

Return to:
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant",

WITNESSETH:

WHEREAS, Declarant, whether one or more, is the owner of certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 1 through 25, inclusive, and Outlots A, B, C and D, of The Reserve, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

SECTION 1. "Association" shall mean and refer to The Reserve Homeowners, Inc., a Nebraska nonprofit corporation, its successors and assigns.

SECTION 2. "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

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RICHARD H. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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 purchasers obligation under the contract.

SECTION 3. "Properties" shall mean and refer to:

Lots 1 through 25, inclusive, and Outlots A, B, C and D, of The Reserve, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split.

SECTION 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

SECTION 6. "Assessable Lot" shall mean and refer to any Improved Lot which the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

SECTION 7. "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

SECTION 8. "Common Area" shall mean and refer to all property owned by the Association including, but not limited to Outlots B, C and D, The Reserve, and Outlot A, The Reserve. Outlot A, The Reserve, shall be owned and held by the Declarant and maintained by the Association pursuant to Article XI hereof. The roadway shall be located upon Outlot D, The Reserve.

ARTICLE II PROPERTY RIGHTS

SECTION 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not

to exceed 60 days for any infraction by any such Owner, or members or such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

SECTION 2. Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

SECTION 2. Members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

SECTION 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Members shall be the Declarant or its successors and assigns which shall be entitled to three votes for each Lot owned by the Declarant or his successors or assigns. The Class B membership shall terminate and be converted into Class A membership (with the Declarant or its successors and assigns then entitled to one vote for each Lot owned by the Declarant or his successors and assigns) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 1999.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Assessable Lot and for each Owner of any Assessable Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association;

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association, and

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment shall be made. Each such assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assume by them.

SECTION 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the Properties for the maintenance, construction, reconstruction and repair of the Common Area and the roadway, utilities and improvements within the Common Area, and other matters as more fully set out in Article V herein.

SECTION 3. Monthly Assessments. The Board of Directors shall have the authority to levy and assess from time to time against an Assessable Lot any monthly maintenance Assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance.

SECTION 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article V herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on or within the Common Area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

SECTION 5. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

SECTION 6. Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

SECTION 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

SECTION 8. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association.

Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

ARTICLE V EXTERIOR & COMMON AREA MAINTENANCE

The Association shall provide for the maintenance, repair, snow removal and reconstruction to and for the roadway and utility improvements within the Common Area.

SECTION 1. Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, fencing, gating and other exterior landscaping improvements as originally installed by the Declarant, except such improvements within any Assessable Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner.
- (b) Operation and maintenance of an underground watering system within the common area.
- (c) Maintenance, repair, snow removal and reconstruction for the roadway, grounds, improvements, and utility improvements within the Common Areas.
- (d) Electrical service for operation of common lighting, gates and other exterior improvements.

SECTION 2. Special assessments may be assessed for, but are not limited to, the following:

- (a) Maintenance, repair, snow removal and reconstruction for the grounds, improvements, roadway and utility improvements within the Common Areas.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor

shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications.

ARTICLE VII GENERAL RESTRICTIONS AND OTHER PROVISIONS

SECTION 1. Front Yard and Side Yard set backs. Subject to the provisions of Chapter 55 of the Omaha Municipal Code, each Lot shall have a front yard set back of not less than twenty feet (20), except Lot 22, The Reserve. The front yard set back for Lot 22, The Reserve, shall be established by the Declarant, or its successors and assigns. Each Lot shall have a interior side yard set back of not less than five feet. All other site development regulators for the Lots shall be in accordance with the R2 Single Family Residential District Regulators and the regulators for Cluster Subdivisions set forth in Chapter 55 of the Omaha Municipal Code.

SECTION 2. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Association, a satellite dish measuring 24 inches or less in diameter may be erected so long as such satellite dish is hidden from the view of the adjoining Properties.
- (b) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets. No such pet shall be kept, bred or maintained for commercial purposes.
- (c) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done

which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.

