



After recording return to:

Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

72.1

RESTRICTIVE COVENANTS
Waverly Ridge Estates

Smetter Development, LLC, a Nebraska limited liability company ("Declarant"), is the titleholder of record of the following described real estate:

Lots 4-14, Block 2, Lots 1-13, Block 3, Lots 1-2, Block 4, Lots 1-2, Block 5, Lots 1-9, Block 6, Lots 1-10, Block 7, Lots 1-14, Block 8, Lots 1-9, Block 9, Lots 19-35, Block 10, Lots 1-4, Block 12, and Lots 1-5, Block 13, Waverly Ridge Estates, Waverly, Lancaster County, Nebraska (the "Single Family Properties");

Lots 1-8, Block 1, Lots 1-3, Block 2, Lots 1-18, Block 10, and Lots 1-12, Block 11, Waverly Ridge Estates, Waverly, Lancaster County, Nebraska ("Townhome Properties"); and

Outlots A, B, D, E, F and G, Waverly Ridge Estates, Waverly, Lancaster County, Nebraska ("Commons").

The Single Family Properties and Townhome Properties are hereafter collectively referred to as the "Properties".

Homeowners Association

Waverly Ridge Estates Homeowners Association ("Corporation") has been or is in the process of being incorporated in Nebraska for the purposes of enforcing the Restrictive Covenants established upon the Properties, administering and maintaining any Commons and providing services to its members. The terms "Lot" or "Lots" as used herein shall mean all lots now or hereafter located on or within the Properties which are shown on any final plat of all or any portion of the Properties that have been filed with the Lancaster County Register of Deeds.

WARTES

Declaration

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

1. USE: No Lot shall be used other than for residential purposes.

2. COMPLETION OF CONSTRUCTION: Any building placed or constructed upon any Lot shall be completed within twelve months after the commencement of construction.

3. ANTENNAS: No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground on a Lot, except within a building. One small satellite dish shall be permitted subject to the requirements of paragraph 7.A.e. and 7.B.e.

4. APPROVAL OF PLANS: Plans for any dwelling structure to be placed or constructed upon any Lot shall be submitted to Declarant and shall show the design, size, and exterior material for the building or improvement and the plot plan for the Lot. One set of plans shall be left on permanent file with Declarant. Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from the Declarant. Written approval or disapproval of the plans shall be given by the Declarant within thirty (30) days after receipt thereof. Approval of the plans shall not be unreasonably withheld and, upon disapproval, a written statement of the grounds for disapproval shall be provided. The Declarant shall have the exclusive right to disapprove the plans if, in the Declarant's opinion, the plans do not conform to the general standard of development in the Properties. The rights and duties of the Declarant under this paragraph, except as to Lots of which the Declarant is the titleholder, may be assigned by the Declarant in writing to the Corporation at any time.

5. GRADING AND EROSION CONTROL:

a. Grading. Declarant or its assignees shall have the exclusive right to establish grades and slopes for all Lots and to fix the grade at which any building or other improvement shall be placed or constructed upon any Lot in conformity with the general plan for the development of the Properties. Once such grades, slopes and/or contours have been established by the Declarant, they shall not be changed in connection with the construction of any building or other improvement on a Lot without written permission from the Declarant, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots.

b. Erosion Control. Each member of the Corporation shall be responsible for implementing and maintaining adequate erosion control measures on its Lot. The adequacy

of erosion control measures on a Lot shall be subject to continual review during construction and until sod or seeding has been established on the Lot as required by paragraph 7.C.b. Declarant shall have the right to require any member to maintain silt fences, straw bales or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalk or into any street, Commons or storm sewer swale. In the event any member fails or refuses to perform any required implementation or maintenance of erosion control measures, the Declarant or Corporation after twenty-four hours (24) notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the member who is or was the owner of the Lot failing to perform their obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Lot assessed.

6. **GENERAL STANDARDS FOR DWELLING STRUCTURES:** The following general standards of development shall guide the Declarant in the review of any plans for dwelling structures submitted for approval within the Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Declarant shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority. The Declarant shall have the right to reduce, increase or otherwise explicitly modify these standards within other additions to the Properties.

