

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR ST. ANDREW'S POINTE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ST. ANDREW'S POINTE (this "Declaration") is made on the date hereinafter set forth by and among the undersigned individual lot owners, and acknowledged by the St. Andrew's Pointe Homeowners Association, Inc., a Nebraska non-profit corporation, hereinafter referred to as "Association".

**WITNESSETH:**

WHEREAS, the following legally described real property is subject to the terms of this Declaration:

Lots 1 - 63, inclusive, and Outlots 1 through 5, inclusive, all in St. Andrew's Pointe, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (referred to collectively as the "Lots" and individually as a "Lot");

WHEREAS, the Association and the Owners (as defined herein) desire to continue to provide for the preservation of the values and amenities for the maintenance of the character and residential integrity of the Lots as well as for the maintenance of the Common Area for the use and enjoyment of homeowners; and

WHEREAS, by this instrument, the Association and the Owners desire to amend and restate, in its entirety, the Declaration of Covenants, Conditions and Restrictions for St. Andrew's Pointe dated August 29, 1988 and recorded on September 28, 1988 in Book 863, Page 356 of the Miscellaneous Records of the Register of Deeds Office of Douglas County, Nebraska, as amended by that certain Certification recorded on August 1, 1994 in Book 1125, Page 75 of the Register of Deeds Office of Douglas County, Nebraska and that certain unrecorded Addendum to Declaration of Covenants, Conditions and Restrictions for St. Andrew's Pointe.

NOW THEREFORE, the Association and the Owners hereby declare that the Lots are hereby subjected to and shall be held, sold, occupied, and conveyed subject to this Declaration and all amendments and supplements thereto shall run with the land and shall be binding upon the Association, each Owner, their heirs, successors, and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Association, each Owner, and all succeeding Owners.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to St. Andrew's Pointe Homeowners Association, Inc., a Nebraska non-profit corporation.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described as the Lots, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property and the improvements thereon from time to time owned or leased by the Association for the common use and enjoyment of the Owners and/or Residents (as defined below). Such property may include, but is not limited to, any signs, entrances, recreational areas, including, but not limited to, ponds, storm water management and drainage facilities, private streets not dedicated to the City of Omaha, Nebraska, Douglas County, Nebraska or the State of Nebraska, and fencing on Common Area. The Association is responsible for management and maintenance of all Common Area. Common Area may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to the City of Omaha and maintained by the Association.

Section 5. "Lot" shall have the meaning set forth above in the recitals.

Section 6. "Board of Directors" shall mean and refer to the Board of Directors of the Association as elected and appointed by the Association pursuant to the terms and conditions of the Association's Articles of Incorporation and Bylaws.

Section 7. "Member" or "Members" shall mean and refer to an individual Owner or all Owners, as applicable.

Section 8. "Structure" shall mean and refer to:

(a) Any thing or object (other than trees, shrubbery, landscaping, and hedges) the placement of which upon any Lot may affect the appearance of such Lot, including, but not limited to, any building, single-family residence, including the roof/shingles located thereon, garage, porch, covered or uncovered patio, swimming pool, fence, awning, sunscreen, solar heating or cooling device, exterior air conditioning equipment, antenna, fire pit or outdoor fireplace, play house, recreational areas, curbing, paving of any kind, wall, signboard, statues, artwork of any type, or manufactured displays that are intended for long term affixing to the Lot, or any other temporary or permanent improvement on such Lot;

(b) Any excavation, fill, ditch, dam, or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, and any Lot; and

(c) Any change of more than six inches in the grade of any Lot.

Section 9. "Resident" shall mean and refer to each individual occupying any dwelling unit located on any of the Lots pursuant to the terms of this Declaration, including, but not limited to, all Owners and members of the immediate family of an Owner who reside within such dwelling unit.

## ARTICLE II PROPERTY RIGHTS TO COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to establish rules and regulations for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations: and
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of the Owners agreeing to such dedication or transfer and has been recorded, except as otherwise dedicated or reserved herein.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his/her right of enjoyment to the Common Area and facilities to the members of his family, guests or contract purchasers who reside on the property.

Section 3. Easement and Licenses. The Association and its agents, contractors and designees shall have an easement and license to enter upon any Lot at all times, but without any obligation, in order to maintain service to or prevent injury or damage to any persons or dwellings or property located within the Properties or the Common Area above described. The Association reserves the right to grant such further easements and licenses under, upon or over said Lots as may be necessary or required by utilities furnishing gas, water, telephone, electrical and television or other utility services to said Properties or the Common Area above described. The Properties shall further be subject to existing easements for abutting roadways and right-of-ways.

### ARTICLE III

#### MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting. Each Member shall be entitled to one (1) vote on each matter submitted to the Members for each Lot owned by such Member. Any Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Member as to such Lot and shall collectively be entitled to a single vote for such Lot as to each matter properly submitted to the Members.

Section 3. Board of Directors. The business and affairs of the Association shall be managed by a Board of Directors, consisting of Owners and/or Residents, elected by the Members. The number of Directors shall be determined in accordance with the provisions of the Bylaws of the Association; however, the number of Directors shall always be an odd number and no event shall be less than three (3). The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Area, and the enforcement of the rules and regulations relating to the Common Area.

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

(c) The expenditure, commitment and payment of the Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Area against property damage and casualty, and purchase of liability insurance coverage for the Association, the Board of Directors of the Association, and the officers serving thereunder.

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

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

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

(g) The employment of professionals and consultants to advise and assist the officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

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

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

(j) Oversee the compliance with this Declaration as may be amended from time to time.

Section 4. Adoption of Further Rules and Regulations. The Board of Directors may make such rules and regulations consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy, and other matters concerning the Association's operations. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and other matters may be conducted by mail, ballot, or other reliable electronic means (in addition to oral voting occurring at regular or special meetings of the Members).

Section 5. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Area or its facilities, or from any wire, pipe, drain, conduit, or the like. The Association shall not be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area or its facilities. No diminution or abatement of assessments,

as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

#### **ARTICLE IV COVENANT FOR MAINTENANCE AND INSURANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent annual assessments and special assessments shall pass to successors in title and both parties (seller and purchaser) shall be jointly liable therefor. No Owner may waive or otherwise escape liability for the annual assessments and special assessments provided for herein by non-use of the Common Area or abandonment of his Lot or any dwelling unit thereon. Lots dedicated as Common Area shall not be subject to assessment and any owner of such Lot may not vote.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement, maintenance and general liability insurance for the Common Area. The amount of insurance, if any, shall be set by the Board of Directors.

Section 3. Exterior Maintenance. The Association shall provide maintenance of the Common Area, streets, sewers and walkways adjacent to Common Area. Each Owner shall provide, at his own expense, repair and replacement of Lot sidewalks, exterior maintenance upon his respective Lot including mowing, fertilizing, watering, planting of trees, shrubs and grass and snow removal on walks and drives. Each Owner shall be responsible for all maintenance and repair of any Structure located on such Owner's Lots and he/she shall not permit waste but instead shall in a timely fashion maintain the exterior appearance of his unit in a clean, uniform, and orderly manner free of discolored or peeling paint or stain. Each Owner shall be responsible for prompt repair of broken glass.

In the event any Owner fails in his/her maintenance obligations, the Board of Directors, within thirty (30) days after written demand delivered to such Owner, may at its election, perform the maintenance including but not limited to, painting, roofing, staining, repairing glass, maintaining or replacing trees, shrubs, bushes, rock walls, or otherwise, as may be necessary to cause the Lot to comply with this Declaration. The cost of any Board ordered repair shall become a lien upon the Lot or Lots repaired without further Board action and the Owner(s) shall be personally obligated to reimburse the actual costs incurred.

In the event that the need for maintenance or repair to Common Area, or Lots is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

Section 4. Establishment and Payment of Annual and Special Assessments. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice shall be delivered either personally, by U.S. Mail, or by electronic mail, to every Owner subject thereto, pursuant to the terms of this Article IV, Section 4. The annual assessments shall be payable, in advance, in one (1) annual installment on or before January 31<sup>st</sup> of each calendar year; provided, however, the Board of Directors may establish a different method of payment upon prior written notice to the Owners. Special assessments, if any, shall be payable in the manner, amounts and times specified by the Board of Directors.

Section 5. Special Assessments for Capital Improvements. Subject to the terms of the Association's Bylaws, in addition to the annual assessment authorized above, the Association, upon a two-thirds (2/3<sup>rd</sup>) majority affirmative vote of the Board of Directors at a duly-held meeting, may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. Any such special assessment levied by the Board of Directors against each Lot in any fiscal year shall not exceed fifty percent (50%) of the annual assessment levied in the same fiscal year, unless the Members, by a majority affirmative vote of those Members present in person or by proxy at a duly-held meeting, authorize a higher amount.

Section 6. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Section 4 or 5 shall be delivered either personally, by U.S. Mail or electronic mail to all directors and/or Members, as applicable, not less than 10 days nor more than 30 days in advance of the meeting. At each such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Rate of Assessment: Reserve. The total annual assessments shall be levied at an equal rate against each Lot. The amount of each annual assessment shall be established by the Board of Directors, subject to the guidelines and limitations imposed by the Association's Bylaws and Articles of Incorporation; provided, however, that it is expressly understood, acknowledged and agreed by the Owners that, in any one (1) calendar year, the Board of Directors may establish a rate of annual assessment sufficient to provide for the accumulation and/or preservation of reserves equal to no more than fifty percent (50%) of the then-current calendar year operating budget; provided, however, that in no event shall the Board of Directors require an annual assessment which results in the planned total accumulation of reserves equal to more than 100% of the then-current calendar year operating budget.

Section 8. Certificate of Payment. The Association shall, upon written request by an Owner, and for a reasonable charge, not to exceed \$35.00, furnish a certificate signed by an officer of the Association setting forth whether the annual assessments and special assessments, if any, on a specified Lot have been paid. The Association shall furnish said certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of annual assessments and/or special assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the

rate of sixteen percent (16%) per annum or the highest lawful rate, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a mechanics lien foreclosure.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE V ARCHITECTURAL CONTROL; ARCHITECTURAL COMMITTEE**

Section 1. Composition of Architectural Committee. An Architectural Control Committee (the "Architectural Committee") shall be elected by the Board of Directors by majority vote. The Architectural Committee shall consist of a minimum of three (3) Members or Residents, but may thereafter be increased in size by the Board of Directors, from time to time. There shall always be an odd number of Architectural Committee members. Members of the Architectural Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Architectural Committee shall be filled by the Board of Directors by a majority vote to serve for the remaining portion of the term of the originally elected member. If any vacancy shall occur, the remaining members of the Architectural Committee may continue to act until the vacancy has been filled. Any member may be removed with or without cause by an affirmative vote of a majority of the Board of Directors.

Section 2. Powers and Duties of the Architectural Committee.

(a) The Architectural Committee shall serve as an architectural review board and shall regulate the external design, appearance, and location of the Lots and Structures thereon so as to enforce the architectural provisions of this Declaration and enhance values and to maintain a harmonious relationship among all Structures and the Properties.

(b) The Architectural Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 3. Submission of Plans to Architectural Committee for Approval. No Structure of any kind whatsoever shall be constructed, erected, placed, moved onto, or permitted on any Lot, nor shall any existing Structure upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefore shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as the Architectural Committee may reasonably require, but shall in all cases include two (2) sets of each of the following:

(a) A site plan showing the location of all proposed and existing Structures on the Lot and all existing Structures on adjoining Lots;

(b) Exterior elevations for the proposed Structures;

(c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed Structures; and

(d) Description of the plans or provisions for landscaping or grading, if applicable.

Concurrent with submission of the plans and any other disclosures required by the Architectural Committee with respect to the specific submission of plans, the Owner shall remit payment of any reasonable fee established and uniformly applied by the Architectural Committee and shall notify the Association of the Owner's mailing address.

**Section 4. Approvals/Disapprovals.** Any approval or disapproval of a requested action by the Architectural Committee shall occur by a majority vote and shall be evidenced in writing (electronic mail shall be sufficient for the purposes of approval without conditions or qualifications). If any application is denied the Architectural Committee shall specify the reasons for such denial. The Architectural Committee may approve an application subject to such conditions and qualifications as the Board of Directors deems appropriate to enforce the architectural provisions of this Declaration. Comments and action of the Architectural Committee will be identically marked on both copies of said submissions. One copy will be returned to applicant and one copy retained as part of the permanent records of the Architectural Committee. Factors to be considered by the Architectural Committee in making its decision may include, but shall not be limited to, the location of the Structure within Lot boundary lines, the quality of construction, size, and suitability for residential purposes of the proposed Structure, the type and exterior of improvements constructed, or approved for construction on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by the Association. In this regard, the Association intends that the Lots continue to be a developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Structure shall be exercised by the Architectural Committee to promote development of the Lots and to protect the values, character and residential quality of all Lots. If the Architectural Committee determines that the proposed Structure will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, after giving due regard for quality style changes to residences and improvements of all of the Lots, the Architectural Committee may refuse approval of the proposed Structure.

**Section 5. Time Period to Act.** The Architectural Committee shall act upon any request submitted to it within fifteen (15) days after a complete submission thereof in a form acceptable to the Architectural Committee. Submission of incomplete plans shall not be considered a valid submission triggering the deadline stated above and shall not be recognized by the Architectural Committee or the Board of Directors. Additionally, if any additional information is requested by the Architectural Committee, the approval time may be extended so as to allow for additional information and documentation to be presented to the Architectural Committee. Any failure to respond shall be deemed denial of an application.

**Section 6. Rules, Regulations, and Policy Statements.** The Architectural Committee may recommend, from time to time, subject to the approval and adoption of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on. The Architectural Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

(a) The Architectural Committee shall hold regular meetings as necessary and meetings may



be called by any one of the members of the Architectural Committee;

(b) A majority of the members of the Architectural Committee present at any meeting shall constitute a quorum; and

(c) A copy of all minutes, rules, regulations, and policy statements of the Architectural Committee, if any, shall be filed with the records of the Association and shall be maintained by the Association as a permanent public record. The Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations, and policy statements available to any Member for copying.

Section 7. Expenses of the Architectural Committee. The Architectural Committee may charge an Owner all reasonable fees for the processing of any requests, plans, and specifications, including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Architectural Committee and the members of the Architectural Committee may be paid a reasonable fee for work performed on the Architectural Committee, which reasonable fee shall be established by the Board of Directors from time to time.

Section 8. Right of Entry. The Association and the Architectural Committee through their authorized officers, employees, and agents shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Structure thereon is in compliance with the provisions of this Article and Article VI without the Association or the Architectural Committee or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

Section 9. Liability. No Owner, or combination of Owners, nor other person or persons shall have any right to any action by the Association or the Architectural Committee, or to control, direct or influence the acts of the Association or the Architectural Committee or with respect to any proposed Structure. No responsibility, liability or obligation shall be assumed by or imposed upon the Association or the Architectural Committee by virtue of the authority granted to the Association in this Article V, or as a result of any act or failure to act by the Association or the Architectural Committee with respect to any proposed Structure.

Section 10. Waiver. The Architectural Committee has the power to waive any requirements set forth in this Declaration, provided, however, that such waiver shall be by a vote of two-thirds or more of the Architectural Committee, or, if approved by a less than two-thirds majority, effective only upon and with majority approval of the Members of the Association present at a duly-held meeting.