- (d) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size. Nothing herein contained shall prevent the use of any Lot by the Declarant, its agents, and the Association as a sales and rental office, or as a model home or both, and while any Lot is so used, they shall have the right, for themselves, or their nominees, to place signs on the premises advertising such office or model home, or both.
- (e) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.
- (f) No boat, camper, trailer or similar chattel shall be maintained on any Lot, other than in an enclosed structure, for more than seven (7) days within any calendar year. No automobile, motorcycle, truck or other vehicle shall be repaired, torn down or stored on any Lot, other than in an enclosed structure.
- (g) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulations, restriction or exclusion by the Association.
- (h) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

ARTICLE VIII INSURANCE

The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

ARTICLE IX ROADWAY EASEMENT

The Declarant hereby reserves and grants to itself, to the Association and to all current and future owners of the Properties, or any part thereof, and their respective invitees, guests, successors

and assigns, a perpetual easement, for ingress, egress and access for pedestrian and vehicular traffic to and from the Properties, the Common Area and Ontario Street, over and through Outlot D, The Reserve, a subdivision in Douglas County, Nebraska.

ARTICLE X ACCESS TO LOTS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

ARTICLE XI UTILITY METERS AND SERVICE LINES

In order to facilitate the installation, operation, maintenance and repair of an underground watering system, such Lots as shall be designated from time to time by the Association shall have a dual metering system for water so as to permit the drawing of water for watering of the laws, shrubs, trees and other vegetation located upon the Lots. It is understood that the amount of water metered for the residential use on any such Lot shall be paid for by the Owner of each Lot receiving water.

ARTICLE XII OUTLOT A, THE RESERVE

Outlot A shall be maintained by the Association along with the other Common Area pursuant to the terms of these Covenants, subject to the terms of this paragraph. The Declarant, and its successors and assigns shall remain the owner of Outlot A, The Reserve, and shall have the right to combine Outlot A, The Reserve, with any adjoining real property in order to create one additional buildable lot which will have access on to Outlot D, The Reserve, and have the right to connect into and utilize the road system, sanitary sewer system, storm sewer system, power, gas and other utilities within The Reserve, in the same manner the other Lots within The Reserve use such improvements. In the event, the Declarant, or its successors and assigns, desire to combine Outlot A with the adjoining property to create an additional lot, it shall first obtain the appropriate approvals from the City of Omaha in order to create such lot, and such lot shall then become a part of The Reserve subdivision and become subject to these Covenants, which lot shall then be entitled to all of the benefits that the other lots subject to these Covenants within The Reserve subdivision are entitled to and be subject to the obligations of these Covenants in the same manner as the other lots in The Reserve Subdivision which are subject to these Covenants. The Declarant, shall at all times, have the right to convey Outlot A, The Reserve, to the Association, and the Association shall then own Outlot A as Common Area under these Covenants. The lot created by the Declarant pursuant to this

paragraph shall be used for single-family purposes only and carry the same zoning classification as the other single-family residential lots within The Reserve subdivision, which are subject to these Covenants, and be included within the definitions Lot, Improved Lot and Assessable Lot, as the case may be, as set forth in Article I hereof.

ARTICLE XIII GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of 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.

SECTION 2. Severability. Invalidation of any one or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

SECTION 3. Amendment. These Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations. The Declarant shall have the right to amend these Declaration for any reason during the initial term of five (5) years from the date these Declarations are recorded.

SECTION 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have executed these Declarations of Covenants, Conditions and Restrictions this 9th day of April, 1997.

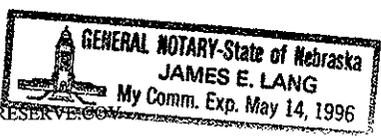
THE RESERVE L.L.C., a Nebraska Limited Liability Company, Declarant

W. Linder
Wendy Linder, a member

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS.

Before me the undersigned, a notary public, personally came WENDY LINDER, to me personally known to be the Declarant, and members of The Reserve L.L.C., A Nebraska Limited Liability Company, and acknowledged the execution of the above to be their voluntary act and deed on behalf of The Reserve L.L.C.

WITNESS my hand and notarial seal this 9th day of April, 1997.



James E. Lang
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS