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JUN 23 2004 09:24 P 8

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6/23/2004 09:24:53.76



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Upon Recording Return to:

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Kutak Rock LLP  
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Omaha, NE 68102-2186

#402-231-8978

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HARVEY OAKS LOTS 246 THROUGH 266 AND LOT 279**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is effective as of the 31st day of December, 1999, by **HARVEY OAKS HOMES ASSOCIATION**, a Nebraska nonprofit corporation ("Declarant").

WHEREAS, Harvey Oaks Lots 246 through 266 (the "Member Lots") and Lot 279 (the "Green Space") is burdened by that certain Declaration of Covenants, Conditions and Restrictions for Harvey Oaks Lots 246 through 266 and Lot 279 (the "Original Declaration");

WHEREAS, the Original Declaration will expire by its own terms in the year 2000; and

WHEREAS, Declarant and the Members (as defined below) desire to continue the Original Declaration, as amended and restated herein, upon the Member Lots and the Green Space for the benefit of the Members and Declarant;

NOW, THEREFORE, Declarant for itself, its successors and assigns does hereby declare that the Member Lots and the Green Space shall be subject to and shall be used in conformance with the following covenants, restrictions and agreements:

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DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

**ARTICLE I**

**DEFINITIONS**

The following capitalized terms used in this Agreement shall have the meanings specified below:

“*Association*” means the Harvey Oaks Homes Association, a Nebraska nonprofit corporation, the Declarant.

“*Green Space*” means Lot 279, in Harvey Oaks, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska.

“*Member*” means every person or entity who holds membership in the Association.

“*Member Lot*” means any one or all of Lots 246 through 266, in Harvey Oaks, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

“*Owner*” means the record owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a Member Lot, including contract buyers and sellers, but excluding those having such interest merely as security for the performance of an obligation.

**ARTICLE II**

**PROPERTY RIGHTS**

**Section 2.01. Members’ Easements of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Green Space which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and rights to use of the Green Space by a Member (i) for any period during which any assessment against such Member remains unpaid, provided that the Association may permanently suspend the voting rights and rights to use of the Green Space by a Member who fails to pay any assessment against such Member and such assessment remains delinquent for a period of sixty days and (ii) for a period not to exceed 60 days for any infraction of its published rules and regulations.

(b) The right of the Association to dedicate or transfer all or any part of the Green Space, subject to any then existing ingress and egress requirements in connection therewith, to any public agency or non-profit corporation to use for purposes similar to those for which the Association was formed, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by the Members entitled to cast

two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 30 days nor more than 60 days in advance.

(c) The right of the Association to limit the number of guests of Members permitted to use the Green Space at any one time.

(d) The right of the Association to borrow money for the purpose of improving the Green Space and in aid thereof to grant a mortgage, deed of trust or lien on the Green Space, provided, however, that any such mortgage, deed of trust or lien shall be subject and subordinate to the rights of the Members hereunder.

**Section 2.02. Delegation of Use.** Any Member may delegate, in accordance with the bylaws of the Association, his or her right of enjoyment of the Green Space, together with any other right, license, privilege or easement conferred upon such Member by this Declaration, to the members of his or her immediate family, tenants, guests, or contract purchasers who reside on the Lot of such Member.

**ARTICLE III**

**MEMBERSHIP**

Every Owner shall be a Member of the Association. No Owner shall have more memberships than the number of Member Lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Member Lots. Ownership of a Member Lot or Lots shall be the sole qualification for membership in the Association.

**ARTICLE IV**

**VOTING RIGHTS**

Members shall be all Owners of the Member Lots and shall be entitled to one vote for each Member Lot owned. When more than one person holds an interest in any Member Lot, all such persons shall be Members, provided, however, that in no event shall more than one vote be cast with respect to any Member Lot, and the vote for such Member Lot shall be exercised as the Members who own such Member Lot shall determine.

**ARTICLE V**

**COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 5.01. Personal Obligation of Assessments.** Each Member covenants and agrees to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees,

shall be a charge on such Member's Member Lot and shall be a continuing lien upon such Member Lot against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of each Member at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

**Section 5.02. Annual Assessments.** The Association may levy an annual assessment on the Members, the proceeds of which shall be used for the improvement, maintenance and insurance of the Green Space and the payment of any taxes and assessments levied or assessed against the Green Space by any governmental body or entity having lawful jurisdiction to do so.

**Section 5.03. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment on the Members applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, removal or replacement of any portion of the Green Space.

**Section 5.04. Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.02 and 5.03 of this Agreement shall be delivered either personally or by mail to all Members not less than 10 days nor more than 50 days in advance of the meeting. The presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes shall constitute a quorum. A majority of the votes cast by the Members present at such meeting shall constitute approval of the annual assessment or a special assessment.

**Section 5.05. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Member Lots and may be collected on a monthly, semi-annual or annual basis.

**Section 5.06. Notice of Assessment.** Written notice of the annual assessment shall be sent to every Member immediately following the assessment date. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Member Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid

**Section 5.07. Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment installment that is not paid by a Member when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the due date at the rate of nine percent (9%) per annum. The Association may (a) bring an action at law against the Member personally obligated to pay the same, (b) foreclose the lien against such Member's Member Lot, (c) suspend the voting rights and rights to use of the Green Space by a Member for any period during which any assessment against such Member remains unpaid and (d) may permanently suspend the

voting rights and rights to use of the Green Space by a Member who fails to pay any assessment against such Member and such assessment remains delinquent for a period of one year. In the event that a Member is permanently suspended from voting or using the Green Space, the Association may seek an injunction prohibiting such Member from entering or otherwise using any portion or all of the Green Space. In the event the Association brings an action at law against a Member for nonpayment of an assessment installment or forecloses its lien in order to collect such assessment installment, the Association shall be entitled to recover reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Green Space or abandonment of his or her Member Lot. The mortgagee under a mortgage or the beneficiary of a deed of trust encumbering the subject property shall have the right to cure any delinquency of a Member by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee or beneficiary all of its rights with respect to such liens upon payment of such sums.

**Section 5.08. Subordination of Association's Lien to Mortgagee or Beneficiary.** The lien of the Association for assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust on any Member Lot. Sale or transfer of any Member Lot shall not affect the assessment lien. However, the sale or transfer of any Member Lot pursuant to any judicial or non-judicial foreclosure of a mortgage or deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such Member Lot from liability or any assessments thereafter becoming due or from the lien thereof.

**ARTICLE VI**

**RESTRICTIONS**

**Section 6.01. Restrictions.** The use of the Green Space shall be subject to the restrictions set forth in Section 2.01 of this Declaration and to those restrictions hereinafter set forth.

**Section 6.02. Violation of Laws.** No use shall be made of the Green Space that will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Green Space.

**Section 6.03. Structures; Access.** No Member shall place any structure whatsoever upon the Green Space, nor shall any Member temporarily or permanently deny free access to any part of the Green Space to any Member.

**Section 6.04. Rules and Regulations of the Association.** The use of the Green Space shall be subject to such rules and regulations as may be adopted from time to time by the Association.

**ARTICLE VII**

**MISCELLANEOUS**

**Section 7.01. Enforcement of Declaration.** The Association or any Member shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of the same, or to recover damages or other dues for such violation. Failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 7.02. Duration; Amendment.** The covenants and restrictions of this Declaration shall run with and bind the Green Space and the Member Lots for a term of ninety-nine years from the date this Declaration is recorded. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds of the Member Lots.

**Section 7.03. Severability.** If any provision of this Declaration should be found to be invalid or unenforceable, all of the other provisions shall nonetheless remain in full force and effect to the maximum extent permitted by law.

**Section 7.04. Headings.** The various headings in this Declaration are inserted for convenience only and shall not affect the meaning or interpretation of this Declaration or any provision hereof.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed effective as of the day and year first above written.

HARVEY OAKS HOMES ASSOCIATION, a  
Nebraska nonprofit corporation

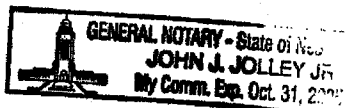
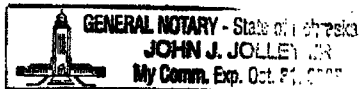
By Stacy J. Jolley  
Stacy Jolley  
President

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Stacy J. Jolley, the President of Harvey Oaks Homes Association, a Nebraska nonprofit corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), who executed the foregoing instrument for the purposes therein contained, by signing her name on behalf of the corporation.

Witness my hand and seal this the 18<sup>th</sup> day of June, 2004.

John J. Jolley Jr.  
Notary Public



My Commission Expires:

10/31/2005

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 246 through 266 and Lot 279, in Harvey Oaks, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska