

NUM PAGES 182
DOC TAX _____ PD _____ CHG _____ RET _____
FEES 928.00 PD _____ CHG X RET _____
TOTAL _____
CK NUM _____ SY _____
BY _____
REC'D _____
RETURN _____
GARY
BOX 895
KEARNEY, NE 68848

TRACT INDEX T
COMPUTER T
COMPARED X

Inst. 2004 - 7164

RECORDED
BUFFALO COUNTY, NE

2004 JUL 29 AM 9:47

Kellie John
REGISTER OF DEEDS

DECLARATION
OF
LaVISTA AT LIGHTHOUSE POINT CONDOMINIUMS

Segura Arrieta Construction, Inc., a Nebraska Corporation, herein referred to as
Declarant and/or Developer, whether one or more, hereby creates a condominium in
the manner established by the Nebraska Condominium Act.

1. **NAMES:** The name of the condominium is **LaVISTA AT LIGHTHOUSE
POINT CONDOMINIUMS**. The name of the association is **LaVISTA AT LIGHTHOUSE
POINT CONDOMINIUM ASSOCIATION**, a nonprofit corporation.

2. **DESCRIPTION:** The condominium is situated in Buffalo County, Nebraska,
on the real estate described at:

Part of Lot 1, Block 7, Lighthouse Point, an addition to the City of
Kearney, Buffalo County, Nebraska, more particularly described at
Exhibit "A" attached hereto and incorporated herein by reference.

3. **NUMBER OF UNITS:** The anticipated number of units to be created is thirty-
five (35).

4. **BOUNDARIES:** The boundaries of each unit are the walls, floors and
ceilings and are identified as shown on the attached plat and plans marked Exhibit "B".
Each unit is designated and shall be described by a plan designation and unit letter,
namely: Plan "A," Units 1, 2, 3 and 4; Plan "B," Units 1, 2, 3 and 4; Plan "C," Units 1, 2,

3 and 4; Plan "D," Units 1, 2, 3 and 4; Plan "E," Units 1, 2, 3 and 4; Plan "F," Units 1, 2, 3 and 4; Plan "G," Units 1, 2 and 3; Plan "H," Units 1, 2, 3 and 4; and Plan "I," Units 1, 2, 3 and 4.

5. **COMMON ELEMENTS:** The common elements are all portions of the condominium other than the units, including, but not limited to, the common walls shared by each unit as described at Exhibit "B". The limited common elements, other than as shown on Exhibit "B", are:

- a. If any chute, flue, duct, wire, conduit, bearing column, or any other fixture lies partially within and partially outside the boundaries of a unit, any portion serving only that unit is a limited common element allocated to that unit, and any portion serving more than one unit or any portion of the common elements is a part of the common element; and
- b. Any air-conditioning units (except for loss or damage due to regular wear and tear which shall be each unit owner's responsibility) and pads, shutters, awnings, window boxes, doorsteps, stoops, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated to that unit.

6. **ALLOCATED INTERESTS:** The interests of each unit are to be allocated on the following basis:

- a. The percentage of undivided interests of each unit in the common elements and limited common elements and in the common expenses of the association that are located or relate to items outside of the units, shall be on the basis of one share for each of the thirty-five (35) units.
- b. The percentage of undivided interests of each unit in the common elements and in the common expenses of the association that are located or relate to items within the units other than common elements and limited common elements, shall be based on the percentage of ownership in any particular building (either $33 \frac{1}{3}\%$ or 25%, as the case may be).
- c. The voting rights in the association shall be allocated on the basis of one vote to each unit.

7. **CONVEYANCES:** Any unit may be conveyed or encumbered, subject to the provision of this Declaration.

8. **SUBDIVISION:** With the written approval of the Executive Board, units may be combined or divided and incorporated within the boundaries of one or more other units. However, no division of any unit shall increase the total number of units. Upon approval, the Executive Board shall record an amendment to this Declaration, and the allocated interest shall be reallocated on a fractional basis both within that unit as in paragraph 6.b. and for the entire project based on paragraph 6.a. The expense of preparation of the amendment, reallocation of the allocated interests and recording fees shall be assessed against the units affected. Any such combination or division must comply with applicable governmental regulations.

9. **MAINTENANCE AND IMPROVEMENTS OF UNITS:** Each unit shall be maintained by the unit owner. Each unit owner shall promptly report to the association any need for repairs for which the association is responsible. Notwithstanding the general provisions for maintenance, the Executive Board may establish specific maintenance responsibilities which shall be uniform as to all units.

A unit owner may make any improvements or alterations to the unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. A unit owner may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without the written approval of the association.

10. **USE OF UNITS:** No unit shall be used other than for single family residential

purposes, as defined under Nebraska law, and the units shall not be used for commercial or other than residential use and further that no use which violates the zoning ordinances of the City of Kearney shall be permitted.

11. **NUISANCE:** No noxious or offensive activity shall be conducted or permitted within any unit, nor on or within any of the common elements or limited common elements, nor anything which is or may become an annoyance or nuisance to the occupants of adjoining units or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining units.

12. **TREES, SHRUBS, BUSHES, GARDENS AND FLOWERS:** No trees, shrubs, bushes, gardens or flowers shall be permitted on the common elements without the prior written approval of the Executive Board.

13. **ATTACHMENTS TO BUILDINGS:** No attachments to buildings may be made or installed without the prior written approval of the Executive Board, except fences as permitted in paragraph 17. Outside "hot tubs" or "jacuzzi's" are permitted, provided that such installation is not permanent and meets City Codes, that the optional fencing as shown on the plat and plans is in fact installed prior to such installation, and that the use thereof does not constitute a nuisance.

14. **ANTENNAS AND DISKS:** No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except within a unit, and no television disks shall be permitted above ground, except within a unit, unless prior written approval has been secured from the Executive Board. No personal wireless service facilities, including but not limited to cell phone towers and/or

structures, shall be permitted on the captioned premises.

15. **PARKING:** The portions of the property designated as garages, as concrete drives and as roofed concrete walkways, shall be treated as limited common elements, and no unit owner shall be entitled to utilize the garage, concrete drive or concrete walkway of any other unit owner without the specific written permission of the affected unit owner, excepting the common street/drive. All rules, regulations and ordinances of the City of Kearney as well as those established in any restrictive covenants shall be adhered to by the unit owners.

16. **RECREATIONAL VEHICLES:** No recreational vehicle shall be parked or stored upon any portion of the common elements or limited common elements except within a garage, or except those owned by guests and visitors for short, temporary periods not to exceed seven (7) days per visit.

17. **FENCES, CLOTHESLINES, TEMPORARY AND PERMANENT BUILDINGS:** No fence (except as permitted hereafter), no clothesline and no temporary or permanent building of any kind or nature shall be permitted to be built, erected, or maintained in or on the common areas without the prior written approval of the Board of Directors. Any unit owner may install a white vinyl fence on the common areas and limited common areas abutting said owner's unit, with location and dimensions as shown by the fencing diagram shown on the plot and plans attached hereto and incorporated herein by reference as Exhibit "B", at said unit owner's cost. For purposes of project uniformity and appearance, the only fence type allowed shall be the "Sterling" fence of 48 inches in height as provided by "Polyvinyl (™) Fence Systems

Inst 2004 - 7164 ⁶

by Digger Specialties, Inc.," with specifications as shown at Exhibit "C" attached hereto and incorporated herein by reference, with the posts installed in concrete and with the fence installed by a reputable and bonded contractor. Any unit owner constructing such fence shall indemnify LaVista at Lighthouse Point Condominium Association, all other unit holders and the Declarant against any and all liability arising from the construction and maintenance of such fence, and each such unit owner shall not permit a construction lien to be recorded against the captioned premises. Any portion of such fence to be constructed on the line as extended from the unit boundary line between any two units shall be built on that boundary line as extended and only one fence may be so built. The cost for the boundary line portion of the fence may be split between the two involved unit owners if both unit owners so desire, but in no case shall two fences be allowed to be constructed on any such extension line. Any modifications to the underground lawn sprinkler system which are necessary by virtue of the fence installation shall be paid for by the unit owner installing the fence and the sprinkler system shall be so designed to water the property within such fence lines, which shall now constitute a limited common area. Such fences may be gated, using the "Sterling" specifications as described above, but if no gate is provided, the unit owner failing to provide a gate shall be deemed to be responsible for all lawn care on the premises within the fence, and such owner shall maintain the lawn under the same standards as provided for the condominium common areas. Any cost to the Association resulting from the failure to maintain such lawn, interference with the common sprinkler system, or the installation and maintenance of such fence, shall constitute special assessments

collectible and enforceable against the unit by the Homeowners Association.

18. **PETS:** No animals of any kind shall be kept in any unit for any commercial purpose. The Board of Directors may establish rules governing pets which may be kept in any unit, including prohibition of all pets or the removal of any pet which becomes an annoyance to other unit owners. Except for the fenced-in areas of each unit as described in paragraph 17 of this Declaration, pets shall not be permitted upon the common elements or upon the limited common elements outside of the fence boundary, unless leashed and accompanied by an adult. Each unit owner shall indemnify the association, all other unit owners and the Declarant against any liability arising from maintaining a pet.

19. **EASEMENTS FOR SUPPORT:** Each unit and common element shall have an easement for lateral and subjacent support from every other unit and common element. The owners of each unit between which a common or party wall exists are granted the right, license and easement to use the party wall as a party or common wall, for the reciprocal benefit of each unit of the condominium structure abutting said party or common wall.

20. **ASSOCIATION:** LaVista at Lighthouse Point Condominium Association (the association) has been incorporated in Nebraska to provide for the management of the condominium, and the Board of Directors (herein referred to as the Executive Board) shall act on behalf of the association.

21. **MEMBERSHIP:** Every person or entity who becomes a unit owner shall be a member of the association. However, the owner or owners of a single unit shall be

treated collectively as one (1) owner for purposes of Condominium Association voting. Any person who holds an interest in a unit merely as security for an obligation shall not be a member. Every person or entity who becomes a unit owner shall be a member of the Association, and shall be required to pay a New Member Fee of \$250.00 upon acquisition of a unit, which New Member Fee shall be paid to LaVista at Lighthouse Point Condominium Association.

