

FILED SARPY CO. NE.  
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*Glenn J. Downing*  
REGISTER OF DEEDS

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Fee \$ 56.00  
Ck ☐ Cash ☒ Chg ☐

### 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 member's 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

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.



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**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. Haring~~, Member

George W. Venteriche

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

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

By:

  
Rod Sadofsky, President

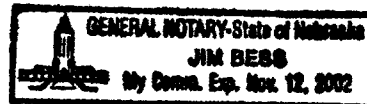
By: GALAXY HOMES, LLC, a Nebraska limited  
Liability Company,

By:

  
Larry Birkel, President

2000-11656 I

STATE OF NEBRASKA )

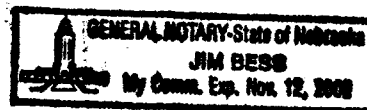


COUNTY OF DOUGLAS ) ss:

*George Venter* The foregoing Declaration was acknowledged before me this 5<sup>th</sup> day of May, 2000, by ~~Frank Bess~~ *Frank Bess*, 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.

*Jim Bess*  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA )

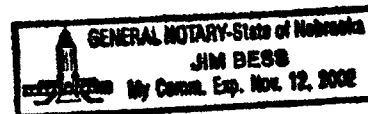


COUNTY OF DOUGLAS ) ss:

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.

*Jim Bess*  
\_\_\_\_\_  
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.

*Jim Bess*  
\_\_\_\_\_  
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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*Sharon G. [Signature]*

REGISTER OF DEEDS

Counter 24  
Verify [Signature]  
D.E. [Signature]  
Proof [Signature]  
Fee \$ 46.00  
Ck ☐ Cash ☒ Chg ☐

### AMENDED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

THIS AMENDED 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 on May 5, 2000 declared in a Declaration of Covenants, Conditions and Restrictions, recorded on May 17, 2000, as Instrument Number 2000- 11656 in the office of the Register of Deeds of Sarpy County Nebraska ("Declaration") which Declaration affects the following described real property:

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.

Declarant is the owner of more than 75% of the properties described above, there are no Federal Housing Administration or Veterans Administration loans, whether direct or guaranteed loans, on any of the above described property, and the Declarant is desirous of amending said Declaration in its entirety by this Amendment for the purpose of deleting certain provisions for the maintenance of the lawns and landscaping of the above described real property and deleting the requirement of assessments for such maintenance.

**NOW, THEREFORE,** Declarant hereby amends said Declaration in its entirety so that the Declaration, after such amendment, shall read as follows:

#### 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

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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

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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 Declarant, 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 Declarant.

### **ARTICLE III REQUIRED MAINTENANCE AND INSURANCE COVERAGE**

**Section 1. Maintenance.** In the event an Owner of any Unit or Lot shall fail to maintain the exterior of such Owners Unit, the lawn, landscaping 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, acting through its agents and employees, shall have the right, upon five (5) days advance notice to the Owner and the failure of the Owner to cure such deficiency, 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 2. 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

2000-20058C

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 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

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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,

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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.

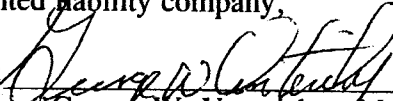


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IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Amended Declaration this 3rd day of August, 2000.

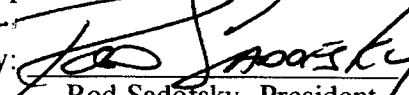
**DECLARANT:**

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

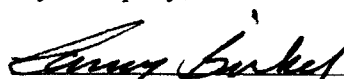
By:   
George W. Venteicher, Member

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

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

By:   
Rod Sadofsky, President

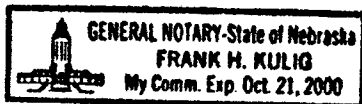
By: **GALAXY HOMES, LLC**, a Nebraska limited Liability Company,


By:   
Larry Birkel, President

STATE OF NEBRASKA )

COUNTY OF DOUGLAS ) ss:

The foregoing Amended Declaration was acknowledged before me this 3rd day of August, by George W. Venteicher, 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.

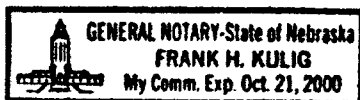


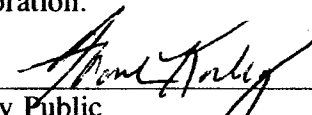
  
Notary Public

STATE OF NEBRASKA )

COUNTY OF DOUGLAS ) ss:

The foregoing Amended Declaration was acknowledged before me this 3rd day of August, 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.



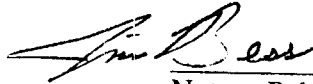
  
Notary Public

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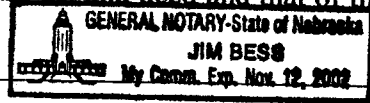
STATE OF NEBRASKA )

COUNTY OF DOUGLAS ) ss:

The foregoing Amended Declaration was acknowledged before me this 3<sup>rd</sup> day of August, 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 on August 3, 2000 by Mark L. Laughlin, Esq. Telephone 402-330-1900  
Laughlin, Peterson & Lang, Attorneys 11306 Davenport St., Omaha, Nebraska 68154-2630

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REGISTER OF DEEDS

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DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF HEARTLAND HILLS, A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by FOX RIDGE, L.L.C., a Nebraska Limited Liability Company "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 1 through 111, inclusive, in Heartland Hills, a Subdivision,  
as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of Heartland Hills, for the maintenance of the character and residential integrity of Heartland Hills, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Heartland Hills.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in any Lot, or any part thereof.

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park or for other non-profit use.

2. No residence, building, fence (other than fences constructed by the Declarant),

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wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or "disc", solar heating or cooling device, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading, excavation or tree removal for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

- A. An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.
  - B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.
  - C. Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.
  - D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.
3. No single-family residence shall be created, altered, placed or permitted

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to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. All Improvements on the Lots shall comply with all set back and side yard requirements of the Zoning Code of the Municipal Code of the City of Bellevue, Nebraska.

4. The exposed front foundation walls and any foundation walls facing any street, including side streets of all main residential structures must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be covered with clay-fired brick, stone, siding or shall be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. A fireplace chimney or the enclosure of the fireplace flue which is located on the front side of a residence shall be constructed of, or finished with, clay-fired brick or stone or other materials approved by Declarant. All other fireplace chimneys may be covered with wood or other material approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with asphalt shingles, weathered wood in color, wood cedar shakes or wood shingles.

5. 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 premises 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.

6. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

7. 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

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be permitted on any Lot without the Declarants approval.

8. No outdoor repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles or similar; nor shall vehicles offensive to the neighborhood 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 building operations, and then only in as neat and inconspicuous a manner as possible.

9. 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 occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways, or streets. However, this Section 9 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.

10. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or propane tank shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

11. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of wood, chain link or wrought iron. No fences or walls shall exceed a height of six (6) feet; provided, however, chain link fences shall not exceed four (4) feet in height.

12. No swimming pool may extend more than one foot above ground level unless approved by Declarant.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the

Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Bellevue.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence. Dog runs or kennels shall be permitted only with the approval of the Declarant, or its assigns; provided always that any permitted dog run or kennel shall be located immediately adjacent to the rear of the residence. No animals, livestock, agricultural-type animals, fowl, or poultry of any kind, including pot-bellied pigs, shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and they are kept confined to the Lot of their Owner and are not permitted to run loose outside the Lot of the Owner.

17. 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. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, unless parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

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19. No structure of a temporary character, including, but not limited to, carport, detached garage, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time nor any mobile home, either temporarily or permanently. No structure or dwelling shall be moved from outside Heartland Hills to any Lot, nor any modular home without the written approval of Declarant.

20. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

21. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

22. No residence shall be constructed on Lots 56, 57, 58, 59, 60, 61 or 62 unless a permanent cedar (board on board) fence, 6' in height is constructed along the east boundary of such Lot (along the 38<sup>th</sup> Street right of way west of the public sidewalk). It shall be the duty of the owner of each such lot to keep the fence on such lot in good condition and repair at all times.

## ARTICLE II HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has caused the incorporation of HEARTLAND HILLS HOMEOWNERS' ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Heartland Hills. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all



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Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Heartland Hills; and the protection and maintenance of the residential character of Heartland Hills.

2. Membership and Voting. Heartland Hills is divided into (111) separate residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee) The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near Heartland Hills.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair any signs, landscaping or other improvements which have been installed by the developer or Homeowner Association in easement areas of the Heartland Hills subdivision and center islands dividing dedicated roads, in generally good and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments

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shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorney fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purpose of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. One Hundred Twenty-Five and no/100 Dollars (\$125.00) per Lot.

B. In each calendar year beginning on January 1, 2000, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

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11. Excess Dues and Assessments. With the approval of seventy-five percent of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

16. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time to time by the Declarant or Declarant's assignee by recordation with the Register of Deeds of Sarpy County, Nebraska, of

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a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article II, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

### ARTICLE III EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public District, and any company which has been granted a franchise to provide a cable television system, data transmission or phone service within the Lots, Metropolitan Utilities Company, Peoples Natural Gas, and Sanitary and Improvement District No. 197 of Sarpy County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha and Peoples Natural Gas, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed

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but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Other easements are provided for in the final plat of Heartland Hills which is filed in the Register of Deeds of Sarpy County, Nebraska (Instrument No. 98-08947).

#### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a period of 30 years and shall automatically renew for successive 10 year period, unless prior to any such automatically renewal 75% of the lots vote to allow covenants to terminate. This Declaration may be amended by Fox Ridge, L.L.C., a Nebraska Limited Liability Company (Heartland Hills), or any person, firm, corporation, partnership, or entity designated in writing by Fox Ridge, L.L.C., a Nebraska Limited Liability Company, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. Fox Ridge, L.L.C., a Nebraska Limited Liability Company, 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, 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.

4. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and affect.

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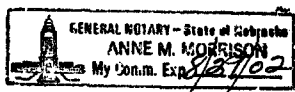
IN WITNESS WHEREOF, the Declarant has caused these presents to  
be executed this 19 day of March, 1998.

FOX RIDGE, L.L.C., A Nebraska Limited Liability  
Company, "Declarant"

Frank H. Kulig  
Frank H. Kulig, for Fox Ridge, L.L.C., a Nebraska  
Limited Liability Company (Heartland Hills) As  
assigned Declarant

STATE OF NEBRASKA )  
 ) ss.:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 19 day of  
March, 1998, by Frank H. Kulig, Manager of Fox  
Ridge, L.L.C., a Nebraska Limited Liability Company, on behalf of the company.



Anne M. Morrison  
Notary Public