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Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HEARTWOOD PRESERVE
OMAHA, DOUGLAS COUNTY, NEBRASKA**

After recording, return to:
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Omaha, NE 68114

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HEARTWOOD PRESERVE
OMAHA, DOUGLAS COUNTY, NEBRASKA

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amended and Restated Declaration") is hereby executed as of the date set forth below by CIC LAND 1, LLC, a Nebraska limited liability company, CNI LAND 1, LLC, a Nebraska limited liability company, IIC LAND 1, LLC, a Nebraska limited liability company, and CIC LAND 3, LLC, a Nebraska limited liability company (a "New Declarant"), successors to NEW WEST FARM HOLDINGS, LLC, a Nebraska limited liability company (an "Original Declarant"), and AUCRA LAND 1, LLC, a Nebraska limited liability company, and CIC LAND 2, LLC, a Nebraska limited liability company (a "New Declarant" and collectively, "New Declarants"), successors to SOUTH FARM, LLC, a Nebraska limited liability company (an "Original Declarant"). The Original Declarants and New Declarants are hereinafter collectively referred to as "Declarant".

RECITALS

WHEREAS, Original Declarants have made that certain Declaration of Covenants, Conditions and Restrictions for Heartwood Preserve, which was recorded on August 15, 2018, as Instrument No. 2018064540 of the Deed Records of Douglas County, Nebraska, and a First Amendment to Declaration of Covenants, Conditions and Restrictions for Heartwood Preserve, which was recorded on October 24, 2018, as Instrument No. 2018084832 (collectively, the "Declaration") affecting the Heartwood Property as legally described in the Declaration; and

WHEREAS, the Heartwood Property as legally described in the Declaration and certain lots have been replatted and is now legally described on Exhibit A attached hereto and incorporated herein by this reference. The Heartwood Property may be subject to further replats; and

WHEREAS, the zone concept as described in Exhibit B to the Declaration is hereby deleted and abandoned in its entirety and the remainder of the Exhibits attached to the Declaration are incorporated herein by reference; and

WHEREAS, Declarant is the record owner of more than two-thirds (2/3) of all Voting Owners of the land intended to be included within the Heartwood Property and Declarant wishes to amend and restate the Declaration pursuant to Section 22 of the Declaration according to the terms and conditions set forth in this Amended and Restated Declaration in order to modify certain provisions thereof and to bind such land described in the Declaration to the terms and conditions set forth in the Declaration.

NOW, THEREFORE, pursuant to the provisions of Section 22 of the Declaration, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heartwood Reserve is executed by Declarant to amend and restate the Declaration and shall become effective when recorded in the official real estate records of Douglas County, Nebraska.

Section 1. **Permitted Uses.** Subject to the remaining provisions of this Declaration, each Lot may be used only for the designated uses (the "Permitted Uses") described in the Development Agreement dated March 28, 2017 between the City of Omaha and New West Farm Holdings, LLC and the Development Agreement dated March 10, 2017 between the City of Omaha and South Farm, LLC, as amended, and any and all further amendments and modifications thereto (collectively, the "Development Agreement") and may be used for no other purpose. The Permitted Uses set forth in the Development Agreement are intended to be additional restrictions upon the use of the property within the Heartwood Property and are not intended to amend or modify in any manner the uses permitted under the mixed use zoning district applicable to the Heartwood Property, as such mixed use district may be modified from time to time. Any use proposed for the Heartwood Property must be an allowed use under the mixed use zoning district as well as a Permitted Use hereunder for such use to be implemented. Any amendment to the Permitted Uses hereunder shall not be deemed to change or modify in any manner the allowed uses under the Development Agreement applicable to the Heartwood Property.

Section 2. **Prohibited Uses and Improvements.**

(a) **First Class Environment.** No use of the property in any portion of the Heartwood Property shall be inconsistent with a first-class environment, as determined in the reasonable discretion of the Architectural Control Committee.

(b) **Industrial; Manufacturing; Excavation.** No property in the Heartwood Property may be used for industrial or manufacturing uses, refuse collection (other than refuse collection facilities for buildings within the Heartwood Property which comply with the terms of this Declaration) or related uses. No rock, gravel, clay or other material shall be excavated or removed from any property in any area for commercial purposes except strictly as necessary to prepare the site for permitted buildings and improvements.

(c) **Nuisances; Hazardous Waste; Environmental Hazards.** No noxious weeds or underbrush shall be permitted to grow or remain upon any property in any area, and no refuse pile, construction debris, unused motor vehicle, or other private nuisance of any kind shall be allowed to be placed or to remain anywhere on any Lot. No uses producing hazardous or toxic waste or other environmental hazards shall be permitted upon any property on any Lot. In the event an owner of any Lot shall fail or refuse to keep such property free from any such private nuisance, waste or environmental hazard, the Association (as defined in Section 4 of this Declaration) or its designated representative (the "Designated Representative") may enter upon such property and remove such nuisance, waste or hazard at the expense of the owner of such property, and such entry shall not be deemed a trespass.

(d) **Gambling.** No gambling or wagering of any kind shall be permitted within the Heartwood Property, except that (i) Nebraska State Lottery tickets may be sold at retail establishments in accordance with applicable laws and regulations, and (ii) with the prior approval of the Architectural Control Committee, an establishment serving food and beverages, located within a platted Lot within the Heartwood Property, may conduct keno games and sell "pickle cards" in accordance with City of Omaha and State of Nebraska laws and regulations.

(e) **Sexually Oriented Commercial Activities.** No portion of the Heartwood Property shall be used, whether by the owner or any lessee thereof, to engage in any commercial endeavor which primarily conducts, markets, promotes or sells items or activities of a sexually oriented nature.

(f) **Temporary Buildings.** Except as otherwise provided herein, no temporary buildings, trailers, manufactured homes or other structures, mobile homes or structures, modular facilities or other similar structures shall be allowed upon any property within the Heartwood Property, except that, with the prior approval of the Architectural Control Committee in connection with an approved construction plan, retail and restaurant container structures may be permitted and container or shelter structures for seasonal activities (i.e. ice skating). Construction trailers and related temporary facilities may be permitted as reasonably required by construction contractors then engaged in constructing improvements within the Heartwood Property. Notwithstanding the foregoing, a Lot owner may be allowed to construct, place and use a temporary facility, including a trailer and/or modular facility, for its use if such Lot owner's permanent facility is destroyed in whole or in part by tornado or any other natural disaster (i.e. fire, wind, hail, etc.). Plans for any temporary facilities must be approved by Declarant prior to construction or placement, which approval shall not be unreasonably withheld.

(g) **Signage.** No stand-alone outdoor advertising signs or billboards shall be permitted upon any Lot within the Heartwood Property. Provided that the foregoing shall not prohibit any Lot owner from constructing, installing or placing monument signage consistent with sign criteria for the development and applicable law with Declarant's approval, which approval shall not be unreasonably withheld, and from placing temporary signage on its Lot for purposes of advertising pending construction and development provided such signage is consistent with applicable law.

(h) **Temporary Landscaping.** No undeveloped land shall remain in any Lot without a temporary landscaping plan installed and maintained by the Owner of such Lot which presents an attractive appearance.

(i) **Automotive.** No automotive sales or service shall be permitted within the Heartwood Property except for Lot 2, West Farm Replat 2. Except as otherwise approved by the Architectural Control Committee, the automotive brands permitted on Lot 2, West Farm Replat 2 are limited to Jaguar, Land Rover, BMW, and Mini Cooper. Any carwash shall be contained within a parking structure or similar structure except for Lot 2, West Farm Replat 2 which may be within a separate carwash structure. All carwashes will be an amenity to serve the employees and invitees of that Lot and will not be open or sell services to the general public.

(j) **Miscellaneous.** No fireworks display shall be allowed within the Heartwood Property, except within Heartwood Park. No activity which is reasonably anticipated to overburden available parking facilities shall be permitted within the Heartwood Property. No portion of the Heartwood Property shall be used, whether by the owner or any lessee thereof, to engage in any commercial endeavor which markets, promotes or sells items associated with:

- (i) shops with the principal purpose of which is the sale of cigarettes and other tobacco products;
- (ii) tattoo parlors or shops providing tattoos;
- (iii) pawn shops and other businesses offering payday advances, cash advances or payday loans, excluding usual and customary consumer and/or commercial lending practices provided by financial institutions;
- (iv) gun shops or other businesses providing for the sale or discharge of firearms; or
- (v) fireworks.

(k) **Temporary Construction Facilities.** Notwithstanding the foregoing, the temporary concrete batch plant contemplated on Lot 8, South Farm shall be a permitted use.

(l) **Financial Institutions.** No banks or other financial institutions shall be allowed to operate on any of the following Lots without the prior express written consent of the owner of Lot 5, West Farm Replat 6: (i) Lot 3, West Farm, (ii) Lot 2, West Farm Replat 3, and (iii) Lot 3, West Farm Replat 6. Notwithstanding the foregoing, automated teller machines (ATMs), financial advisory firms and insurance businesses shall not be prohibited.

Section 3. **Site Development Regulations.**

(a) **Development Plans.** All new building and improvements, or material modifications to existing buildings or improvements, located in any area shall comply with the Development Plans.

