

COMPARED

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CASS COUNTY, NE.

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BOOK 57 MISC 384  
PATRICIA MESSINGER  
REGISTER OF DEEDS

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**OF**  
**HEARTLAND ESTATES SUBDIVISION**

MARK MOREHEAD CONSTRUCTION, INC., a Nebraska Corporation, called Declarant, is the Owner in fee simple of real estate located in Cass County, Nebraska, and known by the official plat designation of Heartland Estates ("hereinafter "Property") of which plat is recorded in Book 14, Page 58, of the records of the Register of Deeds of Cass County, Nebraska on the 8<sup>th</sup> day of August, 2001. Doc # 5216  
91700

For the purpose of protecting the value and desirability of the Lots or tracts constituting such Subdivision, Declarant declares that all of the described real property and each part of such property shall be held, sold, and conveyed only subject to the following covenants, conditions, and restrictions, which constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the described property or any part of such property, their heirs, successors, and assigns, and shall inure to the benefit of each Owner of such property.

**ARTICLE ONE - DEFINITIONS**

"Association" shall mean and refer to Heartland Estates Homeowners Association, its successors and assigns.

"Declarant" shall mean Mark Morehead Construction, Inc., a Nebraska corporation, and Declarant's successors and assigns.

"Lot" shall mean any plot of land shown on the recorded subdivision map referred to above.

"Maintenance" shall mean the exercise of reasonable care to keep roads, right of ways, and other related improvements and fixtures in a condition comparable to their original condition. Maintenance shall also mean the replacement of any portion of the existing road.

"Member" shall mean every person or entity who holds Membership in the Association.

"Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot that is part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation. "Owner" and "Member" are synonymous when used herein.

"Subdivision" shall mean the subdivided real property described above and such additions to such property as may be brought within the jurisdiction of the Association as provided in this Declaration.

**ARTICLE TWO**  
**MEMBERSHIP IN ASSOCIATION - VOTING RIGHTS**

Every Owner of a Lot shall be a Member of the Association; Membership shall be appurtenant to and may not be separated from Ownership of a Lot. A Tenant may not be a Member.

The Association shall have one class of voting Members which shall be all Owners, and each Member shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine between or among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Members.

**ARTICLE THREE - ASSESSMENTS**

**Lien and Personal Obligation for Assessments.** Declarant covenants for each Lot within the subdivision, and each Owner of a Lot is deemed to covenant by acceptance of such Owner's deed for such Lot, whether or not it shall be so expressed in the deed, to pay the Association (1) annual assessments and (2) special assessments for capital improvements. Such assessments will be established and collected as provided below in this instrument. The annual and special assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment together with interest, costs, and reasonable attorney fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made.

- a. Maintenance and repair of roads and other improvements not dedicated to the public use, or being maintained by a public entity.
- b. Any other material, supplies furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments that the Association is required to pay pursuant to the terms of this Declaration or by law.

**Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement. Any such assessment must be approved in the manner provided for in the Bylaws.

**Notice for Action Authorized Under Article Three.** Written notice of any meeting called for the purpose of taking any action authorized by Article Three shall be sent to all Members in the manner provided for in the Bylaws.

**Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within 60 days after the due date, shall be deemed in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner or Owners personally obligated to pay such assessment, or may foreclose the lien against the property. No Owner or Owners may waive or otherwise escape liability for the assessments provided for in the Declaration by nonuse or limited use or abandonment of his or her or their Lot.

Unless a special assessment is made, an annual assessment may be levied only one time during each calendar year.

#### **ARTICLE FOUR** **EASEMENTS AND USE RESTRICTIONS**

**Easements.** Blanket easements for installation and maintenance of utilities are noted on the recorded Final Plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may damage or interfere with, or change the direction of flow of drainage. The easement area of each Lot and all improvements on such Lot shall be continuously maintained by the Owner or Owners of such Lot. No dwelling unit or structure of any kind shall be built, erected, or maintained on any such easement or right of way, and such easements and rights of way shall at all times be open and accessible to public and quasi-public utility corporations and to the Association, their employees and contractors, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, and rights of way are reserved.

**Use Restrictions.** Each Lot shall be used as a residence for a single family and for no other purpose. Only one single family residence shall be allowed per Lot. Each Lot will be serviced by Cass County Rural Water District #1 with Owner responsible for any and all fees associated with connecting to the water system. Owner will install a septic system in accordance with current NDEQ Title 24 regulations, including required soil investigations, component sizing, and setback requirements and reserve areas. Each Lot shall be kept free from debris and unsightly materials at all times. Each Lot Owner shall be responsible for maintaining his or her Lot and all improvements thereon in an aesthetically pleasing manner. No Owner or Owners shall permit anything to be done or kept on a Lot that would result in the cancellation of insurance on any residence or that would be in violation of any law. The Association shall

**Subordination.** No breach of any of the conditions contained in this Declaration or reentry by reason of such breach shall defeat or render invalid the lien of any deed of trust mortgage or other encumbrance. Any deed of trust or other encumbrance shall be subordinate to all the provisions of this Declaration and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived from the foreclosure whether by nonjudicial or judicial foreclosure or otherwise.

**Duration.** The Covenants and Restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of 30 years from the date of this Declaration, thereafter shall continue automatically in effect for additional periods of one year, unless otherwise agreed to in writing by two-thirds of the Members.

**Governing Law.** This Declaration shall be governed by, construed, and enforced in accordance with the laws of the State of Nebraska.

**Attorney Fees.** If the Association hires an attorney to enforce any of the foregoing covenants or any other rules or regulations of the Association by reason of a breach by an Owner then all costs incurred in the enforcement, including attorney fees shall be paid by the Owner and the Association shall have a lien on the Lot for said amount.

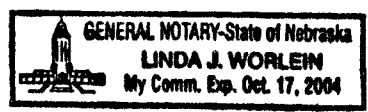
IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed this 11 Day of May, 2001 by its proper officer pursuant to a resolution duly adopted by its Board of Directors.

MARK MOREHEAD CONSTRUCTION, INC., a  
Nebraska Corporation

BY: Mark Morehead

STATE OF NEBRASKA        )  
  :        ss.  
COUNTY OF CASS         )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2001 by Mark Morehead, President of MARK MOREHEAD CONSTRUCTION, INC., a Nebraska Corporation.



Linda J. Worlein  
Notary Public

*Lots 1-4, Heartland Estates*