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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2017-31181

12/27/2017 12:45:21 PM

*Clayton Dowling*

REGISTER OF DEEDS



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF SOUTHERN PINES, A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA**

Lots 172 through 186, inclusive, Southern Pines Replat 1  
(The Southern Pines Villas)

THIS DECLARATION, made on the date hereinafter set forth, is made by SOUTHERN PINES, LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

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

Lots 172 through 186, inclusive, in Southern Pines Replat 1, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Villa Lots" and individually as each "Villa Lot".

The Declarant desires to provide for the preservation of the values and amenities of the Southern Pines Villas, for the maintenance of the character and residential integrity of the Southern Pines Villas, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of the Southern Pines Villas.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Villa Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Villa Lots, and the enjoyment of the residents of the Villa Lots. These restrictions, covenants, conditions and easements shall run with such Villa Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Villa Lot, or any part thereof, as is more fully described herein. The Villa Lots, and each Villa Lot is and shall be subject to all and each of the following conditions and other terms:

After recording, return to:  
John Q. Bachman  
PANSING HOGAN ERNST & BACHMAN LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114

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ARTICLE I.  
VILLAS ASSOCIATION

1. The Villas Association. Declarant shall cause the incorporation of the SOUTHERN PINES VILLAS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Villas Association"). The Villas Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Villa Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members and the maintenance and repair of the improvements to the Villa Lots as set forth herein. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; outlots; and signs, fencing and entrances for the Southern Pines Villas. Common Facilities may be situated on property owned or leased by the Villas Association, or on dedicated property or property subject to easements accepted by and benefiting the Villas Association.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules and regulations are uniformly applicable to all Members. The rules and regulations may regulate, limit and restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Southern Pines Villas; and the protection and maintenance of the residential character of the Southern Pines Villas.

2. Membership and Voting. Southern Pines Villas is divided into fifteen (15) separate Villa Lots. The "Owner" of each Villa Lot shall be a Member of this Villas Association. For purposes of this Declaration, the term "Owner" of a Villa Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Villa Lot, but excluding however those parties having any interest in any of such Villa Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Villa Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Villa Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Villa Lot, and may not be separated from ownership of each Villa Lot.

The Owner of each Villa Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Villas Association.

3. Purposes and Responsibilities. The Villas Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Villas Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, may include but shall not be limited to the following:

A. The exterior maintenance, painting and insurance with respect to improvements constructed on the Villa Lots, grounds care, snow removal, and trash collection as generally described in Sections 13, 14, 15, and 16 of this Article.

B. The development, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

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

D. The expenditure, commitment and payment of Villas Association funds to accomplish the purposes of the Villas Association including, but not limited to, payment for purchase of insurance covering any Common Facility or any improvement to a Villa Lot against property damage and casualty, and purchase of liability insurance coverages for the Villas Association, the Board of Directors of the Villas Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Villas Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Villas Association.

G. The deposit, investment and reinvestment of Villas Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Villas Association in the performance of their duties and responsibilities for the Villas Association.

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

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Villas Association.

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

- (1) Special assessments for capital improvements; and
- (2) Monthly assessments for the purpose of the requirements of this Article I and other operational expenses with respect to each Assessable Villa Lot as deemed necessary by the Villas Association;

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

5. Purpose or Assessments. The assessments levied upon the Villas Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the properties and for exterior maintenance, and other matters as more fully set out in Article I herein. Assessments shall be levied solely against an Assessable Villa Lot. Assessable Villa Lot shall mean and refer to any Improved Villa Lot which the Board of Directors of the Villas Association determines is entitled to the benefits for which assessments are levied by the Villas Association as provided in this instrument. An Improved Villa Lot shall mean and refer to any Villa Lot upon which shall be erected a dwelling, the construction of which shall be at least eighty percent (80%) constructed according to the plans and specifications for construction of said dwelling.

6. Monthly Assessments. The Board of Directors shall have the authority to levy and assess from time to time against any Assessable Villa Lot any monthly maintenance assessment for the purpose of meeting the requirements of this Article I, which assessments may not be equal for each Villa Lot or dwelling.

7. Special Assessment for Capital Improvements. The Villas Association may levy special assessments from time to time against a Villa Lot for the purpose of meeting the requirements of this Article I herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Villa Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the total Villa Lots and each Villa Lot Owner shall vote in person or by proxy at a meeting duly called for such purpose.

8. Notice and Quorum for Any Action Authorized Under this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article I shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes entitled to be cast by each Villa Lot shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum, at such subsequent meeting shall be ten percent (10%) of all the votes entitled to be cast. Any such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

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

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

11. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Villa Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Villas Association. Sale or transfer of any Villa Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Villas Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Villa Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Villas Association. No mortgagee shall be required to collect any assessments due. The Villas Association shall have the sole responsibility to collect all assessments due.

12. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Villa Lot, and shall abate all dues and assessments due in respect of any Villa Lot during the period such Villa Lot is owned by the Declarant.

13. Monthly Assessments. Monthly assessments may be assessed for, but not limited to, the following:

A. Care and maintenance of trees and shrubs, lawns, entrance features and signs, and other exterior landscaping improvements as originally installed by the Declarant or builder, except such improvements as may be within the confines of any fenced in area on any Assessable Villa Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner. The Owner understands that the original landscape as installed by the Declarant or builder is warranted for a period of one year from the time of planting. The Owner is responsible for replacement of all dead landscaping improvements after the one year warranty period expires and the Owner agrees to allow the Villas Association to replace such dead landscape improvements at the expense of the Owner of record at the time of replacement and the Owner shall reimburse the Villas Association on demand.

B. Snow removal from drives, front walks and stoops only as to be determined by the guidelines set forth by the Board of Directors.

C. Trash removal, unless provided by local governmental authorities.

D. The Villas Association shall have no duty to repair, replace or maintain any exterior concrete surfaces, including walks, driveways, patios, foundations, doors, windows, and decks.

E. Reserves for replacements, repairs and maintenance as determined by the Board of Directors.

F. Maintenance of dedicated or nondedicated roads, paths, ways and Common Facilities.

14. Special Assessments. Special assessments may be assessed for, but not limited to, the following:

A. Maintenance, repair and replacement of roofs.

B. Maintenance, repair, including painting, of all exterior walls, with the exception that the Villas Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Villas Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditioning systems. However, the Villas Association shall assume the duty to paint the exterior surfaces of exterior doors.

C. Maintenance, repair and replacement of gutters.

D. Maintenance of dedicated or nondedicated roads, paths, ways and Common Facilities.

15. Party Walls. Party walls shall be constructed, maintained and repaired as follows:

A. General Rules of Law to Apply. Each wall which is built as part of the original construction of any dwelling upon a Villa Lot, and which is placed on the dividing line between any adjoining Villa Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance. The cost of reasonable repairs and maintenance of any party wall shall be shared by the Owners who make use of such party wall in proportion to the length of each Villa Lot and party wall.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner or Owners shall thereafter make use of such party wall, such other Owner or Owners shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner or Owners to call for a larger contribution from other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and repair of damage caused by the elements.

E. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each Owner involved shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and all Owners shall be bound by any decision arrived at by a majority of all such arbitrations. Arbitration shall be governed by the terms of the Uniform Arbitration Act, to the extent consistent with the foregoing provisions.

16. Insurance. Insurance may be required as follows:

A. The Villas Association may, but shall not be obligated to, purchase and provide physical property coverage insurance with respect to the improvements (residential and related structures) in any amount equal to at least ninety percent (90%) of the full replacement value of the original improvements against losses by fire, lightning, wind storm and other perils covered by standard extended coverage endorsements. The full replacement value of the original improvements is defined as the base price of the original structure excluding, but not limited to, custom finished basements and any other improvements over the base original price. Insurance premiums are assessed uniformly



based upon the base price of the original structures. Betterments done to the original structure and additional custom improvements shall not be covered by the Villas Association's policy. The intent is to provide only coverage based only upon the basic purchase price excluding any custom betterments.

The Villas Association shall also purchase and provide comprehensive general liability coverage insurance against any other hazards and in such amounts as shall be determined from time to time by the Board of Directors of the Villas Association. The Villas Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Villas Association, for its Officers, and members of the Board of Directors. Finally, if the Villas Association has any employees of any nature, the Villas Association shall purchase and provide Workers' Compensation Insurance for all employees who may come within the scope of Nebraska Workers' Compensation laws.

The above insurance shall not cover the personal property of any Owner of any Villa Lot, it being the Owner's responsibility to provide such insurance coverage for the Owner's protection. In addition, the Villas Association may purchase such additional insurance against other hazards which may be deemed appropriate by the Board of Directors.

B. The Villas Association is hereby irrevocably appointed as agent for each Owner of each and every Villa Lot and for the holder of any mortgage on any Villa Lot, to adjust any and all claims arising under insurance policies purchased by the Villas Association on the improvements on the Villa Lots, joinder by any such Owner or mortgagee. All insurance proceeds shall be applied by the Villas Association toward repairing the damage covered by such insurance, provided that reconstruction or repair shall not be compulsory where the damage exceeds two-thirds (2/3) of the value of all the buildings and improvements on all of the Villa Lots covered by such insurance.

The deductible portion of the applicable master insurance policy shall be borne equally by those Villa Lots which have suffered the loss. Should the Owners so elect not to rebuild, the insurance proceeds, along with the insurance indemnity, if any, shall be credited to each Owner in accordance with such Owner's pro rata share of the loss as sustained from the casualty for which the proceeds shall be payable. Such sums shall be first applied towards satisfaction of any recorded first mortgage, first deed of trust, initial purchase money security device against such Villa Lots, next applied towards satisfaction of junior recorded liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said properties, and the filling and leveling of any of said Villa Lots, as needed, and the remainder shall then be paid to such Owners of such razed properties on a pro rata basis.

In case the insurance proceeds do not equal the cost of repairs or rebuilding, the excess cost shall be considered a maintenance expense to be assessed and collected by the Villas Association from the Owner of the damaged improvements. In any case of over insurance, any excess proceeds of insurance received shall be credited towards the working fund of the Villas Association.

C. Each Villa Lot Owner may obtain such additional insurance for the individual Owner's benefit and at such Owner's own expense as may be deemed necessary by the Villa Lot Owner, including coverage for specific improvements and betterments in the Owner's unit, personal liability, specific personal property items, the ten percent (10%) co-insurance provision of the full replacement cost of the base price of the original structure, and any exclusions of insurance coverage from the master policy provided by the Villas Association.

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

18. Utility Meters and Service Lines. In order to facilitate the installation, operation, maintenance and repair of an underground watering system, such Villa Lots as shall be designated from time to time by the Villas Association shall have a dual metering system for water so as to permit the drawing of water for watering of the lawns, shrubs, trees and other vegetation located upon the Villa Lots. It is understood that the amount of water metered for the residential use on any such Villa Lot shall be paid for by the Owner of each Villa Lot receiving water, and the Owner shall be responsible for the meter servicing solely the Owner's Villa Lot. Utility meters may be located within the Owner's residence.

## ARTICLE II. 2014 DECLARATION

The Villa Lots, in addition to the provisions of this Declaration, are subject to the terms and conditions of that certain Declaration of Covenants, Conditions, Restrictions and Easements of Southern Pines, a subdivision in Sarpy County, Nebraska, dated December 30, 2014, and recorded on December 31, 2014 as Instrument No. 2014-29404 in the records of the Register of Deeds of Sarpy County, Nebraska, as amended by a First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements of Southern Pines, a subdivision in Sarpy County, Nebraska dated July 28, 2016, and recorded on July 29, 2016 in the records of the Register of Deeds of Sarpy County, Nebraska as Instrument No. 2016-18536 (collectively, the "2014 Declaration"). The Villa Lots under this Declaration are subject to both this Declaration and 2014 Declaration.

## ARTICLE III. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Villa Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Villa Lots covered by this Declaration.

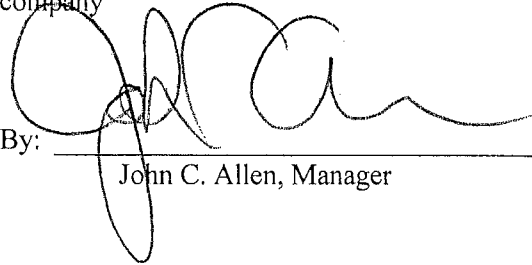
3. Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Villa Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 26<sup>th</sup> day of December, 2017.

DECLARANT:

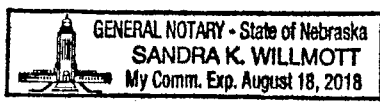
SOUTHERN PINES, LLC, a Nebraska limited liability company



By: \_\_\_\_\_  
John C. Allen, Manager

STATE OF NEBRASKA    )  
                                  ) ss.:  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of December, 2017, by JOHN C. ALLEN, Manager of SOUTHERN PINES, LLC, a Nebraska limited liability company, on behalf of the company.



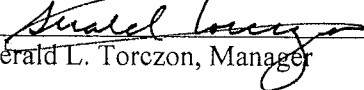
Sandra K. Willmott  
Notary Public

CONSENT

The undersigned, RICHLAND HOMES, LLC, a Nebraska limited liability company, as owner of Lot 177, Southern Pines Replat 1, hereby consents to the recording of the foregoing Declaration of Covenants, Conditions, Restrictions and Easements with the Register of Deeds of Sarpy County, Nebraska.

Dated this 26 day of December, 2017.

RICHLAND HOMES, LLC, a Nebraska limited liability company

By:   
Gerald L. Torczon, Manager

STATE OF NEBRASKA    )  
                                  ) ss.:  
COUNTY OF SARPY     )

The foregoing instrument was acknowledged before me this 26 day of December, 2017, by GERALD L. TORCZON, Manager of RICHLAND HOMES, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public

