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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE GARDENS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE GARDENS ("Declaration") is made and entered into by Village Gardens Development Company, LLC, its successors and assigns ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the Owner of the following described real property:

Lots 1-25, Block 1; Lots 1-19, Block 2; Lots 1-20, Block 3; Lots 2-6, Block 4; Lots 1-5, Block 5; Lots 1-2, Block 6, Village Gardens, Lincoln, Lancaster County, Nebraska (collectively referred to as Properties) and Outlots A, B, C, D, E, F, G, H, I, J, K, L, M, Village Gardens, Lincoln, Lancaster County, Nebraska (collectively referred to as Common Areas) and the Properties and Common Areas collectively referred to herein as the Addition;

WHEREAS, the real property is located within Village Gardens, a Planned Unit Development applied for by Village Gardens LLC and subject to approval by the City of Lincoln, Nebraska, pursuant to the requirements of Lincoln Municipal Code § 27.60. The Village Gardens Planned Unit Development, and as it may be amended from time to time, shall be referred to as the Village Gardens PUD;

WHEREAS, the Declarant intends by this Declaration to impose mutually beneficial restrictions to provide for the preservation of values and amenities of the Lots for the benefit of all owners of the property within the Addition and such other property as may hereafter be annexed into the jurisdiction of the Association (as hereinafter defined);

WHEREAS, the Declarant desires to provide a flexible and reasonable procedure for the overall development of such property and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property;

NOW, THEREFORE, the Declarant hereby declares that the Lots (as hereinafter defined) within the Addition are hereby subjected to the provisions of this Declaration

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and the property within the Addition and all other property hereafter made subject to this Declaration shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

## **ARTICLE I DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

“61<sup>st</sup> Street Corridor” shall mean the group of Lots to be built in Village Gardens surrounding the 61<sup>st</sup> Street entrance and park, legally described as Block 1, Lots 1 through 7, and Block 2, Lots 1 through 7, and Block 3, Lots 6 through 10.

“Additional Property” shall mean any real property and improvements lying adjacent to or in close proximity to the Residential Property or Common Areas, which Declarant may from time to time add to the provisions of this Declaration pursuant to Paragraph 2 of Article V below.

“Apartment Property” shall mean the real property designated as Type G Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Assessments” shall mean those assessments identified in Article IV, Section 7 hereof and more particularly identified as General Assessments, Special Assessments, Specific Lot Assessments, and Foundation Payments (Article V), and any other amounts or sums due by any Lot Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration.

“Association” shall mean the Village Gardens Homeowners Association, a Nebraska non-profit, non-stock, membership corporation incorporated under the laws of the State of Nebraska, its successors and assigns.

“Association Expenses” shall mean and include the actual and estimated expenses of operating the Association, both for general and neighborhood purposes, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors of the Association pursuant to this Declaration and the Association’s By-Laws and Articles of Incorporation.

“Board of Directors” or “Board” shall mean the governing body of the Association.

“Builder” shall mean and refer to any person undertaking the construction of an Improvement on a Lot within the Properties for the purpose of selling same. All builders shall also be a member of the Village Gardens Approved Builder Team or otherwise approved by the Association.

“City” shall mean the City of Lincoln, Nebraska, a political subdivision.

“Common Areas” shall mean the real property designated as Outlots on Exhibit “A” which is attached hereto and incorporated herein by this reference and including all private roadways, water features, and other improvements or green areas located thereon.

“Dwelling Unit” shall mean a single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping and the like.

“Exclusive Common Areas” shall mean and refer to the property and facilities which by plat or otherwise are restricted solely for the use by specific Lot Owners or Members, including but not limited to the real property legally described as Village Gardens Addition Outlot K on Exhibit “A”, which property and facilities may be maintained by the Association at the expense of such Lot Owners or Members specifically benefiting therefrom.

“Exempt Transfer” shall mean a sale or transfer of title or interest to a Lot: (i) by Declarant; (ii) by a Builder; (iii) by a co-Lot Owner to anyone who was a co-Lot Owner immediately prior to such transfer; (iv) to the Lot Owner’s estate, surviving spouse, or child upon the death of the Lot Owner; (v) to any entity wholly owned by the grantor; (vi) to a Mortgagee or the designee of a Mortgagee in lieu of foreclosure or upon foreclosure of a Mortgage; or (vii) to an interim Lot Owner in connection with an employer relocation agreement.

“Foundation” shall mean the Village Gardens Community Foundation, Inc., a non-profit corporation incorporated under the laws of the State of Nebraska, its successors and assigns.

“Foundation Payments” shall mean the amount payable to the Association for the benefit of the Foundation, pursuant to Article V, Section 1 hereof, upon the sale or transfer of title to a Lot which is not an Exempt Transfer or upon the sale or transfer of a

majority of the interests or shares of a corporation, trust, or limited liability company holding title to a Lot which is not an Exempt Transfer.

“General Assessments” shall mean assessments levied by the Board of Directors pursuant to Article IV, Section 7 hereof.

“Gross Selling Price” shall mean the total cost to the purchaser of a Lot as indicated on the title company's closing statement or other similar document.

“Improvement” shall mean a permanent addition to or modification of a structure on a Lot, not including landscaping plants and maintenance and distinguished from an ordinary repair.

“Lot” or “Lots” shall mean a parcel of land occupied or intended for occupancy by use permitted by the Village Gardens PUD and fronting on a permitted public or private street, common driveway, common walkway or park as described in the Lots and Building Standards contained within the Village Gardens PUD.

“Lot Development Plan” shall mean a group of written plans for development and construction of a Lot or Improvement upon a Lot pursuant to Article II, Section 2, and the Village Gardens Architectural Standards.