(b) **Urban Design Principles.** All development within the Heartwood Property shall be consistent with basic urban design principles as set forth in the Development Plans, including, but not limited to:

- (i) wide, pedestrian-friendly sidewalks with extensive landscaping and specialty lighting;
- (ii) plazas and other small gathering spaces incorporated into pedestrian system;
- (iii) buildings that front on the sidewalks with little or no setbacks; except where buildings are deliberately pulled away from the street to create public plazas, pedestrian areas, and other special areas;
- (iv) localized streets with on-street parking;

(v) off-street parking facilities, either structures or surface lots, located behind and screened by buildings; and

(vi) building architecture and design which presents a consistent theme, rhythm and use of materials.

(c) **Densities.** Minimum development densities for each Lot within the Heartwood Property must meet or exceed those shown on the Development Agreement.

(d) **Exterior Appearance.** All structures within the Heartwood Property must present a credible appearance on all sides consistent with a first-class development, and be subject to approval of the Architectural Control Committee as set forth in Section 5(b) of this Declaration.

(e) **Maximum Height.** The maximum height of any structure within the Heartwood Property shall not exceed the heights set forth in the Development Agreement.

(f) **Parking.** Each owner shall make provisions for adequate off-street parking in accordance with the standards established by the Architectural Control Committee and the Design Guidelines; provided, however, that at no time may standards established by the Architectural Control Committee and/or Design Guidelines for the Heartwood Property be adopted or amended without the consent of Declarant or its designee such that less than: (i) 4.01 stalls must be provided for each 1,000 square feet of usable retail space; (ii) 4.01 stalls must be provided for 1,000 usable square feet of office space; provided, however, that in no event shall the usable square feet of any office space be less than ninety percent (90%) of the rentable square feet in said space; (iii) 1.25 stalls must be provided per residential unit; and/or (iv) 1.0 stalls must be provided for each hotel room (collectively, the "Parking Ratios"). Under no circumstance shall parking stalls on city streets be included in determining compliance with the foregoing parking requirements.

All parking areas shall be either properly landscaped hard surface lots or parking structures. Lot owners should not adopt practices that unreasonably prohibit de minimis, non-regular public use of non-residential parking areas during non-business hours. Furthermore, except as provided by the Architectural Control Committee, until December 31, 2030, a minimum of eighty percent (80%) of each Lot's non-residential parking areas (excluding Lot 2, West Farm Replat 2, Lot 2, West Farm Replat 1, Lot 4, South Farm and Lots 2, 3 and 5, West Farm Replat 6) in the Heartwood Property shall be available and open to the public for all hours of the day except between 7:00 a.m. and 6:00 p.m. and non-holiday weekdays, which exclusionary period shall hereinafter be referred to as "Business Hours". Provided that Lot owners may take reasonable steps to police and protect the lot owner's parking areas.

(g) **Cross Parking Easements.** Each owner of any land within Lot 3, West Farm and Lots 2 and 3, West Farm Replat 3 of the Heartwood Property (collectively, the "Cooperating Owners") hereby grants and conveys to every other Cooperating Owner and such Cooperating Owner's lessees, customers and invitees conducting business within the Heartwood Property a non-exclusive easement to (i) park passenger vehicles on any portions of such Cooperating Owner's land which are paved and striped for parking from time to time (collectively, the "Parking Areas") located on such Cooperating Owner's property, so as to keep them at all times in a safe,

functional and first class manner, clean and free from snow, ice, refuse and rubbish; (ii) repave, restripe and replace markings on the surface of the Parking Areas and driveways in the Parking Areas from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Parking Areas; and (iii) maintain all landscaping in the Parking Areas. The configuration of the driveways, curb cuts, landscaping and parking areas within the Parking Areas may be reconfigured, moved or otherwise modified in any manner so long as each Cooperating Owner provides the minimum parking required by this Declaration.

(h) **Loading Areas; Trash Receptacles; Mechanical Equipment.** All loading areas and loading docks, trash receptacles, antennae, satellite dishes and mechanical equipment shall be off-street and screened from adjacent streets and sidewalks.

(i) **Exterior Lighting.** Owners shall install or cause to be installed sufficient exterior lighting so as to properly illuminate drives, parking facilities, streets and sidewalks. Where appropriate, decorative lighting will be employed in accordance with the requirements of the Design Guidelines.

(j) **Landscaping.** Upon completion of any building or parking facility (or the next available planting season), the owner shall install landscaping in accordance with the requirements of the Design Guidelines.

(k) **Signage.** No exterior signs incorporating flashing, pulsating or rotating lights shall be permitted, and no exterior walking or message signs (except time and temperature) shall be permitted, except for those the Architectural Control Committee may approve in portions of the Heartwood Property. No pole signs or roof signs shall be permitted, except the owners of Lots 2 and 5, West Farm Replat 6 may install building signs consistent with the Development Agreement and applicable laws, with the approval of the Declarant which approval shall not be unreasonably withheld.

(l) **Utilities.** All permanent utilities providing local service to the Heartwood Property shall be underground.

Section 4. **Master Property Owners Association.**

(a) **Formation.** A Master Property Owners Association (the "Association") shall be formed for purposes of (i) accepting the dedication of use easements for certain common areas; (ii) owning certain common areas; and (iii) improving and maintaining such common areas within the Heartwood Property.

(b) **Organization.** Except for owners of condominium interests or owners in fee simple of single family residential property (attached or detached) (which the Declarant has intentionally chosen to exclude from voting), each owner of land within the Heartwood Property shall be a member of the Association (collectively, "Voting Owners"). Except as otherwise set forth in this Declaration, decisions of the Association shall be determined by a majority of the total number of authorized votes ("Authorized Votes") at the time such decision is made.

Initially, authorized votes shall be allocated to each Lot pro rata within the Heartwood Property based on the assessed value as of the latest December 31 date, as determined by the Douglas County Assessor, from time to time, of each such Lot. The initial authorized votes for the Lots shall be a total of one hundred (100) ("Authorized Votes"). Voting rights of each Voting Owner will be determined by that Voting Owner's pro rata share of the total assessed value of all Lots in the Heartwood Property based upon one hundred (100) Authorized Votes excluding parks and public open space as described in subsection (c) below. The calculation of the Authorized Votes and the computation of the votes by the Voting Owners shall be in the sole discretion of the Declarant, its successors or assigns.

So long as the Declarant, North American Casualty Co. and Applied Underwriters, Inc., or any related subsidiaries or affiliated companies and their respective successors and assigns, are the owners of Lot 4, South Farm ("Lot 4") or occupies eighty-five percent (85%) of the net floor space of all buildings located on Lot 4, then any action by the Association shall only be effective upon the consent of the Lot 4 representative.

(c) **General Assessments.** The Association shall assess its members for the costs of (1) establishing and operating the Association, the Architectural Control Committee and any other committees or subcommunities; (2) enforcing the terms of this Declaration; (3) owning, maintaining and improving those Common Areas (as hereinafter defined) which provide general benefit for the entire Heartwood Property; (4) owning, maintaining and improving Heartwood Park (Lot 6, West Farm); and (5) such reasonable operating reserves as the Association deems appropriate (collectively, the "Operating Expenses"). Such Common Areas will include, but are not limited to, parks, public open space and access roads (consisting of Lot 3, West Farm Replat 2, Lot 3, West Farm Replat 4, Lots 5, 10 and 11, South Farm, Lot 1 and Outlot A, South Farm Replat 1, and Lots 1 and 4, West Farm Replat 6), landscaping and street scape features within and immediately adjacent to public street rights-of-way, and other areas or features accepted by the Association as the common areas, which areas shall include any public restrooms or facilities made available to the general public on a permanent basis that are accessible without entering an office building or retail establishment (collectively, the "Common Areas").

Assessments for Operating Expenses shall be apportioned to each Voting Owner pro rata based on the number of each member's Authorized Votes as it relates to a total of one hundred (100) Authorized Votes.

(d) **Duties; Authority.** The Declarant or Association shall have authority to enforce the covenants, conditions and restrictions set forth in this Declaration, assess owners for costs, and place and foreclose liens on property for unpaid assessments in accordance with Section 6 of this Declaration. Past due assessments will be charged interest at the rate of First National Bank of Omaha's regional prime plus four percent (4%), and late charges not to exceed ten percent (10%), as determined by the Association. Owners with unpaid assessments shall have their voting rights in the Association suspended until such time as such assessments are paid in full. The Association shall carry appropriate forms and amounts of insurance. The Association may place and foreclose a lien on any of the Lots for past due assessments, interest, late charges, and reasonable attorney fees.

(e) **Sub-Associations.** Owners of certain parcels within the Heartwood Property, including owners of condominium interests and/or owners in fee simple of residential property consisting of less than one acre in size, may form sub-associations ("Sub-Associations") for the purpose of owning, improving, maintaining and operating certain common areas and facilities which provide specific benefits for the particular parcels, including, but not limited to, parking facilities. Each Sub-Association shall have the same authority and obligations as the Association with respect to the parcels included within the Sub-Association. Each Sub-Association shall establish its own boundaries, membership and voting procedures, which membership and voting procedures may be different from that of the Association. Each Sub-Association may establish additional use restrictions or design standards to those set forth in this Declaration or in the Development Plans or Design Guidelines.

(f) **Books and Records; Audits.** The Association shall keep accurate records of all Operating Expenses and Assessments. All books and records of the Association shall be available for inspection, copying and audit by any Voting Owner during Declarant's business hours, upon three (3) business days' notice to Declarant.

Section 5. **Architectural Control Committee.**

(a) **Composition of ACC.** There is hereby established the Architectural Control Committee, which shall initially consist of three (3) members, one member of which shall be Steve Menzies, or such other person as may be appointed by the Declarant (the "Declarant Seat"), and two (2) other members appointed by the Declarant.

(i) Upon the death, Disability, resignation or removal of the person holding the Declarant Seat or any other member, a new member of the Architectural Control Committee to fill the seat occupied by such person shall be appointed by the Declarant.

(ii) "Disability" means (i) the inability of an individual to physically perform his/her job responsibilities for at least six (6) consecutive months, or (ii) an adjudication by a court of competent jurisdiction that an individual is incapable of managing his/her own financial affairs.

(b) **Declarant Control Period.** The "Declarant Control Period" shall mean the date hereof through the date in which Declarant or any of Declarant's related subsidiaries or affiliated companies and their respective successors and assigns are (i) not the owner of Lot 4, South Farm or the Declarant and (ii) occupies less than eighty-five percent (85%) of the net floor space of all buildings located on Lot 5, South Farm. Upon expiration of the Declarant Control Period, then nominations to fill the Declarant Seats of the Architectural Control Committee shall be made by a majority vote of the Authorized Votes. Once nominations have been received, the Voting Owner shall then elect by a majority vote of the Authorized Votes three (3) members of the Architectural Control Committee. Such members shall serve one (1) year terms and elections shall be held on an annual basis by the Association. The Architectural Control Committee shall meet as required at such place and at such time as is mutually agreeable to the members thereof.

(c) **ACC Approval.** Before commencing the construction, addition, installation, modification, demolition or alteration of any building, enclosure, landscaping, fence, parking facility, sign, light pole or fixture, or any other structure or temporary or permanent improvements within the Heartwood Property (except for interior construction or remodeling), and except as expressly provided in this Declaration, the owner of the property upon which such development is located shall provide to the Architectural Control Committee for its approval the site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, and materials plans, demolition plans and such other plans and specifications as may be appropriate (collectively, "Proposed Plans"). The Architectural Control Committee shall adopt by majority vote, appropriate procedures for plan submission, review and approval. Approval of plans shall require the affirmative vote of two (2) members of the Architectural Control Committee; provided, however, that during the Declarant Control Period, then the Architectural Control Committee's approval shall only be effective upon the consent of the Declarant.

(d) **Design Guidelines.** The Design Guidelines are attached to the Declaration as part of the Development Plans. The Architectural Control Committee may amend, by majority vote, the Design Guidelines with respect to each type of improvement within the Heartwood Property; provided, however, that during the Declarant Control Period, then the Architectural Control Committee's approval shall only be effective upon the consent of the Declarant.

(e) **Outside Consultants.** The Architectural Control Committee may retain outside consultants to assist in its activities, and may charge reasonable fees for plan review. The Architectural Control Committee may consult with other property owners as part of its review process. The Architectural Control Committee may grant reasonable exceptions and waivers to the Development Plans and Development Guidelines contained in this section.

Section 6. **Remedies For Violations; Liens.** Upon a violation or breach of any of the covenants, conditions, reservations and restrictions set forth in this Declaration with respect to any property, subject to this Declaration, the Declarant or Association or their Designated Representative shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure promptly to enforce any of the covenants, conditions, reservations and restrictions contained herein shall not bar their enforcement or be deemed a waiver of any future violations. Upon the failure or refusal of the Declarant or Association or their Designated Representative to enforce any of the covenants, conditions, reservations and restrictions set forth herein, any individual member of the Association shall have the right, but not the obligation, to proceed at law or in equity to compel compliance therewith or to prevent or enjoin any actual or threatened violation or breach of the same.

In addition to the foregoing rights, the Declarant or Association or their Designated Representative shall have the right, whenever there exists any condition on the Heartwood Property which is in violation of this Declaration and such violation has not been cured within thirty (30) days after written notice to the breaching party, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, payable within thirty (30) days after such breaching party is billed. Any such entry and abatement or removal shall not be deemed a trespass. The cost of such abatement or removal, if not paid within such 30-day period, shall be a lien in favor of the Association against the breaching owner's

property and, subject to the provision of Section 14 below, may be foreclosed by the curing party in like manner as any other lien against real estate.

Section 7. **Waiver and Variance by Architectural Control Committee.** The owner of any property within the Heartwood Property may petition the Architectural Control Committee to waive compliance with or grant a variance to any of the covenants, conditions, reservations or restrictions set forth in Sections 1, 2 and 3 of this Declaration. Subject to the limitation set forth below, and based on its reasonable discretion, the Architectural Control Committee is hereby given the power to waive or grant a variance to any such covenants, conditions, reservations or restrictions upon such request and upon a finding by the Architectural Control Committee that such request is in conformity with the general scheme for the development of the Heartwood Property as set forth in this Declaration. Such waiver or variance may be conditioned by the Architectural Control Committee. Such waiver or variance shall be effective only upon the unanimous consent of the Architectural Control Committee. Notwithstanding any other provision contained herein, if the Architectural Control Committee shall fail to approve or disapprove any such requests for waiver or variance within thirty (30) days after such request has been submitted to the Architectural Control Committee, such request shall be deemed conclusively to have been disapproved unless or until the Architectural Control Committee takes further action on the same, if ever.

