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*Glenn J. Dowling*

REGISTER OF DEEDS

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### DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

THIS DECLARATION, ("Declaration") made on the date hereinafter set forth by FOX RIDGE, L.L.C., a Nebraska limited liability company, and HEARTLAND HOMES, L.L.C., a Nebraska limited liability company, hereinafter referred to as "Declarant."

#### PRELIMINARY STATEMENT:

Declarant is the owner of certain real property in Sarpy County, Nebraska, which is more particularly described. as:

Lots 112A, 112B, 113A, 113B, 114A, 114B, 115A, 115B, 116A, 116B, 117A, 117B, 118A, 118B, 119A, 119B, 120A, 120B, 121A, 121B, 122A, 122B, 123A and 123B, in Heartland Hills, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

NOW, THEREFORE, Declarant hereby declares that all the properties described above and any other properties hereinafter made subject to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the properties and the enjoyment of the residents and owners thereof and which shall run, perpetually with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

**Section 1.** "Association" shall mean and refer to Heartland Hills Townhomes, Inc., a Nebraska nonprofit corporation, its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record owner whether one or more persons or entities of fee simple title to any townhome Unit or Lot which is apart of the Properties, but excluding in all cases those having any such interest merely as security for the performance

of any obligation. If a townhome Unit or Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

**Section 3.** "Properties" shall mean and refer to that certain real property hereinbefore described, and such additional real properties as may hereafter be, brought within the jurisdiction of the Association in accordance with the provisions of this Declaration.

**Section 4.** "Lot" shall mean and refer to those plots of land shown as lots upon the recorded subdivision maps of Heartland Hills and which are described above.

**Section 5.** "Declarant" shall mean and refer to FOX RIDGE, L.L.C., a Nebraska limited liability company, and to HEARTLAND HOMES, L.L.C., a Nebraska limited liability company, and their successors, assigns and appointees.

**Section 6.** "Unit" shall mean an individual dwelling/townhome unit situated on a Lot. Such Units are referred to collectively as "Units" and individually as "Unit."

**Section 7.** "Architectural Control Committee" shall mean the individuals or committee appointed from time to time by the Board of Directors of the Association.

(Note: The Association does not and will not own any real property for the common use and enjoyment of any Owner, sometimes referred to generally as "Common Areas")

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS

**Section 1. Automatic Membership of Owner.** Every Owner of a Unit or Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit or Lot which is subject to assessment.

**Section 2. Attendance at Association Meetings.** In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the members right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant

The continuing proxy shall be voted by the President of the Association In his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

**Section 3. Two Classes of Membership.** The Association shall have two classes of voting membership:

**Class A.** The Class A members shall be all Owners, with the exception of The Declarants, and shall be entitled to one (1) vote for such Unit or Lot owned, When more than one person holds an interest in any Unit or Lot all such persons shall be members. The vote for such Unit or Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit or Lot

**Class B.** Class B member(s) shall be the Declarants and they shall be entitled to four(4) votes for each Lot or Unit Owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 2005; or
- (c) The written direction of Declarants.

### ARTICLE III COVENANTS FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation or the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties hereby covenants, and each Owner of any Unit or Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the land and shall be a continuing lien upon the real property against which each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such real property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors

in title unless expressly assumed by them, and in that event all successors shall take title subject to the lien for such assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the expenses, charges, and costs of the operation of the Association and the exterior maintenance of the lawns, landscaping and snow removal from the paved areas of the Lots as more particularly described herein.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance at the first Lot to an Owner the maximum annual assessment shall not exceed Nine Hundred Ninety Dollars (\$990.00) per Unit or Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year without a vote of the members by a percentage of the prior years' assessment, which percentage shall not exceed the greater of five percent (5%) of the maximum assessment for the previous year or the percentage increase in the U.S. Department of Labor Consumer Price Index (all items) for all Urban Consumers, 1993- 94 = 100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other Index which will accomplish the same result of reflecting general consumer price changes in the United States economy.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the percentage increase permitted in subparagraph (a) above by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum permitted as provided above.

**Section 4. Notice and Quorum for Any Action Authorized Under Section 3.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of 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 (1/2) 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 5. Rate of Assessment.** Annual assessments must be fixed, based on the status of each Lot. All Lots which have a townhome Unit completed and residents living therein will be assessed. Lots or Units under Construction which are vacant used as models and/or unsold to third party purchasers (not the Declarant or its assigns) will not be assessed. All assessments may be collected on a monthly basis.

**Section 6. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots or Units on the first day of the month following the conveyance of the first townhome Unit to a third party purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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 specific Lot or Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit or Lot is binding upon the Association as of the date of its issuance.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum legal rate for individuals allowable in the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his own lawn or landscaping or providing for his own snow removal from the paved portion of his Lot.

**Section 8. Abatement of Assessments.** Notwithstanding any other provision of this Declaration, the Board of Directors may in its discretion, abate all or any part of the assessments or interest due in respect of any Lot or Unit.

**Section 9. Subordination of the Lien to Mortgage Deeds.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Unit or Lot shall not affect the assessment lien. However, the sale or transfer of any Unit or Lot pursuant to a mortgage or trust deed 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 or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Lawn and Landscape Maintenance and Snow Removal Services.** Lawn and landscape maintenance and snow removal services for each Unit and Lot shall be provided by the Association and each Owner does hereby consent and grant to the Association and its officers, employees, agents, contractors and personnel a perpetual and permanent easement

over and across that portion of the Lot outside the dwelling located on any such Lot at any reasonable time to perform lawn and landscaping maintenance and for the purpose of removing snow from the paved areas of the Lot. All exterior maintenance of the dwelling located on each Lot shall be the responsibility of each Owner of a townhome Unit and Lot.

In the event an Owner of any Unit or Lot shall fail to maintain the exterior of such Owners Unit, and any other improvements situated on the Owners' Lot, if any, in a manner satisfactory to the Board of Directors of the Association, after approval by two-thirds (2/3) vote of the Board of Directors, the Association shall have the right, through its agents and employees to enter upon the Owner's Lot and to repair; maintain, and restore the Unit and any other improvements located on the Owner's Lot, the cost of such exterior maintenance shall be added to and become an additional part of the assessment to which such Unit is subject under this Declaration.

**Section 11. Insurance.** Each townhome Owner shall provide homeowners insurance with respect to the improvements (townhome Units) in an amount equal to at least eighty percent (80%) of the full replacement value of said improvements or in an amount as may be required by any mortgage holder; whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amount as are normally carried by Owners of like units. Upon request of the Association from time to time each Owner shall provide written evidence of this insurance coverage.

#### **ARTICLE IV RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS**

**Section 1. Restrictions.** Every Owner shall have full rights of ownership and enjoyment to his individual Unit or Lot subject to the restrictions set forth herein:

(a) No noxious or offensive trade or activity shall be carried on in or from any Unit or Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any Lot except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such a manner as to conceal them from view. Trailers and recreational vehicles shall not be continuously parked on driveways or side yards.

(b) No fences (other than fences constructed by Declarant) shall be erected without the prior written consent of the Board of Directors of the Association. All fences shall be six feet in height and constructed of construction grade cedar, board on board design. No fence shall extend beyond the front line of a main residential structure located on the Lots. All Lots shall be kept free at all times of trash and debris.

(c) No trailer, basement, tent shack, garage, barn or other building erected on any Lot shall, at any time be used as a residence temporarily or permanently, nor shall any

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structure of a temporary character be used as a residence until all exterior construction is fully completed according to approved plans.

(d) No birds, snakes, cattle, horses, sheep, poultry, pigs or any other animals shall be kept or maintained on any Lot. Each Owner may, however, keep a maximum of two (2) domestic pets.

(e) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjoining Units or adjacent Lot Owners.

(f) Except for approved chemical temporary toilets, to be used only during construction, no outdoor toilets may be constructed or maintained on any Lots.

(g) All Lots and Units shall be used only for residential purposes.

(h) No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No business activities of any kind whatsoever shall be conducted on any Lot except home occupations as defined in the Zoning Code of the Municipal Code of the City of Bellevue, Nebraska; nor shall any Lot or Unit be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof; **provided, however,** the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

(i) Exterior television or radio antenna of any sort shall not be permitted on any Lot, except a satellite receiving dish not exceeding 24 inches in diameter and attached directly to the residence may be permitted provided that the location and size of the proposed satellite receiving dish be first approved by the Declarant, or its assigns. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot without the Declarant's approval.

(j) No outdoor repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles or other self-propelled vehicles or similar such vehicles shall be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual construction operations on the Lot, and then only in as neat and inconspicuous a manner as possible.

(k) No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupant of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-trailers shall be stored, parked, kept or maintained in any yards, driveways, or streets. However, this provision shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the city of Bellevue, Nebraska.

(l) No swimming pools shall be built upon any of the Lots.

(m) Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view.

#### **ARTICLE V ARCHITECTURAL CONTROL**

No dwelling, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, tree house, swimming pool, television or radio antenna, satellite dish, flag pole, solar collecting panels or equipment, tool sheds, or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered, or otherwise maintained or permitted to remain upon any of the Lots, nor shall any grading, excavation, or tree removal be commenced without express written approval of the Architectural Control Committee, and where applicable the express written approval of the Declarant in accordance with the requirements of this Declaration.

#### **ARTICLE VI GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.



**Section 3 Term; Amendment.** The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which time they may be automatically extended for successive periods of ten (10) years by action of not less than seventy-five percent (75%) of the Owners. Subject to complying with the provisions of Section 4 of this Article, this Declaration may be amended or dissolved by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment or extension must be recorded in the real estate records to be effective.

**Section 4. Special Declarant Rights.** Declarant, its successors, assigns or appointees, reserves the right to terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Declarant or the Association, shall each have the right to appoint another entity or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with all the same powers and authority as the original Declarant. Notwithstanding the provisions of Section 3 of this Article, no amendment of this Declaration shall modify in any manner the provisions of this Section 4 unless consented to in writing by Declarant.

**Section 5. FHA/VA Approval.** During the period that there is a Class B membership and the loan on any Owner's Lot or Unit is made or insured by either the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration as the case may be: (i) annexation of additional properties within the jurisdiction of the Association; (ii) any mortgaging or dedication of any common areas of the Association, if any; and (iii) the amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Declaration this 5<sup>th</sup> day of May, 2000.

**DECLARANT:**

FOX RIDGE, L.L.C., a Nebraska  
limited liability company,

By: 

~~Frank H. Kaling~~, Member

George W. Venterich

HEARTLAND HOMES, L.L.C., a Nebraska  
limited liability company,

By: REAL T SERVICES, INC., a Nebraska  
Corporation,

By: 

Rod Sadofsky, President

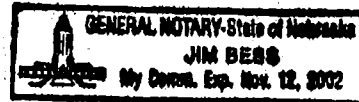
By: GALAXY HOMES, LLC, a Nebraska limited  
Liability Company,

By: 

Larry Birkel, President

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STATE OF NEBRASKA )

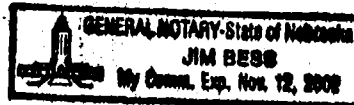


COUNTY OF DOUGLAS ) ss:

*George Uente, et al*  
The foregoing Declaration was acknowledged before me this 5<sup>th</sup> day of May, 2000, by ~~Frank H. Bessig~~, known to me to be a Member of Fox Ridge, L. L. C., a Nebraska limited liability company, who acknowledged that he executed this Declaration as his voluntary act and deed and that of the company.

  
Notary Public

STATE OF NEBRASKA )

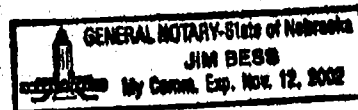


COUNTY OF DOUGLAS ) ss:

The foregoing Declaration was acknowledged before me this 5<sup>th</sup> day of May, 2000, by Rodney Sadofsky, President of Real T Services, Inc. known to me to be a Member of Heartland Homes, LLC, a Nebraska limited liability company, who acknowledged that he executed this Declaration as his voluntary act and deed and that of the corporation.

  
Notary Public

STATE OF NEBRASKA )



COUNTY OF DOUGLAS ) ss:

The foregoing Declaration was acknowledged before me this 5<sup>th</sup> day of May, 2000, by Larry Birkel, President of Galaxy Homes, LLC, a Nebraska limited liability company, known to me to be a Member of Heartland Homes, LLC, a Nebraska limited liability company, who acknowledged that he executed this Declaration as his voluntary act and deed and that of the company.

  
Notary Public

Prepared by and return to: Mark L. Laughlin, Esq. Telephone 402-330-1900  
Laughlin, Peterson & Lang, Attorneys 11306 Davenport St., Omaha, Nebraska 68154

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