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FELICIA GEITH, COUNTY RECORDER
HARRISON COUNTY IOWA

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HARVEST HILLS PHASE II PLAT**

Recorder's Cover Sheet

Preparer Information:

Brennan R. Block, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309; Phone: (515) 242-2400

Taxpayer Information:

Heistand Farm 300 Limited Liability Company, 514 Walker Street, Woodbine, IA 51579

Return Document to:

Taxpayer

Grantor: Heistand Farm 300 Limited Liability Company

Grantee: N/A

Legal Description: See Page 1

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND
RESTRICTIONS**

THIS DECLARATION (this "Declaration") is made this 5 day of June, 2023, by **HEISTAND FARM 300 LIMITED LIABILITY COMPANY**, an Iowa limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of certain real property legally described as follows:

Lots 29 to 167, Outlots E through I inclusive, in HARVEST HILLS PHASE II, an Official Plat, now included and forming a part of the City of Woodbine, Harrison County, Iowa, according to the Plat recorded at Book 2023, Page 0719, and recorded on April 18, 2023.

(the "Plat"); and

WHEREAS, Declarant is desirous of protecting the value and desirability of the Plat.

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

1. DEFINITIONS

For the purposes of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. "Association" shall mean the Harvest Hills Phase II Homeowners Association, Inc., its successors and assigns, a non-profit corporation organized or to be organized pursuant to Chapter 504 of the Code of Iowa, as amended.
- B. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.
- C. "City" shall mean the City of Woodbine, Iowa.
- D. "City Code" shall mean the Zoning Code of the City of Woodbine, Iowa, as amended.
- E. "Common Areas" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners, including but not limited to Outlots E through I.
- F. "Declarant" shall mean and refer to Heistand Farm 300 Limited Liability Company, an Iowa limited liability company, its successors or assigns.
- G. "Improvement" shall mean any structure and all appurtenances thereto of every type

and kind, including but not limited to dwellings, Outbuildings, other buildings, barns, storage sheds, patios, basketball goals, basketball courts, tennis or pickleball courts, swimming pools, garages, fences, screening walls, retaining walls, stairs, decks, landscaping poles, signs, antennas, towers, windmills and any facilities used in connection with water, sanitary sewer, wastewater, septic tank, storm drainage, gas, electric, telephone, regular or cable television or other utilities, including any addition or alteration of any of the foregoing.

- H. "Lot" shall mean and refer to an individual parcel of land, which is described above as shown upon the recorded plat of Harvest Hills Phase II. In the event that any of the Lots on such plat are subsequently replatted, references to a Lot(s) in this Declaration shall be deemed to refer to the areas of the original Lot(s) on such plat as those Lot(s) may be replatted.
- I. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.
- J. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed, garden house, pool house or playhouse.
- K. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- L. "Plat" shall mean and refer to the real property described as the real property being in Harvest Hills Phase II, an Official Plat, now included in and forming a part of the City of Woodbine, Harrison County, Iowa.

2. DESIGNATION OF USE

All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the City Code.

3. BUILDING TYPES

- A. No dwelling shall be constructed, altered, or maintained on any Building Lot other than a detached single family dwelling with an attached private garage.
- B. No dwelling of any kind shall be moved in its entirety onto any Lot.
- C. The construction of any dwelling on any Building Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.

4. BUILDING AREA DESIGN AND CONSTRUCTION

No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing dwellings in the Plat and unless it meets the following requirements:

- A. For Lots 29 to 167 of the Plat, all dwellings must have a ground floor finished living area of not less than 720 square feet. "Ground floor finished living area" shall mean the space of a dwelling at the ground level, as viewed from the front elevation, which is intended for human occupancy and is heated and cooled by a permanent system. For clarity, the same shall not include any finished area that has its floor below the exterior grade, or any attics, porches, decks, breezeways, or attached or built-in garages.
- B. All dwellings must be constructed using hardboard siding or cement board siding or other brands approved in writing by Declarant as being acceptable exterior siding. No vinyl siding shall be permitted unless approved in writing in advance by Declarant.
- C. The use of natural materials is encouraged, i.e., stained wood, stone, brick and warm-toned shingles, as well as soft, earth-tone colors. All exposed concrete foundations on front elevations only must be covered with brick, stone, veneered or stucco textured; provided, however, that other foundation sides may be exposed but not to exceed twenty-four inches (24") above grade. Any exposed portion of a foundation as permitted herein shall be painted to match the remainder of the structure. All structures built in the Plat shall be shingled with materials, and be in colors, acceptable to the Declarant.
- D. All structures shall blend in with the terrain rather than contrast with it. All exterior portions of any dwelling, garage or Outbuilding located on any Lot shall be finished with earth-tone colors, which shall in all cases be approved in writing by Declarant. Prior to commencement of painting of the exterior of any dwelling, a sampling of the approved exterior color(s) chosen by the Owner shall be applied to the dwelling to be viewed by Declarant for final color approval, in writing. All exterior painted portions of dwellings or Outbuildings that are repainted shall be repainted in one of such earth-tone colors approved in writing by Declarant.

All roof material shall be 30 year, architectural style in earth-tone colors or shingle of equal color, quality and appearance thereto. Three tab shingles are not allowed.

- E. The single family dwelling on each respective Lot shall be under construction within thirty-six (36) months from the date of conveyance of such Lot by Declarant to an Owner. All buildings, dwellings, structures and Improvements of any kind must be completed within thirty-six (36) months of the commencement date of construction.

In the event the Owner of a Lot breaches this subsection E by not completing or commencing any construction in thirty-six (36) months, then Declarant shall have the option to repurchase such Lot for a price equal to the purchase price paid by the Owner of such Lot, not adjusted for tax proration or other similar closing items, plus both: (a) an amount equal to three percent (3%) per annum of such purchase price paid by the Owner, not compounded; and (b) the reasonable value, as determined by Declarant, of any whole or partial structures constructed on the Lot.

Such option to repurchase shall be prior to any liens that may be placed on such Lot either at the time of the closing of the purchase and sale of such Lot or subsequent thereto. If the Declarant elects to exercise such option to repurchase any of said Lots, it must furnish written notice of its intention to repurchase to such Lot Owner and record such notice in the office of the Harrison County Recorder. If the Owner of the Lot cannot be located, Declarant shall mail a copy thereof to the Owner of the Lot at the Owner's last known address. If the Declarant exercises its option to repurchase said Lot, it shall obtain a preliminary title opinion within fifteen (15) days following the date such notice of its intention is recorded. If such preliminary title opinion discloses any liens on such lot, the amount of which is in excess of the amount of said repurchase price, Declarant shall notify the Owner of the Lot and the lien holder who shall have thirty (30) days to make arrangements to release such lien. If satisfactory arrangements are not made within said thirty (30) day period to satisfy any such lien at the closing, the Declarant shall deposit the amount of such purchase price in escrow with an escrow agent with instructions to disburse the same to the Lot Owner and lien holder(s), as is appropriate, when the escrow agent is satisfied that the title has been transferred to the Declarant free of all liens and encumbrances.

- F. All buildings, dwellings, structures and Improvements shall be constructed in accordance with the following setback requirements:

Measurement Point on Improvement	Distance of Setback
Front:	30 feet from front property line of Lot
Side:	10 feet from property line
Street Side:	10 feet from property line
Rear:	50 feet from rear property line of Lot

- G. With respect to the dwelling constructed or to be constructed on each Lot, the front of such dwelling shall be located no more than forty feet (40') from the front property line of the Lot. For purposes of clarity, the front of the dwelling shall be a minimum of thirty feet (30'), and a maximum of forty feet (40'), from the front property line of the Lot.

No building, dwelling or other Improvement shall be constructed or substantially altered on any Building Lot unless and until a design plan and/or a site plan (collectively the "Plans") have been submitted to and approved by Declarant (or by the Association if the Declarant does not hold legal or equitable title to any Lot or Building Lot). The Plans shall contain details of design, color scheme, number of windows, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters as applicable. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to ensure that Improvements are developed in reasonable harmony within the Plat and that the covenants, conditions and restrictions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

5. **GARAGES AND DRIVeways**

All dwellings shall have a minimum of a two-car attached garage. All dwellings shall have a single portland cement concrete or paving stone driveway not less than fourteen feet (14'), nor greater than twenty four feet (24'), in width, and which shall run directly from the street to the garage. Unless otherwise approved in writing by Declarant, each Lot's driveway shall enter the Lot from the street.

6. TEMPORARY AND OTHER STRUCTURES-RESTRICTED USES

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, trailer, unfinished dwelling basement, tent, shack, garage, or Outbuilding shall be used at any time as a dwelling. No vehicle with a gross vehicle weight greater than seven thousand pounds (7,000 lbs) and no camper, motor home, watercraft, trailer, or mechanical equipment may be parked or maintained on any Lot (except inside a garage) or on the public street, other than on a temporary basis; provided that this restriction shall not apply to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean both: (a) no more than a total of thirty (30) days per year, and (b) no more than forty-eight (48) consecutive hours. At no time may any vehicle, trailer or camper be parked or maintained in the yard of any Lot. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

7. FENCES

Only black vinyl clad chain-link fences (with a maximum height of forty-eight inches (48")) or black wrought iron or aluminum fences (with a maximum height of seventy-two inches (72")) will be allowed. No fences or other structures may be built or maintained within the front or back setback areas for buildings or dwellings described in this Declaration and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. All fences shall be kept in good repair and attractive appearance. No fences may be built or maintained on any Lot prior to commencement of construction of the single family dwelling and issuance of an occupancy permit. For the avoidance of doubt, any permitted fencing behind a dwelling shall not come within ten feet (10') of the rear property line of the Lot.

8. DECKS

Decks attached to a dwelling must be constructed from cedar, redwood, treated lumber, composite decking or other products approved by Declarant. All decks shall be kept in good repair and attractive appearance and shall be in colors consistent with the dwelling on the Lot.

9. SODDING OR SEEDING

Within ninety (90) days of issuance of an occupancy permit for the dwelling on a Lot, all portions of the Lot shall be landscaped with ground cover. Permitted types of ground cover include sod, mulch and other ground covering types approved by Declarant. All landscape plans shall be submitted to and approved by Declarant. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance. Landscape plans submitted to Declarant shall comply with the following standards:

- A. Plans shall indicate any grade changes, walls and berms.
- B. Each Lot shall be landscaped with a mixture of plant materials consisting of a representative sample of shade trees, ornamental trees, evergreen trees, evergreen shrubs, deciduous shrubs and perennials/groundcovers.
- C. Landscaping shall be installed during the first available planting season following issuance of an occupancy permit for the dwelling on the Lot.
- D. All swimming pool plans (if any) shall be approved by the Declarant.
- E. Minimum tree size is a one inch (1") caliper B&B.
- F. No hedges or mass planted shrubs shall be permitted more than ten feet (10') in front of the front line of the residential dwelling unless otherwise approved by Declarant.
- G. No wall shall exceed a height of six feet (6') unless otherwise approved by Declarant.

10. EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat as recorded. The Owner and/or occupant of each Lot, jointly and severally, shall, at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion within the Lot containing the easements reserved herein at all times in good repair and condition and shall neither erect nor permit erection of any Improvement within the easement areas (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easements areas. Any berm and/or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed. Additionally, Declarant reserves unto itself, its successors and assigns, for so long as it owns any Lot in the Plat, the right and easement to erect and maintain identification and "For Sale" sign or signs on Lots that it owns, provided the same are consistent with the ordinances of the City.

11. NUISANCES

No noxious or offensive activity or odors shall be permitted on or to escape from any Lot, nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently.

12. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS

The Owner of each Lot (and in the case one or more persons are Owner, each such person jointly and severally) whether vacant or improved, and their agents, assigns, heirs and/or building contractors, shall take all necessary precautions to prevent, stabilize and control erosion within the Owner's Lot to prevent sediment migration and soil erosion from extending

beyond the boundaries of the Lot. In the event of any occurrence of soil erosion, the Owner of the Lot (and in the case one or more persons are Owner, each such person jointly and severally) shall clean up all eroded sediment and restore all affected areas to their original condition.

Any construction or earth moving on any Lot shall be in compliance with all applicable laws relating to storm water discharge permitting. The Owner shall be solely responsible for the Lot with respect to compliance with all terms, provisions and requirements of any NPDES Storm Water Discharge Permit No. 2 and any storm water pollution prevention plan which includes the Lot.

During the ownership of the Lot, each Owner (and in the case one or more persons are Owner, each such person jointly and severally) shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and attorneys and consultant fees caused by, or in any manner related to: (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot; or (ii) any alleged violation of any NPDES or storm water discharge rule or regulation.

13. SIGNS

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except: (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant, in writing, not exceeding one hundred forty-four (144) square inches in area on which there shall only be exhibited the street number and/or the name of the resident, (iii) a customary sign (one per Lot) advertising a Lot or dwelling for sale, not exceeding one thousand two hundred ninety-six (1,296) square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs. Temporary signs (for political campaigns, garage sales, etc.) may be placed for up to 30 days if in accordance with City ordinances.

Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City. A monument sign for the development may be placed by the Declarant on any of the outlots within the Plat.

14. TRASH RECEPTACLES

No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding no earlier than twelve (12) hours prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area or underground location, or inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

15. UTILITIES

All utility connection facilities and services shall be underground.

16. TOWERS AND ANTENNAS

With respect to each Lot (but excluding outlots), no exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings, on garages or on Outbuildings. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-four inches (24") or less in diameter shall be permitted. No more than two (2) such exterior towers, antennas or receiver dishes shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from each such exterior tower, antenna or receiver dish permitted on each Lot. No such device shall be mounted on the front elevation or front half of the side elevation of the dwelling or garage. No other exterior towers or antenna shall be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on Outbuildings without specific approval from the Declarant. For the avoidance of doubt, the provisions of this Section shall not apply to any outlots within the Plat.

17. MAINTENANCE

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six inches (6"). The Owner and/or occupant of each Lot shall jointly and severally be responsible for maintaining the exterior of any dwelling, the driveway, fence, screening and all other improvements.

18. CERTAIN ANIMALS PROHIBITED

No animals, livestock, pigs, snakes or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, unless the prior written consent of Declarant has been obtained, shall more than a total of three (3) dogs or cats (in the aggregate) be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard.

19. ACCESSORY STRUCTURES

Each Building Lot may have one (1) customary and traditional Outbuilding such as a tool shed, garden house, and the like. The Outbuilding may not exceed twelve feet (12') in height, its side walls shall not exceed eight feet (8') in height and its area in square feet shall not exceed five hundred (500) square feet. The siding and roofing materials utilized for Outbuildings must match those utilized for the dwelling located on the Building Lot. In addition, in-ground pools and pool houses are permitted as additional accessory structures. All permanent pools, whether in-ground or above-ground, must be properly fenced in accordance with the City Code. Play sets erected shall be earth-tone in color, not exceed ten feet (10') in height, be properly maintained, and shall be located only in the rear yard of a Lot. Outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within ten feet (10') of the side Lot line unless the Declarant has specifically approved the structure and location. Any accessory structures must match the architecture of the dwelling on the Lot.

A dog run shall not be permitted on any Lot unless: (i) it is located at the rear of the house or garage and extends toward the rear of the Lot; (ii) it is entirely enclosed with a fence in compliance with Section 7 of this Declaration; and (iii) it is screened from public view with landscape plantings or hedges.

20. SURFACE WATER

The topography of the Plat is such that surface water may flow from certain Building Lots onto other Building Lots. In regard to all matters concerning surface water, each Building Lot shall be subject to and benefited by such easements as may exist from the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time; and, all Owners shall have such rights and obligations with respect thereto as may be provided by such laws.

21. MAILBOXES

The Declarant may, at its discretion, install neighborhood mailbox cluster units according to United States Postal Service regulations. The Owner and/or occupant of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

22. SECURITY LIGHTING

Security or decorative lighting for driveways, parking and other areas shall be designed, located and directed in a manner which will avoid direct lighting onto adjoining Lots.

23. CITY CODE

It is understood by Declarant, each Owner and the Association that the Plat is to be annexed by the City of Woodbine, and that the City Code will thereafter govern use of all property within the Plat. Notwithstanding any provisions in this Declaration to the contrary, in the event of any conflict between this Declaration and the applicable provisions of the City Code, the applicable provisions of the City Code shall be controlling to the extent of the conflict.

24. ENFORCEMENT OF COVENANTS

This Declaration shall be deemed to run with the land and the Declarant, the Owner of any Lot, or the Association may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs if the Declarant, Owner or the Association prevails in any such action.

25. AMENDMENT OF COVENANTS

This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Notwithstanding anything to the contrary herein, until the Declarant (or any successor or assign affiliated with Declarant) is no longer the record titleholder of any Lot within the Plat, the Declarant may make amendments or modifications to this Declaration in its sole discretion without the consent of any other Owners or any other party. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the Recorder.

26. PERIOD OF COVENANTS

The easements granted herein shall be perpetual in nature. All covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all parties claiming under them for the maximum period allowed by law, subject to the right of Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect. For clarity, the filing of a verified claim by a single Owner shall be effective for purposes of extending the covenants, conditions, and restrictions of this Declaration as against all other Owners as provided herein.

27. ENFORCEMENT AND WAIVER

- A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.
- B. This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on City-owned property within the Plat.

28. OWNER'S ASSOCIATION

- A. The Association has or will be established, at least initially by the Declarant, to manage common requirements and associated expenses with maintenance of a subdivision, including but not limited to, real estate taxes, carrying insurance for the Common Areas and outlots, carrying insurance for the Association's management, landscape maintenance, prairie grass planting and maintenance, outlot maintenance, general real estate management, common utilities (if any), snow removal, road maintenance, and legal services of the Common Areas and outlots in the Plat. The Association will also be responsible for enforcement of the covenants, conditions and restrictions contained in this Declaration, including by promulgation of rules and regulations consistent herewith.
- B. Every Owner of a Lot shall be a member of the Association (each, a "Member"). Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. The Owner of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be Members; provided, that, the vote for such Lot shall be exercised as the Owners thereof, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE DECLARANT (OR ITS SUCCESSOR OR ASSIGN) SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION FROM THE DATE OF FILING OF THIS DECLARATION UNTIL THE DATE THAT DECLARANT (OR ANY

SUCCESSOR OR ASSIGN AFFILIATED WITH DECLARANT) IS NO LONGER RECORD TITLEHOLDER TO ANY LOT. DURING THIS TIME PERIOD, DECLARANT (OR ITS SUCCESSOR OR ASSIGN) SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS FOR THE ASSOCIATION.

- C. Subject to the Bylaws adopted by the Association, the voting Members shall elect a Board of Directors of the Association. The Board of Directors shall manage the affairs of the Association in accordance with the Association's Bylaws.
- D. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against the Member's Lot remains unpaid.
- E. Unless the Articles of Incorporation or the Bylaws, or similar governing documents, of the Association otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose(s) for which the meeting is called, shall be delivered no less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the officer(s) or person(s) calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to the Member at his/her/its address as it appears on the Association's records, with postage prepaid thereon.

29. ASSESSMENTS.

- A. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) monthly assessments or charges; (2) special assessments for the capital improvements and operating deficits; and (3) special assessments as provided below. Such assessments to be established and collected as hereinafter provided. The monthly and special assessment(s), together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property, except only: (i) tax liens on the Lot in favor of any assessing unit or special district, and (ii) liens for all sums unpaid on a first mortgage of record. 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.
- B. The assessments levied by the Association shall be used exclusively to promote the safety and welfare of the owners and users of the Lots and Common Areas and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein, including but not limited to: utilities, prairie grass seed and planting of same, drainage facilities, payment of insurance, administrative and management fees, legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.
- C. In addition to the monthly assessments authorized above, the Association shall levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under this Declaration. Further, the Association may levy a special

assessment in addition to the monthly assessments for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement not required of the Association under this Declaration or other discretionary expenditure, provided that any such assessment shall have the assent of a majority of the votes of Members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

- D. Monthly and special assessments provided for in this Declaration shall be fixed in accordance with this section. Each Lot or portion thereof and the Owner(s) of each Lot or portion thereof, shall be liable for a share of the total budget upon which any monthly or special assessment is based. The share appurtenant to each Lot or a portion thereof shall be calculated by multiplying the total budget of the monthly or special assessment times a fraction, the numerator of which is the number of votes appurtenant to such Lot or portion thereof and the denominator of which is the total votes outstanding in the Association.

The monthly assessments provided for herein shall be due as to each Lot on the first day of each month or as otherwise set by the Board of Directors. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

- E. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, plus costs and reasonable attorney fees.
- F. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien created by this Declaration, except that assessment liens, if any, as shall have come due up to the

expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure, shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

- G. Because of the limited obligations of the Association as a result of the City's contemplated annex of the Plat and the nominal amount of Common Areas within the Plat, it is initially anticipated that the aggregate amount of assessments and dues payable by an Owner of a Lot to the Association will be \$0.00 per Lot per year.
- H. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:
 - (i) All property which is dedicated to and accepted by a public authority; and
 - (ii) All property owned or, in accordance with this Declaration is to be owned, by the Association.

No other land or improvements located within the Plat shall be exempt from said assessments, charges or liens.

30. DECLARANT'S RIGHTS

- A. Declarant reserves the right to use any of the Lots to conduct activities in connection with the construction and development of the project prior to the applicable Lot(s) being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to erect signs, conduct general marketing, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of any Lot that remain unsold. Declarant's rights are subject to all applicable ordinances of the City.
- B. Declarant, its successors and assigns reserve the right to add additional Common Areas by conveying the same to the Association from time to time. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional real or personal property to the Association.
- C. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established in accordance with the Code of Iowa and the initial Common Areas are conveyed to the Association.
- D. Notwithstanding any building or construction requirements or specifications contained in

this Declaration, the Declarant, in its sole discretion, shall have the right, but not the obligation, to allow variances to the building requirements or specifications by any Owner at any time by granting a specific written variance to such Owner.

31. EASEMENTS

- A. Declarant reserves unto the Association an easement over the various Lots encompassing the area that is a distance of ten feet (10') parallel to the boundary lines of the Common Areas. This easement shall be a non-exclusive easement for the sole benefit of the Association in performance of its maintenance obligations on the Common Areas and adjacent landscape areas. This easement shall not be for the benefit of the Members or the public at large.
- B. Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Plat, the right and easement to erect and maintain identification and "For Sale" sign or signs on Lots that it owns, provided the same are consistent with the ordinances of the City.

32. GENERAL PROVISIONS

- A. The Board of Directors of the Association shall have the right to adopt rules and regulations governing the Plat, included any Common Areas, and such rules shall be observed and obeyed by the Owners, their guests, invitees, lessees, contractors, assigns and licensees; provided, however, that no such rules or regulations adopted by the Board of Directors shall, in any way, modify, amend, repeal or alter any provision of this Declaration, or the Articles or Bylaws of the Association.
- B. Failure of the Association to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules or regulations promulgated pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.
- C. In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines or liquidated damages to be imposed upon Owners or their tenants, invitees and/or guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.
- D. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without providing any actual damages, including the right to secure injunctive relief or secure

removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

- E. This Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

[See attached copy of HARVEST HILLS PHASE II Plat.]

LANE RINEARSON

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HARVEST HILLS PHASE II

UNITS 101 THROUGH 138 AND 140 THROUGH 149 ARE PART OF THE SOUTHWEST QUARTER AND PART OF THE NORTHWEST QUARTER, SECTION 15, TOWNSHIP 50 NORTH, RANGE 12 WEST OF THE 5TH MAIN MERIDIAN, DENVER, CO.