A. **Single Family Properties:**

a. **Minimum Floor Area.** The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks or enclosed decks shall be as follows:

- i. Single story ranch style: 1,400 sq. ft.
- ii. Two story: 1,800 sq. ft.

b. **Setbacks.** Setbacks of dwellings from the lot lines are established as follows:

- i. Interior Lots: 25 feet from front lot line, 7.5 feet from side lot line.
- ii. Corner Lots: 25 feet from front lot line, 15 feet from street side yard and 7.5 feet from interior side lot line.

Front line for corner Lots to be determined by Declarant. Declarant shall also have the right to vary the setbacks within the limits established by the Waverly Zoning District Regulations.

c. **Exterior Finish.**

- i. **Approval.** All exterior finish materials and colors shall be approved by the Declarant.

- ii. Front Elevation. The front elevation of any dwelling shall be faced with at least 50% brick or natural stone. There shall be no exposed foundation on the front elevation of the dwelling, except areas where less than 6 inches of foundation is showing.
 - iii. Exposed Foundation. Exposed foundation walls other than the front elevation shall not exceed an average of 24 inches.
 - iv. Roofing Materials. Roofing materials shall be equal to or better than an architectural-grade shingle which provides an appearance of depth such as the Horizon shingle.
- d. Attached Garage. All dwellings shall have at least a full size, two stall attached garage which shall not exceed the height of the dwelling.
 - e. Solar Panels. Any active solar panels must be flush with the roof or side wall of a dwelling and shall not be located in any required yard or upon any accessory structure.
- B. Townhome Properties:
- e. Minimum Floor Area. The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks or enclosed decks shall be 1,000 square feet.
 - e. Setbacks. Setbacks of dwellings from the lot lines shall be within the limits established by the Waverly Zoning District Regulations.
 - e. Exterior Finish.
 - e. Approval. All exterior finish materials and colors shall be approved by the Declarant.
 - e. Front Elevation. The front elevation of any dwelling shall be faced with at least 40% brick or natural stone. There shall be no exposed foundation on the front elevation of the dwelling, except areas where less than 6 inches of foundation is showing.
 - e. Exposed Foundation. Exposed foundation walls other than the front elevation shall not exceed an average of 24 inches.

- e. Roofing Materials. Roofing materials shall be equal to or better than an architectural-grade shingle which provides an appearance of depth such as the Horizon shingle.
- d. Attached Garage. All dwellings shall have at least a full size, two stall attached garage which shall not exceed the height of the dwelling.
- e. Solar Panels. No solar panels shall be allowed upon any dwelling or accessory structure within the Townhome Properties unless approved by Declarant.

7. GENERAL STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS: The following general standards shall be satisfied in the construction and installation of improvements and structures other than the dwelling on the Properties. Written approval for other improvements and structures is not required, unless otherwise stated herein, but shall comply with these standards. The Corporation and members of the Corporation shall have the right to enforce these standards.

A. Single Family Properties:

- a. Fencing. Fencing shall not be constructed closer to the street than the front elevation of the dwelling and shall be constructed of white vinyl opaque fencing. In addition, on any corner Lot where the dwelling on an adjacent Lot does or will set perpendicular to the dwelling on the corner Lot, fencing along the rear and street side of the corner Lot shall not be constructed within the twenty-five feet (25') street yard setback unless approved by Declarant. No livestock-type fencing material or chain link shall be used for construction of a fence within the Properties, except chain link may be used for kennels only and shall be either black or green in color.
- b. Accessory Structures. Accessory structures such as storage sheds and playhouses shall be constructed of compatible and similar materials and design with the dwelling. These structures shall not exceed 120 square feet, be more than 10 feet in height, and shall not be located in the front or side yard setback or within 5 feet of any Lot line.
- c. Driveways. Driveways shall be at least 22 feet. Basketball hoops are permitted.
- d. Dog Kennels. Any dog run or kennel shall be adequately screened from view and shall not be located in the front yard or side yard setbacks.

- e. Satellite Dish. Any satellite dish shall not exceed 24" in diameter and be located and screened so as to be as unobtrusive as is reasonably possible.

B. Townhome Properties:

- a. Fencing. No fencing is permitted within the Townhome Properties except (i) underground electronic fences, and (ii) with approval by Declarant, six feet (6') black wrought iron fences may be allowed in certain locations identified by Declarant.
- b. Accessory Structures. Accessory structures such as storage sheds and playhouses shall not be constructed within the Townhome Properties.
- c. Driveways. Driveways shall not exceed 22 feet. Basketball hoops and/or standards are prohibited.
- d. Dog Kennels. Dog runs and kennels shall not be permitted within the Townhome Properties.
- e. Exterior Restrictions. No exterior television or radio antenna, satellite receiving station or dish, exterior solar heating or cooling device, or wind powered electric generators of any sort shall be permitted on any Lot within the Townhome Properties unless such apparatus is approved by the Declarant and is installed in such a manner that it is not visible from any street or roadway.
- f. Air Conditioning Units. Any exterior air conditioning unit or system placed on any Lot within the Townhome Properties must be located in the side or rear yard and, if such unit or system is visible from a street or private roadway, must be screened by landscape shrubbery or fencing approved by the Declarant, in connection with the approval of the initial plan submitted to the Declarant for approval.
- g. Patios. No back patio may be extended beyond what is initially constructed with the dwelling on any Lot within the Townhome Property without the prior written approval of the Declarant, whose approval may be withheld for any reason.

C. All Properties:

- a. Opening Elevations. All dwelling opening elevations shall comply with the minimum elevation established for each individual Lot as required by the City of Waverly ("City").

- b. Clothes Poles. No clothing poles or lines are permitted.
- c. Exterior Sound Speakers. No exterior sound speakers, other than security alarm systems, portable radios, televisions sets or built in speakers shall be permitted.
- d. Sodding. All front, side and rear yard areas shall be sodded prior to the occupancy of any residence within the Properties, weather permitting. No seeding is permitted unless approved by the Declarant.
- e. Lawn Irrigation Systems. All Lots within the Properties shall be equipped with underground lawn irrigation systems.

8. CITY REQUIREMENTS: All buildings within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City. Public sidewalks and street trees shall be installed during the construction of the dwelling as required by the City and once planted must be maintained by the Lot Owner.

9. TEMPORARY STRUCTURES: No partially completed dwelling or temporary building and no trailer, tent, shack, or garage on any Lot shall be used as either a temporary or permanent structure.

10. NUISANCE: No noxious or offensive activity shall be conducted or permitted upon any Lot, nor anything which is or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining Lots.

11. SIGNS: No signs, billboards, advertising devices or unsightly objects shall be erected, placed or permitted on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising (i) a Lot as "For Sale", or (ii) a "Garage Sale" on a Lot, no more than one time per year. In addition, Declarant may erect signs of any size advertising Lots for sale within the Properties. This provision shall not prohibit any object or sign from being placed on any Lot that is required by a governmental entity, builder, contractor, subcontractor or tradesman as part of the home marketing and construction process.

12. ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot for any commercial purpose.

13. REPAIR AND STORAGE ON LOT: No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No recreational vehicle or trailer shall be parked or stored upon any Lot within the Properties, except within an enclosed structure. Recreational vehicles may be temporarily parked or stored upon a Lot for a period of time not to exceed seven (7) days per year.

14. CONSTRUCTION VEHICLES AND ROLL OFF SERVICE: Declarant may designate and enforce locations through and over which all construction vehicles shall enter and exit the Properties during development. Declarant shall also have the exclusive right to designate a single provider of roll off service within the Properties. The purpose of designating a single provider is to limit and control the number of service trucks operating within the Properties. The rights of the Declarant under this paragraph to designate a roll off provider shall be assigned to the Corporation when residences shall have been placed or constructed upon all of the Lots within the Properties.

15. HOMEOWNERS ASSOCIATION: Every person or entity who owns fee simple title to a Lot within the Properties ("Lot Owner") shall be a member of the Corporation. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

16. MANAGING AGENT: The Declarant or the Corporation may contract for the performance of any of the Corporation's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Declarant or the Corporation. The fee charged by the Managing Agent shall be a common expense of the members.