Section 8. **Term and Extensions.** Each covenant, condition, reservation and restriction contained in this Declaration shall continue in effect indefinitely until terminated as provided below as of a Termination Date, the first of which shall be on July 1, 2048. At any time within one year prior to July 1, 2048, and each 30-year anniversary thereafter (each such date being referred to herein as a "Termination Date"), by majority vote of the Voting Owners, the Association may, by written declaration signed and acknowledged by a majority of the approving Voting Owners and duly recorded with the Register of Deeds for Douglas County, Nebraska, terminate the covenants, conditions, reservations and restrictions herein, effective as of the next Termination Date. Failing such termination, the covenants, conditions, reservations and restrictions contained in this Declaration shall automatically be renewed and extended for successive periods of 30 additional years, subject to the right of the Association by a vote of a majority of the Voting Owners to terminate this Declaration at the end of such 30-year period as provided in this Section.

Section 9. **Interest.** Whenever and as often as one party shall not have paid any sum payable hereunder to another party, or to the Association, any Sub-Association or the Architectural Control Committee, within thirty (30) days of the due date, such delinquent party shall pay interest on such amount from the due date to the date such payment is received by the party entitled thereto, at an interest annual rate equal to the prime rate plus five percentage points.

Section 10. **Estoppel Certificate.** Each owner of any property within the Heartwood Property agrees that upon written request of any other party (which shall not be more frequent than three times during any calendar year by a single requester), it will issue to a prospective mortgagee or successor of such other owner or to such other party, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(a) whether the owner to whom the request has been directed knows of any default by the requesting party under this Declaration, and if there are known defaults, specifying the nature thereof;

(b) whether this Declaration has been modified or amended in any way by the requested owner (and if it has, then stating the nature thereof); and

(c) whether this Declaration is in full force and effect.

Such statement shall act as a waiver of any claim by the owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such owner to disclose correct and/or relevant information.

Section 11. **Notices.** All notices, demands, statements and requests (collectively, "Notices") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified (a) on the date of personal service upon the person to whom the Notice is addressed or if such person is not available the date such Notice is left at the address of the person to whom it is directed, (b) on the date the Notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (c) on the date the Notice is delivered by a nationally recognized overnight courier service, postage prepaid and addressed to the person to whom it is directed, The addresses of certain of the signatories to, or the anticipated ultimate owners of the property subject to, this Declaration to which Notices shall be sent are set forth below.

If to Declarant:

Applied Underwriters, Inc.
10805 Old Mill Road
Omaha, Nebraska 68154
Attn: Jeffrey A. Silver

With copies to:

Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114
Attn: Dennis P. Hogan, III and John Q. Bachman

The place for delivery of any Notice hereunder may be changed by any party (or its successor in interest) by written notice to the other parties delivered in the manner required by this paragraph. As to any successor owner, upon acquisition of ownership of a parcel within the Heartwood

Property, such new owner may give notice of its address as provided in this Section. If the new owner gives such a notice, future Notices must be given to said owner at that address. If the new owner does not give such notice, future Notices shall be effective if sent to the address of the record owner of the property as shown on the real property tax records of Douglas County, Nebraska.

Section 12. **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall (a) entitle any party to cancel, rescind or otherwise terminate this Declaration, or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Heartwood Property. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

Section 13. **Approval Rights.** Unless provision is made for a specific time period (such as the time for approval as set forth in Section 5), approval or consent requested pursuant to this Declaration shall be given or withheld within thirty (30) days of the receipt of the request for approval. Except as otherwise provided in this Declaration, if a disapproval is not given within the required time period, the requested party shall be deemed to have given its approval. Except with respect to any approval or disapproval given by lapse of time under the terms of this Declaration, all approvals and disapprovals shall be in writing, but the failure to furnish such a writing shall not be deemed an approval.

Section 14. **Lien for Expenses.**

(a) The liens provided for in Section 6 above shall be effective only when a signed and acknowledged document providing notice of such lien is filed by the Association or its Designated Representative in the Office of the Register of Deeds for Douglas County, Nebraska, which notice shall contain at least:

- (i) a statement of the unpaid amount of costs and expenses;
- (ii) a description sufficient for identification of that portion of the property of the defaulting owner which is the subject of the lien; and
- (iii) the name of the owner or reputed owner of the property which is the subject of the alleged lien.

(b) The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien.

The lien shall be for the use and benefit of the Association and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

Section 15. **Dispute Resolution.** Expressly excluding matters to be determined by the Architectural Control Committee hereunder, all other disputes and controversies of every kind and nature between or among the parties hereto arising out of or in connection with this Declaration as

to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination hereof shall be submitted to arbitration pursuant to the procedure hereafter set forth:

(a) Any party may demand such arbitration by written notice to the remaining owners of all property within the Heartwood Property within thirty (30) days after the controversy arises, which notice shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.