22. MAINTENANCE OF COMMON ELEMENTS: The association shall maintain all common elements and limited common elements and shall have the right to enter any unit at reasonable times to perform maintenance. Costs of maintenance of all common elements and limited common elements shall mean the total cost and expense incurred by the association in operating, maintaining, repairing, and replacing any facility or improvements of the common elements and limited common elements. Such costs may include, without limitations, the cost of maintaining and resurfacing parking areas and sidewalks, gardening and landscaping, line painting, lighting, maintenance of sanitary control, removal of snow, ice, drainage, rubbish and other refuse, public liability and property damage insurance premiums, repairs, reserves for capital replacements, depreciation on equipment and machinery used in such maintenance, cost of postage, photocopies, telephone and fax charges, legal fees, or other expenses and personnel required to provide such services and management, or amounts paid to independent contractors for any or all of such services. The lawn sprinkler systems for the common areas in the development, shall be owned, operated, maintained, repaired and replaced by the association, as a common association

expense.

9

The association shall keep accurate records of the costs associated with the administration, maintenance and improvement for the purpose of making assessments as provided by this declaration. For assessment purposes, the Executive Board shall make reasonable allocations among the unit owners of costs and payments for any services and expenses which are for limited common elements.

The association shall be entitled to enter into agreements with other entities or independent contractors for the purpose of providing the maintenance contemplated under this paragraph.

During the period of the initial development of the condominium project, only those common areas that are essential to the utilization of those units which have been sold by Declarant and which are maintained as occupied living units shall be maintained, most particularly in the area of parking lot, driveway and grounds.

Notwithstanding any provisions herein to the contrary, until such time as thirty-two (32) of the thirty-five (35) units of LaVista at Lighthouse Point Condominiums project have been sold by the Declarant/Developer to third-party bona fide purchasers, the initial members of the Executive Board shall serve as the Board of Directors/Executive Board of the association and shall be responsible for, and entitled to make, all decisions and assessments relating to the management of the association and the condominium project as described herein. This provision shall expire upon the sale of the 32nd unit, and the regular provisions as set forth herein and in the By-Laws

shall become applicable.

10

23. **EXTERIOR SURFACES:** The association may maintain any exterior surface within the boundaries of any unit, consistent with other comparable exterior surfaces, and shall have the right to enter the unit at reasonable times to perform maintenance. The cost of maintenance performed by the association shall be added to the next assessment against the unit. The exterior surfaces shall not be materially altered, either structurally or aesthetically, without first obtaining the written consent of the Executive Board. The board shall have the exclusive right to disapprove such plan of alteration if, in the opinion of the board, the plan does not conform to the general standards of the condominium as a whole.

24. **INSURANCE:** The association shall maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, and water damage endorsements, if available, insuring any improvements on the properties. Coverage shall include all exterior and structural components of the buildings, together with the service machinery, and all electrical, telephone, cable television, water, sewer or other utilities serving the properties. The policy shall cover the interests of the association and all members and their mortgagees or lenders, as their interests may appear, subject to loss payment and adjustment provisions in favor of the association. Coverage shall be in an amount equal to 100 percent of the current replacement costs of the property, without deduction for depreciation, the amount to be determined annually by resolution

of the Executive Board of the association with the assistance of the insurance company affording the coverage.

The policy will also include the following endorsements (or equivalent):

- a. "Contingent liability from operation of building laws or codes;"
- b. "Replacement costs;" and
- c. "Agreed amount" or elimination of co-insurance clause.

The association shall maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage insurance to such limits as the board may determine, from time to time, insuring each member of the board and each titleholder of a lot within the properties against any liability to the public or to the titleholders arising out of the ownership and use of the common areas.

The policy shall contain:

- a. The limits of liability under such insurance shall be at least one million dollars covering all claims for bodily injury occurrence.
- b. Each member shall be required to maintain a comprehensive general liability policy covering such member's unit. Limits on such policy shall be at least one million dollars. This policy shall include the same coverages mentioned in the above paragraphs. In the event a member's unit or units are rented to a tenant, then said tenant's liability policy shall comply with these same guidelines.

None of the members shall be liable to the other members for any loss or damage to property hereunder or in any manner growing out of or connected with the member's use and occupancy of the property, or the condition thereof, whether or not caused by the negligence or other fault of any one or more of the members or of their

respective agents, employees, licensees, or assigns. This release shall apply only to the extent that said loss or damage to property hereunder is covered by insurance referred to under this paragraph regardless of whether such insurance is payable to or protects any one or more of the members of the association. Nothing in this paragraph shall be construed to impose any other or greater liability upon any of the members that would have existed in the absence of this paragraph. This release shall be in effect only so long as the applicable insurance policies contain a clause to this effect that this release shall not affect the right of the insured to recover under such policies. Such clauses shall be obtained by the parties whenever possible.

Premiums for any insurance required by this declaration shall be assessed against the units in the same manner as assessments in maintenance or improvements of the common elements and shall be deemed to be part of the annual assessment and subject to the same provision for the payment of interest and for such amounts becoming a lien against the property assessed. The deductible on any policy purchased by the association shall be a common expense and shall be assessed against the units in the same manner and subject to the same provisions as annual assessments.

If improvements on the properties are damaged as a result of fire or other casualty, the association shall arrange for, supervise and promptly repair and restore that portion of the property insured by a policy of insurance held by the association. Any restoration shall be substantially similar to the original construction of the

improvements, subject to any modifications required by changes and applicable government regulations and using contemporary building materials and technology to the extent feasible. Said repairs or restoration shall be completed within six (6) months of the date of such fire or other casualty.

A unit owner, at the unit owner's own expense, may obtain insurance for the unit owner's own account and benefit covering the unit and contents.

25. **DAMAGE:** Any damage to the condominium caused by fire or other casualty shall be promptly repaired or replaced by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance or (3) 80% of the unit owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to the units and limited common elements which are not rebuilt must be distributed to the owners of those units and owners of the units to which those limited common elements were allocated, or the lienholders, as their interest may appear, and (3) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interest are automatically reallocated upon the vote as if the

unit had been condemned by eminent domain, and the association shall record an amendment to this Declaration reflecting the reallocation.

26. **LIABILITY:** Any tort liability arising from the use of common elements shall be a common expense. Any deficiency in insurance coverage of such liability shall be borne by all unit owners in proportion to the allocated interests.

27. **EMINENT DOMAIN:** If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Actual damage to physical improvements shall be repaired and the fund created by the award shall be administered as insurance proceeds in the manner set forth herein.

28. **USE OF COMMON ELEMENTS:** The association and each unit owner shall have the right to use the common elements, other than limited common elements, and shall have an easement over the common elements for that use.

The association, and each unit owner of a unit to which a limited common element is assigned, shall have the right to use such limited common element and shall have an easement over such limited common element for that use.

The use of the party walls by the recipients of the reciprocal easement grants contained hereinabove, respectively, shall be in such a manner as to avoid (a) materially damaging or weakening the party wall, and (b) materially altering the party wall. In the event that such party wall is damaged by fire, windstorm or other casualty, the same shall be repaired pursuant to the provisions of the insurance provisions of

the association.

29. **EASEMENTS OVER COMMON ELEMENTS:** The Executive Board may grant easements, leases, licenses and concessions over the common elements for the installation and maintenance of utilities and enter into any other contracts or agreements for such other purposes as the board deems to be in the best interests of the condominium.

30. **COMMON EXPENSES AND LIEN:** The members shall pay annual and special assessments for the common expenses and for any service or expense allocated to a limited common element, in addition to the New Member Fee as described herein before. The annual assessment amount shall be divided into twelve (12) equal monthly installments, and each unit holder shall be responsible to pay these monthly installments starting with the first day of the month following a purchase of the unit by the unit holder, and the monthly assessment amount for the month during which a purchase is made shall be prorated to the end of that month. Any unit holder shall be entitled to pre-pay the annual assessment amount for any period up to and including the date of the next annual determination of the assessment amount for the coming year. After any assessment has been initially made by the Association, assessments must be made at least annually thereafter. Annual and special assessments for common expenses shall be in proportion to allocated interests which shall be on the basis of one share per unit. Annual and special assessments for any service or expense allocated to a limited common element shall be allocated among

the appropriate unit owners on a reasonable basis as determined by the Executive Board. Each assessment shall be the personal obligation of the member who is the unit owner of the unit assessed at the time of the assessment, shall bear interest at the rate of 14% per annum (or such other rate as the board shall set, not to exceed 14% per annum) from the date established by the board until paid (which shall be no earlier than 30 days after the mailing of notice of such assessment to the member), and when shown of record, shall be a lien upon the unit assessed. Each member, by acceptance of a deed by which the interest requirements for membership is acquired, shall be deemed to consent to maintain the common elements and limited common elements applicable to that member's unit. Until the Association makes a common expense assessment, the Declarant shall pay all common expenses. After thirty-two (32) of the thirty-five (35) units have been sold by the Declarant/Developer as described hereinabove, the assessments shall be based upon a budget adopted at least annually by the association; prior to that time, the Declarant/Developer shall be responsible to calculate and compute the budget and the amount of the annual assessments, to be payable in monthly installments as provided herein.

31. UTILITIES: The Executive Board shall assess the costs of common utilities, if any, on the same basis as the allocation of annual and special assessments set forth above, namely on the basis of one share per unit.

32. REPAIRS: The Executive Board may assess a member with the cost of maintenance or repair of common elements or exterior surfaces necessitated by

willful or negligent conduct of the member by adding such cost to the next assessment against the member's unit. 17

33. **PRIORITY OF LIENS:** The lien of any annual or special assessment is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first purchase money mortgage or first purchase money deed of trust on the unit recorded before the date on which the assessment sought to be enforced was recorded, including any refinancing thereof and (3) liens for real estate taxes and other governmental assessments or charges against the unit. Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six months of the unit's unpaid regularly budgeted dues or charges accrued before the acquisition of the title to the unit by the mortgagee. If the condominium's association's lien priority includes cost of collecting unpaid dues, the seller/servicer will be liable for any fees or costs related to the collection of the unpaid dues.

34. **CAPITAL IMPROVEMENTS:** Annual and special assessments, other than for capital improvements, may be levied by the Executive Board. Any special assessment for capital improvements shall be approved by the affirmative vote of unit owners representing at least 67% of the allocated interests, 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 special assessment is contained in the notice of the special meeting.

35. **BINDING EFFECT:** The covenants contained in this Declaration shall

run with the land and shall inure to the benefit of and bind the declarant and all persons claiming under the declarant.

36. **ENFORCEMENT:** Enforcement of the covenants contained in this Declaration may be by proceedings at law or in equity against any person violating or attempting to violate any covenant, and brought by the Association and/or any of the unit owners. The proceedings may be to restrain the violation or recover damages and in addition, if by the association, may be to enforce any lien or obligation created by the covenants. The filing and/or enforcement of any such lien by the association may be approved by the Association without the concurrence of the unit owner against whose interest the lien is being filed and/or enforced.

37. **AMENDMENTS:** The condominium established by this Declaration may be amended, in writing, by the unit owners of at least 67% of the units at any time, subject to the provisions herein regarding the sale of thirty-two (32) of the thirty-five (35) units by the Declarant/Developer. The condominium established by this Declaration may be terminated, in writing, by the unit owners of at least 80% of the units, and further subject to the provisions of Neb. Rev. Stat. § 76-855 (as amended), the provisions of which are incorporated herein by reference, and further subject to the provisions of the sale of thirty-two (32) of the thirty-five (35) units by the Declarant/Developer.

38. **SEVERABILITY:** The invalidation of any one of the provision of this Declaration shall not affect the validity of the remaining provisions.

Inst. 2004 - 7164

19

Segura Arrieta Construction, Inc., a
Nebraska Corporation

By: [Signature]
Carlos F. Segura, President

STATE OF NEBRASKA)
)SS.
COUNTY OF BUFFALO)

The foregoing instrument was acknowledged before me this 19th day of
July, 2004, Carlos F. Segura as President of Segura Arrieta
Construction, Inc., a Nebraska Corporation, on behalf of the Corporation.



[Signature]
Notary Public

Inst. 2004 - 7164

20

Exhibit "A", Page 1

Lot 1, Block 7, Lighthouse Point, an Addition to the City of Kearney, Buffalo County, Nebraska, Except: a tract of land being part of Lot 1, Block 7, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northwest Corner of Lot 1, Block 7, in said addition, said point also being the Northeast Corner of Lot 2, Block 7, in said addition, and assuming the line common to Lot 1 and 2 as bearing South 00° 15' 28" W and all bearings contained herein are relative thereto; thence South 00° 15' 28" W and on the line common to Lot 1 and Lot 2 a distance of 156.95 feet to the Southwest Corner of Lot 1 and the Southeast Corner of Lot 2; thence North 89° 50' 26" E and on the South line of Lot 2, Block 7 in said addition (if extended east) a distance of 33.0 feet; thence North 00° 15' 28" E and parallel with the West line of Lot 1 and the East line of Lot 2, Block 7 in said addition, a distance of 166.65 feet to a point that intersects on the South right-of-way line of 43rd Street, a street in the City of Kearney, Buffalo County, Nebraska; thence southwesterly on the aforesaid South right-of-way line of 43rd Street a distance of 34.49 feet to the place of beginning.

NUM PAGES 6
DOC TAX _____ PD _____ CHG _____ RET _____
FEES 30.50 PD _____ CHG X RET _____
TOTAL _____
CK NUM _____ BY _____
_____ BY _____
REC'D _____
RETURN _____ GANZ _____
_____ BOX 895 _____
_____ KEARNEY, NE 68848 _____

TRACT INDEX pp
COMPUTER X
COMPARED _____

Inst. 2004 - 3162

RECORDED
BUFFALO COUNTY, NE

2004 AP 12 AM 11:30

Kellie John
REGISTER OF DEEDS

MICROFILMED

SPACE ABOVE RESERVED FOR REGISTER OF DEEDS OFFICE RECORDING INFORMATION

6

Inst 2004 - 3162 2

MICROFILMED

DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS OF
Lot 1, Block 7, Lighthouse Point Subdivision, Final Plat
to the City of Kearney, Buffalo County, Nebraska.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, D T Development Inc., a Nebraska Corporation, hereinafter referred to as "Developer", is the owner of a certain tract of real property more particularly described as follows, and which is hereto and herein incorporated and known as "Property", and

WHEREAS, it is the belief of Developer that Lighthouse Point Subdivision is an exclusive development designed for those who appreciate and expect those extras provided in this development, and therefor, the following restrictive covenants have been set forth to further protect and provide for those investing in and building in the subdivision and for the preservation of the natural terrain and the beauty of the area; and

WHEREAS, Developer is desirous of providing and maintaining a uniform set of rules, regulations and restrictions concerning the construction and use of any structures on the property; and

WHEREAS, these restrictive covenants are hereby established upon the lot.

1. DEFINITIONS

- (a) Property: As used herein, the term "Property" shall be deemed to mean the Property described as Exhibit "A" which is attached hereto and incorporated herein by this reference as if fully set forth.

- (b) Covenants: As used herein, the term "Covenants" shall be deemed to refer to this Declaration of Protective Covenants, Conditions and Restrictions of Lighthouse Point Subdivision, as modified or amended in accordance herewith.
- (c) Developer: As used herein, the term "Developer" shall be deemed to mean D T Development, a Nebraska Corporation, or its successors or assigns.

2. CONSTRUCTION STANDARDS

- (a) The Property will be developed into multi-family buildings with 3 or 4 units in each building. The property will have no more and 35 units total built on it. The main floor will have a minimum 1200 sq ft of living space per unit.
- (b) The buildings will have shingle roofs with a 6/12 minimum pitch.
- (c) The front elevation will be faced with a minimum of 75% brick. The units which the front, rear or side is to the street, will be faced with a minimum 40% brick on the exterior. The units backing each other will have siding.
- (d) No Vinyl Siding will be used on any of the buildings.

3. HOMEOWNER'S ASSOCIATION

- (a) This project will be a member of the Lighthouse Point Home Owners Association. The entire lot will count as one (1) member and will have one (1) vote in the Association Meetings. EXCEPT that the final developer decides to sub divide the parcel of land into 3 parts. At that point, each newly divided lot will have one (1) membership and vote, for a maximum of three (3) memberships and votes. Each "Unit Owner" will not be their own member in this association.

(b) This project will have its own Homeowner's Association. To which each unit owner, by virtue of such ownership, automatically becomes a member of this Homeowner's Association and shall abide by the bylaws of this Homeowner's Association. All such unit owners shall also abide by rules and regulations governing the operation, maintenance, and use of this Homeowner's Association as the same may now exist or hereafter be established by this Homeowner's Association. This association will be responsible to protect and maintain this property and its common areas. The governing board of this Association shall vote the vote(s) that this property is entitled to vote in the Lighthouse Point Home owner's association.

4. SEVERABILITY

The invalidation of any one of the covenants or restrictions set forth herein shall not effect the validity of the remaining provisions hereof, all of which shall remain in full force and effect.

Inst. 2004 - 3162

5

Dated this 9 day of April, 2004

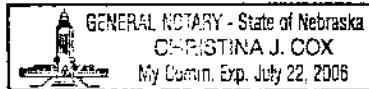
D.T. Development Inc.

By [Signature]
By _____

STATE OF NEBRASKA)
) SS:
COUNTY OF BUFFALO)

The foregoing instrument was acknowledged before me this 9th day of April, 2004 by Jeffrey L. Cox Attorney
Name Title

On behalf of said corporation.



✓ [Signature]
Notary Public

MICROFILMED

EXHIBIT "A"

Lot 1, Block 7, Lighthouse Point, an Addition to the City of Kearney, Buffalo County, Nebraska, Except: a tract of land being part of Lot 1, Block 7, Lighthouse Point, an Addition to the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northwest Corner of Lot 1, Block 7, in said addition, said point also being the Northeast corner of Lot 2, Block 7, in said addition, and assuming the line common to Lot 1 and 2 as bearing South 00° 15' 28"W and all bearings contained herein are relative thereto; thence South 00° 15' 28"W and on the line common to Lot 1 and Lot 2 a distance of 156.95 feet to the Southwest Corner of Lot 1 and the Southeast Corner of Lot 2; thence North 89° 50' 26"E and on the South line of Lot 2, Block 7 in said addition (if extended east) a distance of 33.0 feet; thence North 00° 15' 28"E and parallel with the West line of Lot 1 and the East line of Lot 2, Block 7 in said addition, a distance of 166.65 feet to a point that intersects on the South right-of-way line of 43rd Street, a street in the City of Kearney, Buffalo County, Nebraska; thence southwesterly on the aforesaid South right-of-way line of 43rd Street a distance of 34.49 feet to the place of beginning.

LIGHTHOUSE POINT SUBDIVISION AGREEMENT
(As Amended May 28, 2002)

3

WHEREAS, DT Development Inc, a Nebraska Corporation doing business in Buffalo County, Nebraska, as owner of a tract of land described as follows:

A tract of land located in the Southwest Quarter of Section 27, Township 9 North, Range 16 West, 6th P.M., Buffalo County, Nebraska, more particularly described as:

All of the Southwest Quarter of said section, except the South 554 Feet thereof, plus lot 2, High Plains Subdivision to the City of Kearney, Buffalo County Nebraska, said tract containing 145.79 acres, more or less;

desires to develop said tract into a subdivision to be known as "Lighthouse Point," an addition to the City of Kearney, Buffalo County, Nebraska, and

WHEREAS, pursuant to the City of Kearney Subdivision Ordinance, Subdivision Ordinance No. 5421 as contained in the Subdivision Regulation Handbook of the City of Kearney, Nebraska, a Subdivision Agreement must be reached between owners of any land located within the City of Kearney and within two miles thereof, and the City of Kearney, a City of the First Class, before such land may be subdivided, and

WHEREAS, the parties recognize that the final plat for Lighthouse Point may have some dimensional variances and/or lot numbering deviations from those set out below,

THEREFORE, the undersigned, DT Development, Inc., hereinafter referred to as "Owner," and the City of Kearney, hereinafter referred to as the "City," in consideration of the mutual covenants and agreements hereinafter contained, agree to the following:

OWNER AGREES AS FOLLOWS:

1. To comply with the terms and conditions of the City of Kearney Subdivision Ordinance, Subdivision Ordinance No. 5421 as contained in the Subdivision Regulation Handbook of the City of Kearney, Nebraska.
2. To pay for all design services for Lighthouse Point improvements as provided in this agreement, except for those specifically designated in this agreement as being the responsibility of the City.
3. To pay for all construction costs for items specifically cited herein as being the responsibility of the Owner.
4. To indemnify and hold harmless the City and its agents, officers, and employees for any and all claims, damages, losses or expenses, including reasonable attorney's fees, that arise out of or allegedly arise out of the negligence or omissions of the owner, its agents, and employees concerning the design or construction of the systems and facilities described in this agreement, only until such time as such systems or facilities are dedicated to and

accepted by the City. At the time of such dedication, the Owner shall transfer, assign, and set over any and all warranties flowing to the Owner from each and every builder or designer of such improvements, as there may be, to the City.

