



1314 380 MISC



16660 99 380-384

Nebr Doc Stamp Tax
Date
\$
By

REGISTERED OF DEEDS  
SARASOTA COUNTY, FL

99 OCT 27 PM 3:08

RECEIVED

*Rush*

**THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT**

*16660 d*  
*154.50* *DU-08756*

NET	FEE	STAMP	RECORDING	COMMISSION

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF DEER CREEK, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by Irishstone, L.L.C., a Nebraska limited liability company, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

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

Lots 1 through 36, 69-135 and 178-233, all inclusive, in Deer Creek, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots (and any "additional lots" as per Article IV, Section 3) 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 Deer Creek, for the maintenance of the character and residential integrity of Deer Creek, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Deer Creek. As used herein, the term "Common Facilities" shall mean all recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Deer Creek, as well as any and all other facilities acquired, constructed, improved, maintained, operated, repaired, or replaced by the Homeowner's Association for the general use, benefit and enjoyment of the members of the Homeowner's Association.

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 Deer Creek. 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 each Lot, or any part thereof, as is more fully described herein. Each Lot is and shall be subject to all and each of the following conditions and other terms:

**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, golf course or for non-profit use.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, pool house, antenna satellite receiving station or "discs," flag pole or any other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, reconstructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation 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 one set of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description 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 light of the conditions and restrictions of Article I of this Declaration and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as 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 in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within Deer Creek Subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. If Declarant determines that the proposed Improvement does not conform with the surrounding improvements or topography or 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

4

to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

E. At such time as there shall be a completed single family residence constructed and occupied on ninety percent (90%) of all Lots or ten (10) years from the date hereof, whichever shall occur first, all discretions of Declarant under this Article I, Paragraph 2 shall transfer to the Homeowner's Association and shall be administered pursuant to the provisions of Article IV herein.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling that does not exceed two and one-half stories in height. Residences on all Lots shall have a minimum front set back of twenty-five (25) feet.

4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick, stone, stucco or other material approved by Declarant. All exterior front and side walls of all main residential structures not covered by brick, stone, stucco or other approved materials, must have horizontal siding with the color approved by the Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete or other approved material. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Direct vent fireplaces are permitted. Any fireplace chimneys extending above the roofline shall be covered with brick, stone, stucco or other material approved in writing by Declarant. Unless otherwise approved by the Declarant, roofs are to be covered with "Weathered Wood" Presidential Shake Celotex shingles or earth-tone tile or slate. All other external materials of any Improvement shall be of white, off-white or earth-tone. All tiwalls must be of brick, concrete, concrete pavers, or other approved interlocking materials. No wood/railroad tiwalls will be allowed.

5. 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 premises shall be used in any way for any purpose that may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. No business activities of any kind shall be conducted on any Lot. Provided, however, this 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 exterior television or radio antenna or disc greater than 18" x 24" in size shall be permitted on any Lot other than in an enclosed structure hidden from public view.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles be 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.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be parked 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 semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

9. No incinerator, trash burner or outside fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pick up 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, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards. All Lots shall be fully sodded at the time of completion of the Improvements.

10. 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.

11. No fence shall be permitted to extend beyond the front line of a main residential structure. Fences shall be only composed of wrought iron or ornamental iron or materials that have a like appearance. No fence shall be below the height of four (4) feet or exceed the height of six (6) feet. No wall shall exist above ground.

12. No swimming pool may extend more than one foot above ground level.

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 four (4) 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 Omaha.

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. No dog runs or kennels allowed unless approved by the Declarant. No livestock or agricultural-type animals shall be allowed Subdivision, including pot-bellied pigs.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or a side yard so as not to be visible from the street. 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 and is as large in area as the largest Lot.

19. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time for a residence, either temporarily or permanently. Any owner may erect a swing set, playground equipment, pool house or other non-prohibited structure on a Lot only after securing the prior written approval of the Declarant. No structure or dwelling shall be moved from outside Deer Creek to any Lot without the written approval of Declarant.

20. Except for connection and access facilities, all utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

21. No garage doors shall be permitted to remain open except when entry to and exit from the garage is required.

22. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, 1943, shall be permitted in Deer Creek Subdivision.

7

**ARTICLE II  
RESIDENTIAL LOT RESTRICTIONS AND EASEMENTS  
AS RELATED TO GOLF COURSE**

1. All Lot owners hereby acknowledge that certain of the Lots may not have an unobstructed view, or may not have any view at all of the Golf Course to be constructed on Lots 234 through 239 of Deer Creek Subdivision, (hereinafter "Golf Course" or "Golf Course Lots"), and that the right of privacy appurtenant to each residential lot shall be subject to such disruption and invasion, by noise, windblown debris and the like, as is normally associated with Golf Course construction/maintenance, grass mowing and equipment maintenance.

2. Assumption of Golf Course Risks: By acceptance of a deed to a Lot, each Owner acknowledges that owning property in Deer Creek is subject to each of the following risks and that the owner assumes each of these risks: (i) the risk of damage to property or injury to persons or animals from golf balls hit on or over an Owner's Lot or other portions of the Development; (ii) the entry by golfers onto Owner's Lot or other portions of the Development to retrieve golf balls; (iii) overspray in connection with the watering or fertilizing of the roughs, fairways and greens on the Golf Course; (iv) noise from Golf Course maintenance and operation equipment (including, without limitation, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (v) the use of fertilizers, pesticides and other chemicals on the Golf Course; (vi) odors arising from irrigation and fertilization of the turf situated on the Golf Course; and (vii) disturbance and loss of privacy resulting from golf course maintenance, golf cart traffic and golfers. Additionally, each Owner acknowledges and understands that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the Golf Course.

Each Owner expressly assumes such detriments and risks and agrees that neither Declarant, any Residential Developer, the Golf Course Owner, or any director, officer, manager, employee or agent thereof, nor any of their successors or assigns shall be liable to the Owner or occupant of any Lot, or any family member, guest, employee or agent, or anyone else claiming any loss or damage, including without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or residence to the Golf Course. Each Owner shall indemnify and hold harmless Declarant, the Residential Developers, and the Golf Course Owner, and their successors and assigns against any and all such claims by Owner's family members, invitee or agents. The Owner's foregoing indemnity obligations shall not exceed the amount of liability insurance maintained by the Owner at the time the event occurred that gave rise to the Owner's indemnity obligations.

3. Appearance of Golf Course: Each Owner acknowledges, understands and agrees that no Owner shall have the right to compel the Golf Course Owner to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements shall be determined in the sole discretion of the Golf Course Owner.

8

4. **Golf Course Easements.** There is reserved for the benefit of the Golf Course Owner, and its successors and assigns, a nonexclusive right and easement appurtenant to the Golf Course as the dominant tenement over each Residential Lot as the servient tenement for purposes of overspray in connection with the watering and fertilizing of the roughs, fairways, tees and greens on the Golf Course and for the intrusion of golf balls onto or over the servient tenement from the roughs, fairways, tees and greens of the Golf Course. Any person for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such Person. The right and easements reserved by this section shall be for the benefit of the Golf Course Owner, Declarant and the Residential Developers and their successors and assigns and for the benefit of their employees, contractors, agents, guest, invitees, licensees and all persons playing the golf course, (collectively referred to as "Beneficiaries").

5. Prior to commencement of any construction activities on any Lot which is adjacent to one or more of the Golf Course Lots, a silt fence must be installed in a trench constructed along all boundary lines of such lot which are adjacent to the golf course, so as to prevent any run off of silt or other erosion from such lot onto the golf course property.

### **ARTICLE III. LANDSCAPE BUFFER AND BOUNDARY FENCE**

1. Declarant may, at its sole discretion, construct a landscape buffer and/or boundary fence along the north ten (10) feet of Lots 68, 136, and 231 inclusive, and the south ten (10) feet of Lot 105 (the "Landscape Buffer and Boundary Fence"). These lots are collectively referred to as the "Boundary Lots."

2. Declarant hereby declares that the Boundary Lots are subject to a permanent and exclusive right and easement in favor of Declarant and the Deer Creek Homeowners' Association to maintain, repair and replace the Landscape Buffer and Boundary Fence. Without limitation of the rights and easements granted by this Declaration, the Declarant or Association may come upon any of the Boundary Lots for the purpose of constructing, installing, repairing, maintaining, removing and replacing the Landscape Buffer and Boundary Fence.

### **ARTICLE IV. HOMEOWNERS' ASSOCIATION**

1. The Association. Declarant shall cause the incorporation of Deer Creek Homeowners' Association, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association shall have 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 Deer Creek. 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 Members. The rules and regulations may permit or restrict use of the Common Facilities to 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 Deer Creek; and the protection and maintenance of the residential character of Deer Creek.

2. Membership and Voting. Deer Creek initially contains One Hundred fifty Nine (159) single family residential Lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. The Association shall include further phases of Deer Creek as may be developed by the Declarant. 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 owners of each Lot, whether one or more persons or entities, shall be entitled to one (1) vote on each matter properly coming before the members of the Association, except that Declarants shall have three votes for each lot owned until the total number of lots owned by non-Declarants equals 80% of the total number of lots included in the Association (including further phases of Deer Creek as developed by the Declarant), at which time all lots shall be entitled to one vote.

3. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be effected from time to time by the Declarant by recordation with the Register of Deeds of Douglas County, Nebraska, of an Amendment to Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall become subject to this Declaration. In addition, the Amendment to Declaration may declare that all or any part of the additional residential lots which shall become subject to the Declaration shall be

Boundary Lots as that term is defined in Article III herein and such additional Boundary Lots shall be subject to all restrictions and obligations on Boundary Lots set forth herein.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of the Deer Creek Homeowners' Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

4. 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, medians and islands in cul-de-sacs, outlets and other public property and improvements on parks or public property within or near Deer Creek.

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.

5. Mandatory Duties of Association. The Association shall maintain and repair any entrance landscaping, entrance monuments, and signs that have been installed by Declarant in generally good and neat condition and any property or lots which the Association may own.

6. 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 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.

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues and assessments 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. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens.

8. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' 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 attorneys' 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.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association and to perform the Powers and Responsibilities of the Association described in this Article.

10. Annual Dues. The Board of Directors may establish annual dues in such amount as deemed necessary to carry out the purposes and responsibilities of the Association.

11. 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 Dollars (\$200.00) per Lot unless the Board decides by unanimous vote to exceed such amount.

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 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 assessments 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 and assessment shall bear interest from the due date at the rate of Fifteen percent (15%) 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 and shall be indemnified against the interest, costs and reasonable attorneys' 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 given 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.

**ARTICLE V.  
EASEMENTS**

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, US West Company, and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, Metropolitan

Utilities Company, and Sanitary and Improvement District No. 405 of Douglas 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 Company, 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 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. All easements along side lot lines shall be automatically released if the lots adjoining both sides of the side lot line(s) are under common ownership and one dwelling unit is constructed on all of such lots.

4. A perpetual easement is further reserved in favor of the Declarant and the Association, its successors and assigns, to create, install, repair, reconstruct, maintain, and renew a landscape buffer and/or boundary fence and related accessories located on, over and upon the north ten (10) feet of Lots 68, 136, and 231, and the south ten (10) feet of Lot 105.

5. Other easements are provided for in the final plat(s) of Deer Creek which are filed in the Register of Deeds of Douglas County, Nebraska.

**ARTICLE VI.  
GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted only 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 all loss or damages arising out 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 term of twenty-five (25) years from the date this Declaration is recorded, but shall be automatically renewed for successive periods of five (5) years each unless terminated as provided below. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, 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 or, after twenty-five (25) years, terminated, by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots. Provided, however, that the provisions of Article I, Paragraph 22 shall not be amended or changed by Declarant, any person, firm, corporation, partnership or entity designated in writing by Declarant, or seventy-five (75%) of the owners of the Lots.