“Lot Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding, however, those parties having any interest in any of such Lots merely as security for the performance of any obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgage). The purchaser of a Lot under land contract or similar instrument shall be considered to be the “Lot Owner” for purposes of this Declaration.

“Member” shall mean those Lot Owners entitled to vote on matters pertaining to the business of the Association.

“Multi-family Building” shall mean any Residence containing more than two dwelling units.

“Multi-family Mansion Property” shall mean the real property designated as Type F Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Neighborhood Center” shall mean the area which is typically centered around a neighborhood park and functions as the social center of a neighborhood and comprising of limited retail, office and civic uses.

“Neighborhood General” shall mean the area which is primarily residential and urban in character and comprised of higher density residences from medium-sized single-family residences to Townhouses and Rowhouses.

“Neighborhood Edge” shall mean the area between the surrounding rural landscape and Village Gardens consisting of single-family residences on larger lots.

“Party Walls” shall mean each wall, including common garage walls, common fences, common walls of attached Dwelling Units, and roofs which are placed on or span over the dividing line between the Lots.

“Primary Street” shall mean the street identified by the Lot’s legal address.

“Residence” shall mean single or multiple Dwelling Unit(s) used primarily for human habitation and related accessory uses.

“Residential Property” shall mean the real property designated as Type A, B, C, D, E, F and G Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Rowhouse” shall mean an attached Single-family Residence on individual platted Lots sharing a common wall with one or more adjacent Dwelling Units.

“Rowhouse Property” shall mean the real property designated as Type A Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Secondary Dwelling Unit” shall mean a Dwelling Unit in addition to the Single-family Residence located on the same Lot, and either contained within the Residence or within an accessory building to the rear of the Residence.

“Significant Tree” shall mean each tree on a Lot which has a caliper in excess of eight (8) inches measured at one foot above grade.

“Single-family Residence” shall mean all Residences containing one or two Dwelling Units.

“Single-family Residential Property” shall mean the real property designated as Type C, D and E Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Townhouse” shall mean an attached Single-family Residence on an individual platted Lot which shares a common wall with one adjacent Dwelling Unit.

“Townhouse Property” shall mean the real property designated as Type B Lots on Exhibit “A” which is attached hereto and incorporated herein by this reference.

“Type A Lots” shall mean all lots located on Rowhouse Property.

“Type B Lots” shall mean all lots located on Townhouse Property.

“Type C, D and E Lots” shall mean all lots located on Single-family Residential Property.

“Type F Lots” shall mean all lots located on Multi-family Mansion Property.

“Type G Lots” shall mean all lots located on Apartment Property.

“Village Gardens Architectural Committee” or “VGAC” shall mean a review committee established at the sole discretion of the Declarant which shall be responsible for the review and approval of all Lot Development Plans and the review and approval of any other plans requiring compliance with the Village Gardens Architectural Standards.

“Village Gardens Architectural Standards” or “VGAS” shall mean and refer to the written standards, as amended from time to time, for the construction of Improvements, structures, appurtenances, and landscaping on the Lots within the jurisdiction of the Association, which standards are adopted by the VGAC pursuant to this Declaration and incorporated herein by this reference. The VGAS may impose different requirements for different portions of the Properties. The VGAS shall be on file and available for inspection from the Association.

## **ARTICLE II**

### **RESTRICTIONS AND COVENANTS**

1. Use. No Lot within the Properties shall be used other than as designated under the Village Gardens PUD and as further restricted herein. Any conflicting provision of the Village Gardens PUD and this Declaration shall be resolved in favor of this Declaration.

2. Plan Approval.

(a) Improvements. Prior to construction of any Improvement on any Lot, the Lot Owner shall submit a Lot Development Plan to the VGAC for review and approval. The Lot Owner may satisfy this requirement as follows:

- (i) The Lot Owner may select a Site Plan from the Village Gardens Plan Library which will already include a foundation plan and building plans; or
- (ii) The Lot Owner may submit for approval an original Site Plan in conformance with the VGAS. Original Site Plans must also include the following plans as identified and described in the VGAS: foundation plan and building plans.

Regardless of whether a Lot Owner selects a Site Plan from the Village Gardens Plan Library or submits an original Site Plan, all Lot Owners will be required to additionally submit the following plans as identified and described in the VGAS: material plans and specifications; exterior colors and materials sheet; exterior lighting plan; tree preservation plan; fencing plan; and all other data the VGAC may require with respect to any construction activity.

No construction of any Improvement on any Lot shall be commenced unless and until written approval of the Lot Development Plan for such Improvement has first been obtained from the VGAC. Written approval, approval subject to conditions, or disapproval of the Lot Development Plan shall be given by the VGAC within forty-five (45) days from and after receipt thereof by the VGAC. Approval of such building plans shall not be unreasonably withheld; provided, however, that the VGAC shall have the sole and exclusive right, in its sole discretion, to approve or reject any such Lot Development Plan if, in the opinion of the VGAC, either the style, size, material or plot plan of such Improvement does not conform to the general standard and character of the Improvement constructed or to be constructed on other Lots located within the Properties. If the Lot Development Plan is approved subject to conditions, a final Lot Development Plan including all conditions addressed must be submitted to the VGAC for final approval. Failure to do so shall render invalid the approval of the Lot Development Plan. Notwithstanding anything to the contrary, all Improvements must be made in conformance with the VGAS.

(b) Landscaping and Retaining Walls. Each Lot Owner shall receive a Landscape Plan from VGAC for use in landscaping the Lot. In the alternative, the Lot Owner shall submit to the VGAC for approval an original Landscaping Plan in conformance with the VGAS. Written approval or disapproval of an original Landscaping Plan shall be given by the VGAC within fifteen (15) days from and after receipt of the Landscaping Plan by the VGAC. Failure of the VGAC to either approve or deny the Landscaping Plan within fifteen (15) days shall operate as a denial of the Landscaping Plan. Approval of said Landscaping Plan shall not be unreasonably withheld; provided, however, that the VGAC shall have the sole and exclusive right, in its sole discretion, to approve or reject any said

Landscaping Plan if, in its opinion, the Landscaping Plan does not complement the architectural style of the Residence and any Improvements and is not compatible with the surrounding residential landscapes.

Any landscape allowance must be used and installed within sixty (60) days following substantial completion of the Residence (weather permitting). Notwithstanding anything to the contrary, all Landscaping must be done in conformance with the VGAS.

(c) Lawn Irrigation and Sodding. Upon substantial completion and prior to any occupancy of any Residence on Residential Property, an underground lawn irrigation system shall be installed (weather permitting) on at least the front and side yards (if exposed to the street) on each Lot. The front yard of such Lots and street exposed side yard shall be sodded and the remainder of the Lot shall be seeded or sodded within thirty (30) days (weather permitting) of substantial completion of the Residence.

3. Grading and Erosion Control. Declarant shall have the sole and exclusive right to establish grades, slopes and/or contours on all Lots and to fix the grade upon which any Single-family Residence shall be placed or constructed upon any Lot. Once such grades, slopes and/or contours have been established by the Declarant, they shall not be changed in connection with the construction of any Single-family Residence or Improvement on a Lot without written permission from the Declarant, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots. If any damage is caused to an abutting Lot during construction, the Lot Owner of the Lot upon which construction is taking place shall be responsible for repairing such damage and returning the abutting Lot to its original condition. If upon notice to the Lot Owner, upon whose Lot construction is or has taken place, from Declarant to repair an abutting Lot, the Lot Owner of the Lot upon which construction is or has taken place or his /her contractor fails to comply within forty-eight (48) hours of delivery of such notice, Declarant may take such measures as may be necessary to repair the damage done to the abutting Lot and charge the cost of the measures to the Lot Owner. Such charges, when shown of record, shall be a lien upon the Lot and until paid, shall bear interest at 18% per annum or the maximum rate allowed by law, whichever is less.

The adequacy of erosion control measures on a Lot shall be subject to continual review during construction. Builders shall notify Village Gardens ten (10) days prior to the commencement of construction for installation of erosion barriers at Builders' expense. If erosion control measures are not in place within ten (10) days after the commencement of construction on the Lot, the Declarant may take such erosion control measures as may be necessary to control the erosion and charge the cost of the measures to the Lot Owner. Such charges, when shown of record, shall be a lien upon

the Lot and until paid, shall bear interest at 18% per annum or the maximum rate allowed by law, whichever is less.

No dirt from grading, excavation or resulting from any other activity on any Lot, may be removed from the Residential Property without the prior written permission of Declarant. Declarant will designate an area or areas within the Residential Property for stockpiling dirt, and those placing dirt in such areas will level it so as to allow for mowing and maintenance. The Declarant may, in the Declarant's sole discretion, at such time as the Declarant deems appropriate, transfer, convey and assign to the Association the right to designate an area for stockpiling dirt.

4. Minimum Standards, Special Requirements and Restrictions. The following general standards, special requirements and restrictions shall guide the VGAC in the review of any plans for any Single-family Residence submitted for approval within the Residential Property. These standards, requirements and restrictions shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The VGAC shall have the right, in the VGAC's sole and absolute discretion, to modify the application and interpretation of these standards, requirements and restrictions when exercising plan approval authority. All improvements constructed within the Properties and Common Areas prior to the recording of this Declaration shall be exempt from conformance with this Declaration. All other Improvements shall be in conformance with this Declaration.

(a) Minimum Floor Area. The minimum floor area for any Residence constructed upon Residential Property must comply with Village Gardens Architectural Standards. The minimum required footprint and square footage of any such Residence, exclusive of basements, garages, porches, patios, decks or screened enclosed decks and measured from the article of the exterior wall framing exclusive of veneers, are set forth as follows:

- (i) A Rowhouse constructed upon a Type A Lot must have and maintain a minimum footprint of 500 square feet with a minimum total square footage of 1,000 square feet.
- (ii) A Townhouse constructed upon a Type B Lot must have and maintain a minimum footprint of 700 square feet.
- (iii) A Single-family Residence constructed upon a Type C Lot must have and maintain a minimum footprint of 700 square feet.

- (iv) A Single-family Residence constructed upon a Type D Lot must have and maintain a minimum footprint of 1,200 square feet.
- (v) A Single-family Residence constructed upon a Type E Lot must have and maintain a minimum footprint of 2,000 square feet.

(b) Lot Coverage. The Lot Coverage of any Residence constructed upon Residential Property must comply with VGAS. The maximum area of a Lot which may be used by a Residence and garage/carport for each Residential Property Lot is as follows:

- (i) The Residence and garage/carport on a Type A Lot, Rowhouse, may not exceed 85% of the total Lot area.
- (ii) The Residence and garage/carport on a Type B Lot, Townhouse, may not exceed 75% of the total Lot area.
- (iii) The Residence and garage/carport on a Type C and D Lots, Single-family Residence, may not exceed 50% of the total Lot area.
- (iv) The Residence and garage/carport on a Type E Lot, Single-family Residence, may not exceed 45% of the total Lot area.
- (v) The Residence and garage/carport on a Type F Lot, Multi-family Mansion, may not exceed 70% of the total Lot area.
- (vi) The Residence and garage/carport on a Type G Lot, Apartment, may not exceed 70% of the total Lot area.

(c) Building Frontage. The Building Frontage of any Residence constructed upon a Residential Lot must comply with VGAS. Any face of a residential structure located upon a Residential Lot which faces a primary street shall be considered a Building Frontage. Residential structures located on Residential Lots must present to each adjacent public street a Building Frontage as set forth below:

- (i) Type A Lot. A Rowhouse shall have and maintain a Building Frontage which occupies not less than 50% of the total Lot Frontage adjacent to any public street.

- (ii) Type B Lot. A Townhouse shall have and maintain a Building Frontage which occupies not less than 50% of the total Lot Frontage adjacent to any public street.
- (iii) Type C and D Lots. A Single-family Residence shall have and maintain a Building Frontage which occupies not less than 40% of the total Lot Frontage adjacent to any public street.
- (iv) Type E Lot. A Single-family Residence shall have and maintain a Building Frontage which occupies not less than 35% of the total Lot Frontage adjacent to any public street.
- (v) Type F Lot. A Multi-family Mansion shall have and maintain a Building Frontage which occupies not less than 60% of the total Lot Frontage adjacent to any public street.
- (vi) Type G Lot. An Apartment shall have and maintain a Building Frontage which occupies not less than 60% of the total Lot Frontage adjacent to any public street.

(d) Exterior Finish Requirements. Any residential structure constructed upon a Residential Lot must comply with VGAS. Building and site material colors must adhere to the architectural style of the building. Exterior colors and materials plan must be submitted and approved by Declarant as part of the Lot Development Plan under Article III, Section 2, above, and prior to commencement of construction. Except in the case of Rowhouses and Townhouses, identical or closely similar street facades shall not be allowed on residential structures within 250 feet on the same street face, unless otherwise authorized in writing by Declarant.

(e) Roof Requirements. The roof of each Residence or other Improvement constructed upon any Lot will be dictated by a unique architectural style, and must comply with VGAS.

(f) Houses on Blanchard Boulevard. Houses on Lots adjacent to Blanchard Boulevard shall have their front facades face Blanchard making Blanchard the primary street.

(g) Lots Adjacent to Water. All Lots having direct physical or visual access to ponds or streams shall not unreasonably restrict the visual access of the surrounding Lots to the water feature. No docks and extended above water or edge of water gazebos shall be permitted. Any other desired landscaping or

hard surface features at or near the water feature must receive prior written approval from VGAC.

5. Construction Time Frame. Commencement of construction of a Residence upon a Lot located along the 61<sup>st</sup> Street Corridor must begin within forty-five (45) days from the date title is conveyed from Declarant. For all other Lots, commencement of construction of a residential dwelling upon a Lot must begin within eighteen (18) months from the date title is conveyed from Declarant. In the event construction is not commenced within the time set forth herein, Declarant shall have the option to purchase the Lot for its original sale price, less any real estate commissions or other closing costs paid by Declarant at the time of the original sale. Construction of any building to be located upon a Lot shall be completed within eighteen (18) months from the date of commencement of excavation or construction of the improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

6. Garages, Carports, Secondary Dwelling Units and Access. Garages located on Residential Property, and access thereto must comply with VGAS. Garage, carport, and Secondary Dwelling Unit design, materials and finish shall be regulated by the same standards for Improvements, and shall be compatible with and complementary to the primary residential structure. There may not be more than one Secondary Dwelling Unit on a Lot in addition to the Residence. All driveways, walks and other access to a Lot shall be in conformance with the VGAS.

7. Arbors, Gates and Fences. Arbors and gates are encouraged in Village Gardens. Residential fencing is a crucial part of the aesthetic landscape of Village Gardens. The scale and the quality of the fence should complement the architectural style of the Residence and the surrounding Lots and neighborhood. Prior to installation, a Fencing Plan shall be submitted to the Declarant for approval. At a minimum, the Fencing Plan shall include the site plan; dimensions and placement of fence; a photograph of any current fencing on adjacent Lot(s); a photograph or brochure picture, color, vendor of fence and proposed fence installer; and landscaping screen for convergence of different fencing materials at Lot joining points. All fencing shall be in accordance with the VGAS. Notwithstanding anything to the contrary, the following shall not be permitted:

- (a) Walls or fences constructed along the bank of any Common Area lake or pond, whether or not such lake or pond is located partially upon or adjacent to the Lot.
- (b) Stockade, railroad ties, and/or pressure treated lumber.

(c) Chain-link style fencing, except that green or black chainlink style fencing is acceptable for kennels.

(d) Privacy fencing along any unbuilt rear and common Lot lines exceeding five (5) feet in height.

(e) Fully opaque or solid fencing, except that up to four (4) feet of the fence may be opaque when used in combination with a picket or lattice design placed above the four (4) feet of opaque or solid fencing.

8. Accessory Structures and Appurtenances. Any and all Improvements, accessory structures, and appurtenances made to a Lot or Residence must receive prior written approval by the VGAC and be in conformance with the VGAS, including but not limited to, swimming pools, swimming pool houses, decks, gazebos, satellite dishes, free standing flag poles and greenhouses. Any approval by the Declarant under this paragraph shall not be unreasonably withheld.

(a) No mini-barn, satellite dishes greater than eighteen (18) inches in diameter, above-ground pools, window air conditioners or storage sheds will be approved.

(b) Flag poles less than six (6) feet long may be mounted on an angle to porch columns or posts and building walls.

(c) Any exterior air conditioner units placed on a Lot must be located in the side or rear yard or, if approved by Declarant, upon the roof of any Dwelling Unit. Air conditioning units must be screened by landscape shrubbery or fencing if the unit is visible from the street. All air conditioning units must have a minimum SEER rating of twelve (12).

(d) The following items are not allowed to be located in front yards, side yards facing the street (unless totally concealed by approved fence, wall or visually impervious landscaping) nor be visibly obtrusive from nearby streets: clothes drying apparatus, air conditioner equipment, electrical or gas meters, solar panels, antennas, satellite dishes, garbage cans, synthetic fauna and flora, permanent grills, in-ground swimming pools, swimming pool houses, firewood (except on porches), vegetable gardens, recreation and play equipment, dog houses and dog runs, hot tubs and spas, and propane tanks.

(e) Porches are encouraged, but not required. All porches should be complementary to the architectural style of the Residence. Porches may be a maximum of twelve (12) feet deep and may encroach in the Front Setback as

long as it is in conformance with the City's sight triangle requirements. Porches may cover the entire length of the full front façade, if appropriate.

9. Animals and Animal Shelters. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog run or kennel or rabbit hutch; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by the VGAC, which may require special landscaping or screening. Dog runs or kennels shall:

- (a) be attached to a Dwelling Unit or garage;
- (b) not be visible from any street or private roadway, excluding alleys;
- (c) not be located in any required setback; and
- (d) shall not exceed housing for more than three (3) dogs over the age of six (6) months.

Conventional household pets are permitted subject to the condition that the pet(s) is not allowed to unreasonably annoy and/or disturb the normal residential occupancy of the neighborhood or constitute a hazard to public health or safety.

10. Mailboxes. Cluster mailboxes will be provided for all Lots.

11. City Requirements. All Improvements constructed upon any Lot within the Residential Property shall be constructed in conformity with the requirements of the applicable building codes of the City.

12. Sidewalks. Each Lot Owner, other than the Declarant, shall be, and does hereby assume, any and all responsibility or liability for the construction and installation of public sidewalks parallel to each street or road which abuts the Lot or Lots owned by such Lot Owner. All sidewalks approximately parallel to such street or road which abuts a Lot shall be constructed and paid for by such Lot Owner upon the earlier date of thirty (30) days following substantial completion of the home or within twenty-four (24) months following the purchase of the Lot. All sidewalks must be five (5) feet wide and the responsibility of the Lot purchaser.

13. Street Trees and Tree Preservation. Declarant shall be responsible for the initial planting of street trees required by the City of Lincoln along each street or road within the Residential Property that abuts any Lot or Lots. Such street trees shall be paid for by the Lot Owner at the time the Lot is purchased from Declarant. The Lot Owner shall be responsible for maintenance and replacement of any street tree

installed by Declarant. All street trees shall be a minimum of 2 ½" caliper and 3" caliper on Blanchard Boulevard.

As part of any Lot Development Plan, each Lot Owner shall submit tree preservation plans identifying each Significant Tree on the Lot, and indicating which, if any, Significant Tree(s) are proposed to be removed in connection with construction activities. In addition, adequate protective measures must be taken during the construction activities to minimize damage to existing trees and other vegetation to be retained.

14. Signage. All signage shall be in conformance with Village Gardens PUD and the VGAS. Notwithstanding anything to the contrary, each Residential Property must display a uniform street address plaque on the front facade at a location approved by Declarant and an additional uniform street address plaque on the garage if it is located on an alley. The address plaques must be obtained from Declarant prior to or at the time of closing at the expense of the Lot Owner.

15. Exterior Restrictions. No exterior television or radio antenna, satellite receiving station or dish, exterior solar heating or cooling device, or wind powered electric generators of any sort shall be permitted on any Lot unless such apparatus is approved by the VGAC and is installed in such a manner that it is not visible from any street or roadway.

16. Repair on Lot. No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot.

17. Storage on Lot. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, trucks exceeding one ton, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot for over twenty-four (24) hours, other than in an enclosed structure. No motor vehicle may be parked or stored outside on any Lot, except properly licensed and registered vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this paragraph shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction.

18. Construction Vehicle and Roll-Off Service. Declarant may designate and enforce locations through and over which all construction vehicles shall enter and exit the Residential Property during development. During construction of any Residence on a Lot, a dumpster shall be placed on the Lot and no material may be staged or stored in

any street, road or on another Lot. Such dumpster must be emptied when full. Declarant shall have the right to designate a single provider of roll-off service within the Residential Property in order to limit and control the number of service trucks operating within the Residential Property.

19. Lighting. An exterior lighting plan must be provided to the VGAC as part of an original Lot Development Plan identifying the types and locations of all exterior lighting to be installed on the Lot. All lighting must comply with VGAS.

20. Temporary or Permanent Structures. No partially completed dwelling or temporary building and no trailer, tent, storage shed, outbuilding, shack or garage/carport on any Lot shall be used as a temporary or permanent Residence.

21. Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining Lots. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials. No vegetation on vacant Lots, excluding vacant Lots owned by Declarant, shall be allowed to reach a height in excess of eighteen (18) inches. In the event vegetation on a vacant Lot not owned by the Declarant is allowed to reach a height in excess of eighteen (18) inches, the Association shall have the right to enter upon and mow the Lot, and to assess the mowing charges against the Lot.

22. Subdivision. No Lot may be split, divided, combined or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of Declarant of plans and specifications for such split, division, combination or subdivision, which approval shall not be unreasonably withheld. Any such plans and specifications must be in conformance with the VGAS and the City Municipal Code.

23. Alleys. Parking shall not be allowed in the alley drive lanes.

24. Party Walls.

(a) General rules of law to apply. To the extent not inconsistent with these Declarations, the general rules of law of the State of Nebraska regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- (b) Sharing of repair and maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Lot Owners who make use of the Party Wall in proportion to such use.
- (c) Destruction by fire or other casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Lot Owner who has used the Party Wall may restore it, and if the other Lot Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Lot Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of these Declarations, a Lot Owner who, by his or her negligent or willful act, or his or her guest, agent, or invitee, caused the Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right to contribution runs with land. The right of any Lot Owner to contribution from any other Lot Owner under these Declarations shall be appurtenant to the land and shall pass to such Lot Owner's successors in title.

### **ARTICLE III** **USE CATEGORIES**

1. Permitted Uses. The B-3 and R-3 uses permitted under the City Municipal Code as of the date of this Declaration are hereby permitted in Village Gardens unless specifically restricted or prohibited herein.

2. Restricted Uses. The following B-3 and R-3 uses are not permitted in Village Gardens without the prior written approval of Declarant: group homes; nonprofit religious, educational, and philanthropic institutions; adult care centers; hospitals and clinics for animals, but under no circumstances shall external open kennels be allowed; self-service laundromats and launderettes; undertaking establishments; sales and showrooms, including but not limited to service facilities and rental of equipment, provided all displays and merchandise are within the enclosure walls of the building; clubs; parking lots and storage garages; enclosed commercial recreational facilities; motorcycle and small engine repair; automobile wash facility; motels and hotels; furnace, heating, sheet metal, electrical shops or electrical contractors, heating and air conditioning contractors, and cabinet shops or stores; tire stores and sales, including

but not limited to, vulcanizing; and, service stations and automobile or appliance sales and repair facilities, but not including vehicle body repair shops.

3. Prohibited Uses. The following B-3 and R-3 uses shall not be permitted in Village Gardens: ambulance services; food storage lockers; recycling centers; mobile home courts; radio or television broadcast towers; extracting sand, gravel and soil; wind energy conversion systems; mobile home subdivisions; and cemeteries.

#### **ARTICLE IV** **HOMEOWNERS ASSOCIATION**

1. Purposes. Declarant shall cause the incorporation of the Association. The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Residential Property and the Common Areas, including:

(a) The acquisition, construction, improvement, maintenance, operation, repair, upkeep, replacement and administration of the Common Areas for the use, benefit and enjoyment of all the Members, including but not limited to: Alleys; parks; playground equipment (including upsizing); water features; shore lines; pump stations; irrigation systems; dams; dam overflows, forebays, piping, fuse plugs and emergency spillways; and any other Common Area structure or property. The Common Areas may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property covered by an Annexation Agreement or Agreements entered into between Declarant and/or Village Gardens LLC and the City of Lincoln.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Common Areas. The rules and regulations may permit or restrict use of the Common Areas by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Areas.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Village Gardens; and the protection, maintenance and enhancement of the residential character of the Residential Property.

2. Powers and Responsibilities. The Association shall have all the powers conferred upon nonprofit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and

administer the affairs of the Association. 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 not be limited to the following:

(a) The acquisition, construction, improvement, maintenance, operation, repair, upkeep, replacement and administration of the Common Areas for the use, benefit and enjoyment of all the Members, including but not limited to: Alleys; parks; playground equipment (including upsizing); water features; shore lines; pump stations; irrigation systems; dams; dam overflows, forebays, piping, fuse plugs and emergency spillways; and any other Common Area structure or property. The Common Areas may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property covered by an Annexation Agreement(s).

(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 Association funds to accomplish the purposes of the Association including, but not limited to, payment for the purchase of insurance covering the Common Areas against property damage and casualty, and the purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(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 instruments and documents and the 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) The making of contracts and guaranties, incurring liabilities, borrowing money, issue, notes, bonds, and other obligations, and securing any of its obligations by mortgage or pledge of any of its property, franchises, or income.

3. Membership and Voting. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of each Lot and ownership of a Lot shall be the sole qualification for membership. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) Class A Members shall be all Lot Owners with the exception of the Class B Members. Class A Members shall be entitled to one (1) vote for each Lot of which they are the Owner on each matter coming before the Members of the Association.

(b) Class B Members shall be the Declarant who shall have ten (10) votes for each Lot of which it is the Owner on each matter coming before the Members of the Association. Declarant shall also have the power to veto any matter coming before the Members of the Association. Class B Membership shall cease and be converted to Class A Membership upon the earlier of (i) the date on which the Declarant has sold and conveyed all of the Lots it owns in the Properties, or (ii) on such earlier date that the Declarant, in its sole discretion, so determines and records an instrument to such effect in the real property records of Lancaster County, Nebraska. From and after the termination of the Class B Membership, the Declarant shall be deemed to be a Class A Member with respect to the Lots then owned, if any.

4. Rights of All Members. Each Member of the Association shall have the right to use and enjoy the Common Areas and shall have a nonexclusive easement over and upon the Common Areas for the use and enjoyment thereof, which shall be appurtenant to and shall pass with the interest requisite for membership held by such Member; provided, however, that no Lot Owner shall construct any structures or Improvements within the Common Areas without the prior written consent of the Association. The rights of the Members of the Association in and upon the Common Areas shall be subject to the following:

(a) All easements shown upon any final plat of any portion of the Residential Property recorded with the Register of Deeds of Lancaster County, Nebraska;

(b) The right of the Association to promulgate rules and regulations for the reasonable use and enjoyment of the Common Areas and the right of the Association, as provided in its Articles and Bylaws, to suspend a Member's use of the Common Areas for any period during which any assessment remains unpaid, or for any period not to exceed thirty (30) days for any other infraction of any published rules and regulations governing the use and maintenance of the Common Areas;

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility, and subject to such conditions as may be agreed to by the Members; provided, however, that any such dedication or transfer shall be approved by a majority vote of those in attendance at a regular or special meeting of the Members, providing notice of the proposed dedication or transfer be contained in the notice of such meeting;

(d) The use of the roadways, streets, and alleys located within the Common Areas by the general public pursuant to any public access easement granted or to be granted by Declarant; and

(e) The right of the Association to restrict access to the Exclusive Common Areas solely for the use by specific Lot Owners or Members which property and facilities may be maintained by the Association at the expense of such Lot Owners or Member specifically benefiting therefrom.

5. Association Activities Regarding the Common Areas. The Association and each Lot Owner of a Lot, by acceptance of a deed by which the interest requisite for membership is acquired, hereby covenant and agree to pay to administer, insure, maintain, repair, replace, add, improve and to the extent applicable, own the Common Areas. The covenant to pay shall be satisfied by the payment of dues and Assessments for such administration, insurance, maintenance, repairs, replacement, addition, improvement, and to the extent applicable, ownership of the Common Areas. The City has approved the Village Gardens PUD upon the condition that the Common Areas be maintained by the Declarant on a continuous basis pursuant to an Annexation Agreement(s). The Association and each Lot Owner of a Lot, by the acceptance of a deed by which the interest requisite for membership is acquired, hereby covenant to assume the obligations of the Declarant to comply with the requirements of the final plat of Village Gardens regarding continuous and permanent maintenance of the Common Areas. In the event the Association dissolves, the Lot Owners shall remain jointly and

severally liable for the cost of administering, insuring, maintaining, repairing, replacing, adding and improving the Common Areas.

6. Refuse and Recycling Service. The Association shall select a provider or providers to provide refuse and recycling collection services for the entire Residential Property. The cost of the refuse and recycling services for Residential Property shall be paid by the Lot Owner directly to the service provider and shall not be collected by or paid to the Association.

7. Dues and Assessments. The Association may fix, levy and charge each Lot Owner with dues and Assessments under the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association. The dues and General Assessments levied and collected by the Association shall be committed and expended to accomplish the purposes and to perform the powers and responsibilities of the Association described in this Article. Except as otherwise specifically provided herein, the dues and Assessments shall be fixed by the Board and shall be payable at the time and in the manner prescribed by the Board. The judgment of the Board as to the expenditure of Assessments collected by the Association shall be final and conclusive so long as its judgment is exercised in good faith.

(a) Types of Assessments. Each Owner by acceptance of a deed to any Lot in the Properties, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association General Assessments, Special Assessments, Specific Assessments, Exclusive Use Assessments, and Foundation Payments, as identified and provided for in this Declaration.

(b) General Assessments. General Assessments shall be levied annually to enable the Association to pay Association Expenses which are determined by the Board to benefit all Members. Such expenses benefiting all Members shall be all Association Expenses except: (i) Special Assessments which are determined by the Board to benefit a particular Lot or Lots; (ii) expenses for which the Board makes a Specific Assessment; and (iii) Exclusive Use Assessments.

The initial annual General Assessment shall commence as to all Lots covered by this Declaration or any subsequent Declaration on the date that a Lot is conveyed by the Declarant or on such later date as the Board determines, and shall be due and payable thirty (30) days thereafter. If such Assessment commences on a date other than January 1, such Assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, annual General Assessments shall be levied for each calendar year in advance and shall be due and payable as specified by the Board.

(c) Special Assessments. In addition to the other Assessments authorized herein, the Board may levy one or more Special Assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common area, including fixtures and personal property related thereto; provided, however, any such Special Assessment for capital improvements exceeding 50% of the General Assessments for the current year shall be approved by the affirmative vote of a majority of the Members affected and entitled to vote on the matter who are in attendance at a regular meeting of the Members or at a special meeting of the Members, and only if notice of the Special Assessment for capital improvements is contained in the notice of the regular meeting or special meeting. In determining whether the Special Assessment exceeds 50% of the General Assessments, the Board shall obtain a written estimate for the work to be completed, including labor and materials, and shall divide that number by the total amount of the General Assessment assessed that year for the Lots to be assessed for the Special Assessment.

If a Special Assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed. Special Assessments shall be allocated among all Owners in the same manner as General Assessments unless the purpose of the Special Assessment is to provide funds only to be used for benefit of a particular Lot or Lots, in which event the Special Assessment shall be allocated solely among the Owners of the Lots benefiting therefrom. The Board shall make a good faith determination as to which Lots will be benefiting from the capital improvement and provide notice of such determination to those Lot Owners prior to or in conjunction with the notice of the meeting approving such Special Assessment.

(d) Exclusive Use Assessments. Exclusive Use Assessments shall be levied against the Lots of the Lot Owners who are enjoying or benefiting from the use of an Exclusive Common Area to enable the Association to pay the expenses related to the Exclusive Common Area. Upon written request by fifty-percent (50%) of the Lot Owners who are enjoying or benefiting from the use of the Exclusive Common Areas, the Board shall initiate a service or improvement benefiting only those particular Lots which shall be paid for by a Special Assessment or the Board shall discontinue a service previously provided to those Lots. The Board's decision as to which Lot Owners are enjoying or benefiting from the Exclusive Common Area shall be final if made in good faith. Expenses related to the Exclusive Common Areas may include, without limitation, costs incurred for maintenance and repair of the following items and provision of the following services or benefits which are appurtenant to the

Exclusive Common Areas: operation and maintenance; landscaping; fencing; gates; fountains; water features; lighting; signs; and monuments.

(e) Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(i) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the related service; and

(ii) to cover the costs, including reasonable attorney's fees, incurred in bringing a Lot into compliance with this Declaration or the VGAS, or costs incurred by the Association as a consequence of the conduct of the Owner of a Lot, their agents, contractors, employees, licensees, invitees, or tenants.

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

(g) Liens and Personal Obligations for Dues and Assessments. The dues and Assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Lot Owner at the time when the dues and Assessments first become due and payable. The dues and Assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and Assessments are charged. The personal obligation for delinquent dues and Assessments shall not pass to the successor in title to the Lot Owner at the time the dues and Assessments become delinquent unless such dues and Assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and Assessments, and shall be bound, prior to taking title, to inquire of the Association as to the amount of any unpaid dues and Assessments.

(h) Uniform Rate of General Assessments. General Assessments shall be fixed at a uniform rate per Lot Type, but may be abated as to individual Lots or Lot Type, as provided in paragraph f above.

(i) Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and Assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, Assessment or installment thereof. The dues and Assessments shall be and become a lien as of the date such amounts first become due and payable.