5. To construct a lake on Lot 33 of Block 3 of the Lighthouse Point preliminary plat as approved on May 21, 1993, such lot referred to as Lot 5 of Block 1 on the final Lighthouse Point plat, and on adjacent City property currently known as Ted Baldwin Park. The lake shall be constructed to the City's design, subject to the Owner's approval, in accordance with the Lighthouse Point preliminary plat as approved on May 21, 1993, and the final Lighthouse Point plat.
6. To create a Homeowners' Association to maintain the lake's shoreline along all private property in such a way as to minimize erosion and deterioration of the lake.
7. To construct a feeder canal from a location on the north side of 39th Street to the lake to channel storm water to the lake (traversing Lot 4 of Block 2 and Lot 32 of Block 3 of the Lighthouse preliminary plat as approved on May 21, 1993, such areas known as Lot 4 of Block 8 and Lot 19 of Block 1 respectively on the final Lighthouse Point plat). The construction of the feeder canal and all associated work shall proceed in accordance with the City's design, subject to the Owner's approval, and shall include sediment settling area(s) as determined necessary by qualified engineers.
8. To construct a well and associated piping and other related work for replenishing the lake's water level as needed, such water level to be maintained at a minimum pool level to be determined during the design of said lake, except as provided below. The construction of the well and associated piping and all associated work shall proceed in accordance with the City's design, subject to the Owner's approval.
9. To restore to its original condition all City property disturbed during construction of the lake or its associated work, unless otherwise agreed upon by the Owner and City.
10. The City shall convey to the Lighthouse Point Homeowners' Association Lot 4, Block 2, except that portion previously dedicated to the City for the hike/bike trail, as shown in Lighthouse Point preliminary plat as approved on May 21, 1993. Also, the City shall convey to the Lighthouse Point Homeowners' Association that portion of Lot 32, Block 3 that is south of a line agreed upon which shall be north of the well and pumping station.
11. To construct an eight foot wide hike/bike trail through the following areas: the area south of Lot 1 of Block 1, Lot 4 of Block 2 and the area across the west edge of Lighthouse Point along 30th Avenue of Lighthouse Point preliminary plat as approved on May 21, 1993 and also construct an eight foot wide hike/bike trail along the entire north boundary of the subdivision as original laid out in the Lighthouse Point preliminary plat as approved on May 21, 1993. The construction of the hike/bike trail and the corresponding landscaping and contouring in the areas contiguous to the hike/bike trails will be provided by the owner in accordance with the City's design and subject to owner's approval. Construction, landscaping and contouring of the hike/bike trail shall be completed within one year of the execution of this amendment.

- 5
12. To develop Country Club Lane with center medians which include lighting. Such medians shall be formed during the construction of the street, in accordance with the City's design, subject to the Owner's approval, and each shall include lighting, turf, and an irrigation system. Lighting shall incorporate standard devices used by the Nebraska Public Power District unless the Owner, subject to approval by the City, elects to employ custom lighting. All construction, maintenance and improvement costs related to the interior of the medians shall be the responsibility of the Homeowners' Association created by Owner.
 13. To develop Lot 1 of Block 1 of the Lighthouse Point preliminary plat as approved on May 21, 1993, referred to as Lot 1 of Block 7 in the Lighthouse Point final plat, as a planned zone to include duplex condominiums. The Owner shall landscape, light, and otherwise improve the area and create a Homeowners' Association as the ongoing entity to maintain and further improve this area. The Owner shall construct privacy fencing along the South and East sides of this lot of either brick, rock, wood, or a combination thereof and in compliance with City codes.
 14. To create a Homeowners' Association which will have the ongoing responsibility to maintain the medians, the approximately fifty (50) foot wide strip along the south edge of Lot 1 of Block 15 of the Lighthouse Point preliminary plat as approved on May 21, 1993, referred to as Lot 1 of Block 7 in the Lighthouse Point final plat, and the common areas within the overall development site.
 15. To deed a parcel of land in Lot 2 of Block 1 of the Lighthouse Point preliminary plat as approved on May 21, 1993, referred to as the north/northwest corner of Lot 1 of Block 7 in the Lighthouse Point final plat, to the New Life Assembly Church for ingress and egress to the church parking lot. The Owner shall provide concrete paving on the said land as agreed to with the New Life Assembly Church.
 16. As the result of negotiations with the City, to pay a pro-rated (proportionate) share of the cost of necessary lift station(s), based upon the percentage of benefit resulting to the owner as compared to the total area of benefit. For example: if the lift station will serve 600 acres total area, and the Owner has 60 acres, then the Owner will pay 10 percent of the cost of the lift station. Payment for all associated piping providing flow into the lift station(s) shall be in accordance with the Subdivision Ordinance cited in this agreement.

CITY AGREES AS FOLLOWS:

1. To comply with the terms and conditions of the City of Kearney Subdivision Ordinance, Subdivision Ordinance No. 5421 as contained in the Subdivision Regulation Handbook of the City of Kearney, Nebraska.
2. To maintain any and all property dedicated to the City by the Owner in at least as good as condition as it exists at the time of its dedication, subject to normal wear and tear, but shall in no event shall it to fall into disrepair. The City may also, at its option, construct new or additional improvements on said dedicated property in a fashion equal to or greater than the facilities which are existing on such property at the time of dedication.
3. To maintain the lake's shoreline along all public property in such a way as to minimize erosion and deterioration of the lake (except as set out in paragraph 6 on page 2).

4. To maintain the eight-foot-wide hike/bike trails through dedicated park areas following their completion, inspection, and acceptance by the City and dedication by the Owner. The City will maintain these hike/bike trails in at least as good as condition as they exist at the time of their dedication, subject to normal wear and tear, but shall in no event allow them to fall into disrepair.
5. To pay for electricity and other power costs for park lighting.
6. To assist the Owner in coordinating with the Nebraska Public Power District, US West, and New Life Assembly Church to obtain permission for the Owner to install a hike/bike trail (of like characteristics as in Lighthouse Point) on the lots owned by the Nebraska Public Power District, US West, and New Life Assembly Church.
7. To not allow parking along the curbs on Country Club Lane within the boundary of the development site as shown in the Lighthouse Point preliminary plat as approved on May 21, 1993.
8. Payment for all piping providing flow into the lift station shall be in accordance with the Subdivision Ordinance cited in this agreement. If the lift station and associated piping to provide flow from the lift station to the existing City system are not installed by the City in a timely manner satisfactory to the Owner, the Owner has the option, at no additional cost to the City, to proceed with constructing the lift station in accordance with City design (and associated piping to connect the lift station to the existing City system) according to City specifications, including acquisition of any necessary easements. Upon completion, inspection and acceptance by the City, the lift station (and associated piping to connect the lift station to the existing City system) shall be dedicated to the City.

BINDING UPON ALL HEIRS, ASSIGNS AND SUCCESSORS

All other terms and conditions of the original agreement shall remain in full force and effect and shall be unchanged by this amendment.

This agreement shall be binding upon the heirs, assigns, and successors of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands this 28 day of May, 2002.

DT DEVELOPMENT, INC., a Nebraska Corporation

By [Signature]
Jeffrey L. Ott, its Attorney

CITY OF KEARNEY, NEBRASKA

By [Signature]
Peter G. Kotsiopoulos, Mayor

Inst. 2003 - 11536

Exhibit "A" to Amendment to Lighthouse Subdivision
Agreement (May 28, 2002)

7

	<u>Block</u>	<u>Lot(s)</u>
Lighthouse Point	1	1-22
	2	1
	3	1-8
	4	1-2
	5	1-11
	6	1
	7	1-6
	8	1-4
Lighthouse Point Second Addition		1-10
Lighthouse Point Third Addition	1	1-6
	2	1
	3	1
Lighthouse Point Fourth Addition	1	1-2
	2	1-2
	3	1
	4	1-22
Lighthouse Point Fifth Addition	1	1-10
	2	1-10
	3	1-3
	4	1-2
Lighthouse Point Sixth Addition	1	1-6
	2	1
	3	1-17
	4	1-3
All located in the City of Kearney, Buffalo County, Nebraska.	5	1-14

Proposed Lighthouse Point Seventh Addition

A tract of land being part of the North Half of the Southwest Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northeast corner of Outlot "C", Lighthouse Point Sixth Addition, an addition to the City of Kearney, said place of beginning being on the North line of the Southwest Quarter of said Section 27; thence N89°26'19"E on the aforesaid North line a distance of 1172.44 feet to the Northwest corner of Lot 5, Block 1, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska; thence S15°32'07"E along the West line of said Lot 5 a distance of 128.05 feet; thence S24°42'W continuing on the aforesaid West line a distance of 116.7

Inst 2003 - 11536

feet; thence S33°21'W on said West line a distance of 231.81 feet to the Northeast corner of Lot 2, Block 1, Lighthouse Point Third Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence S89°55'W along the North line of the aforesaid Lighthouse Point third Addition a distance of 316.65 feet to the East line of Country Club Lane, a street in the City of Kearney, Buffalo County, Nebraska; thence N00°08'15"W along the aforesaid East line a distance of 40.65 feet; thence S89°55'W a distance of 80.0 feet to the Northeast corner of Lot 1, Block 2, Lighthouse Point Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence S89°55'W along the North line of the aforesaid Lighthouse Point Fifth Addition a distance of 614.64 feet to the Southeast corner of Lot 1, Block 1, Lighthouse Point Sixth Addition; thence N00°05'W along the East line of the aforesaid Lot 1, Block 1 a distance of 164.99 feet to the centerline of 48th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence S89°55'W along said centerline a distance of 18.55 feet; thence N00°05'W a distance of 30.0 feet to the Southeast corner of Lot 1, Block 2, Lighthouse Point Sixth Addition; thence N00°05'W along the East line of said Lighthouse Point Sixth Addition a distance of 177.39 feet to the place of beginning. Containing 10.24 acres, more or less, Buffalo County, Nebraska.

8