3. By written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver modification or amendment will have on the Deer Creek subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

4. Declarant, or its successors or assigns, 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, Declarant shall appoint the Association 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.

5. 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 effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 6<sup>th</sup> day of October, 1999.

DEER CREEK DEVELOPMENT

By: [Signature]

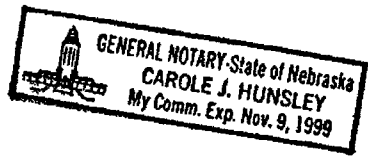
By: [Signature]

By: IRISHSTONE, L.L.C., a Nebraska limited liability company, member

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of October, 1999, by Kevin Irish, personally known to me to be the Manager of IRISHSTONE, L.L.C., a Nebraska limited liability company and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

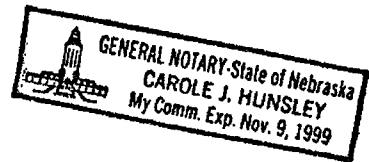
[Signature]  
Notary Public



STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of October, 1999, by Dan Livingston, personally known to me to be the Manager of IRISHSTONE, L.L.C., a Nebraska limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

[Signature]  
Notary Public





1291 414 MISC



06541 98 414-419

Nebr Doc Stamp Tax
Date
\$
By

RECEIVED

APR 30 3 18 PM '99

RICHARD H. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

6541  
384

FEE 31 FB OK 60000 CR  
BNP 29.16.12 G/O COMP EB  
DEL COAN dr

After recording, return to:

Robert J. Huck, Esq.  
Croker, Huck, Kasher, DeWitt,  
Anderson & Gonderinger, P.C.  
2120 South 72nd Street, Suite 1250  
Omaha, NE 68124

**PROTECTIVE AND RESTRICTIVE COVENANTS**

THIS DECLARATION, made this 17<sup>th</sup> day of December, 1998, by the undersigned, WITNESSETH:

WHEREAS, SUNSET SPEEDWAY, INC, a Nebraska corporation ("Declarant") is the owner of the property legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Sunset Property"); and whereas Declarant has entered into an agreement with IrishStone, L.L.C. whereby the Declarant received valuable consideration for its agreement to place certain restrictions on the Sunset Property in favor of the current and future owners of any part of the property legally described in Exhibit "B" attached hereto and incorporated herein by this reference, which is intended to be platted as the Deer Creek Subdivision (the "Deer Creek Property"); and whereas Declarant intends that the Sunset Property be bound by the covenants, restrictions and conditions contained herein and that the purchasers of all or any part of the Sunset Property take title subject to the covenants, restrictions and conditions described herein to inure to the benefit of, and to protect, the current and future owners of all or any part of the Deer Creek Property and in general to enhance the value of the Sunset Property and the Deer Creek Property.

NOW, THEREFORE, the Declarant hereby declares that all or any part of the Sunset Property shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions. These restrictions, covenants, and conditions shall run with the Sunset Property and shall be binding upon all parties having or acquiring any right, title or interest in the Sunset Property, or any part thereof. The Sunset Property is and shall be subject to all and each of the following covenants, restrictions and conditions.

Covenants, Restrictions and Conditions

1. After October 31, 2000 no automobile racing operations shall be permitted on the Sunset Property and the Sunset Property shall not be used in any manner which creates automotive racing noise or any other unreasonably disturbing noises, odors or sounds. No floodlights or spotlights shall be used on the Sunset Property which are unreasonably bright or disruptive to the present or future owners of any part of the Deer Creek Property. Furthermore the Sunset Property shall not be used in any manner which would constitute a nuisance which may be disturbing to the current or future owners of any part of the Deer Creek Property. Declarant may operate any business other than automotive racing allowed under the applicable zoning codes so long as such business does not violate the terms of this paragraph prohibiting nuisances including automotive racing noise or any other unreasonably disturbing noises, odors, sounds, or the use of floodlights or spotlights. The parties expressly acknowledge that Declarant may reasonably operate a restaurant, lounge or banquet facility on the Sunset Property and such use is not prohibited by these covenants, restrictions and conditions.





EXHIBIT "A"

The following is the legal description for the property described as the "Sunset Property" in the Protective and Restrictive Covenants:

The East 20 acres of the Northeast quarter of the Northwest quarter of Section 29, Township 16 North, Range 12, East of the Sixth P.M., the West 20 acres being the West  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Sec. 29, Township 16, Range 12, East of the Sixth P.M.

NE NW

597-97//172850

Tract A:

EXHIBIT "B"

The West 1/2 of the SE 1/4 of Section 30, Township 16 North, Range 12, East of the 6th P.M., Douglas County, Nebraska,

EXCEPT

that part of the West 1/2 of the SE 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the Southwest corner of said West 1/2; thence North (assumed bearing) on the West line of said West 1/2, 1117.00 feet to the point of beginning; thence continuing North on the West line of said West 1/2, 368.00 feet; thence North 87°13'27" East 825.97 feet; thence South 408.00 feet; thence West 825.00 feet to the point of beginning,

EXCEPT

NW SE  
SW SE

a parcel of land lying in the SE 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, being more particularly described as follows: Beginning at the Southwest corner of the SE 1/4 of said Section 30; thence North 00°05'14" West (assumed bearing) along the West line of said SE 1/4, 141.50 feet to a point on the Westerly right-of-way line of 126th Street, thence South 20°45'14" East along said Westerly right-of-way, 104.29 feet; thence South 07°14'46" West, along said Westerly right-of-way line, 44.00 feet to a point on the South line of said SE 1/4; thence South 89°23'41" West, along said South line, 31.19 feet to the point of beginning.

TRACT B:

A tract of land located in the NW 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at the SE corner of the NW 1/4 of said Section 30, thence South 87°48'23" West (assumed bearing) along the South line of said NW 1/4 1732.38 feet to the point of beginning, thence continuing South 87°48'23" West along said South line 619.51 feet to the beginning of a curve concave to the Northwest having a radius of 525.00 feet, an arc length of 263.93 feet, and a chord bearing North 55°52'23" East, 261.16 feet to the beginning of a reverse curve concave to the Southeast having a radius of 475.00 feet, an arc length of 324.66 feet, and a chord bearing North 61°03'05" East, 318.37 feet; thence North 80°37'55" East, 104.30 feet; thence South 04°09'27" East, 294.66 feet to the point of beginning and containing 2.507 acres, more or less.

TRACT C:

SW NW

A tract of land lying in the North 1/2 of the NE 1/4 of Section 31, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Beginning at the North quarter corner of Section 31 and assuming the North line of the NE 1/4 to bear North 89°19'17" East; thence North 89°19'17" East a distance of 2634.12 feet to the NE corner of Section 31; thence South 00°00'11" East along the East line of the NE 1/4 a distance of 881.43 feet to the centerline of Military Avenue "as traveled"; thence North 81°51'58" West along said centerline a distance of 1970.65 feet to the point of curvature of 478.30 foot radius curve to the left; thence Westerly along said curve a distance of 110.12 feet (having a chord bearing of North 88°27'43" West and a chord distance of 109.88 feet) to the point of tangency; thence South 84°56'32" West a distance of 153.16 feet to the point of curvature of a 1348.50 foot radius curve to the right; thence Westerly along said curve a distance of 244.63 feet (having a chord bearing of North 89°51'39" West and a chord distance of 244.29 feet) to the point of tangency; thence North 84°39'50" West a distance of 176.85 feet to the West line of the NE 1/4; thence North 00°02'15" West a distance of 564.92 feet to the point of beginning, except that part deeded to Douglas County, Nebraska, dated February 3, 1982, filed February 5, 1982 in Book 1681 at Page 680, and dated February 3, 1982, filed February 5, 1982 in Book 1681 at Page 681, and dated February 3, 1982, filed February 5, 1982 in Book 1681 at Page 682, and dated February 3, 1982, filed February 5, 1982 in Book 1681 at Page 684, and dated March 15, 1985, filed March 21, 1985 in Book 1751 at Page 215, and dated March 15, 1985, filed March 21, 1985 in Book 1751 at Page 216. Subject to easements for road purposes and Mobil Petroleum Pipeline.

NE NE

TRACT D:

The East 242.00 feet of the North 180.00 feet of the SW 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska.

TRACT E:

That part of the NW 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Beginning at the SE corner of said NW 1/4; thence West (assumed bearing) on the South line of said NW 1/4, 1732.38 feet; thence North  $01^{\circ}57'50''$  West, 320.98 feet; thence North  $89^{\circ}10'51''$  East, 699.49 feet; thence East 157.46 feet; thence South 233.00 feet; thence South  $63^{\circ}58'42''$  East, 108.93 feet; thence East on a line 50.00 feet North of and parallel to the South line of said NW 1/4, 788.80 feet to a point on the East line of said NW 1/4; thence South  $00^{\circ}13'07''$  West on the East line of said NW 1/4, 50.00 feet to the point of beginning.  
Subject to easements of record, if any, and lawful highways.

SE NW  
SW NW

TRACT F:

That part of the West 1/2 of the SE 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the SW corner of said West 1/2; thence North (assumed bearing) 1117.00 feet on the West line of said West 1/2; thence East 33.00 feet to the point of beginning; thence North 100.00 feet on a line 33.00 feet East of and parallel to the West line of said West 1/2; thence East 352.00 feet; thence North 286.67 feet; thence North  $87^{\circ}13'27''$  East, 440.52 feet; thence South 408.00 feet; thence West 792.00 feet to the point of beginning.

TRACT G:

The East 764 feet of the North 375 feet of the Southwest 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., except the East 242 feet of the North 180 feet thereof, as surveyed, platted and recorded in Douglas County, Nebraska.

NE SW

TRACT H:

That part of the West 1/2 of the Southeast 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the SW corner of said West 1/2; thence North (assumed bearing) 1117.00 feet on the West line of said West 1/2; thence East 33.00 feet; thence North 100.00 feet on a line 33.00 feet East of and parallel to the West line of said West 1/2 to the point of beginning; thence East 352.00 feet; thence North 286.67 feet; thence South  $87^{\circ}13'27''$  West 352.41 feet; thence South 269.60 feet on a line 33.00 feet East of and parallel to the West line of said West 1/2 to the point of beginning.

TRACT I:

The East 1/2 of the SE 1/4 of Section 30, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, except the East 33 feet.  
Subject to easements of record, if any, and lawful highways.

NE SE  
SE SE

TRACT J:

The SW 1/4 of Section 29, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska,

EXCEPT

- (1) the North 208.71 feet of the West 208.71 feet,
- (2) the North 212.75 feet of the East 417.00 feet thereof,
- (3) a tract of land lying in the SW 1/4 of Section 29, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Beginning at the South quarter corner of Section 29, and assuming the North-South 1/4 line of Section 29 to bear due North-South; thence South  $89^{\circ}39'03''$  West along the South line of the Southwest 1/4 a distance of 524.26 feet; thence North a distance of 880.05 feet; thence North  $86^{\circ}36'37''$  East a distance of 525.17 feet; thence South along the North-South 1/4 line of Section 29, a distance of 907.91 feet to the point of beginning.

