

After Recording Return to:  
O'Neill, Heinrich, Damkroger,  
Bergmeyer & Shultz, P.C., LLO  
800 Lincoln Square  
121 S. 13<sup>th</sup> Street  
Lincoln, NE 68508

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
HERITAGE FALLS TOWNHOMES**

THIS DECLARATION is made and entered into as of this 9<sup>th</sup> day of June, 2016, by **Heritage Lakes, LLC**, a Nebraska Limited Liability Company, hereinafter referred to as the "Declarant."

**ARTICLE I  
DEFINITIONS**

Unless defined elsewhere in this Declaration, the following terms are defined below:

**"Additional Property"** shall mean any real property and improvements lying adjacent to or in close proximity to the Townhome Property, which Declarant may from time to time add to the provisions of this Declaration pursuant to Paragraph 2 of Article V below.

**"Association"** shall mean the Heritage Falls Townhome Association, a Nebraska nonprofit corporation, which has been established for the purpose of enforcing and maintaining compliance with this Declaration.

**"Common Area"** shall mean all Roadways, sidewalks along the Roadways, all private utilities and all Green Area now or hereafter located on the Townhome Property including, but not limited to, Outlots A, B, C, D and E, Fallbrook 33<sup>rd</sup> Addition, Lincoln, Lancaster County, Nebraska.

**"Declarant"** shall mean Heritage Lakes, LLC, a Nebraska Limited Liability Company, its successors and assigns. Declarant is the owner of the Townhome Property, defined herein.

**"Front Yard"** shall mean the entire portion of a Lot from the Front Lot Line of such Lot to the residence to be constructed upon the Lot.

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**“Green Area”** shall mean the all of the Townhome Property except that portion of the Townhome Property on which any townhome structure, patio, garage, sidewalk, driveway, walkway or Roadways are located.

**“Lot” or “Lots”** shall mean all townhome lots now or hereafter located on the Townhome Property, which are shown on any final plat of all or any portion of the Townhome Property that has been filed with the Lancaster County Register of Deeds.

**“Lot Owner”** shall mean 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 any obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgage). The purchaser of a Lot under land contract or similar instrument shall be considered to be the “Lot Owner” for purposes of this Declaration.

**“Maintenance Free Material”** shall include brick, stucco, stone, hardy plank, or any other low maintenance material approved by Declarant.

**“Member”** shall mean those Lot Owners entitled to vote on matters pertaining to the business of the Association.

**“Roadways”** shall mean the private roads located on the Townhome Property which are open for the common use of all Lot Owners, their guests and invitees.

**“Townhome Property”** shall mean Lots 1 through 10, Block 1, Lots 1 and 2, Block 2, Lots 1 through 12, Block 3, Lots 1 through 6, Block 4, Lots 1 through 6, Block 5 and Outlots A, B, C, D and E, Fallbrook 33<sup>rd</sup> Addition, Lincoln, Lancaster County, Nebraska, and any Additional Property that may be added to this Declaration pursuant to Paragraph 2 of Article V below.

## **ARTICLE II DECLARATION**

In order to provide for the preservation of the values and amenities of the Lots as well as for the maintenance of the character and residential integrity of the Lots, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the restrictions, covenants, conditions and easements contained in this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof. The Lots are, and each Lot is, and shall be, subject to all and each of the following conditions and other terms.

## **ARTICLE III RESTRICTIONS AND COVENANTS**

1. **Use.** Each Lot located within the Townhome Property shall be used exclusively for townhome residential purposes and Declarant shall submit a site plan and exterior elevations of all four sides that identify the colors and materials selected to NEBCO, Inc. for approval prior to the commencement of construction on any improvement, which approval shall be given or denied in NEBCO, Inc.’s sole discretion.

2. Plan Approval.

(a) Improvements. Prior to the construction of any townhome residence on any Lot, a set of building plans for such residence shall be submitted by the Lot Owner to the Declarant for approval. Said building plans shall be signed and certified by the Lot Owner as a true and correct copy of the building plans for the residence to be constructed on such Lot, and contain a statement that the Lot Owner will submit to the Declarant, for written approval, any amendments, modifications or changes to such building plans. Such building plans shall show the size, exterior material, design and plot plan for the residence to be constructed on such Lot and shall indicate the location of the residence, attached garage and any other structures to be placed or constructed on such Lot. Such plans shall also include erosion control measures which will contain erosion of soil on the Lot during construction. One set of such building plans, and all amendments, modifications and changes thereto, signed by the Lot Owner shall be left on permanent file with the Declarant. Declarant shall have the right to request the Lot Owner provide samples of the Lot Owner's proposed exterior materials. No construction of any townhome residence on any Lot shall be commenced unless and until written approval of the building plans for such residence has first been obtained from the Declarant. Written approval or disapproval of such building plans shall be given by the Declarant within ten (10) days from and after receipt thereof by the Declarant. Approval of such building plans shall not be unreasonably withheld; provided, however, that the Declarant shall have the sole and exclusive right, in its sole discretion, to approve or reject any such building plans if, in the opinion of the Declarant, either the style, size, material or plot plan of such residence does not conform to the general standard and character of the townhome residences constructed or to be constructed on other Lots located within the Property.

Prior to the construction of any addition to any residence constructed on any Lot, or the change or modification in the exterior of any residence constructed on any Lot, the Lot Owner shall first obtain the written approval of the Declarant to proceed with any such construction, change or modification, which approval shall not be unreasonably withheld.

(b) Landscaping. Prior to the occupancy of any townhome residence on any Lot, a landscape plan signed by the Lot Owner shall also be submitted to the Declarant and to NEBCO, Inc., and prior approval must be obtained from both. Any landscape plan must include at a minimum:

- (i) a landscape plan for the entire portion of the Front Yard;
- (ii) show a minimum planting schedule for such Lot of one (1) one and one-half inch caliper deciduous tree or one (1) evergreen of minimum five feet in height in the Front Yard and, if such Lot is located along a boulevard or parkway, one (1) evergreen of minimum five feet in height in the side or back yard;
- (iii) meet the screening requirements of Paragraph 9 of this Article;
- (iv) contain a written certification by the Lot Owner that, to wit:
  - (A) all of the plantings required pursuant to Paragraph 2(b) of this Article will be installed within nine (9) months of completion of construction of the townhome residence to be constructed on such Lot, and that the Green Area of such Lot will be sodded, as required herein, prior to

- occupancy of the townhome residence unless such sodding is delayed by weather; and
- (B) that an underground sprinkler system will be installed on such Lot by the Lot Owner prior to any sodding of the Green Area of such Lot, in accordance with Paragraph 7 of this Article; and
  - (C) that the landscape plan, the plantings and the underground sprinkler system required to be installed on the Lot pursuant to this Declaration will be continually maintained (and replaced if necessary) by the Lot Owner, or the Lot Owner's successors or assigns.
- (v) include all street trees required by the City of Lincoln.

No townhome residence constructed upon a Lot shall be occupied unless and until written approval of the landscape plan has first been obtained from the Declarant. Written approval or disapproval of such landscape plan shall be given by the Declarant within ten (10) days from and after receipt of such plans by the Declarant. Approval of such landscape plan shall not be unreasonably withheld; provided, however, that the Declarant shall have the sole and exclusive right, in its sole discretion, to approve or reject any such landscape plan if, in its opinion, such landscape plan does not conform to the general standard and character of landscape plans for other Lots located within the Townhome Property.

Lot Owner shall be responsible for completing the planting of all items identified on the landscape plan within nine (9) months after the date the townhome residence constructed upon a Lot has been occupied, and shall thereafter be continually maintain said required landscaping. Upon failure to comply with this Paragraph, the Association may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual costs plus a 10% administrative charge against the Lot. If not paid when due, assessments shall bear interest at the rate of 16% per annum and, when notice of nonpayment is filed with the Lancaster County Register of Deeds, shall be a lien upon the Lot. The Lot Owner by acceptance of the deed to one of the Lots automatically grants the Declarant the right to enter upon the real estate identified in such deed for purposes of enforcing the requirements of this Paragraph.

Declarant shall have the right, in Declarant's sole and absolute discretion, to waive and/or modify the application and interpretation of any term, condition or restriction imposed by this Paragraph 2.

3. Grading and Erosion Control. Declarant shall have the sole and exclusive right to establish grades, slopes and/or contours on all Lots and to fix the grade upon which any townhome residence shall be placed or constructed upon any Lot. Once such grades, slopes and/or contours have been established by the Declarant, they shall not be changed in connection with the construction of any townhome residence on a Lot without written permission from the Declarant, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots. If any damage is caused to an abutting Lot during construction, including the removal of adjacent Lot corners and pins, the Lot Owner of the Lot upon which construction is taking place shall be responsible for repairing such damage and returning the abutting Lot to its original condition. If upon notice from Declarant to repair an abutting Lot, the Lot Owner of the Lot upon which construction is or has taken place or his/her contractor fails to comply within seven (7) days of delivery of such notice, Declarant may take

such measures as may be necessary to repair the damage done to the abutting Lot and charge the cost of the measures to the Lot Owner. Such charges, when shown of record, shall be a lien upon the Lot and shall bear interest at the rate of fourteen percent (14%) per annum until paid.

The adequacy of erosion control measures on a Lot shall be subject to continual review during construction. Declarant shall have the right to require any Lot Owner to maintain silt fences or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalks or into any street or private roadway. If upon notice from Declarant to repair, maintain or take additional measures to control erosion, the Lot Owner of any Lot or his/her contractor fails to comply within forty-eight (48) hours of delivery of such notice, Declarant may take such measures as may be necessary to control the erosion and assess the actual cost of the measures plus a 10% administrative charge against the Lot. If not paid when due, assessments shall bear interest at the rate of 16% per annum and, when notice of nonpayment is filed with the Lancaster County Register of Deeds, shall be a lien upon the Lot. The Lot Owner by acceptance of the deed to one of the Lots automatically grants the Declarant the right to enter upon the real estate identified in such deed for purposes of enforcing the requirements of this Paragraph.

4. Minimum Standards. The following general standards shall guide the Declarant in the review of any plans for any townhome residence submitted for approval within the Townhome Property. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval and may be modified as dictated by architectural style. The Declarant shall have the right, in the Declarant's sole and absolute discretion, to modify the application and interpretation of these standards when exercising plan approval authority.

(a) Minimum Floor Area. The minimum floor area for any townhome residence constructed upon a Lot, exclusive of basements, garages, porches, patios, decks or enclosed decks, are set forth below.

Single Story	1,300 square feet
Story and One-Half	1,500 square feet
Two-Story	1,700 square feet

(b) Exterior Finish Requirements. The front of any townhome residence constructed upon a Lot must be faced with at least twenty-five percent (25%) brick or natural stone. Each side of any townhome residence constructed upon a Lot facing a parkway or boulevard must be faced with at least twenty-five percent (25%) brick or natural stone. Each rear of any townhome residence constructed upon a Lot facing a parkway or boulevard must be faced with at least twenty percent (20%) brick or natural stone. All fireplace chimneys constructed as part of a townhome residence on any Lot shall be faced with brick or natural stone or as approved by Declarant and by NEBCO, Inc. All exposed foundations constructed as part of a townhome residence on any Lot exceeding 12 inches in height shall be faced with brick or natural stone, except on a side yard when the slope is 4:1 or greater, then all exposed foundations on such side yards exceeding 18 inches in height shall be faced with brick or natural stone. Vertical transitions between brick or stone to another material shall be made at an inside joint, such as a window, wall, fireplace, or other similar design device. No transitions shall be permitted from an outside joint or corner. All remaining surfaces of any townhome residence not faced with brick or natural stone, including windows, shall be constructed of or faced with Maintenance Free Material. The soffit and fascia shall match the window

color. The brick used on any townhome residence constructed upon a Lot shall be (i) modular size; (ii) within the color range of red to brown; and (iii) be manufactured by Acme Brick Co., Glen Gery Brick Co., Endicott Brick Co., Hebron Brick Co., Denver Brick Co., Cherokee Sandford Brick or Cherokee Brick Co.

(c) Roof Requirements. The roof of each townhome residence constructed upon any Lot shall be a minimum pitch of 4:12, or as may be dictated by a unique architectural style and shall be covered with fiberglass or asphalt shingles (minimum 250 lb. weight) such as Horizon or Heritage II, shakes, wood shingles, tile, slate or synthetic slate or an equal approved by Declarant and NEBCO, Inc.

5. Construction Time Frame. Construction of any building to be located upon a Lot shall be completed within twelve (12) months from the date of commencement of excavation or construction of the improvement. In the event construction of the exterior shell and landscaping is not substantially completed within one (1) year from the date title to a Lot is transferred by the Declarant, the Declarant (or its successors and assigns) shall have the option to repurchase the Lot for the amount paid to Declarant for the Lot. Declarant may exercise the option by sending written notice to the titleholder of the Lot.

6. Garages, Driveways and Walkways. All garages for townhome residences constructed upon any Lot must be attached to the residence constructed on such Lot. All driveways must be constructed of concrete, brick, paving stone or laid stone. All driveways and walkways located upon a Lot shall be constructed, maintained, repaired and replaced by the Lot Owner; provided that, the Association shall be responsible for snow removal from such areas.

7. Lawn Irrigation and Sodding. Prior to the occupancy of any townhome residence constructed upon any Lot, an underground lawn irrigation system shall be installed on such Lot and the Green Area of such Lot shall be sodded, weather permitting.

8. Fences. Perimeter fencing shall not be permitted on any Lot. Notwithstanding the foregoing sentence, small wrought iron (not to exceed 48 inches in height), or an equal approved by Declarant and NEBCO, Inc., fenced areas may be allowed if attached to the residence and prior approval is obtained from Declarant and NEBCO, Inc. as part of the landscaping plan.

9. Air Conditioning Units. Any exterior air conditioning unit or system placed on any Lot must be located in the side or rear yard and, if such unit or system is visible from a street or private roadway, must be screened by landscape shrubbery or fencing approved by the Declarant, in connection with the approval of the initial landscape plan submitted to the Declarant for approval.

10. Accessory Buildings. No detached accessory buildings, sheds, playhouses, greenhouses, or any structures of any kind (not including swing sets), shall be constructed or placed on any Lot.

11. Animals and Animal Shelters. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, including any dog run or kennel other than as contemplated by Paragraph 8, above. Conventional household pets are permitted subject to the condition that the pet(s) is not allowed to unreasonably annoy and/or disturb the normal residential occupancy of the neighborhood or constitute a hazard to public health or safety.

12. Swimming Pools. Swimming pools shall not be permitted on any Lot.
13. Mailboxes. Cluster mailboxes as required by the United States Postal Service shall be constructed. To the extent possible, such mailboxes shall be constructed of brick or masonry material identical to the brick or masonry material utilized in the construction of the townhome residences located on such Lots, and shall be designed and constructed in accordance with standard specifications established by the Declarant.
14. City Requirements. All buildings constructed upon any Lot within the Townhome Property shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks shall be installed by the Lot Owner of each Lot as required by the City of Lincoln, Nebraska. Each individual Lot Owner, other than Declarant, shall indemnify and hold harmless Declarant from any liability or cost incurred in connection with the timely installation or payment of any public sidewalk parallel to each street which abuts such Lot Owner's Lot.
15. Exterior Maintenance. Each Lot Owner covenants to maintain its Lot and improvements in a neat and attractive manner. No Lot may be utilized as a dumping ground for rubbish including, but not limited to, leaf or grass clippings. No compost pile may be constructed or maintained on any Lot. All waste, garbage and trash must be kept in sanitary containers and removed on a weekly basis. No incinerator may be constructed or maintained on any Lot. All Lots shall be kept free of debris and weeds.
16. Exterior Maintenance Assessment. In the event a Member fails to maintain a Lot according to Paragraph 15 above, the Association may, upon 10 days written notice to the Member, maintain the Lot and the exterior of any improvement and shall have the right to enter upon any Lot, at reasonable time, to perform such maintenance. The written notice shall specify the required maintenance and the time in which it must be completed. The actual cost of the maintenance, plus a 10% administrative fee, shall be paid by the Member within 10 days of billing. Upon failure of the Member to remit payment, the cost of maintenance and administrative fee shall be specially assessed against the Lot, shall bear interest at the rate provided for unpaid assessments and, when notice of nonpayment is filed with the Lancaster County Register of Deeds, shall be a lien upon the Lot.
17. Signage. No advertising signs, billboards, or other advertising devices shall be erected, placed or permitted to remain on any Lot. However, Declarant may erect signs advertising Lots for sale within the Townhome Property and a sign advertising a lot as "For Sale" may be erected upon any Lot.
18. Exterior Restrictions. No exterior solar heating or cooling device, or wind powered electric generators of any sort shall be permitted on any Lot unless such apparatus is approved by the Declarant and is installed in such a manner that it is not visible from any street or roadway. No exterior television or radio antenna, satellite receiving station, antenna, or dish shall be permitted on any Lot unless such apparatus is approved by the Declarant and is installed in such a manner that it is not visible from any street or roadway.
19. Repair on Lot. 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 offensive to the neighborhood be visibly stored, parked or abandoned on any Lot.

20. Storage on Lot. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot for over twenty-four (24) hours, other than in an enclosed structure. No motor vehicle may be parked or stored outside on any Lot, except properly licensed and registered 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 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.

21. Construction Vehicle and Rolloff Service. Declarant may designate and enforce locations through and over which all construction vehicles shall enter and exit the Townhome Property during development. During construction of any townhome residence on a Lot, a dumpster shall be placed on the Lot and no material may be staged or stored in any street, road or on another Lot. Such dumpster shall be covered and must be emptied when full. Declarant shall have the right to designate a single provider of rolloff service within the Townhome Property in order to limit and control the number of service trucks operating within the Townhome Property.

22. Lighting. All 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.

23. Temporary or Permanent Structures. No partially completed dwelling or temporary building and no trailer, tent, storage shed, outbuilding, shack or garage on any Lot shall be used as a temporary or permanent residence.

24. Nuisance. 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 community or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining Lots. 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. No vegetation on vacant Lots, excluding vacant Lots owned by Declarant, shall be allowed to reach a height in excess of eighteen (18) inches. In the event vegetation on a vacant Lot not owned by the Declarant is allowed to reach a height in excess of eighteen (18) inches, the Association shall have the right to enter upon and mow the Lot, and to assess the mowing charges against the Lot.

25. Subdivision. No Lot may be split, divided or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of Declarant of plans and specifications for such split, division or subdivision. This provision does not apply to Declarant.

26. Fallbrook Homeowners Association. Each Lot Owner acknowledges by acceptance of a deed to a Lot, that the Lot is subject not only to this Declaration, but also to the Second Amendment and Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fallbrook filed with the Register of Deeds on August 31, 2015, as Instrument No. 2015036858, and any amendments thereto (hereinafter collectively referred to as the "Fallbrook Declaration"), which imposes additional obligations on the Lot Owner for the Neighborhood Common Area, including but not limited to the annual payment of membership



dues (which payment obligation does not apply to Declarant), and establishes membership in the Fallbrook Homeowners Association, all as set forth in greater detail in the Fallbrook Declaration.

#### **ARTICLE IV** **ASSOCIATION**

1. **The Association.** Declarant shall cause the incorporation of the Association. The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Townhome Property, including:

(a) The acquisition, construction, improvement, maintenance, operation, repair, upkeep, replacement and administration of the Common Area for the use, benefit and enjoyment of all the Members, including snow removal from all driveways and walkways located upon the Lots. The Common Area may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Common Area. The rules and regulations may permit or restrict use of the Common Area by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Area.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Townhome Property; and the protection and maintenance of the residential character of the Townhome Property.

2. **Membership and Voting.** Every Lot Owner, whether one or more persons or entities, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of each Lot and ownership of such Lot shall be the sole qualification for membership.

All Members whether one or more persons and entities, shall be entitled to one (1) vote per Lot on each matter properly coming before the Members of the Association. Declarant shall be entitled to ten (10) votes per Lot for each Lot owned by Declarant on each matter coming before the Members of the Association.

3. **Rights of All Members.** Each Member of the Association shall have the right to use and enjoy the Common Area and shall have an easement over and upon the Common Area for the use and enjoyment thereof, which shall be appurtenant to and shall pass with the interest requisite for membership held by such Member; provided, however, that no Lot Owner shall construct any structures within the Common Area without the prior written consent of the Association. . In addition, the City of Lincoln shall have the permanent right and easement to enter upon the Common Area to maintain the Common Area in the same manner as required of the Association in the event the Association fails to perform said maintenance or the Association dissolves and the Lot Owners fail to perform said maintenance. The rights of the Members of the Association in and upon the Common Area shall be subject to the following:

(a) All easements shown upon any final plat of any portion of the Townhome Property recorded with the Register of Deeds of Lancaster County, Nebraska;

(b) The right of the Association to promulgate rules and regulations for the reasonable use and enjoyment of the Common Area and the right of the Association, as provided in its Articles and Bylaws to suspend a Member's use of the Common Area for any period during which any assessment remains unpaid, or for any period not to exceed thirty (30) days for any other infraction of any published rules and regulations governing the use and maintenance of the Common Area;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility and subject to such conditions as may be agreed to by the Members; provided, however, that any such dedication or transfer shall be approved by a majority vote at a regular meeting of the Members, providing notice of the proposed dedication or transfer be contained in the notice of such meeting; and

(d) The use of the Roadways located within the Common Area by the general public pursuant to any public access easement granted or to be granted by Declarant.

(e) The right of the City of Lincoln to enter upon the Common Area to maintain the Common Area in the same manner as required of the Association in the event the Association fails to perform said maintenance or the Association dissolves and the Lot Owners fail to perform said maintenance.

4. Powers and Responsibilities. The Association shall have the powers conferred upon nonprofit 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, construction, improvement, development, maintenance, operation, repair, upkeep, replacement and administration of the Common Area and the enforcement of the rules and regulations relating to the Common Area.

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

(c) 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 the Common Area against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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. Association Activities Regarding the Common Area. The Association covenants and each Lot Owner of a Lot, by acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant and agree to pay to administer, insure, maintain, repair, replace, add, improve and to the extent applicable, own the Common Area. The covenant to pay shall be satisfied by the payment of dues and assessments for such administration, insurance, maintenance, repairs, replacement, addition, improvement, and to the extent applicable, ownership of the Common Area as set forth below.

6. Dissolution of Association; Lot Owner Responsibilities. Each Lot Owner, by the acceptance of a deed by which the interest requisite for membership in the Association is acquired, shall be deemed to covenant that, in the event the Association dissolves, such Lot Owner shall remain jointly and severally liable along with all other owners of Lots within the Townhome Property for the cost of administering and maintaining the Common Area in the same manner as required of the Association under Paragraph 5 above. In the event such Lot Owners fail or refuse to perform any required maintenance and upkeep of the Common Area, the City of Lincoln after seven (7) days' notice to such Lot Owners, may perform the required maintenance and assess each Lot and Lot Owner for the cost of the performance of such maintenance on an equal per lot basis. Each assessment of the City's actual costs of performing the maintenance shall be the personal obligation of each Lot Owner who is the owner of the Lot at the time of assessment and shall be a lien upon the Lot assessed. To evidence such lien for unpaid assessments, the City shall prepare a written notice setting forth the amount, the name of the Lot Owner, and a legal description of the Lot. Such notice shall be signed on behalf of the City by the Mayor and shall be recorded with the Register of Deeds of Lancaster County, Nebraska. Each Lot Owner shall pay the Lot Owner's pro-rata share of the City's actual cost of maintaining the Common Area within thirty (30) days following receipt of an assessment therefor. Delinquent payments shall be subject to a late charge of 10% of the delinquent payment or twenty dollars (\$20) whichever is greater.

7. Ground Maintenance Driveway and Walkway Snow Removal. The Association shall be responsible for snow removal from all driveways and walkways located upon the Lots as well as within the Common Area.

8. Green Area Maintenance. The Association's maintenance of the Green Area located upon each Lot shall include lawn fertilizing and mowing, but shall not include maintenance of any landscaping and plantings installed on any Lot. Each Lot Owner shall be

responsible for maintaining any and all landscaping and plantings located upon their Lot and shall be responsible for watering the Green Area located upon their Lot.

9. Refuse Service. The Fallbrook Homeowners Association shall select a single provider to provide refuse collection services for the entire Residential Property and Townhome Property. The cost of the refuse services for each Lot shall be paid by the Lot Owner directly to the service provider and shall not be collected by or paid to the Association.

10. Imposition of Dues and Assessments. The Association may fix, levy and charge each Lot Owner with 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 time and in the manner prescribed by the Board.

11. 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 due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

12. Liens and Personal Obligations for Dues and Assessments. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Lot Owner at the time when the dues and 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 dues and assessments shall not pass to the successor in title to the Lot 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 dues and assessments.

13. Purpose of Dues. Dues and assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. The dues and assessments levied and collected by the Association shall be committed and expended to accomplish the purposes and to perform the powers and responsibilities of the Association described in this Article.

14. Assessments for Capital Improvements. In addition to the dues, the Board of Directors may levy an assessment or assessments for capital improvements; provided that, any assessment for capital improvements to the Common Area may be rejected at any time within thirty (30) days of the notice of the levy by the vote of Members comprising not less than fifty-one percent (51%) of the total votes of Lots included within this Declaration, at a regular meeting of the Members or at a special meeting of the Members, if notice of a special assessment is contained in the notice of the special meeting.

15. Uniform Rate of Dues and Assessments. Dues and assessments related to the Common Area shall be fixed at a uniform rate as to all Lots, but may be abated as to individual Lots and shall be abated as to Declarant, as provided in Paragraph 11, above.

16. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date

of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

17. Effect of Nonpayment of Dues or Assessments; Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum, or the maximum rate allowed by law, whichever is less. The Association may bring an action at law against the Lot 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 Lot 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 a Lot 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.

18. 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** **GENERAL PROVISIONS**

1. Acknowledgment of Commercial Property. By acceptance of a deed to a Lot, each Lot Owner acknowledges that the Commercial Property, identified in the Fallbrook Declaration is zoned O-3 and B-2 and will contain uses permitted in those zoning districts.

2. Additional Property. Declarant reserves the right, in its sole and absolute discretion, at any time and from time to time, to add Additional Property to the provisions of this Declaration without the consent of the Members of the Association. Additional Property may be added to this Declaration by an instrument executed by Declarant and filed with the Lancaster County Register of Deeds, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Member of the Association) and shall (i) refer to this Declaration, stating the date and filing information, (ii) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof; (iii) contain an exact legal description of such Additional Property, and (iv) state such other or different covenants, conditions and restrictions as the Declarant, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property.

3. Party Walls. Each wall which is built as a part of the original construction of a dwelling within the Townhome Property and placed on the dividing line between two adjoining Lots shall constitute a party wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the Lot Owners of the Lots who make use of a party wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Lot Owner of a Lot who has used the wall may restore it. If any other Lot Owner subsequently makes use of the party wall, they shall contribute to the cost of restoration in proportion to such use.

Notwithstanding any other provision of this paragraph, a Lot Owner who by their negligence or willful acts or omissions causes the party wall to be destroyed, damaged or otherwise exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration. The right of any Lot Owner to contribution from any other Lot Owner under this paragraph shall be appurtenant to the land and shall pass to such title holder's successors in interest. Should a dispute arise concerning a party wall under this Declaration the parties are encouraged to resolve their dispute pursuant to the Dispute Resolution Act, NEB. REV. STAT. § 25-2901 to 25-2920 prior to filing a lawsuit. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the parties have utilized the Dispute Resolution Act.

4. Common Utility Lines. When any utility line shall be constructed on two or more adjoining Lots with the Townhome Property, each Lot Owner of one of the adjoining Lots shall have an easement for the maintenance, repair and replacement of the utility line upon all of the adjoining Lots, which easement shall be appurtenant to the interest requisite for membership. Any expense of maintenance, repair or replacement of the utility line shall be borne equally by the Lot Owners of such adjoining Lots. The provisions of this paragraph shall not operate to relieve any Lot Owner from any liability which such Lot Owner may incur by reason of negligent or willful acts or omissions resulting in damage to the utility line.

5. Enforcement of Declaration. Except for the authority and powers specifically granted to the Declarant, the Declarant or any Lot Owner named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. The City shall have the right to enforce all restrictive covenants and conditions regarding the maintenance of the Common Area by proceedings at law or in equity against the Association or any person violating or attempting to violate said provisions. In the event the Association dissolves, the City proceedings may be to restrain violation of the duty to maintain the Common Area, to recover a money judgment upon the personal obligation and debt of the Lot Owner to pay the Lot Owner's pro-rata share of the City's cost to maintain the Common Area or to foreclose upon the defaulting Lot Owner's lot in a like manner as mortgages on real property. In any such foreclosure or lawsuit, the Lot Owner shall be required to pay the cost and expenses of such proceedings, including reasonable attorney fees, costs of suit, and court costs incurred as allowed by the court. Suit to recover a money judgment for unpaid assessments for the cost to maintain the Common Area shall be maintainable without foreclosure of the Lot Owner's lot or waiving the lien securing the assessment. Failure by the Declarant, City of Lincoln or by any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. Amendment. 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 fifteen (15) years from the date hereof. Thereafter any portion of this Declaration, may be amended by an instrument signed by the Lot Owners of Lots comprising not less than sixty-six percent (66%) of the total votes of Lots covered by this Declaration. Notwithstanding any provision above to the contrary the provisions of this Declaration governing membership in the Association, maintenance of the Common Areas, Lot Owner responsibilities upon dissolution of the Association, and the rights of the City of Lincoln shall not be terminated or modified without the written approval of the City Attorney for the City of Lincoln, Nebraska.

7. Assignment. Heritage Lakes, LLC shall have the power to assign any or all of its rights and duties as Declarant in this Declaration to a successor or assign, or to the Association at such time as the Declarant deems appropriate, by filing a Notice of Assignment of Declarant Rights and Duties that delineates which rights and duties are being assigned. Heritage Lakes, LLC or its successor or assign, may also terminate its status as Declarant under this Declaration in its entirety, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant with respect to those remaining rights and duties the Declarant has not previously assigned to another entity, association or individual under a Notice of Assignment of Declarant Rights and Duties, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant with respect to those remaining rights and duties.

8. Partial Invalidation. 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.

9. Termination of Covenants. The covenants and restrictions of this Declaration shall run with and bind the land and the Lot Owners, their successors, assigns, heirs and devisees, for a term of thirty (30) years from the date of this Declaration, after which time said Declaration shall be automatically extended for successive ten (10) year periods unless an instrument terminating this Declaration signed by the then Lot Owners of Lots comprising not less than seventy-five percent (75%) of the total votes of Lots covered by this Declaration has been recorded prior to the commencement of any ten year period.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 9<sup>th</sup> day of June, 2016.

**HERITAGE LAKES, LLC, A Nebraska  
Limited Liability Company**

By: HB II, Inc., Manager

By: Gary Kort  
Gary Kort, President

APPROVED AS TO FORM FOR THE LIMITED PURPOSE OF TRANSFERRING  
MAINTENANCE OF THE COMMON AREA TO THE ASSOCIATION:

Richard P. [Signature]  
Assistant City Attorney

Date: June 9, 2016

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me on June 9, 2016 by Gary Kort (WHO {x} IS PERSONALLY KNOWN TO ME OR { } PROVED TO ME SATISFACTORY IDENTIFICATION), President of HB II, Inc., a Nebraska corporation and Manager of Heritage Lakes, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Tim O'Neill  
Notary Public