17. MEMBERSHIP: The Corporation shall have three (3) classes of membership:

Class A membership shall include any Lot Owner of a Lot within the Single Family Properties except the Declarant and any successor in interest. Each Class A member of the Corporation shall be entitled to all the rights of membership and to one (1) vote for each Lot.

Class B membership shall include only the Declarant and any successor in interest. The Class B member shall be entitled to twenty (20) votes for each Lot.

Class T membership shall include any Lot Owner of a Lot within the Townhome Properties. Each Class T member of the Corporation shall be entitled to all the rights of membership, to one-half (1/2) vote for each Townhome Lot, and shall pay one-half (1/2) of the Class A dues and assessments.

18. COMMONS: The Commons shall include all pedestrian walkways that abut two or more Lots, drainage ways, storm water detention and water quality facilities, and open space, as shown on any final plat of all or any portion of the Properties; provided that such final plat has been filed with the Lancaster County Register of Deeds. Commons shall also include any signage identifying the residential development.

19. CONVEYANCE OF COMMONS: Declarant shall convey any Commons to the Corporation, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the City. The conveyance shall reserve to the City a permanent right to enter upon the Commons to maintain the Commons in the same manner as required of the Corporation in the event the Corporation dissolves and the Lot Owners (defined below) fail to perform said maintenance.

20. USE OF COMMONS: Each member of the Corporation shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Corporation and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership. In addition, the City shall have the permanent right and easement to enter upon the Commons to maintain the Commons in the same manner as required of the Corporation in the event the Corporation fails to perform said maintenance or the Corporation dissolves and the Lot Owners (defined below) fail to perform said maintenance.

21. RIGHTS IN COMMONS: The rights and easements of the members of the Corporation shall be subject to:

- a. The right of the Corporation to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed mortgage is contained in the notice of the special meeting.
- b. The right of the Corporation to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Corporation to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the published rules and regulations governing the use of the facilities.
- d. The right of the Corporation to charge reasonable admission and other fees for the use of the facilities.
- e. The right of the Corporation to dedicate or convey all or any part of the Commons to any public entity.
- f. The right of the City to enter upon the Commons to maintain the Commons in the same manner as required of the Corporation in the event the Corporation fails to perform said maintenance or the Corporation dissolves and the Lot Owners fail to perform said maintenance.

22. MAINTENANCE OF LANDSCAPE SCREENS: Each member of the Corporation who is the titleholder of a Lot on which any landscape screen, whether composed of structural or live plant material, which is installed as required by the City, shall be deemed to covenant to maintain the screen.

23. GENERAL MAINTENANCE OBLIGATIONS: Each member of the Corporation shall be responsible for the proper storage and disposal of all construction debris and materials associated with the construction of any improvement upon their Lot. Lots shall be periodically mowed and loose debris and materials picked up and properly stored to prevent them from being spread and blown throughout the Properties. Each member shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon their Lot.

24. FAILURE TO MAINTAIN: In the event any member fails or refuses to perform any required maintenance and upkeep of any landscape screen or general maintenance obligations, the Declarant or Corporation after seven (7) days' notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the member who is or was the owner of the Lot failing to perform their maintenance obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Lot assessed.

25. CORPORATION RESPONSIBILITIES: The Corporation shall provide such services to its members as they may determine. These services and responsibilities of the Corporation shall include, but are not limited to, the following:

- a. Maintenance of Commons: The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons to the extent not otherwise provided for by these Restrictive Covenants, which Restrictive Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons. The City has approved the final plat of Waverly Ridge Estates upon the condition that the Commons be maintained by the Declarant on a continuous basis. The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to assume the obligations of the Declarant to comply with the requirements of the final plat of Waverly Ridge Estates regarding continuous and permanent maintenance of the Commons. In the event the Corporation dissolves, the members shall remain jointly and severally liable for the cost of administering and maintaining the Commons.
- b. Refuse Services: The Corporation shall have the option to provide to each member refuse collection services through a single designated provider. The cost of these services shall be paid for by the members as part of their annual dues and assessments. Annual dues and special assessments for the services provided to the members shall be uniform as to each Lot within the Properties, except as provided in paragraph 30 and except for any differences in services provided to its members.

26. DISSOLUTION OF CORPORATION; LOT OWNER RESPONSIBILITIES:

Each Lot Owner by the acceptance of a deed by which the interest requisite for membership in the Corporation is acquired, shall be deemed to covenant that, in the event the Corporation dissolves, such Lot Owner shall remain jointly and severally liable along with all other owners of Lots within the Properties ("Lot Owners") for the cost of administering and maintaining the Commons in the same manner as required of the Corporation under paragraph 25 above. In the event such Lot Owners fail or refuse to perform any required maintenance and upkeep of the Commons, the City after seven (7) days' notice to such Lot Owners, may perform the required maintenance and assess each Lot and Lot Owner for the cost of the performance of such maintenance on an equal per lot basis. Each assessment of the City's actual costs of performing the maintenance shall be the personal obligation of each Lot Owner who is the owner of the Lot at the time of assessment and shall be a lien upon the Lot assessed. To evidence such lien for unpaid assessments, the City shall prepare a written notice setting forth the amount, the name of the Lot Owner, and a legal description of the lot. Such notice shall be signed on behalf of the City by the Mayor and shall be recorded with the Register of Deeds of Lancaster County, Nebraska. Each Lot Owner shall pay the Lot Owner's pro-rata share of the City's actual cost of maintaining the Commons within thirty days following receipt of an assessment therefor. Delinquent payments shall be subject to a late charge of 10% of the delinquent payment or twenty dollars (\$20) whichever is greater.

27. LIEN OF DUES AND ASSESSMENTS: The lien of any dues or special assessments shall, until shown of record, be subordinate to the lien of any mortgage placed upon the Lot against which the assessment is levied.

28. ANNUAL ASSESSMENT AND LIENS: Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Corporation. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of members affected and entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting.

The members shall pay annual dues and special assessments to the Corporation or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur when the Lot is transferred by the Declarant. Changes in the amount of future annual dues shall be based upon an estimate of the Corporation's costs for the administration, maintenance and improvement of the Commons and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Commons operating costs may be presented to the members of the Corporation and the members shall pay any excess charge to the Corporation within thirty (30) days of the statement.

a. Budgets. The Corporation or Managing Agent shall prepare, approve and make available to each member a pro forma operating statement (budget) containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Corporation currently available for replacement or major repair of the Commons and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the

Commons; and (4) a general statement setting forth the procedures used by the Corporation in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Commons.

- b. Additional Charges. In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures (“Additional Charges”) as the Corporation or Managing Agent may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but are not limited to, the following:
 1. Attorney’s Fees: Reasonable attorney’s fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by suit or otherwise;
 2. Late Charges: A late charge in an amount to be fixed by the Corporation to compensate the Corporation for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any “grace” period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater.
 3. Costs of Suit: Costs of suit and court costs incurred as allowed by the Court;
 4. Filing Fees: Cost of filling notice of lien in the Office of the Register of Deeds;
 5. Interest: Interest on all dues and assessments at the rate of fourteen percent (14%) per annum, commencing thirty (30) days after the assessment becomes due; and
 6. Other: Any other cost that the Corporation may incur in the process of collecting delinquent dues and assessments.
- c. Lien. The dues and assessments shall be the personal obligation of the member who is the owner of the Lot assessed at the time of the assessment and when shown of record shall be a lien upon the Lot assessed.
- d. Fines. The Corporation may create a schedule of fines for violation of the Corporation governing documents, which shall include the Articles of Incorporation and Bylaws of the Corporation, these Restrictive Covenants,

and any rules and regulations created by the Corporation, which fines shall be treated and billed as a special assessment to the offending member's Lot.