NE SW  
NW SW  
SE SW  
SW SW



MISC 2012005787



JAN 19 2012 11:47 P 21

21/ *MIUC*  
 FEE *28600* FB *See legal*  
*cash*  
 1362 BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP *See*  
 K DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_  
*cash*



Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
1/19/2012 11:47:34.58



2012005787

**AGREEMENT TO  
 AMEND AND RESTATE DECLARATION  
 OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
 OF DEER CREEK, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA**

*JANUARY, 2012*

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Deer Creek, A Subdivision in Douglas County, Nebraska (hereinafter referred to as "Amendment") is made this 16 day of ~~December, 2011~~, by THE DC HOMEOWNERS' ASSOCIATION (hereinafter referred to as "Successor Declarant") and LANDMARK ENTERPRISES, INC., a Nebraska corporation, successor in interest to IRISHSTONE, L.L.C. (hereinafter referred to as "Original Declarant").

**WITNESSETH:**

WHEREAS, on October 9, 1999, Irishstone, L.L.C. filed that certain Declaration of Covenants, Conditions, Restrictions and Easements of Phase 1 of Deer Creek, a Subdivision in Douglas County, Nebraska, recorded in Official Records Book 1314 Page 380 of the Public Records of Douglas County, Nebraska; and on November 27, 2001, Irishstone, L.L.C. filed that certain Declaration of Covenants, Conditions, Restrictions and Easements of Phase 2 of Deer Creek, a Subdivision in Douglas County, Nebraska, recorded in Official Records Book 1410, Pages 053-066 et seq. of the Public Records of Douglas County, Nebraska (collectively referred to herein as "Declaration"); and

WHEREAS, Successor Declarant desires to amend and restate the Declaration in its entirety and have such Amended and Restated Declaration apply to all lots located within both Phase 1 and Phase 2 of Deer Creek; and

WHEREAS, Irishstone, L.L.C. sold some of the lots it owned within Phases 1 and 2 of Deer Creek to Landmark Enterprises, Inc. in 2005 at which time, under the terms and provisions of the purchase agreements executed by Irishstone, L.L.C. and Landmark Enterprises, Inc., Landmark Enterprises, Inc. assumed some of the rights, responsibilities and obligations of Irishstone, L.L.C., specifically assuming the Original Declarant's rights and responsibilities with respect to Phases 1 and 2 of Deer Creek.

WHEREAS, pursuant to Article VI, Section 2 of the Declaration, the Declaration may be amended at any time by the affirmative vote or written consent, or any combination thereof, of the owners of not less than seventy-five percent (75%) of the Lots.

*Deer Creek HOA*

*2012005787*

WHEREAS, the Board of Directors of the Successor Declarant has proposed to amend and restate the Declaration in order to update the method of community governance, to establish flexible and reasonable procedures to govern owners of residences and to further define the procedures and responsibilities of the Board of Directors and the Successor Declarant, among other things; and

WHEREAS, notice of a special meeting of the Successor Declarant for the purpose of considering this Amendment was given to each Voting Member on July 10, 2008; and

WHEREAS, a special meeting of the Successor Declarant was held on July 17, 2008, for the purpose of considering this Amendment. Upon motion duly made and seconded it was agreed that, in order to give all members of the Successor Declarant sufficient time to consider the proposed amendments to the Declaration, such meeting be reconvened at a later date. Notices of such reconvened meeting were given to all members of the Successor Declarant on March 19, 2009, and such reconvened meeting was then held on March 26, 2009, at which 291 votes were cast in favor of this Amendment.

WHEREAS, eighty-one percent (81%) of the owners of the Lots voted to amend and restate the Declaration by adopting this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Deer Creek, a Subdivision in Douglas County, Nebraska ("Amendment").

NOW THEREFORE, the Declaration is hereby amended by striking it and all amendments and exhibits thereto in their entirety and substituting in its place the Amended and Restated Declaration attached hereto.

IN WITNESS WHEREOF, the undersigned officers of the Successor Declarant hereby certify that this Amendment has received the requisite approval pursuant to Article VI, Section 2 of the Declaration this 16 day of ~~December 2011~~, as set forth on the following Certification.

*JANUARY 2012*

DC HOMEOWNERS' ASSOCIATION

By: *Richard Rozgay*  
Its: President *ST* RICHARD ROZGAY  
By: *David W. Andersen*  
Its: Secretary DAVID ANDERSEN

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of DC HOMEOWNERS' ASSOCIATION, a Nebraska nonprofit corporation, and that the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Deer Creek was duly adopted at a meeting of the Successor Declarant held on the 26th day of March, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Successor Declarant this 16 day of ~~December 2011~~.

*JANUARY 2012*

X *David W. Andersen*  
DAVID ANDERSEN

SECRETARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

*JANUARY 2012 DRS*

On this 16 day of ~~December, 2011~~, before me, the undersigned, a Notary Public in and for said County, personally came RICHARD ROZBAY and DAVID ANDERSEN, to me personally known to be the President and Secretary of DC Homeowners' Association, and the identical person whose name is affixed to the above and foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easement of Deer Creek, A Subdivision In Douglas County, Nebraska and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said corporation.

WITNESS my hand and Notary Seal at Omaha, Nebraska, the day and year last above written.

*David E. Smith*  
\_\_\_\_\_  
NOTARY PUBLIC





**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
DEER CREEK, A SUBDIVISION IN  
DOUGLAS COUNTY, NEBRASKA**

THIS AMENDED AND RESTATED DECLARATION is made this 26th day of March, 2009 by DC HOMEOWNERS' ASSOCIATION, INC., a Nebraska nonprofit corporation (hereinafter referred to as "Successor Declarant") and LANDMARK ENTERPRISES, INC., a Nebraska corporation, successor in interest to IRISHSTONE, L.L.C (hereinafter referred to as "Original Declarant").

**WITNESSETH:**

NOW, THEREFORE, Successor Declarant hereby declares that all of the real property described on Exhibit "A", hereto (the "Properties") shall be subject to the covenants, conditions, restrictions and easements set forth in this Amendment. Successor Declarant further declares that the Properties shall be held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to the easements, restrictions, covenants and conditions set forth below, which are for the purpose of protecting the value and desirability of the Properties, and which shall run with such real property and be binding on all parties having any right, title or interest in or to all or any portions of the Properties, their heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of each Owner thereof.

**ARTICLE I**

**DEFINITIONS**

1. "Successor Declarant" shall mean and refer to the DC HOMEOWNERS' ASSOCIATION, its successors and assigns.
2. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Successor Declarant and any board, group or entity of the successor or assigns to the Successor Declarant serving in a comparable capacity to the Board of Directors of the Successor Declarant.
3. "Common Area" shall mean and refer to all real property and any improvements thereon from time to time owned or leased by the Successor Declarant for the common use and enjoyment of all of the Members. Such property may (but need not) include any common areas, recreational facilities, parks and other open space land, storm water management and drainage facilities, private streets not dedicated to the City of Omaha, Douglas County, or State of Nebraska, pathway and bikeway systems and fencing on Common Areas. The Successor Declarant is responsible for management and maintenance of all Common Areas.
4. "Original Declarant" shall mean Landmark Enterprises, Inc.
5. "Declaration" shall mean and refer collectively to the Declaration of Covenants, Conditions, Restrictions and Easements dated October 6, 1999 and recorded October 27, 1999 in the Office of the Register of Deeds of Douglas County, Nebraska, in Book 1314 at Page 380, and the Declaration of Covenants, Conditions, Restrictions and Easements dated November 19, 2001 and recorded November

27, 2001, in the office of the Register of Deeds of Douglas County, Nebraska in Book 1410 at Page 53, applicable to the Properties, as amended and restated from time to time.

6. **"Governing Documents"** shall mean and refer to Declaration, Amendment, Articles of Incorporation, Bylaws and any Rules and Regulations adopted by the Board of Directors.

7. **"Improvement"** shall mean and refer to:

a. Any thing or object (other than trees, shrubbery, landscaping and hedges which will be less than two feet high at full growth) the placement of which upon any Property may affect the appearance of such Property, including but not limited to building, garage, porch, shed, greenhouse, covered or uncovered patio, swimming pool, playground equipment, fence, curbing, paving, wall, signboard, wishing well, bird bath, statues or any other temporary or permanent improvement on such Property.

b. Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Property.

c. Any change of more than six (6) inches in the grade of any Property.

8. **"Lot"** shall mean and refer to any platted lot (other than for roadways) shown upon any recorded subdivision map of the Property.

9. **"Member"** shall mean and refer to all Owners of Lots.

10. **"Owner"** shall mean and refer to:

a. The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and

b. The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchaser's obligation under the contract.

11. **"Property" or "Properties"** shall mean and refer to that certain real property, more particularly described in Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Successor Declarant.

12. **"Special Assessment"** shall mean and refer to the charge or charges imposed pursuant to this Amendment.

## ARTICLE II 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 Original Declarant and/or the Successor

Declarant (hereinafter jointly referred to as "Original Declarant"), or their successors or assigns, for use in connection with a Common Facility, or as a church, school, park, golf course or for non-profit use.

2. No Improvement shall be constructed, reconstructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by the Original Declarant or the Architectural Review Committee (the "ARC"), as hereinafter defined, pursuant to Article VI of this Amendment, as follows:

a. An owner desiring to erect an Improvement shall deliver one set of construction plans, landscaping plans and plot plans to Original Declarant or ARC (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Original Declarant or ARC of the Owner's mailing address.

b. Original Declarant or ARC shall review such plans in light of the conditions and restrictions of Article II of this Amendment and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Original Declarant and ARC intend that the Lots shall be developed as 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 Original Declarant or ARC in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within Deer Creek Subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Amendment. If Original Declarant or ARC determines that the proposed Improvement does not conform to the surrounding improvements or topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Original Declarant or ARC may refuse approval of the proposed Improvement.

c. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Original Declarant or ARC, or to control, direct or influence the acts of the Original Declarant or ARC with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Original Declarant or ARC by virtue of the authority granted to Original Declarant or ARC in this Paragraph, or as a result of any act or failure to act by Original Declarant or ARC with respect to any proposed Improvement.

d. Upon the earliest to occur of the following:

- i. Single family residences shall be constructed and occupied on ninety percent (90%) of all the Lots, or
- ii. December 31, 2011

all discretions of Original Declarant under this Article II, Paragraph 2, shall transfer to the Homeowner's Successor Declarant and shall be administered pursuant to the provisions of Article VI herein.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling that does not exceed two and one-half stories in height ("Residence"). Residences on all Lots shall have minimum setbacks based on zoning as outlined below:

<u>Lot Number</u>	<u>Zoning</u>	<u>Front Yard</u>	<u>Rear Yard</u>	<u>Interior Side Yard</u>	<u>Side Yard Facing Street</u>
1 through 36	R-4	25'	25'	5'	15'
69 through 135	R-4	25'	25'	5'	15'
178 through 233	R-4	25'	25'	5'	15'
246 through 269	R-4	25'	25'	5'	15'
270 through 314 (Estate Lots)	R-3	35'	25'	7'	17.5'
315-317	R-4	25'	25'	5'	15'
318 through 390 (Villas)	R-5	25'	25'	5'	15'
391 through 450	R-4	25'	25'	5'	15'

4. The exposed front foundation walls and any foundation walls facing any street of all main residential Improvements must be constructed of or faced with brick, stone, stucco or other material approved by the Original Declarant or ARC. All exterior front and side walls of all main residential Improvements not covered by brick, stone, stucco or other approved materials, must have horizontal siding with the color approved by the Original Declarant or ARC. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete or other approved materials. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Direct vent fireplaces are permitted. Any fireplace chimneys extending above the roofline shall be covered with brick, stone, stucco or other materials approved in writing by Original Declarant or ARC. Unless otherwise approved by the Original Declarant or ARC, roofs are to be covered with "Weathered Wood" Presidential Shake Celotex shingles or earth-tone tile or slate. All other external materials of any Improvement shall be of white, off-white or earth-tone. All tie walls must be of brick, concrete, concrete pavers, or other approved interlocking materials. No wood/railroad tie walls will be allowed.

5. 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 lot as "For Sale", without express written permission from the Board. Advertising signs, billboards, unsightly objects or nuisances shall never be erected, placed or permitted to remain on any Common Area Lot without express written permission from the Board.

6. No premises shall be used in any way for any purpose that may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof.

7. No business activities of any kind shall be conducted on any Lot without express written permission from the Board of Directors. Provided, however, the provisions of paragraphs 5, 6 and 7 shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Original Declarant, their agents or assigns, during the construction and sale of the Lots.

8. No exterior television or radio antenna or disc greater than 28"x25" in size shall be permitted on any Lot other than in an enclosed Improvement hidden from public view.
9. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles be abandoned on any Lot. No unused building materials, 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.
10. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be parked or stored on any part of a Lot (other than in an enclosed Improvement) for more than twenty (20) days within a calendar year. No other 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 semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this paragraph 10 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the city of Omaha, Nebraska.
11. No incinerator, trash burner or outside fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pick up 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, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards. All Lots shall be fully sodded at the time of completion of the Improvements.
12. 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.
13. No fence shall be permitted to extend beyond the front line of a main residential Improvement. All fencing shall be only composed of wrought iron or ornamental iron or materials that have a like appearance. No fence shall be below the height of four (4) feet or exceed the height of six (6) feet. No wall shall exist above ground.
14. No swimming pool may extend more than one foot above ground level.
15. 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 fashion as to materially change the grade or contour of any Lot.
16. 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 four (4) 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 Improvement and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.
17. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or placement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

18. 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 Improvement have been first approved by Original Declarant or ARC, or its assigns. Dog houses shall only be allowed at the rear of the residence. No dog runs or kennels allowed unless approved by the Original Declarant or ARC. No livestock or agricultural-type animals shall be allowed in the Subdivision, including pot-bellied pigs.
19. Any exterior air conditioning condenser unit shall be placed in the rear yard or a side yard so as not to be visible from the street. 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.
20. 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 and is as large in area as the largest Lot.
21. No Improvement of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time for a residence, either temporarily or permanently.
22. Any owner may erect a swing set, playground equipment, pool house or other nonprohibited Improvement on a Lot only after securing the prior written approval of the Original Declarant or ARC.
23. No Improvement or dwelling shall be moved from outside Deer Creek to any Lot without the written approval of Original Declarant or ARC.
24. Except for connection and access facilities, all utility service lines from each Lot line to a dwelling or other Improvement shall be underground.
25. No garage doors shall be permitted to remain open except when entry to and exit from the garage is required.
26. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, 1943, shall be permitted in Deer Creek Subdivision.
27. On each Lot, the Residence, structures and other Improvements shall be maintained in a neat, orderly and safe condition by the Owner of such Lot at all times. Exterior finishes on all structures, including the residence, shall not be permitted to remain in a chipped or peeling condition. The Owner of such Lot shall at all times maintain all sidewalks and other "public" Improvements upon such Lot in a safe and clean condition, free of any obstructions, trash, or other materials. In the event any Owner shall fail to so maintain any Lot, the Successor Declarant may notify the Owner that the Lot, Residence, or Improvements on the Lot require repair or renovation and shall provide specific requirements to such Owner for such repair or renovation. All such notices shall be in writing and issued to the Owner of any such Lot either in person or via certified U.S. mail, postage prepaid. Except for removal of trash or other obstructions, the Owner shall have 30 days after receipt of such notice in which to complete all such repairs and renovations set forth in the notice. In the event the Owner is unable to complete the necessary repairs and renovations within such 30 days in spite of Owner's good faith efforts to do so, the Owner may request an extension from the Successor Declarant, with such extension not to exceed 90 days, and

which request shall not be unreasonably denied by the Original Declarant or the Successor Declarant. Trash or obstructions on sidewalks must be removed within twenty-four (24) hours of the Lot Owner's receipt of notice.

Should any Owner fail to comply with a written notice, the Successor Declarant may take such actions as it deems reasonably necessary to restore the Lot, Residence and all Improvements and landscaping, to a neat and orderly condition. All costs incurred by the Successor Declarant shall become an assessment against the Lot and shall become the obligation of the Owner. Any such assessment shall be made as set forth in Article V below, and shall become a lien upon the Lot and its Improvements as set forth in Article V, Section 9 below.

### **ARTICLE III RESIDENTIAL LOT RESTRICTIONS AND EASEMENTS AS RELATED TO GOLF COURSE**

1. All Lot owners hereby acknowledge that certain of the Lots may not have an unobstructed view, or may not have any view at all, of the Golf Course to be constructed on Lots 234 through 239 and Lots 452 through 458 of Deer Creek Subdivision (hereinafter "Golf Course" or "Golf Course Lots"), and that the right of privacy appurtenant to each residential lot shall be subject to such disruption and invasion, by noise, windblown debris and the like, as is normally associated with golf course construction/maintenance, grass mowing and equipment maintenance.

2. Assumption of Golf Course Risks: By acceptance of a deed to a Lot, each Owner acknowledges that owning Property in Deer Creek is subject to each of the following risks and that the owner assumes each of these risks: (i) the risk of damage to property or injury to persons or animals from golf balls hit on or over an Owner's Lot or other portions of the Development; (ii) the entry by golfers onto Owner's Lot or other portions of the Development to retrieve golf balls; (iii) overspray in connection with the watering or fertilizing of the roughs, fairways and greens on the Golf Course; (iv) noise from Golf Course maintenance and operation equipment (including, without limitation, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (v) the use of fertilizers, pesticides and other chemicals on the Golf Course; (vi) odors arising from irrigation and fertilization of the turf situated on the Golf Course; and (vii) disturbance and loss of privacy resulting from golf course maintenance, golf cart traffic and golfers. Additionally, each Owner acknowledges and understands that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the Golf Course.

Each Owner expressly assumes such detriments and risks, and agrees that neither Original Declarant, Successor Declarant nor any Residential Developer, the Golf Course Owner, or any director, officer, manager, employee or agent thereof, nor any of their successors or assigns shall be liable to the Owner or occupant of any Lot, or any family member, guest, employee or agent, or anyone else claiming any loss or damage, including without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or residence to the Golf Course. Each Owner shall indemnify and hold harmless Original Declarant, Successor Declarant, the Residential Developers, and the Golf Course Owner, and their successors and assigns against any and all such claims by Owner's family members, invitees or agents. The Owner's foregoing indemnity obligations shall not exceed the amount of liability insurance maintained by the Owner at the time the event occurred that gave rise to the Owner's indemnity obligations.

3. Appearance of Golf Course: Each owner acknowledges, understands and agrees that no Owner shall have the right to compel the Golf Course Owner to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements shall be determined in the sole discretion of the Golf Course Owner.

4. Golf Course Easements. There is reserved for the benefit of the Golf Course Owner, and its successors and assigns, a nonexclusive right and easement appurtenant to the Golf Course as the dominant tenement over each Residential Lot as the servient tenement for purposes of overspray in connection with the watering and fertilizing of the roughs, fairways, tees and greens on the Golf Course and for the intrusion of golf balls onto or over the servient tenement from the roughs, fairways, tees and greens of the Golf Course. Any person for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such Person. The rights and easements reserved by this section shall be for the benefit of the Golf Course Owner, Original Declarant and the Residential Developers and their successors and assigns and for the benefit of their employees, contractors, agents, guests, invitees, licensees and all persons playing the golf course (collectively "Beneficiaries").

5. Prior to commencement of any construction activities on any Lot which is adjacent to one or more of the Golf Course Lots, a silt fence must be installed in a trench constructed along all boundary lines of such lot which are adjacent to the Golf Course, so as to prevent any run off of silt or other erosion from such lot onto the Golf Course property.

#### ARTICLE IV LANDSCAPE BUFFER AND BOUNDARY FENCE

1. Original Declarant hereby declares that the Boundary Lots are subject to a permanent and exclusive right and easement in favor of Original Declarant and the Successor Declarant to maintain, repair and replace the Landscape Buffer and Boundary Fence. Without limitation of the rights and easements granted by this Amendment, the Original Declarant or Successor Declarant may come upon any of the Boundary Lots for the purpose of constructing, installing, repairing, maintaining, removing and replacing the Landscape Buffer and Boundary Fence.

#### ARTICLE V HOMEOWNERS' ASSOCIATION

1. **The Successor Declarant.** Original Declarant shall cause the incorporation of DC Homeowners' Successor Declarant, a Nebraska not for profit corporation (hereinafter referred to as the "Successor Declarant"). The Successor Declarant shall have 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, playground and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Deer Creek. Common Facilities may be situated on property owned or leased by the Successor Declarant, on public property, on private property subject to an easement in favor of the Successor Declarant, 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 Members. The rules and regulations may permit or restrict use of the Common Facilities to 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 Deer Creek; and the protection and maintenance of the residential character of Deer Creek.

2. **Membership and Voting.** The Owner of each Lot in Deer Creek Phase I and Deer Creek Phase II shall be a Member of the Successor Declarant. For purposes of this Amendment, 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 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 Amendment. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The owners of each Lot, whether one or more persons or entities, shall be entitled to one (1) vote on each matter properly coming before the members of the Successor Declarant, except that Original Declarants shall have three votes for each lot owned until the total number of lots owned by non-Original Declarants equals 80% of the total number of lots included in the Successor Declarant at which time all Lots shall be entitled to one vote.

3. **Additional Lots.** Original Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Amendment is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be affected from time to time by the Original Declarant recordation with the Register of Deeds of Douglas County, Nebraska, of an Amendment, executed and acknowledged by Original Declarant, setting forth the identity of the additional residential lots which shall become subject to this Amendment. In addition, the Amendment may declare that all or any part of the additional residential lots which shall become subject to the Amendment shall be boundary Lots as that term is defined herein and such additional Boundary Lots shall be subject to all restrictions and obligations on Boundary Lots set forth herein.

4. **Purposes and Responsibilities.** The Successor Declarant 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 Successor Declarant. 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, medians and islands in cul-de-sacs, outlets and other public property and improvements on parks or public property within or near Deer Creek.

- c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues or assessments made pursuant to the terms of this Amendment.
- d. The expenditure, commitment and payment of Successor Declarant funds to accomplish the purposes of the Successor Declarant 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 Successor Declarant, the Board of Directors of the Successor Declarant 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 Successor Declarant as set forth in this Amendment, as the same may be amended from time to time.
- f. The acquisition by purchase or otherwise, holdings, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Successor Declarant.
- g. The deposit, investment and reinvestment of Successor Declarant 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 Successor Declarant in the performance of their duties and responsibilities of the Successor Declarant.
- i. General administration and management of the Successor Declarant, 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 Successor Declarant.

**5. Powers and Duties of the Board of Directors of the Successor Declarant.**

- a. **Powers:** The Board of Directors shall have, in addition to those powers under Nebraska law, the power to:
  - i. Adopt and publish rules and regulations governing the personal conduct of the Members and their guests and invitees, and to establish penalties for the infraction thereof;
  - ii. Suspend any Member's voting rights and right to receive Successor Declarant benefits during any period in which such Member shall be in default in the payment of any assessment levied by the Successor Declarant or in violation of any rules and regulations established by the Board of Directors;
  - iii. Exercise for the Successor Declarant all powers, duties and authority vested in or delegated to the Successor Declarant and not reserved to the membership by other provisions of the Bylaws and Articles of Incorporation of the Successor Declarant, or this Amendment including, without limitation, the mandatory duties of the Successor Declarant.

- iv. Employ managers, independent contractors, and such other employees and agents, which individuals or entities may also be members of the Board of Directors, as the Board may deem necessary to accomplish the purposes of the Successor Declarant set forth herein, and to prescribe their duties and set their compensation.
- b. Duties. It shall be the duty, in addition to those duties under Nebraska law, of the Board of Directors to:
- i. Cause to be kept a complete record of all of its acts and of the corporate affairs at the registered office and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;
  - ii. Supervise all officers, agents and employees of the Successor Declarant and see that their duties are properly performed;
  - iii. As more fully provided herein:
    - 1. Fix the amount of the periodic assessments against each Lot at least thirty (30) days in advance of each assessment period;
    - 2. Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each assessment period;
    - 3. Commence collection activities against any Lot or Owner for unpaid assessments more than 30 days delinquent. If less severe collection procedures do not result in the payment of the delinquent assessments, the Board shall foreclose the lien against any Lot charged with the assessment or shall bring an action against the Owner personally obligated for the assessment as, in the discretion of the Board, is most effective and expedient;
    - 4. Issue, or cause an appropriate officer to issue, upon demand, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of any such certificate. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;
    - 5. Procure and maintain general liability insurance as needed, and directors and officers liability insurance for the Successor Declarant, its officers and directors;
    - 6. Cause all officers and employees of the Successor Declarant having fiscal responsibilities to be bonded, as the Board may deem appropriate;
    - 7. Perform any other acts necessary to carry out the obligations and purposes of the Successor Declarant as described herein; and
    - 8. Keep a record of the names and addresses of the Members entitled to vote.

6. **Mandatory Duties of Successor Declarant.** The Successor Declarant shall maintain and repair any entrance landscaping, entrance monuments, and signs that have been installed by Original Declarant in generally good and neat condition and any property or lots which the Successor Declarant may own.

7. **Imposition of Dues and Assessments.** The Successor Declarant 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 Amendment. Except as otherwise specifically provided, the dues

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

8. **Abatement of Dues and Assessments.** Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues and assessments 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 Original Declarant. Lots owned by the Original Declarant shall not be subject to imposition of dues, assessments, or Successor Declarant liens.

9. **Liens and Personal Obligations for Dues and Assessments.** The assessments and dues, together with interest thereon, costs and reasonable attorneys' 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 attorneys' 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 Successor Declarant as to the amount of any unpaid assessments or dues.

10. **Purpose of Dues.** The dues collected by the Successor Declarant may be committed and expended to accomplish the purposes of the Successor Declarant to perform the Powers and Responsibilities of the Successor Declarant described in this Article.

11. **Annual Dues.** The Board of Directors may establish annual dues in such amount as deemed necessary to carry out the purposes and responsibilities of the Successor Declarant.

12. **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 Seven Hundred Fifty Dollars (\$750.00) per Lot unless the Board decides by unanimous vote to exceed that amount.

13. **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 above.

14. **Certificate as to Dues and Assessments.** The Successor Declarant shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Successor Declarant 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 assessments shall be and become a lien as of the date such amounts first become due and payable.

15. **Effect of Nonpayment of Assessments-Remedies of the Successor Declarant.** Any installment of dues or assessment, which is not paid when due, shall be delinquent. Delinquent dues and assessment shall bear interest from the due date at the rate of fifteen percent (15%) per annum, compounded annually. The Successor Declarant 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 Successor Declarant shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Successor Declarant with respect to such action. No Owner may waive or otherwise escape liability for the charge and the 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 Successor Declarant 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 Successor Declarant.

16. **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 given 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.

## ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE

1. **Composition and Appointment.** An Architectural Review Committee (the "ARC") may be elected by the Members or appointed by the Board of Directors, according to the Bylaws. Such Committee shall consist of at least three (3) members, and may be increased or decreased in size by the Board of Directors, from time to time. Members of the ARC shall serve as required by and according to the Bylaws. If any vacancy shall occur, the remaining members of the ARC may continue to act until the vacancy has been filled. Any member may be removed with cause by the Board of Directors. In the event that the Board of Directors shall fail to designate an Architectural Review Committee, the Board of Directors shall serve as the ARC.

2. **Powers and Duties.**

a. The ARC shall serve as an architectural review board and shall regulate the external design, appearance and location of the Lots, Lot Property Areas and Improvements thereon so as to enforce the architectural provisions of this Amendment, enforce the requirements of the recorded subdivision plats, deeds of subdivision, and to preserve and enhance values and maintain a harmonious relationship among Improvements and the Properties.

b. The ARC shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Amendment, the Articles of Incorporation and Bylaws of the Successor Declarant. Any decision or determination of the Architectural Committee may be appealed by a Member affected thereby to the Board of Directors.

3. **Failure of the Architectural Committee to Act.** If the ARC shall fail to act upon any request submitted to it within fifteen (15) days after a complete submission thereof in a form acceptable to the ARC, such request shall be submitted to the Board of Directors for approval. If the Board of Directors shall fail to act within fifteen (15) days after submission to the Board of Directors, then such request shall be deemed to have been approved as submitted, and no further action shall be required. Submission of incomplete plans shall not be considered by the ARC or the Board of Directors.

4. **Rules, Regulations and Policy Statements.** The ARC may recommend, from time to time, subject to the approval and adoption of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Amendment and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on. The ARC shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

- a. The ARC shall hold regular meetings as necessary. Meetings of the committee may be called by the Chairman and by a majority of the members of said committee.
- b. A majority of the members of the ARC present at any meeting shall constitute a quorum.
- c. The ARC shall maintain minutes of its meetings and a record of the votes taken thereat.
- d. All meetings of the ARC shall be open to the Members of the Successor Declarant and any vote of the ARC shall be taken at an open meeting. Nothing contained herein, however, shall prevent the ARC from meeting in closed session or executive session in accordance with State and Federal laws or regulations.
- e. A copy of all minutes, rules, regulations and policy statements of the Architectural Committee shall be filed with the records of the Successor Declarant and shall be maintained by the Successor Declarant as a permanent public record. The Successor Declarant shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations and policy statements available to any Member for copying.

5. **Expenses of the Architectural Committee.** The ARC may charge reasonable fees as approved by the Board of Directors for the processing of any requests, plans and specifications including consultation with a professional. The Successor Declarant shall pay all ordinary and necessary expenses of the Architectural Committee; provided, however, no member of the ARC shall be paid any salary or receive any other form of compensation.

6. **Right of Entry.** The Successor Declarant and the ARC through their authorized officers, employees and agents shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling or alteration of any Improvement thereon is in compliance with the provisions of this Article and Article II without the Successor Declarant or the ARC or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

## ARTICLE VII EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, US West Company, and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, Metropolitan Utilities Company and Sanitary and Improvement District No. 405 of Douglas 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 Company, 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 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 easement ways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways 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. All easements along side lot lines shall be automatically released if the lots adjoining both sides of the side lot line(s) are under common ownership and one Lot is constructed on all of such lots.

4. Other easements are provided for in the final plat(s) of Deer Creek which are filed in the Register of Deeds of Douglas County, Nebraska.

#### **ARTICLE VIII GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted only to the Original Declarant, the Original 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 Amendment either to prevent or restrain any violation or to recover all loss or damages arising out of such violation. Failure by the Original 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 Amendment shall run with and bind the land for a term of twenty-five (25) years from the date this Amendment is recorded, but shall be automatically renewed for successive periods of five (5) years each unless terminated as provided below. Thereafter this Amendment may be amended or, after twenty-five (25) years, terminated by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots. Provided, however, that the provisions of Article II, Paragraph 26, shall not be amended or changed by Original Declarant, any person, firm, corporation, partnership or entity designated in writing by Original Declarant, or seventy-five (75%) of the owners of the Lots.

3. Original Declarant, or its successors or assigns, may terminate its status as Original Declarant under this Amendment, at any time, by filing a Notice of Termination of Status as Original Declarant. Upon such filing, Original Declarant shall appoint the Successor Declarant or another entity, Successor Declarant or individual to serve as Original Declarant, and such appointee shall thereafter serve as Original Declarant with the same authority and powers as the original 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 effect.

#### **ARTICLE IX DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

1. **Claims.** The Successor Declarant and its directors and committee members, and the Owners subject to this Amendment agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Successor Declarant without the emotional and financial costs of litigation. Accordingly, each of the above named parties agrees not to file suit in any court with respect to a Claim described below, unless it has first submitted such Claim to the Board of Directors to negotiate a resolution. If a resolution cannot be achieved through negotiation with the Board of Directors, the Claim shall be submitted to Mediation as set forth below.

- a. As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to the interpretation, application, or enforcement of the Amendment, Bylaws or Rules of the Successor Declarant; or
- b. the rights, obligations, and duties of the Successor Declarant, its directors and committee members, and Owners; or
- c. any attempt or intention of the Successor Declarant to collect Assessments or other amounts due from any Owner; or
- d. any attempt or intention by the Successor Declarant to obtain a temporary restraining order; or
- e. any dispute between Owners, which does not include the Successor Declarant.

2. **Mediation.** If the parties to a Claim are not able to resolve said Claim after a reasonable period of time through negotiation, the Claim shall be submitted to mediation with an independent agency providing dispute resolution services in the Omaha, Nebraska area, as agreed upon by the parties. If the parties cannot agree on a dispute resolution provider, one shall be designated by the Successor Declarant, if the Successor Declarant is not party to the claim. If the Successor Declarant is party to the claim, the parties shall each designate a dispute resolution services provider, and those two providers shall select a third provider to mediate the dispute.

Each party shall bear its own costs of the mediation, including attorney's fees, and each party shall share equally all fees charged by the mediator.

In the event the parties do not achieve a settlement of the Claim in mediation, the parties retain the right to pursue any and all legal remedies available.

## ARTICLE X REMEDIES

Every Owner shall comply with the Governing Documents. The Board may impose sanctions for a violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- a. imposing reasonable uniform monetary fines, according to the Bylaws or Rules and Regulations of the Successor Declarant, which shall constitute a lien upon the violator's Lot, or
- b. suspending an Owner's right to vote; or



- c. exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation; or
- d. requiring an Owner, at its own expense, to remove any Improvement or improvement on such Owner's Lot in violation of this Amendment and to restore the Lot Property Area to its previous condition; or
- e. exercising self-help in any emergency situation and entry into any Lot for such purpose, which entry shall not be considered a trespass; or
- f. bringing a suit at law or in equity to enjoin any violation or recover monetary damages or both, after complying with the requirements of Article III.

IN WITNESS WHEREOF, the the Successor Declarant has caused this Amendment to be executed this 16 day of ~~December, 2011.~~ JANUARY 2012 *DR*

DC HOMEOWNERS' ASSOCIATION

By: *Richard Rozgay*  
 Its: President *DR* RICHARD ROZGAY

By: *X* *David Andersen*  
 Its: Secretary DAVID ANDERSEN

STATE OF NEBRASKA     )  
   ) ss:  
 COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 16 day of ~~December, 2011,~~ JANUARY 2012 *per* by RICHARD ROZGAY and DAVID ANDERSEN, personally known to me to be the President and Secretary of DC Homeowners' Association, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

*David E. Smith*

Notary Public

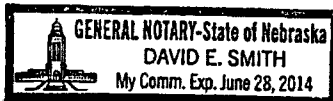


EXHIBIT "A"

DEER CREEK, A SUBDIVISION

OU-08756

OJ-08771

Lots 1 - 36, 69 - 135, 178 - 184, 188 - 229, 231 - 233, 246 - 277, 279 - 290, 293 - 298, 301 - 309, 311 - 315, 318 - 437, 440 - 450, R8-L1, R8-L2, R9-L1, R9-L2, R12-L9, R12-L10, R12-L11, R13-L1, R13-L2, R14-L1, R14-L2 and R15, all inclusive, in Deer Creek, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

14 00

(R8) Replat 8 - OJ-08792

(R9) Replat 9 - OU-08793

(R12) Replat 12 - OJ-08797

(R13) Replat 13 - OU-08799

(R14) Replat 14 - OJ-08815

(R15) Replat 15 - OJ-08816



1325 578 MISC



01602 00 578-591

Nebr Doc  
Stamp Tax

Date

\$

By

RICHARD K. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

00 JAN 31 PM 4:10

RECEIVED

FEE 950 FB DU-08756  
BKP Comp C/O \_\_\_\_\_ COMP 8%  
DEL \_\_\_\_\_ SCAN ✓ FV \_\_\_\_\_

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR LOTS 137 THROUGH 177 OF  
DEER CREEK SUBDIVISION  
KNOWN AS DEER CREEK FAIRWAY VILLAS**

THIS DECLARATION, made on the date hereinafter set forth by DAN WITT BUILDERS, INC., a Nebraska corporation, hereinafter referred to as "Declarant":

**WITNESSETH:**

WHEREAS, Declarant is the owner of the following described real property:

Lots 137 through 177, inclusive, Deer Creek, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarant desires to provide for the preservation of the value and amenities in a residential community and for the limited maintenance of private yards and certain private improvements; and to this end, desires to subject the properties to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created;

WHEREAS, Declarant plans to incorporate the Deer Creek Fairway Villas Homeowners Association under the laws of the State of Nebraska as a non-profit corporation, the purpose of which shall be to exercise the functions aforesaid; and

WHEREAS, Declarant will convey the said lots, subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the lots described above 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, desirability and attractiveness of said lots. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**

**DEFINITIONS**

Section 1. "Committee" shall mean the Architectural Control Committee appointed by the Board of Directors of the Deer Creek Fairway Villas Homeowners Association, a Nebraska non-profit corporation, its successors and assigns.

Section 2. "Association" shall mean and refer to the Deer Creek Fairway Villas Homeowners Association, a Nebraska non-profit corporation, its successors, and assigns.

*Patrick McGill #1400  
777 S. 15 St*

Section 3. "Common Properties" shall mean and refer to any areas of land declared to be Common Properties in any Supplemental Declaration filed by Declarant pursuant to Article II of the Declaration. All Common Properties shall be devoted to the exclusive common use and enjoyment of the Owners of the Properties.

Section 4. "Declarant" shall mean and refer to Dan Witt Builders, Inc., a Nebraska corporation, its successors and assigns.

Section 5. "Living Unit" shall mean and refer to any building situated upon the properties designated and intended for the use and occupancy as a residence by a single family.

Section 6. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon any recorded map or plat of the properties, upon which a Living Unit shall be built, or is proposed to be built, with the exception of the "Common Properties," as heretofore defined. The Lots subject to this Declaration are shown and described on Exhibit "A" attached hereto and by this reference incorporated herein. Any Supplemental Declaration hereinafter filed shall similarly reflect those Lots thereunder subject to this Declaration, or otherwise legally describe the real property to become subject to the Declaration.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Mortgagee" shall mean the holder or beneficiary of any mortgage, deed of trust or other security interest on or to any Lot or any improvements or fixtures thereon.

Section 9. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. The "Properties" shall mean and refer to all such properties as are subject to the Declaration or any Supplemental Declaration under the provisions of Article II hereof, which shall initially consist of Lots 137 through 177 inclusive, Deer Creek, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

Section 11. "Supplemental Declaration" shall mean and refer to any written instrument filed under the provisions of Article II hereof which shall subject additional real estate to this Declaration.

Section 12. "Tree" shall mean and refer to any specie of tree larger than one (1) inch diameter at chest height.

**ARTICLE II**

**PROPERTY SUBJECT TO DECLARATION**

The Properties shall be held, transferred, sold, conveyed and occupied subject hereto. Declarant shall incorporate the Association. The Association shall have the right at any time subsequent to the filing of this Declaration, to add, annex and subject additional land in Douglas County, Nebraska, to this Declaration by filing in the Office of the Register of Deeds of Douglas County, a written instrument duly executed and acknowledged by the Association, to the effect that such additional land is being subjected hereto. The annexation of additional land to be subject hereto shall require written instruments signed by not less than two-thirds (2/3) of the membership in the Association. Any real property thereby subjected to this Declaration shall, after said filing, be subject hereto and the owners thereof shall be subject to all the same duties, liabilities and rights hereunder as though said additional property had been originally a part of the real estate described in Article I hereof on the date of the filing of this Declaration.

**ARTICLE III**

**MEMBERSHIP**

Declarant, and every Owner as defined in Article I, Section 9, under this Declaration shall be a member of the Association. No Owner shall have more memberships than the number of Lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot

or Lots shall be the sole qualification for membership. The foregoing is not intended to include persons or entities (such as a lender or lien holder) who hold an interest merely as security for the performance of an obligation.

ARTICLE IV

VOTING RIGHTS

Members (Owners) shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. If multiple owners of a Lot cannot agree as to how their vote shall be cast, then they shall be deemed to have abstained from the vote, but they shall be deemed to have participated for purposes of any required quorum.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, subject to Section 7 of this Article, and each Owner of any Lot, except those exempt under Section 9 of this Article, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenant, and agree to pay to the Association: (i) annual assessment or charges; and (ii) special assessments for capital improvements; such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. All subsequent purchasers shall take title to the Lot subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of the Properties and, in particular, annual assessments shall be used for providing insurance coverages upon any Common Properties as herein set forth; basic yard care and maintenance for each Lot, removal of snow from the front sidewalks and driveway of each Lot, periodic removal of debris from gutters and downspouts for each Living Unit, trash pickup, and maintenance and operation of yard sprinklers for any of the Lots, to the extent the Association elects to provide any of the foregoing services from time to time; and providing for the recreation needs of the residents of the Properties, to the extent the Association elects to provide the same from time to time. Annual assessments, and annual assessment reserves, are not intended to be for maintenance (other than yard care, snow removal and gutter cleaning, if the Association elects to provide the same), repair or replacement of the Living Units or appurtenant structures or improvements (other than yard sprinklers, if the Association elects to provide the same), nor for the construction, replacement or major repair of capital improvements upon any Common Properties.

Section 3. Annual Assessment. Until January 1, 2001, the maximum annual assessment shall be ONE THOUSAND FIVE HUNDRED and No/100 Dollars (\$1,500.00) per Lot, payable monthly in twelve (12) equal installments of \$125.00 each, subject to adjustment as hereinafter set forth:

- (a) From and after January 1, 2001, the annual assessment may be increased each year not more than ten percent (10%) above the assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 2002, the annual assessment may be increased above ten percent (10%) of the annual assessment for the previous year by a vote of not less than two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) The Board of Directors must fix the annual assessment.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year 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 upon any Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be delivered either personally or by mail to all members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes 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 all of the votes. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of June, 2000, EXCEPT THAT SUCH ASSESSMENTS SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE DECLARANT UNTIL JANUARY 1, 2003. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The Association's fiscal year shall be the calendar year. The Board of Directors shall adopt a budget for each fiscal year, which shall include the estimate of funds required to defray the expenses of the Association in the coming fiscal year and provide funds for reserves as herein set forth. The budget shall be adopted by no later than November of each year immediately preceding the upcoming fiscal year, and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each Owner on or before December 31, preceding the fiscal year for which the budget is made. Budgets may be amended during a current fiscal year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each Owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to Owner shall not apply to any budgeting for any period prior to January 1, 2001.

The Board of Directors shall fix the amount of annual assessment to be assessed against each Lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing at 12:01 a.m., on January 1 of each year and terminating at 12:00 midnight on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the Board to so notify each Owner in advance shall not, however, relieve any Owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion, to require that all Owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be and become a lien as of the date of the annual assessment.

The Association shall, upon written request, and upon payment of a reasonable administrative charge as determined by the Association from time to time, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any assessment, or any installment thereof, or any other amount due by an Owner pursuant to this Declaration, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period.

Any delinquent assessment, payment or installment thereof not paid within thirty (30) days after the due day shall bear interest from the due date at an annual rate equal to the "Prime Rate" as published from time to time in the Midwest Edition of The Wall Street Journal, plus five percent (5%), or the highest contractual rate permitted by law, whichever is less; provided, if the "Prime Rate" cannot be obtained for any reason from The Wall Street Journal, then the interest rate on delinquent assessments shall be sixteen percent (16%) per annum, or the highest contractual rate permitted by law, whichever is less. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose

the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of any Common Properties or abandonment of his Lot. The Mortgagee of the subject property shall have the right to seasonably 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 rights of foreclosure.

Section 9. Exempt Property. Other than Lots exempt under the provisions of Section 7 of this Article, all Lots shall be subject to a uniform rate, except for Lots owned by or conveyed to, and accepted by, any political subdivision of the Federal, State or any local governments, and Lots owned by or conveyed to, and accepted by, the Association. Such Lots shall be exempt from assessment from and after the date of filing of any such conveyance with the Register of Deeds of Douglas County, Nebraska, and until the Lot is thereafter conveyed to a party or an entity not qualifying for exemption under this Section. Such Lots shall also be exempt from special assessments.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish with respect to the subject Lot, only, the lien of such assessments as to payments which became due prior to such sale or transfer, but the Owner at the time the delinquent assessments were incurred shall remain personally liable for payment of the same. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due, or from the lien thereof.

## ARTICLE VI

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Board of Directors of the Association shall appoint three (3) or more persons to serve as Architectural Control Committee (the "Committee"). The Board as a whole or one or more members thereof may serve as members of the Committee. Such appointees shall serve until resignation or dismissal by the Board. Vacancies need not be filled unless the Committee has less than three (3) members remaining, in which event a replacement shall be named at the earliest opportunity by the Board.

#### Section 2. Review of Committee.

- (a) Structures. No structures, whether residences, accessory buildings, tennis courts, swimming pools, swing sets, play equipment, antennae (on a structure or on a Lot), flag poles, fences, walls, driveways, patio, patio enclosure, house numbers, or any other such improvements, shall be constructed or maintained upon any Lot, nor shall any grading or excavation be commenced unless complete plans, specifications, grading plans, landscape plans and lot plans therefore, showing the exterior design, height, building material and color scheme thereof, the location of the structure platted horizontally and vertically, the location and size of driveways, the detailed plan of landscaping (including the species and location of all trees, shrubs and ornamental plantings and beds), fencing, walls and windbreaks, and the grading plan all shall have been submitted to and approved in writing by the Committee, and a copy of such plans, specifications, and lot plans as finally approved, deposited with the Committee. The Committee shall have such other powers and duties as set forth in this Declaration, the By-Laws of the Association and as delegated by the Board of Directors.
- (b) Review Procedures. After submission of such plans and requests, the Committee shall make due consideration thereof in light of the restrictions in Article VII below and shall approve or disapprove all plans and requests in writing within thirty (30) days after submission. In the event the Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the Committee members is required for approval of proposed improvements.
- (c) Tree Removal. No tree upon the Lot of an Owner may be moved, removed, cut or destroyed unless complete plans showing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, together with the size and specie of the tree to be planted to replace the same, shall have been submitted to and approved in writing by the Committee.

- (d) Tree Removal Procedures. After submission of such tree removal and replacement plans and requests, the Committee shall make due consideration thereof and shall approve or disapprove all plans and requests in writing within thirty (30) days after submission. In the event the Committee fails to take any action within thirty (30) days after tree removal requests have been submitted, said submitted plans shall be deemed disapproved. A majority vote of the Committee members is required for approval of proposed tree removal plans.

