



After recording return to:

O'Neill, Heinrich, Damkroger,
Bergmeyer & Shultz, P.C., LLO
Attn: Tim O'Neill
800 Lincoln Square
121 S. 13th Street
Lincoln, NE 68508

**DECLARATION OF COMMON
COVENANTS AND EASEMENT**

THIS DECLARATION OF COMMON COVENANTS AND EASEMENT ("**Declaration**") is entered into by and among Heritage Lakes, LLC, a Nebraska limited liability company ("**Heritage**"), BCLINC, L.L.C., a Nebraska limited liability company ("**BCLINC**"), and B & J Partnership, Ltd., a Nebraska limited partnership ("**B&J**"), effective on the date of the last Owner to sign this Declaration (the "**Effective Date**").

RECITALS

- A. Heritage is the owner of certain real property legally described on Exhibit A which is attached hereto and incorporated herein (the "**Heritage Property**").
- B. BCLINC is the owner of certain real property legally described on Exhibit B which is attached hereto and incorporated herein (the "**BCLINC Property**").
- C. B&J is the owner of certain real property legally described on Exhibit C which is attached hereto and incorporated herein (the "**B&J Property**").
- D. Heritage, BCLINC, and B&J and their respective successors and assigns are hereinafter sometimes referred to individually as "**Owner**" and collectively as the "**Owners**".
- E. The Heritage Property, BCLINC Property and B&J Property shall hereinafter be referred to individually as a "**Property**" and collectively as the "**Properties**".
- F. In order to provide for the common drainage and other common expenses of the Properties, the Owners desire to grant an easement and establish certain rights, duties, obligations and responsibilities of each Owner with respect to the common areas, defined below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owners do hereby declare that the Properties shall be held, transferred, sold, conveyed, and owned subject to the covenants, easement, restrictions, charges, and liens hereinafter set forth and collectively referred to as "**Covenants**" which shall run with the land described herein as the Properties.

1. **COMMON AREAS.** The common drainage area shall consist of that portion of the Heritage Property that is legally described as Outlot C, Hillcrest CC 1st Addition, Lincoln, Lancaster County, Nebraska and Outlot D, Hillcrest CC Addition, Lincoln, Lancaster County, Nebraska including any associated easement areas granted by the City of Lincoln, Nebraska ("**Common Drainage Area**"). The other common areas shall consist Outlots B and C, Hillcrest CC Addition, Lincoln, Lancaster County, Nebraska and the landscaped area of the roundabout between A Street and Hillcrest Country Club ("**Other Common Areas**")

2. **MAINTENANCE OF THE COMMON AREAS.** Heritage shall be responsible for (a) maintaining, repairing, reconstructing, replacing and insuring the entire Common Drainage Area, including, but not limited to, the detention pond and all stormwater facilities located within the Common Drainage Area for the benefit of the Properties, in a commercially reasonable manner that meets the design standards, rules and ordinances of the City of Lincoln, Nebraska and (b) maintaining, repairing and replacing the sign and landscaping in the Other Common Areas (collectively the "**Common Maintenance**"). Heritage may be relieved of the responsibility to conduct the Common Maintenance upon creating in writing a permanent and continuous association of property owners to own the Common Drainage Area and be responsible for said Common Maintenance. Heritage will not be relieved of such obligation until the document or documents creating said property owners' association have been approved by the City of Lincoln and Covenants are filed with the Lancaster County Register of Deeds.

3. **ALLOCATION OF COMMON EXPENSES.** The cost and expense of all Common Maintenance, together with (i) a reasonable charge for administrative expenses associated therewith, not to exceed 10% of the total cost and expense of the Common Maintenance, and (ii) any collection costs ("**Common Expenses**"), shall be the responsibility of the Owners of the Properties in the proportions set forth below ("**Common Share**"):

<u>Property</u>	<u>Cost Percentage</u>
Heritage Property	76.91%**
BCLINC Property	12.52%
B&J Property	10.57%

4. **COMMON EXPENSES; PERSONAL OBLIGATION AND LIEN.** The Owners, for each of their respective Properties, hereby covenant, and each successive grantee of any Property by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Common Expenses in the proportions set forth above. The Owner who performs the Common Maintenance shall submit to the Owner(s) of the remaining Properties, at least annually, a written invoice for each Property's share of the Common Expenses based upon each Property's Common Share. The Owners agree to pay all such Common Expenses within thirty (30) days of receipt of a written invoice that itemizes each Property's share of the Common Expenses. Documentation supporting the costs and expenses included in the invoice shall be available for inspection for a period of two (2) years. The amount of the Property's share of the Common Expenses shall be a charge on the Property and shall, when filed of record, be a lien upon the Property; provided, however, such lien shall be subordinate to the lien of any mortgage placed upon the Property. The amount of the written invoice shall also be the personal obligation of the person(s) who was the Owner(s) of such Property at the time when the invoice came due. The personal obligation for the invoice shall not pass to his or her successors in title unless expressly assumed by them. Any invoice not paid within thirty (30) days after receipt shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the maximum rate allowed by law, whichever is less. The Owner who performed the work represented by the invoice may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. Notwithstanding the foregoing, during the term of the Hillcrest Agreement, dated April 3, 2018, as amended, between Heritage and Hillcrest Country Club ("**Hillcrest Agreement**"), the Owners of BCLINC Property shall pay Heritage \$225 per month and the Owners of the B&J Property shall pay Heritage \$190 per month for their respective shares of the Common Expenses that are applicable to that portion of the Common Maintenance provided by Hillcrest and paid by Heritage under the Hillcrest Agreement.

5. **EASEMENT.** Heritage does hereby establish, give, grant and convey to each Owner for their mutual benefit and the benefit of their respective successors, heirs and assigns, a perpetual nonexclusive easement for use of the Common Drainage Area for the purpose of conveying and detaining surface water runoff and/or

If to B&J:

B & J Partnership, Ltd.
ATTN: Clay F. Smith
340 Victory Lane
Lincoln, NE 68528

With copy to:

B&J Partnership, Ltd.
ATTN: Michael J. Tavlin
340 Victory Lane
Lincoln, NE 68528

8.3 No Waiver. Any waiver of a breach of any of the provisions of this Declaration shall not operate as a waiver of any other breach of such provisions or any other provisions hereof, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof.

8.4 Force Majeure. The performance of any obligation hereunder by any Owner will be excused if prevented by acts of God; flood, fire, interruptions in third-party provider's ability to provide information, data, and service; public enemy, fire or other casualty; labor dispute or, without limiting the foregoing, any circumstances beyond any Owner's reasonable control, but specifically excluding any payment obligation which cannot be excused by force majeure.

8.5 Successors and Assigns. Except as contemplated by Section 2 hereof, this Declaration may not be assigned by any Owner without the consent of the other Owners and, with the consent of such Owners, shall be binding upon the successors, heirs, administrators, trustees, representatives and permitted assigns of the Owners.

8.6 Severability. Each and every provision of this Declaration is independent and severable from the others. If any provision of this Declaration is determined to be invalid or unenforceable by any court or other tribunal, such determination shall not render invalid or unenforceable any of the other provisions of this Declaration. It is the intent of the Owners that this Declaration shall constitute a binding and enforceable agreement to the maximum extent permitted by law. In the event any court or other tribunal shall, for any reason, determine that any one, all or any combination of the provisions agreed to by the Owners are not adequately limited or are for any other reason invalid or unenforceable, then, in that event, the Owners expressly authorize and do hereby jointly request the court or tribunal to exercise its equitable power and reform this Declaration to the extent and in the manner necessary and/or appropriate, under the circumstances, so as to render such provisions enforceable to the maximum extent possible and thereby effectuate the intent of the Owners.

8.7 Construction. The Owners hereto acknowledge and agree that each Owner has participated in the drafting of this Declaration and that the normal rules of construction to the effect that any ambiguity is to be resolved against the drafting Owner shall not apply to the interpretation of this Declaration. No inference in favor of, or against, any Owner shall be drawn by the fact that one Owner has drafted any portion hereof. The Owners represent that they have been represented by or had the opportunity to be represented by legal counsel in the negotiation and drafting of this Declaration.

8.8 Survival. Except as specifically provided herein, all representations and warranties set forth in this Declaration, and all rights, remedies, obligations, and all covenants and agreements in this Declaration, and/or in any exhibit or ancillary agreement contemplated herein, which, by their terms, require or contemplate performance which is to extend beyond or occur after termination of this Declaration, shall survive the termination of this Declaration, and shall remain in effect and be enforceable as among the Owners hereto in accordance with their terms.

8.9 Counterparts. This Declaration may be executed in any number of counterparts, each of which will be an original and equally effective, and shall constitute one and the same instrument.

8.10 Governing Law. This Declaration shall be governed by and interpreted and enforced in accordance with the laws of the State of Nebraska.

8.11 Incorporation of Exhibits. All exhibits attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

[The next pages are the signature pages]

"BCLINC"

BCLINC, L.L.C., a Nebraska limited liability company

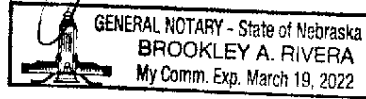
By: _____

Boyd Batterman
Boyd Batterman, Manager

STATE OF NEBRASKA)

COUNTY OF LANCASTER)

) ss.
)



The foregoing instrument was acknowledged before me this 16th day of September, 2019, by Boyd Batterman, Manager of BCLINC, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

Brookley A. Rivera
Notary Public

EXHIBIT A

Heritage Property

Outlots B, C and D, Hillcrest CC Addition, Lincoln, Lancaster County, Nebraska and Lots 1-26, Block 1, Lots 1-6, Block 2, Lots 1-12, Block 3, Lots 1-18, Block 4 and Lots 1-8, Block 5 and Outlot C, all in Hillcrest CC 1st Addition, Lincoln, Lancaster County, Nebraska.

HILCC
HILCC A

EXHIBIT B

BCLINC Property

Lot 1, Block 6, Hillcrest CC 1st Addition, Lincoln, Lancaster County, Nebraska.

Hillcrest

EXHIBIT C

B&J Property

The West 370 feet of Lot D in the subdivision of the East Half of Section 26, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, lying North of the Missouri Pacific Railroad Right-of-Way, and South of Hillcrest Heights ("Premises").

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