(b) Within fifteen (15) days after such notice, the remaining parties shall name their respective arbitrator, or in default of such naming, such arbitrator or arbitrators shall be named forthwith by the Arbitration Committee of the American Arbitration Association.

(c) The arbitration costs and expenses of each party shall be borne by that party.

(d) The arbitration hearing shall be held on fifteen (15) days' notice to the parties at a neutral site in Omaha, Nebraska, to be selected by a majority of the arbitrators.

(e) The arbitration rules and procedures of the American Arbitration Association shall be utilized in the arbitration hearing, and the law of evidence of the State of Nebraska shall govern the presentation of evidence at such hearing.

(f) The arbitration hearing shall be concluded within three (3) days unless otherwise ordered by a majority of the arbitrators, and the award or determination on the hearing shall be made within ten (10) days after the close of the submission of evidence.

(g) An award or determination rendered by a majority of the arbitrators appointed under and pursuant to this Section 15 shall be final and binding on all parties to the proceeding, and judgment on such award or determination may be entered by any party in the highest court, state or federal, having jurisdiction over the matter.

(h) The parties stipulate that a decision rendered pursuant to the provisions of this Section 15 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to such controversy or dispute arising hereunder and which is arbitrable as set forth in this Section 15. The arbitration provisions of this Section 15 shall, with respect to such controversy or dispute, survive the termination of any party's ownership of any one of the Lots. Nothing contained in this Section 15 shall be deemed to give the arbitrators any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of the Declaration, as amended or modified from time to time.

Section 16. Effect of Sale By Owner. If any owner of any property in the Heartwood Property sells its property, then after the date of sale such owner shall have no further obligation under this Declaration with respect to such property sold; provided, however, the selling owner shall remain liable for obligations incurred prior to said sale.

Section 17. **Default in Payment of Expenses.** Notwithstanding any of the provisions of this Declaration, a breach of any of the conditions and covenants contained herein shall not defeat, affect or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but such conditions and covenants shall be binding and effective against any owner of any property or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 18. **Rule Against Perpetuities.** In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective being contrary to applicable law or prohibited by the "rule against perpetuities" or any similar law, then in that event only, the terms hereof shall be reduced to the maximum period of time which does not violate such law or the rule against perpetuities as set forth in the laws of the State of Nebraska.

Section 19. **Waiver.** No delay or omission on the part of the Architectural Control Committee, the Association, any Sub-Association, or the owners of any property in the Heartwood Property in exercising any rights, power or remedy herein provided, in the event of any breach of the covenants, conditions, reservations or restrictions herein contained, shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Architectural Control Committee, the Association or any Sub-Association for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations or restrictions.

Section 20. **Severability.** In the event any one or more of the foregoing covenants, conditions, reservations or restrictions is declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions, reservations and restrictions not specifically declared to be void or unenforceable, but all of the remaining covenants, conditions, reservations and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

Section 21. **Beneficiaries.** These covenants, conditions, reservations and restrictions are made for the benefit of any and all persons who may now own, or who may in the future own, property in the Heartwood Property. Such persons are specifically given the right to enforce these restrictions and covenants by injunction or other legal or equitable procedure as provided herein, and to recover damages resulting from any violation thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

Section 22. **Amendment.** This Declaration may be amended at any time by the written agreement of Declarant and two-thirds (2/3) of all Voting Owners, effective upon the recording of such amendment in the official real estate records of Douglas County, Nebraska; provided, however, that once Declarant relinquishes in writing its right to approve any amendment to this Declaration pursuant to this Section 22, thereafter this Declaration may be amended at any time by the written agreement of two-thirds (2/3) of all Voting Owners, effective upon the recording of such amendment in the official real estate records of Douglas County, Nebraska.

Section 23. **Subsequent Amendments/Eminent Domain.** In the event any improvement constructed in accordance with Proposed Plans approved by the Architectural Control Committee shall later be in violation of any provision of this Declaration solely by reason of (a) a subsequent amendment to this Declaration, or (b) any eminent domain proceeding which may affect the location of public rights of way, then such improvement shall thereafter be deemed to comply with such provisions of this Declaration so long as the improvement is not materially modified or altered thereafter.

Section 24. **Subsequently Acquired Property.** In order to ensure the continued vitality and quality of the Heartwood Property, in the event any party hereto should acquire ownership of any piece of property located within the boundaries of the Heartwood Property or adjacent thereto, said party shall be obligated to record this Declaration and take any other action(s) necessary to ensure that said acquired property is used in conformity herewith and becomes subject hereto, which obligation may be specifically enforced by the Architectural Control Committee.

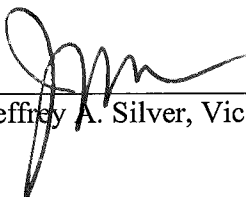
Section 25. **Assignment of Declarant Rights.** Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

(REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the undersigned parties hereto executed this Amended and Restated Declaration on the date set forth beneath its respective signature.

CIC LAND 1, LLC, a Nebraska limited liability company

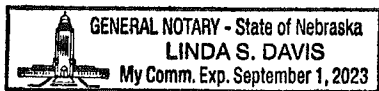
By: North American Casualty Co., a Nebraska corporation, Manager

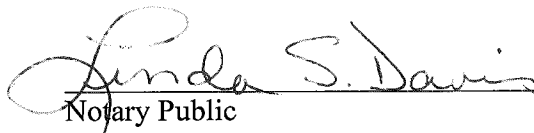
By: 
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on May 13, 2020, by Jeffrey A. Silver, Vice President of North American Casualty Co., a Nebraska corporation, the Manager of CIC LAND 1, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

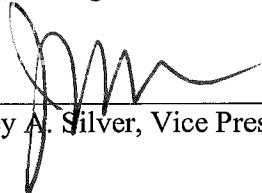



Notary Public

My commission expires: 09/01/2023

CNI LAND 1, LLC, a Nebraska limited liability company

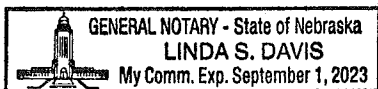
By: North American Casualty Co., a Nebraska corporation, Manager


By: 
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on May 13, 2020, by Jeffrey A. Silver, Vice President of North American Casualty Co., a Nebraska corporation, the Manager of CNI LAND 1, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.




Notary Public

My commission expires: 09/01/2023

IIC LAND 1, LLC, a Nebraska limited liability company

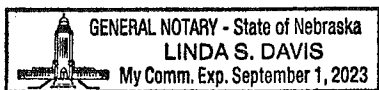
By: North American Casualty Co., a Nebraska corporation, Manager

By: [Signature]
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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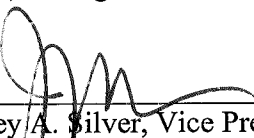


[Signature]
Notary Public

My commission expires: 09/01/2023

CIC LAND 3, LLC, a Nebraska limited liability company

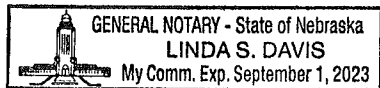
By: North American Casualty Co., a Nebraska corporation, Manager

By: 
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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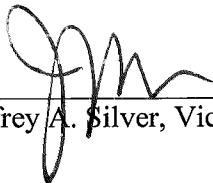



Notary Public

My commission expires: 09/01/2023

AUCRA LAND 1, LLC, a Nebraska limited liability company

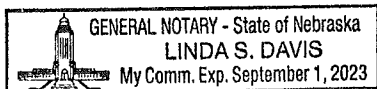
By: North American Casualty Co., a Nebraska corporation, Manager

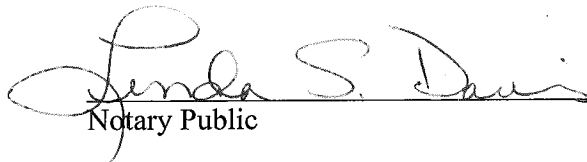
By: 
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on May 13, 2020, by Jeffrey A. Silver, Vice President of North American Casualty Co., a Nebraska corporation, the Manager of AUCRA LAND 1, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.




Notary Public

My commission expires: 09/01/2023

CIC LAND 2, LLC, a Nebraska limited liability company

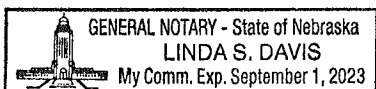
By: North American Casualty Co., a Nebraska corporation, Manager

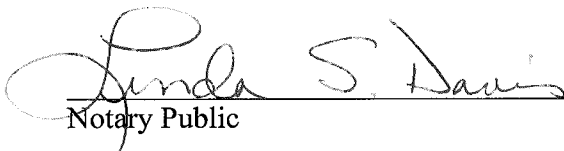
By: 
Jeffrey A. Silver, Vice President

Date: May 13, 2020

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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Notary Public

My commission expires: 09/01/2023

EXHIBIT A

HEARTWOOD PROPERTY LEGAL DESCRIPTION

Lots 3, 5, 6, 7, 8, 9 and 13, West Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1 and 2, West Farm Replat One, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 2 and 3, West Farm Replat Two, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1 and 2, inclusive, West Farm Replat Three, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1 through 3, inclusive, West Farm Replat Four, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1 through 5, inclusive, West Farm Replat Six, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 2, 4, 5, 6, 7 and 8, South Farm, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1, 2 and Outlot A, South Farm Replat One, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT B

INTENTIONALLY DELETED