Section 3. Guidelines and Restrictions. All exterior front and side walls of all main residential structures not covered by brick, stone, stucco or other approved materials, must have the color approved by Declarant. All exterior painting will be of an earth tone color and any repainting or changing of color or repainting of any Living Unit shall be consistent with the approved original plans and specifications for the Living Unit and shall not be done without the prior affirmative approval of the Committee. Driveways for each Living Unit shall be concrete. Except for any fence or gate Declarant or the Association may elect to install along the boundary of the Deer Creek Fairway Villas, and except as permitted in Article VII(o), below, no fences shall be allowed. Any fireplace chimneys extending above the roofline shall be covered with brick, stone, stucco or other material approved in writing by Declarant. All other external materials of any Improvement shall be of white, off-white or earth-tone. All tiwalls must be of brick, concrete, concrete pavers, or other approved interlocking materials. No wood/railroad tiwalls will be allowed. The Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the Properties conform to and harmonize with existing surroundings and structures.

Section 4. Records. The Committee shall maintain written records of all applications submitted to it, the dates submitted, and of all action it takes in reference thereto and the dates such action is taken.

Section 5. Liability. The Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval, delay or failure to approve or disapprove with regard to such requests. The approval, disapproval or failure to approve or disapprove by the Committee of any plans or requests for approval hereunder shall in no way render the Committee or the Association liable for the sufficiency of such plans or requests or the failure of the same to comply with any covenants, restrictions, laws, ordinances, regulations, structural standards or design standards, the same being the obligation and responsibility solely of the Owner of the Lot for which the approval or disapproval would be applicable.

## ARTICLE VII

### COMMON SCHEME COVENANTS AND RESTRICTIONS

Section 1. The following covenants and restrictions are imposed as a common scheme upon all Lots for the benefit of each other Lot, and may be enforced by any Owner of a Lot, or the Association.

- (a) No Lot shall be used except for single family residential purposes for occupancy by the Owners and their immediate family and guests, and any domestic staff. Living Units shall be limited to 2 story, 1½ story and ranch style homes, only, and walk-out basements shall be permitted only on Lots where the designed grade of the Lot is appropriate. No house or room rentals, or paid boarding, shall be allowed under any circumstances.
- (b) No noxious 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. No floodlights for outdoor areas shall be installed or used.
- (c) No structure of a temporary character, trailer, modular home, basement, tent, shack, barn or other outbuilding shall be erected upon, or used, on any Lot any time as a residence, either temporarily or permanently.
- (d) Living Units shall not be moved from outside of the Properties to any Lot within this addition.
- (e) No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, during which time such items shall be kept to a minimum and shall be properly contained within the boundaries of said Lot. No repair of automobiles will be permitted outside of garages on any Lot at any time.



- (f) No boat, camping trailer, motor home, recreational vehicle, bus, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading, construction or excavating equipment (except as reasonably necessary during construction or repairs on a Lot or its improvements) or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or in any manner left exposed on any Lot at any time.
- (g) Except for the purpose of controlling erosion on vacant Lots, no field crops or vegetables shall be grown upon any Lot at any time, however, well-maintained flower and ornamental gardens are permitted, subject to Committee approval and a four (4) foot maximum height restriction on plants other than trees, shrubs or vines.
- (h) No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the Living Unit and not exposed to view from the outside of the Living Unit and complies with applicable laws and codes. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any Living Unit unless completely screened from view from every street and from all other Lots in the Deer Creek Fairway Villas. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Living Unit except when in actual use unless completely screened from view from every street and from all other Lots in the addition. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothes line shall be permitted outside of any Living Unit at any time. Any exterior air conditioning condenser unit shall be placed in the rear or side yard so as not to be visible from the street.
- (i) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the Living Unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further that the total number of dogs and cats kept within the Living Unit or on the Lot shall not exceed two. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the Living Unit except for the single dog house permitted in Article VII (j). Only one free-standing bird feeder and bird bath shall be allowed per Lot, subject to Committee approval.
- (j) 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 that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed structure have been first approved in writing by the Committee using the provision set forth in Article VI.
- (k) No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any Lot, except that typical real estate for-sale signs of a size no greater than 4.5 square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale.
- (l) Exposed portions of the foundation on the front of each Living Unit facing any street are to be covered with brick and exposed portions of the foundation on the sides and rear of each Living Unit shall be painted imprinted brick on poured foundation.
- (m) A Living Unit and any permitted outbuildings shall have "Weathered Wood" Presidential Shake Celotex shingles approved by the Declarant or the Committee or earth-tone tile or slate.
- (n) All Living Units shall have indoor garage space for a minimum of two automobiles, and shall have driveway space for a minimum of two automobiles. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement be needed, the repair or replacement shall also be concrete. No asphalt overlay of driveway approaches will be permitted. A public sidewalk shall be constructed of 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 four (4) 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 sidewalk provision shall vary to comply with any requirements of the City of Omaha.
- (o) No fences shall be allowed except as required by applicable code for a swimming pool enclosure, in which case the fence must be wrought iron and shall be confined to the perimeter of the patio and/or deck surrounding the pool.

- (p) A Living Unit on which construction has begun must be completed within one (1) year from the date the foundation was dug for said Living Unit. Appropriate erosion control measures shall be employed at all times during construction and until proper sod and vegetation has been established to control same. No Owner shall remove or alter any berms, slopes or swales established by Declarant in the grading and drainage design for the Properties.
- (q) No use shall be made of any Common Properties which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over any Common Properties.
- (r) No Owner, other than the Declarant, and Declarant's successors and assigns, shall place any structure whatsoever upon any Common Properties, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of any Common Properties to all members.
- (s) The use of any Common Properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.
- (t) Swimming pools shall not extend more than one (1) foot above the surrounding grade, and above-ground swimming pools shall not be allowed under any circumstances. Outdoor spas must be either in the ground or enclosed within a deck, and no "portable" spas will be allowed.
- (u) No basketball hoops or backboards shall be erected or installed on any Lot or Living Unit. Any other playground equipment shall be limited to the rear yard of any Living Unit and shall be subject to stringent review and approval by the Committee.
- (v) No exterior television or radio antenna or disc greater than 18"x 24" in size shall be permitted on any Lot other than in an enclosed structure hidden from public view.
- (w) 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.
- (x) Each Owner must install an approved automatic yard sprinkler system at the time of construction of a Living Unit on the Owner's Lot, at Owner's expense, and, if the Association has or is establishing a central yard sprinkler control and water supply system, the Owner's sprinkler system shall be connected at Owner's expense to that system. If an Owner's sprinkler system is connected to a central system operated and controlled by the Association, then the Association shall provide maintenance for each Owner's sprinkler system (provided it has been properly installed and conforms to the standards and specifications established by the Association from time to time); otherwise each Owner shall properly operate and maintain the yard sprinkler system for that Owner's Lot as appropriate for the season, at the Owner's sole expense.
- (y) Once a landscape plan has been approved by the Committee for a Lot, the Owner shall be responsible for installing as soon as seasonably possible after the Living Unit is substantially completed and maintaining the approved landscaping and all vegetation called for in the same at all times in good, proper and healthy condition, including proper trimming, pruning and removal of any dead or diseased material, and promptly replacing any dead or diseased plants or vegetation with healthy plants or vegetation of the same species and of appropriate size and maturity, which shall in no event be less than the size and maturity at the time the vegetation being replaced was first planted on the Lot. All Lots shall be fully sodded at the time of completion of the Living Unit.
- (z) Each Owner shall at all times keep and maintain the exterior of its Living Unit, Lot and any related improvements in good and neat condition and repair including, but not limited to, repainting, re-siding, re-roofing, and sealing and resurfacing of driveways, as needed and in a timely manner.

Section 2. The restrictions set forth in subparagraphs (a) and (k) of Section 1 shall not apply to Declarant, its successors or assigns, during the period in which Declarant is selling and constructing Living Units on the Lots.

ARTICLE VIII

INSURANCE

Insurance shall be obtained and maintained and the proceeds thereof disposed of by the Association as follows:

Section 1. Coverage. The Association shall obtain and maintain in effect for the improvements upon any Common Properties, one or more policies of insurance against the perils of fire, lightning, malicious mischief and vandalism with extended coverage in amounts equivalent to the full replacement costs of any damage or destruction caused by such peril, without deduction for depreciation (if such replacement value coverage is available at a cost deemed reasonable by the Board of Directors). Such coverage shall include "contents coverage." The Association shall obtain and maintain in effect public liability insurance in such limits as determined from time to time by the Board of Directors, but in no event less than \$500,000/\$1,000,000/\$100,000, covering any Common Properties with the Association, Board, its employees and agents as insureds. The Association shall also obtain and maintain workmen's compensation coverage and such other coverage as determined to be appropriate from time to time by the Board.

Section 2. Valuation and Coverage Amount. Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors may obtain an appraisal from a casualty company or otherwise of the full replacement of the improvements on any Common Properties, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effected pursuant to this Article.

Section 3. Liability of Board. The Board of Directors shall not be liable to any party upon the amount of insurance coverage carried on or with respect to any Common Properties, or obtained in settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

Section 4. Homeowner's Insurance. Each Owner shall at all times keep its Living Unit and Lot insured for its full insurable value against fire and other casualty ("all risk" coverage) and shall carry public liability insurance in amounts which are not less than the amounts carried from time to time by the Association. Each Owner shall provide proof that such insurance coverages are in effect upon request by the Association.

ARTICLE IX

RESIDENTIAL LOT RESTRICTIONS AND EASEMENT  
AS RELATED TO GOLF COURSE

All Lot owners hereby acknowledge that certain of the Lots may not have an unobstructed view, or may not have any view at all of the Golf Course to be constructed on Lots 234 through 239 of Deer Creek Subdivision, (hereinafter "Golf Course" or "Golf Course Lots"), and that the right of privacy appurtenant to each Lot shall be subject to such disruption and invasion, by noise, windblown debris and the like, as is normally associated with Golf Course construction/maintenance, grass mowing, equipment maintenance and use.

Section 1. Assumption of Golf Course Risks. By acceptance of a deed to a Lot, each Owner acknowledges that owning property in Deer Creek Fairway Villas is subject to each of the following risks and that the Owner assumes each of these risks: (i) the risk of damage to property or injury to persons or animals from golf balls hit on or over an Owner's Lot or other portions of the Properties; (ii) the entry by golfers onto Owner's Lot or other portions of the Properties to retrieve golf balls; (iii) overspray in connection with the watering or fertilizing of the roughs, fairways and greens on the Golf Course; (iv) noise from Golf Course maintenance and operation equipment (including, without limitation, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (v) the use of fertilizers, pesticides and other chemicals on the Golf Course; (vi) odors arising from irrigation and fertilization of the turf situated on the Golf Course; and (vii) disturbance and loss of privacy resulting from golf course maintenance, golf cart traffic and golfers. Additionally, each Owner

acknowledges and understands that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the Golf Course.

Each Owner expressly assumes such detriments and risks and agrees that neither Declarant, the Golf Course Owner, or any director, officer, manager, employee or agent thereof, nor any of their successors or assigns shall be liable to the Owner or occupant of any Lot, or any family member, guest, employee or agent, or anyone else claiming any loss or damage, including without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or residence to the Golf Course. Each Owner shall indemnify and hold harmless Declarant, and the Golf Course Owner, and their successors and assigns against any and all such claims by Owner's family members, invitees or agents. The Owner's foregoing indemnity obligations shall not exceed the amount of liability insurance maintained by the Owner at the time the event occurred that gave rise to the Owner's indemnity obligations.

Section 2. Appearance of Golf Course. Each Owner acknowledges, understands and agrees that no Owner shall have the right to compel the Golf Course Owner to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements shall be determined in the sole discretion of the Golf Course Owner.

Section 3. Golf Course Easements. There is reserved for the benefit of the Golf Course Owner, and its successors and assigns, a nonexclusive right and easement appurtenant to the Golf Course as the dominant tenement over each Lot as the servient tenement for purposes of overspray in connection with the watering and fertilizing of the roughs, fairways, tees and greens on the Golf Course and for the intrusion of golf balls onto or over the servient tenement from the roughs, fairways, tees and greens of the Golf Course. Any person for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such person. The right and easements reserved by this section shall be for the benefit of the Golf Course Owner, its successors and assigns and for the benefit of their employees, contractors, agents, guests, invitees, licensees and all persons playing the Golf Course, (collectively referred to as "Beneficiaries").

Section 4. Prior to commencement of any construction activities on any Lot which is adjacent to one or more of the Golf Course Lots, a silt fence must be installed in a trench constructed along all boundary lines of such Lot which is adjacent to the Golf Course, so as to prevent any run off of silt or other erosion from such Lot onto the Golf Course property.

## ARTICLE X

### PROPERTY RIGHTS IN ANY COMMON PROPERTY

Section 1. Owner's Easements of Enjoyment. Every Owner and/or Member of the Association, shall have a right and easement of enjoyment in and to any Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and rights to the use of any Common Properties by an Owner for any period during which any assessment against his Lot remains unpaid for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) The right of the Association to dedicate or transfer all or part of any part of any Common Properties, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, non-profit corporation (to use for purposes similar to those for which the Association was formed), authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or Members of the Association and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast not less than two thirds (2/3) of the votes have been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days or more than sixty (60) days in advance. Declarant, or its assigns, shall have the right at any time to use so much of any

Common Properties as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not unreasonably interfere with the Owner's use and reasonable access to any Common Properties, nor with their right of ingress or egress to their homes. This shall not be construed as limiting the right of the Association, without a vote of the Owners, to grant reasonable and necessary water, telephone, cable, sewer and utility easements within any Common Properties to serve or enhance service to the Properties by the same.

(c) The right of the Association to borrow money for the purpose of improving any Common Properties and facilities and, in aid thereof, to mortgage any Common Properties and facilities, which mortgage shall be subordinate to the rights of the owners hereunder.

(d) The right of the Association to charge reasonable admission and other fees for the use of any Common Properties by Members and by guests of Members.

(e) The right of the Association, through its Board of Directors, to pass and amend, from time to time, rules and regulations governing the use of certain parts or all of any Common Properties for the welfare and common good of all Owners within the Properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment of any Common Properties and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests or contract purchasers who actually reside on such Owner's Lot.

Section 3. Title to the Common Properties. The Declarant will convey a fee simple title to any Common Properties owned by Declarant to the Association, free and clear of all encumbrances and liens, except easements, rights-of-way, restrictions, covenants, and conditions then of record. Any Common Properties may be conveyed by the Declarant to the Association prior to the sale of the twenty-fifth (25th) Lot by Declarant, and shall be conveyed by Declarant to the Association no later than the sale of the twenty-fifth (25th) Lot by Declarant.

**ARTICLE XI**

**EASEMENTS**

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, US West Company, and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 405 of Douglas 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 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 and an eight (8) foot wide strip of land abutting the rear boundary lines of all Lots.

Section 2. A perpetual easement is further reserved for the Metropolitan Utilities Company, 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 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.

Section 3. All easements along side lot lines shall be automatically released if the lots adjoining both side of the side lot line(s) or a portion of such lots are under common ownership and one Living Unit is constructed on all of such lots.

Section 4. Other easements are provided for in the final plat of Deer Creek Subdivision which is filed in the Register of Deeds of Douglas County, Nebraska.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, at which time this Declaration shall automatically renew for consecutive terms of ten (10) years each unless the Owners of at least two-thirds (2/3) of the Lots vote to have this Declaration terminate at the end of the initial 30 year term or any subsequent 10 year renewal term next following any such vote.

Section 2. Amendments. The covenants and restrictions of this Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion, until such time as the Declarant has conveyed fee simple title to twenty-five (25) of the Lots. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Notices. Any notice required to be sent to any Member, Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing; provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Association, in writing of its interest in a Lot prior to the responsibility arising in the Association to notify said contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. 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 6. Limited Liability. In the event the Association elects to provide any care or maintenance for the Lots or the exterior of the Living Units, such as, but not limited to, yard and landscape care, snow removal and/or gutter and downspout cleaning, each Owner shall nevertheless remain primarily responsible for keeping its Lot and Living Unit in good and safe repair and condition and shall indemnify and hold harmless the Declarant, the Association, the Board and any contractor hired by them to provide such services, from any liability, damage, claim or injury to person or property suffered as a result of the existence of any defective, hazardous or unsafe condition on or about the Lot, except where the defective, hazardous or unsafe condition was actually created (as opposed to being allowed to exist passively) on or about the Lot of an Owner as a result of the negligent or wanton acts of one of the Association, the Board or any contractor hired by one of them. Neither the Declarant, the Association nor the Board shall be liable or responsible for the acts of the other nor shall they be liable or responsible for the acts of any independent contractor which may be hired from time to time to provide any such services. In the event the Association elects to provide snow

removal services for the sidewalks and driveways to any Living Unit, this service shall not include any obligation to remove or prevent the accumulation of ice or hard packed snow, and it shall be the obligation solely of the Owner of each lot to apply salt, sand and/or other appropriate deicer to any such areas as the Owner deems necessary or appropriate to comply with obligations imposed by law on an owner of property to prevent injury or damage from unsafe or hazardous conditions on or about the property.

Section 7. Declarant's Successor. At any time Declarant shall have the absolute right to transfer all of Declarant's rights and obligations under this Declaration to the Association by conveying title to any Common Properties to the Association and by signing and recording with the Douglas County Register of Deeds a notice of transfer pursuant to this section, after which time the Association shall be deemed to be the Declarant for all purposes under this Declaration and any supplements, addenda or amendments hereto, and the first named Declarant shall thereupon have no further rights or obligations hereunder, except as an Owner if and to the extent said Declarant thereafter continues to own one or more Lots.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 31<sup>ST</sup> day of JANUARY, 2000.

DAN WITT BUILDERS, INC., a Nebraska corporation, Declarant

By: [Signature]  
Daniel N. Witt, President

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

On this 31<sup>ST</sup> day of JANUARY, 2000, before me, a Notary Public duly commissioned and qualified in and for said county and state, personally came Daniel N. Witt, President of Dan Witt Builders, Inc., to me personally known to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

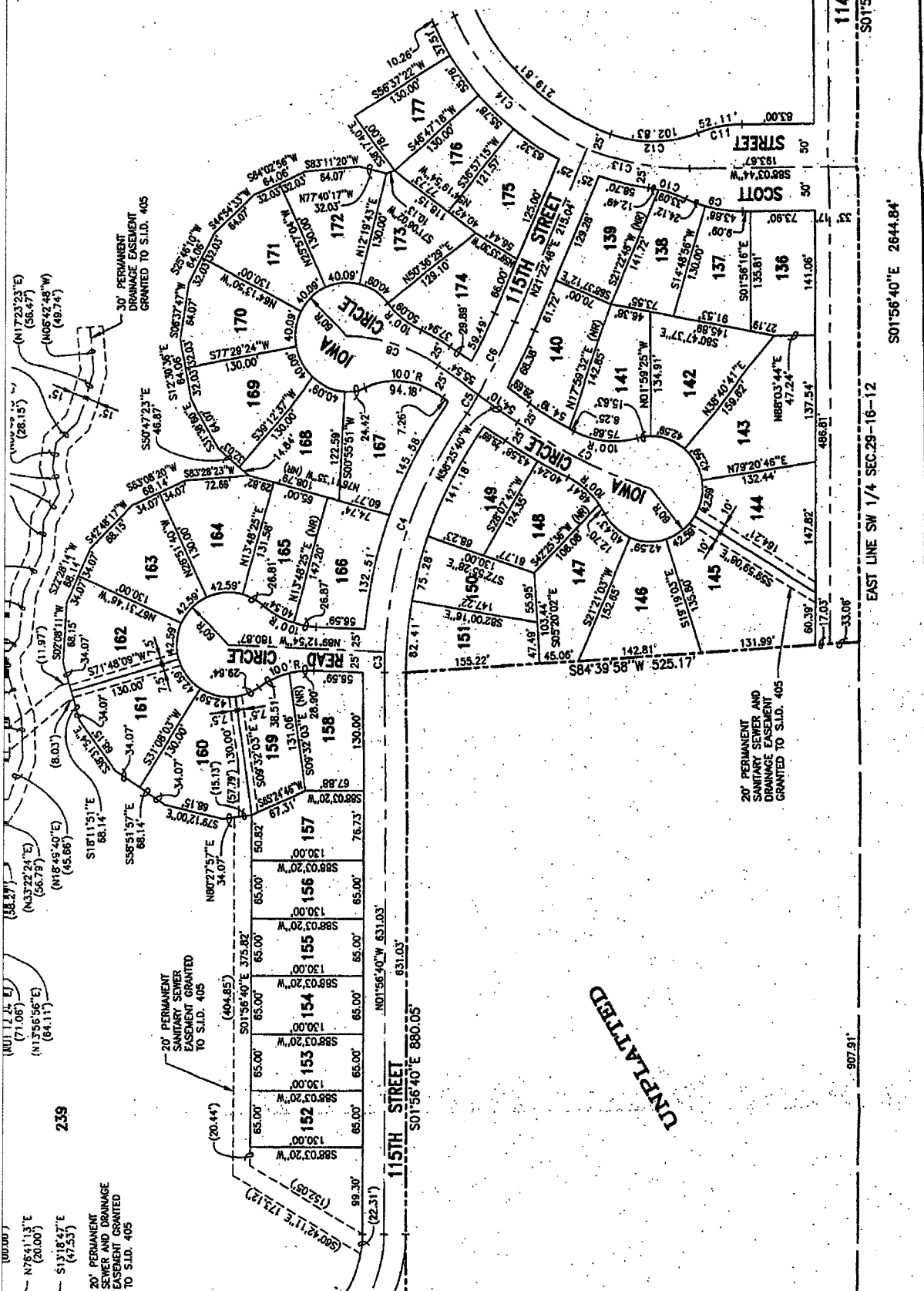
Witness my hand and notarial seal the day and year last above written.



[Signature]  
NOTARY PUBLIC

Exhibit "A"

Lots 137 through 177, inclusive, Deer Creek, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska



114TH STREET  
S01°56'40"E 1524.18

S01°56'40"E 2644.84'

EAST LINE SW 1/4 SEC.29-16-12

S07°91'

UNPLATTED

115TH STREET  
S01°56'40"E 880.05'

20' PERMANENT  
SEWER AND DRAINAGE  
EASEMENT GRANTED  
TO S.I.D. 405

20' PERMANENT  
SANITARY SEWER AND  
DRAINAGE EASEMENT  
GRANTED TO S.I.D. 405

30' PERMANENT  
DRAINAGE EASEMENT  
GRANTED TO S.I.D. 405

239

N76°41'13"E (20.00')  
S13°18'47"E (47.53')

N32°22'24"E (56.79')  
N17°56'56"E (84.11')

N18°49'40"E (45.86')  
S88°51'57"E (88.14')

N172°23'23"E (56.47')  
N06°42'48"W (48.74')

(00.00')