29. ABATEMENT OF DUES AND ASSESSMENTS: Notwithstanding any other provision of these Restrictive Covenants, the Board of Directors may abate all or part of the dues and assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

30. TOWNHOME OWNERS ASSOCIATION: Waverly Ridge Estates Townhome Association ("Townhome Association") will be incorporated for the purposes of enforcing the Additional Covenants for the Townhome Properties set forth in Paragraph 31 below and providing services to any owner of a Lot within the Townhome Properties ("Townhome Owner"). The terms "Townhome Lot" or "Townhome Lots" as used herein shall mean all lots now or hereafter located on or within the Townhome Properties which are shown on any final plat of all or any portion of the Townhome Properties that have been filed with the Lancaster County Register of Deeds

31. ADDITIONAL COVENANTS FOR THE TOWNHOME PROPERTIES: The following covenants shall be binding solely upon the Townhome Properties and are intended to provide for the unique characteristics of these type of dwellings.

A. Party Walls. Each wall which is built as a part of the original construction of a dwelling within the Townhome Properties and placed on the common boundary line between two abutting Townhome Lots shall constitute a party wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the Townhome Owners who share said party wall. If a party wall is destroyed or damaged by fire or other casualty, the Townhome Owners making use of the party wall each equally share the cost of restoration. Notwithstanding any other provision of this paragraph, a Townhome Owner who by their negligence or willful acts or omissions causes the party wall to be destroyed, damaged or otherwise exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration. The right of any Townhome Owner to contribution from any other titleholder under this paragraph shall be appurtenant to the land and shall pass to such titleholder's successors in interest.

B. Party Roofs. Each roof which is built as a part of the original construction of a dwelling within the Townhome Properties and placed on the common boundary line between two abutting Townhome Lots shall constitute a party roof. The cost of reasonable repair and maintenance of a party roof shall be shared by the Townhome Owners who share said party roof. If a party roof is destroyed or damaged by hail, fire or other casualty, the Townhome Owners making use of the party roof shall each equally share the cost of restoration. Notwithstanding any other provision of this paragraph, a Townhome Owner who by their negligence or willful acts or omissions causes the party roof to be destroyed, damaged or otherwise exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration. The right of any Townhome Owner to contribution from any other titleholder under this paragraph shall be appurtenant to the land and shall pass to such titleholder's successors in interest.

C. Encroachments. When a building shall be constructed on any Townhome Lot so as to encroach upon an adjoining Townhome Lot, the Townhome Owner of the Townhome Lot with the encroaching building shall have an easement upon the adjoining Townhome Lot to the extent of the encroachment. Any expense of maintenance, repair or replacement of the encroaching building shall be borne by the Townhome Owner of the Townhome Lot with the encroaching building.

D. Common Utility Lines. Each Townhome Owner shall have an easement for the construction, installation, repair, maintenance and replacement of any utility or service line constructed on one or more adjoining Townhome Lots, which easement shall be appurtenant to the ownership interest of the Townhome Owner so benefitted. Any expense of maintenance, repair or replacement of the utility line shall be borne equally by the Townhome Owners utilizing said utility line.

E. Townhome Association Membership. Every person or entity who owns fee simple title to a Townhome Lot within the Townhome Properties shall be a member of the Townhome Association and agrees to be bound by the provisions of the Townhome Covenants, including contract buyers. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. The Townhome Association shall have two classes of membership:

Class A membership shall include all members of the Townhome Association except the Declarant and any successor in interest. Each Class A member of the Townhome Association shall be entitled to all the rights of membership and to one vote for each Townhome Lot. However, no more than one (1) vote shall be cast with respect to any Townhome Lot.

Class B membership shall include only the Declarant and any successor in interest. The Class B member shall be entitled to twenty (20) votes for each Townhome Lot.

F. Townhome Association Responsibilities. The Townhome Association shall be subject to the following:

a. Grounds Maintenance. The Townhome Association shall annually establish a budget for the common services being provided to the members of the Townhome Association, which budget shall be used to establish the annual assessment to be paid by the members pursuant to subparagraph I below. The common services and expenses to be paid by the members as the annual assessment shall include, at a minimum, the cost of grounds maintenance for all Townhome Lots, which shall include mowing and maintenance of each member's lawn, trees and shrubs; repair and replacement of the lawn sprinkler system; and snow removal from the public sidewalk, front stoop and driveway. In the event any improvements, such as fences, planters or similar obstructions or plantings, such as gardens, shrubs, plants or trees, increase the cost to the Townhome Association of performing ground maintenance service for any Townhome Lot, the additional cost shall be paid by the Townhome Owner, or the improvements or plantings shall be

removed by the Townhome Owner, or the Townhome Association may discontinue this service without any reduction to the dues or assessments paid by the Townhome Owner. The Townhome Association shall have the right to enter upon any Townhome Lot, at reasonable times, to perform maintenance. The Board of Directors of the Townhome Association, acting pursuant to the authority granted to it in the Bylaws of the Townhome Association, may also include other services common to and shared by the members of the Townhome Association.

b. Additional Townhome Corporate Authority. The Townhome Association may exercise all rights granted to the Corporation in, by or through the Covenants on the Townhome Properties as if the Townhome Association were the Corporation.

c. Delegation. The Corporation may elect to delegate to the Townhome Association any of its duties under the Covenants as they relate to the Townhome Properties, with the exception of the Corporation's duties identified in Paragraph 25 above which shall remain with the Corporation.

d. Managing Agent. The Declarant or the Townhome Association may contract for the performance of any of the Townhome Association's rights, obligations or responsibilities with any entity or individual ("Townhome Managing Agent"). The Townhome Managing Agent shall exercise such authority which may be granted by the Declarant or the Townhome Association. The fee charged by the Townhome Managing Agent shall be a common expense of the members of the Townhome Association.

G. Member's Maintenance of Townhome Properties. Each Townhome Owner shall be responsible for the proper upkeep, care, maintenance and exterior appearance of the improvements located upon their Townhome Lot for the purpose of maintaining a high quality and attractive development. Specific rules, regulations, requirements and specifications further implementing this provision may be adopted by the Townhome Owners holding not less than one-half (1/2) of the total votes of Townhome Lots within the Townhome Properties, and with written notice, shall be binding upon and enforceable by the Townhome Association or any Townhome Owner against all Townhome Properties. In the event any Townhome Owner fails or refuses to perform any required townhome maintenance, the Townhome Association or any Townhome Owner after seven (7) days' notice to the Townhome Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance together with a 10% administrative fee shall be the personal obligation of the member who is or was the Townhome Owner of the Townhome Lot failing to perform their maintenance obligations, shall bear interest at the rate of 14% per annum and shall be a lien upon the Townhome Lot assessed.

H. Pets. Pets have the potential to create significant nuisance problems within the Townhome Properties. Each Townhome Owner shall be responsible for controlling all pets and preventing them from becoming an annoyance, nuisance, or unreasonably disturbing the quiet of any other Townhome Owner. Specific rules, regulations and requirements further implementing this provision (including the banning of individual

animals, types of animals, or specific breeds) may be adopted by not less than one-half (1/2) of the Townhome Owners and with written notice shall be binding upon and enforceable by the Townhome Association and any Townhome Owner against all Townhome Properties. The keeping, harboring, or kenneling of the breeds Pit Bull Terriers, Rottweilers, and Chows, or any dog with lineage thereof, shall be prohibited.

I. Annual Assessments. Each member agrees to pay to the Townhome Association annual assessments or charges uniformly made against each Townhome Lot within the Townhome Properties for the provision of services described herein. The annual assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Townhome Lot and shall be a continuing lien upon the Townhome Lot which each such assessment is made. Notwithstanding anything else to the contrary, no Townhome Owner shall be liable to pay any annual assessment to the Townhome Association until a certificate of occupancy has been issued by the City for the improvements built on said Townhome Owner's Townhome Lot.

J. Purpose of Assessments. The assessments levied by the Townhome Association shall be used exclusively to promote the health, safety and welfare of the residents of the Townhome Properties and for the services provided by the Townhome Association. The annual assessments shall be based on the annual budget established by the Board of Directors for maintenance and associated tasks.

K. Levy and Lien of Assessments. Annual assessments may be fixed and levied by the Board of Directors of the Townhome Association, and shall be payable at the time and in the manner prescribed by the Board of Directors. The lien of any annual assessment shall be subordinate to the lien of any mortgage placed upon the Townhome Lot against which the assessment is levied.

L. Townhome Covenant Amendments. These Townhome Covenants shall run with the land and shall be binding upon and enforceable by a Townhome Owner and all other persons claiming under the owner. These Townhome Covenants may be amended by Declarant, or any person, firm, corporation, partnership, or entity designed in writing by Declarant, in any manner which is may determine in its full and absolute discretion for a period of fifteen (15) years from the date hereof. Thereafter, any portion of the Townhome Covenants may be amended by an instrument signed by the Lot Owners of Townhome Lots comprising not less than two-thirds of the total votes of the Townhome Lots within the Townhome Properties, at any time.

32. ADDITIONS: The Declarant may add additional contiguous or adjacent real estate to the Properties or the Commons, at any time, without the consent of the members of the Corporation. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants; provided the general standards set forth in paragraphs 6 and 7 may be reduced, increased or otherwise modified within any such addition.

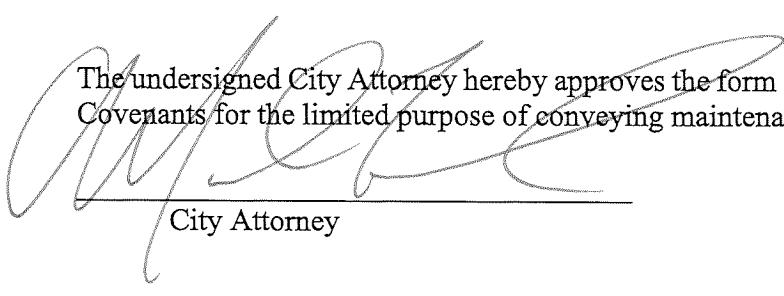
33. AMENDMENTS: These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Declarant and all persons claiming under the Declarant.

These Restrictive Covenants may be amended by Declarant, or any person, firm, corporation, partnership, or entity designed in writing by Declarant, in any manner which is may determine in its full and absolute discretion for a period of fifteen (15) years from the date hereof. Thereafter, any portion of the Restrictive Covenants may be amended by an instrument signed by the Lot Owners of Lots comprising not less than two-thirds of the total votes of the Lots within the Properties, at any time. However, the provisions of these Restrictive Covenants governing membership in the Corporation and the maintenance of the Commons shall not be terminated or modified without the consent of the City.

34. ENFORCEMENT: The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation or to recover damages and, by the Corporation or Declarant, may be to enforce any lien or obligation created hereby. The City shall have the right to enforce all restrictive covenants regarding maintenance of the Commons by proceedings at law or in equity against the Corporation or any person violating or attempting to violate said provisions. In the event the Corporation dissolves, the City proceedings may be to restrain violation of the duty to maintain the Commons, to recover a money judgment upon the personal obligation and debt of the Lot Owner to pay the Lot Owner's pro-rata share of the City's cost to maintain the Commons or to foreclose upon the defaulting Lot Owner's Lot in a like manner as mortgages on real property. In any such foreclosure or lawsuit, the Lot Owner shall be required to pay the cost and expenses of such proceedings, including reasonable attorney fees, costs of suit, and court costs incurred as allowed by the court. Suit to recover a money judgment for unpaid assessments for the cost to maintain the Commons shall be maintainable without foreclosure of the Lot Owner's Lot or waiving the lien securing the assessment.

35. SEVERABILITY: The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

Dated: January 13, 2024.


The undersigned City Attorney hereby approves the form of the Waverly Ridge Estates Restrictive Covenants for the limited purpose of conveying maintenance of the Commons to the Corporation.

City Attorney

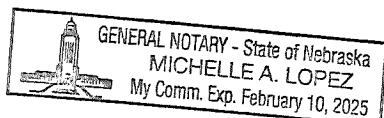
SMETTER DEVELOPMENT, LLC, a
Nebraska limited liability company

By:

Sean Smetter, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 13 day of January, 2024, by
Sean Smetter, Manager of **Smetter Development, LLC**, a Nebraska limited liability company, on
behalf of the limited liability company.




Notary Public