## ARTICLE VI COMMON SCHEME COVENANTS AND RESTRICTIONS

The following covenants and restrictions are imposed as a common scheme upon all Lots and Properties for the benefit of each other Lot and Common Area, and may be enforced by an Owner of a Lot or Common Area, or the Association.

- (a) No Lot shall be used except for single family residential purposes for occupancy by the Owners and their immediate family and guests, and any domestic staff. No use shall be permitted to occur on any Lot which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Lots.

- (b) No commercial enterprise or gainful public business, occupation, or profession which results in a public annoyance or nuisance, and no noxious or offensive activity, will be carried on, conducted, or other permitted on any Lot. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots
- (c) No structure of a temporary character, trailer, modular home, shed, greenhouse, gazebo, dog house, tent, shack, barn or other outbuilding shall be erected upon, or used, on any Lot any time as a residence, either temporarily or permanently.
- (d) Dwellings shall not be moved from outside of the Properties to any Lot.
- (e) No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations during which time such items shall be kept to a minimum and shall be contained within the boundaries of the Lot. No repair of automobiles will be permitted outside of garages on any Lot at any time.
- (f) No boat, camping trailer, motor home, recreational vehicle, bus, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading, construction or excavating equipment (except as reasonably necessary during construction or repairs on a Lot or its improvements) or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or in any manner left exposed on any Lot at any time.
- (g) No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into a living unit and not exposed to view from the outside of the living unit and complies with applicable laws and codes. No garbage or trash can or container shall be permitted to remain outside of any living unit unless completely screened from view from every street and from all other Lots, and except after 2:00 P.M. the day before the scheduled garbage pickup, provided said garbage or trash can or container is removed from view as herein provided by 10:00 P.M. the day of the garbage pickup. No fuel tank, garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any living unit except when in actual use unless completely screened from view from every street and from all other Lots in the addition. No garage door shall be permitted to remain open except when entry to and exit from the garage are required or when present in the front yard. No clotheslines shall be permitted outside of any living unit at any time. Any exterior air conditioning condenser unit shall be placed in the rear or side yard.
- (h) The maintenance, keeping, boarding, or raising of animals, livestock, or poultry regardless of number, is prohibited on any Lot or upon the Common Area, except for the keeping of guide animals and reasonable number of orderly domestic pets (e.g. fish, dogs, cats, or caged birds), not to exceed four (4) pets which can regularly leave the Lot, subject to the rules and regulations adopted by the Board of Directors. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Animals shall not be permitted upon the Common Area except for orderly domestic pets accompanied by someone who can control the animal and unless carried, leashed, or under other positive control. Animal droppings shall be cleaned up by the Owner responsible for the animal being on the Property. If an animal's owner fails to clean

up after his or her pet or fails to comply with leash laws or the requirements of the rules and regulations of the Association charges may be levied against the responsible party as allowed by law. In addition, the Residents shall use all reasonable efforts to mitigate the prolonged barking of any dog being kept on such Resident's Lot. Any Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. The appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances.

- (i) No advertising sign, contractor sign or other poster, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, except one (1) sign per Lot consisting of an area not more than four (4) square feet advertising such Lot for sale, promoting a garage/estate sale or announcing the sale of the Lot belonging to the Association as owner of such Lot will be maintained on any Lot. Notwithstanding the foregoing, up to four (4) political signs may be erected, placed or permitted to remain on a Lot, provided that such signs otherwise comply with the provisions of this Declaration. The permitted signs may remain on the affected Lot for the following time periods and must be removed thereafter:

- |     |                      |                                                                                                        |
|-----|----------------------|--------------------------------------------------------------------------------------------------------|
| (1) | "For Sale" Signs     | During the period of the sale;<br>Directional signs permitted only during the period of an open house. |
| (2) | Garage/Estate Sales: | Two days prior to sale and removed immediately after sale has concluded.                               |
| (3) | Political signs:     | Four weeks before election and taken down the day after the election.                                  |

- (j) Exposed portions of the foundation on the front of each living unit are to be covered with brick and exposed portions of the foundation on the sides and rear of each living unit shall be either covered with brick, or stone or stucco or other material approved by the Architectural Committee.
- (k) All living units and attached porches shall have wood shingles, Presidential Composite Shake shingles, Heritage shingles or other high quality material as determined by the Architectural Committee.
- (l) All living units shall have indoor garage space for a minimum of two automobiles, and shall have driveway space for a minimum of two automobiles.
- (m) No fences shall be allowed on any Lot except those made of wrought iron, composite material made to look like wrought iron, or other high quality fencing material as determined by the Architectural Committee.

- (n) All dwelling units on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling unit. Appropriate erosion control measures shall be employed at all times during construction and until proper sod and vegetation has been established to control same. No Owner shall remove or alter any berms, slopes, or swales established by in the grading and drainage design for the Properties.
- (o) No Owner shall place any structure whatsoever upon the Common Areas, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.
- (p) Swimming pools shall not extend more than one (1) foot above the surrounding grade, and above-ground swimming pools shall not be allowed under any circumstances. Outdoor spas must be either in the ground or enclosed within a deck, and no "portable" spas will be allowed.
- (q) Any playground equipment other than basketball hoops or backboards shall be limited to the rear yard of any dwelling unit and shall be subject to stringent review and approval by the Architectural Committee.
- (r) Each Owner must install an approved automatic yard sprinkler system at the time of construction of a living unit on the Owner's Lot, at Owner's expense. Each Owner shall properly operate and maintain the yard sprinkler system for that Owner's Lot as appropriate for the season, at the Owner's sole expense.
- (s) Once a landscape plan has been approved by the Architectural Committee for a Lot, the Owner shall be responsible for installing as soon as seasonably possible after the dwelling unit is substantially completed and maintaining the approved landscaping and all vegetation called for in the same at all times in good, proper and healthy condition, including proper trimming, pruning and removal of any dead or diseased material, and promptly replacing any dead or diseased plants or vegetation with healthy plants or vegetation of the same species and of appropriate size and maturity, which shall in no event be less than the size and maturity at the time the vegetation being replaced was first planted on the Lot.
- (t) Each Owner shall at all times keep and maintain the exterior of its dwelling unit, Lot and any related improvements in good and neat condition and repair including, but not limited to, repainting, re-siding, re-roofing, and sealing and resurfacing of driveways, as needed and in a timely manner.
- (u) Improvements to any Lot made or constructed in advance to the effective date of this Declaration shall not be required to conform to the provisions of this Declaration, as now amended and restated, until such time as any replacement or repair or substantial construction of greater than twenty-five percent (25%) of any element is made, provided that all such prior improvements complied with the covenants in effect at the time the improvement was made.

- (v) No disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be parked on any Lot or on Common Area. No motor vehicle may be parked or stored outside on any Lot except vehicles driven on a regular basis (at least twice weekly) by the Residents of the dwelling unit on such Lot. The Association may enforce the provisions of this subsection by towing any non-complying vehicle at the vehicle owner's sole risk and expense. Additionally, for safety purposes, the Residents of a dwelling unit on any Lot shall use all reasonable efforts to ensure that all vehicles associated with such dwelling unit are parked in the garage or on the driveway located on such Lot. Any vehicle parked on a city street, if in violation of current city code, will be reported to authorities.

## **ARTICLE VII GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at Law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Construction. The Board of Directors shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding on all persons and entities benefited or bound by the provisions of this Declaration.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at a regular or special meeting of the Members, by a vote of two-thirds (2/3<sup>rd</sup>) of a quorum of Members present in person or by proxy at a duly-called and duly-held meeting.

Section 5. Special Rights of Mortgagees. Any notice required to be given to an Owner must be similarly given to all mortgagees of record covering said Lots to be binding upon them. In addition to the required consents by Owners, it is also required that all such mortgagees of record execute written consents to the dedication, the assessments, the amendments and annexations.