 38 above are for the use and benefit of the Grantees. Without limitation of the foregoing, the Grantees shall include any person or entity which contracts to operate any portion of the Golf Course on the Golf Course Property, and any golfer who is duly authorized to play golf on the Golf Course.

40. RESTRICTION ON LANDSCAPING WITHIN ADJACENT AREA. Neither the Corporation nor any Crooked Creek Owner shall install any landscaping within the Adjacent Area that (i) obstructs the view of the Golf Course, or (ii) creates a barrier or obstacle that restricts or in any manner impedes access from the Golf Course into the Adjacent Area (e.g., a hedge). The Adjacent Area shall be the backyards of Lots 1 through 28 and Lots 32 through 38, all located in Crooked Creek Addition, Lincoln, Lancaster County, Nebraska.

41. GOLF COURSE CONFIGURATION AND LIGHTING. The Golf Course Member may from time to time change the configuration and layout of any portion of the Golf Course. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Crooked Creek Lot. The Golf Course Member may also, from time to time, light any portion of the Golf Course Property. Nevertheless, no Crooked Creek Owner shall have any right to object to, or in any manner, limit the lighting of any portion of the Golf Course Property or changes to the configuration and layout of the Golf Course, and the easements granted above shall remain fully effective as to all the Crooked Creek Lots after such changes.

42. PRIVATE PROPERTY. The Golf Course Property is private property. Each Crooked Creek Owner acknowledges and understands the Golf Course Member shall have the right to change all or any portion of the Golf Course from public to private at any time. Neither the Corporation nor any Crooked Creek Owner shall have any right in and to the Golf Course Property or any amenities contained therein, including the right to enter upon or use any portion of the Golf Course, above the general public, except as may be granted by the Golf Course Member, from time to time. Crooked Creek Owners and their invitees shall comply with all the rules and regulations of the Golf Course Member relating to use of and play on the Golf Course. Each Crooked Creek Owner acknowledges, understands and agrees that no Crooked Creek Owner shall have any right to compel the Golf Course Member to maintain the Golf Course Property or any improvements thereon to any particular standard of care and that the appearance of the Golf Course Property and improvements shall be determined in the sole discretion of the Golf Course Member. In addition, each Crooked Creek Owner acknowledges that there is no guaranty that said Crooked Creek Owner will have an unobstructed view, or any view at all, of the Golf Course, or lands or ponds located on the Golf Course Property.

43. EXCESSIVE NOISE. Each Crooked Creek Owner acknowledges and understands that excessive noise may interfere with golfers playing golf on the Golf Course Property. Each Crooked Creek Owner agrees that he shall not engage in any activity on a Crooked Creek Lot or on the Commons that repeatedly creates excessive noise that may interfere with golfers playing golf on the Golf Course Property.

44. ADDITIONS: The Developer may add additional contiguous or adjacent real estate to the Crooked Creek Properties or the Commons, at any time, without the consent of the members of the Corporation. 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 the general standards set forth in paragraphs 10 and 11 may be reduced, increased or otherwise modified within any such addition.

45. CHANGE OF USE/OPTION TO PURCHASE: If the use of the Golf Course Property shall be changed to any use other than a golf course, the Corporation shall have the option to purchase a portion of the Golf Course Property, that portion being generally described as a 250 foot wide tract of land adjoining the Crooked Creek Properties and lying between the Crooked Creek Properties and the Golf Course Property ("Option Lot"). Developer shall within a reasonable time after filing these Restrictive Covenants (not to exceed 180 days), file for record a metes and bounds legal description for the Option Lot.

- a. The Golf Course Member shall give notice to the Corporation that the use of the Golf Course Property is going to be changed. Such notice shall specify the change in use and a proposed date such change will occur, which shall be not less than ninety (90) days from the date such notice is received by the Corporation.
- b. If within sixty (60) days of receipt of such notice, two-thirds (2/3) of each class of members entitled to vote shall have approved the purchase of the Option Lot, the Corporation shall execute a written instrument expressing its intent to purchase the Option Lot and shall promptly deliver the notice to the Golf Course Member.
- c. The Corporation and Golf Course Member shall, on receipt of the written instrument by the Golf Course Member, mutually agree upon a licensed appraiser to appraise the Option Lot, which shall value the Option Lot on a per-acre basis as raw residential development land, developable at a density equal to the existing density of the Crooked Creek Properties. If the Corporation and the Golf Course Member cannot agree on an appraiser, then the Corporation shall choose a licensed appraiser, the Golf Course Member shall choose a licensed appraiser, and the two appraisers shall choose a third licensed appraiser and the value of the Option Lot shall be determined by averaging the values called by the three appraisers; however, each of the three appraisers shall value the Option Lot on a per-acre basis as raw residential development land, developable at a density equal to the existing density of the Crooked Creek Properties.

- d. The Corporation shall have an option to purchase the Option Lot, which option shall be exercisable within thirty (30) days of receipt of an appraisal of the Option Lot as provided in this paragraph. The option shall be exercised by the Corporation giving not less than thirty (30) days notice of its intent to exercise the option.
- e. Upon exercise of the option and the purchase of the Option Lot, the Option Lot shall become a part of the Commons and the Corporation and its members shall have the rights and obligations relative to the Option Lot the same as other elements of the Commons.

If the Corporation does not elect to purchase the Option Lot, the Crooked Creek Owners shall, nevertheless, have a perpetual easement for open space over a strip of land 200 feet in width, running parallel to the rear lot lines of the Crooked Creek Properties with rear lot lines abutting the Golf Course Property. Such 200-foot strip of land shall be perpetually maintained as landscaped open space and shall not be occupied by structures of any kind.

46. ASSESSMENT FOR PURCHASE OF COMMONS. In the event that the Option Lot is purchased by the Corporation as provided above, the Class A members of the Corporation shall each be assessed an equal amount for the purchase of the Option Lot, which assessment shall be levied by the Board of Directors of the Corporation and shall be due and payable on or before the closing date of the purchase of the Option Lot. Assessments for the purchase of the Option Lot shall be the personal obligation of the Class A member who is, or was, the Crooked Creek Owner of each Crooked Creek Lot assessed at the time of the assessment, shall bear interest at the rate of fourteen percent (14%) per annum until paid, and when shown of record, shall be a lien upon the Crooked Creek Lot of the Class A member so assessed.

47. AMENDMENTS: These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by Developer and all persons claiming under Developer or a Crooked Creek Owner. These Restrictive Covenants may be terminated or modified, in writing, by an affirmative vote of two thirds (2/3) of all members entitled to vote, at any time. However, the provisions of these Restrictive Covenants governing membership in the Corporation and the maintenance of the Commons shall not be terminated or modified without the consent of the City of Lincoln, Nebraska.

48. ENFORCEMENT: The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages and, by the Corporation or Developer, may be to enforce any lien or obligation created hereby.

49. SEVERABILITY: The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

Dated: 3/20, 2024.

DEVELOPER:  
Birdie Creek, L.L.C., a Nebraska limited liability  
company



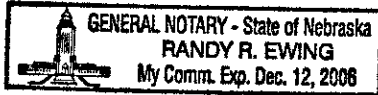
By: Steve M Champoux  
Steve Champoux, President of  
Prairie Home Builders, Inc., Managing Member

134<sup>th</sup> & O Street Partnership

Marc Cruse  
Marc Cruse, Partner

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

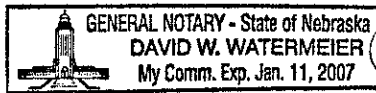
The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of March, 2004, by Steve Champoux, President of Prairie Home Builders, Inc., a Nebraska corporation, on behalf of the corporation as Managing Member of Birdie Creek, L.L.C.



[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 2004, by Marc Cruse, Partner of 134<sup>th</sup> & O Street Partnership, a Nebraska partnership, on behalf of the partnership.



[Signature]  
Notary Public