(j) Effect of Nonpayment of Dues or Assessments; Remedies of the Association. Any installment of dues or Assessments which is not paid when due shall be delinquent. Delinquent dues or Assessments shall bear interest from the due date until paid at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is less. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy allowed by law. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Lot Owner may waive or otherwise escape liability for the charge and lien provided for herein by non-use of the Common Areas or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Lot Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

(k) Subordination of the Lien to Mortgagee. The lien of dues and Assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and Assessment lien.

## **ARTICLE V**

### **VILLAGE GARDENS COMMUNITY FOUNDATION, INC.**

1. Authority. The Board shall establish and collect on behalf of the Village Gardens Community Foundation, Inc. (the "Foundation") a transfer fee ("Foundation Payment") from the transferring Owner upon each transfer of title to a Lot which is not an Exempt Transfer. The Foundation Payment shall be payable to the Association at the closing of the transfer of the Lot and shall be secured by the Association's lien for Assessments against the applicable Lot pursuant to Article IV, Section 7 hereof. The transferring Owner shall notify the Association of a pending title transfer at least seven

(7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as the Board may require.

2. Foundation Payment Limit. The Board from time to time shall determine the amount of the Foundation Payment after consultation with the Foundation. The Foundation Payment may be based upon a sliding scale which varies in accordance with the Gross Selling Price of the property or another factor as determined by the Association's Board; provided, however, the Foundation Payment shall not be less than .25% or greater than 1% of the Gross Selling Price of the applicable Lot.

3. Purpose. All Foundation Payments which the Association collects on behalf of the Foundation shall be paid or transferred to the Foundation and deposited into a separate account in the name of the Foundation and shall be used for such purposes as the Foundation acting through the Foundation's Board of Directors and/or Trustees deems beneficial to the general good and welfare of the Village Gardens community and as permitted by the Articles of Incorporation and By-laws of the Foundation, including, without limitation, the enhancement and/or improvement of infrastructure and amenities within Village Gardens.

4. Exempt Transfers. Notwithstanding the above, no Foundation Payment shall be levied upon transfer of title or interest to a Lot which is an Exempt Transfer.

## **ARTICLE VI**

### **GENERAL PROVISIONS**

1. Additional Property. Declarant reserves the right, in its sole and absolute discretion, at any time and from time to time, to add Additional Property to the provisions of this Declaration without the consent of the Members of the Association. Additional Property may be added to this Declaration by an instrument executed by Declarant and filed with the Lancaster County Register of Deeds, which instrument shall be deemed an amendment to this Declaration which need not be consented to nor approved by any Member of the Association and shall:

- (a) refer to this Declaration, stating the date and filing information;
- (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof;
- (c) contain an exact legal description of such Additional Property; and
- (d) state such other or different covenants, conditions and restrictions as the Declarant, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property.

2. Townhouse and/or Rowhouse Association(s). It is presently contemplated that the Declarant may establish Village Gardens Townhouse and Rowhouse Association for the purposes of enforcing the Restrictive Covenants established upon the Type A and Type B Lots in order to promote the health, safety and welfare of the Townhouse and Rowhouse Property. Townhouse and Rowhouse Property may be subject to covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed herein. It is presently contemplated that the Lot Owners of Townhouse and Rowhouse Property will be subject to additional dues and Assessments for maintenance and services provided only for the benefit of the Townhouse and Rowhouse Property.

3. Enforcement of Declaration. Except for the authority and powers specifically granted to the Declarant, the Declarant or any Lot Owner named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages, assessments, or other dues of such violation. In addition, the City shall have the right to enforce, by proceedings at law or in equity, all restrictive covenants and conditions regarding maintenance of the Common Areas. Failure by the Declarant, City or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

4. Certificates of Compliance. Any Lot Owner may request in writing that the Association issue a Certificate of Compliance certifying that there are no known violations of this Declaration or the VGAS. The Association will either grant or deny such request within thirty (30) days after receipt of the written request and may charge a reasonable administrative fee for issuing such certificates. Failure of the Association to either grant or deny such request within thirty (30) days shall operate as a denial of the request. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had actual or constructive notice as of the date of such certificate.

5. Amendment. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of fifteen (15) years from the date hereof. Thereafter any portion of this Declaration, except Article III, may be amended by an instrument signed by the Lot Owners of Lots comprising not less than sixty-six percent (66%) of the total votes of Lots covered by this Declaration. Article III of this Declaration may only be amended by an instrument signed by the Lot Owners of Lots comprising not less than sixty-six percent (66%) of the total votes of Lots located within the Residential Property.

6. Assignment. Village Gardens Development Company, LLC shall have the power to assign any or all of its rights and duties as Declarant in this Declaration to a successor or assign, or to the Association, at such time as the Declarant deems appropriate, by filing a Notice of Assignment of Declarant Rights and Duties that delineates which rights and duties are being assigned. Village Gardens Development Company, LLC, or its success or assign, may also terminate its status as Declarant under this Declaration in its entirety, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant with respect to those remaining rights and duties the Declarant has not previously assigned to another entity, association or individual under a Notice of Assignment of Declarant Rights and Duties, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant with respect to those remaining rights and duties.

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

8. Termination of Covenants. The covenants and restrictions of this Declaration shall run with and bind the land and the Lot Owners, their successors, assigns, heirs and devisees, for a term of fifty (50) years from the date of this Declaration, after which time said Declaration shall be automatically extended for successive ten (10) year periods unless an instrument terminating this Declaration signed by the then Lot Owners of Lots comprising not less than seventy-five percent (75%) of the total votes of Lots covered by this Declaration and the instrument is then recorded prior to the commencement of any ten-year period.

9. City Approval. Notwithstanding the foregoing provisions, any instrument amending, modifying, abrogating, or terminating this Declaration pertaining to the structure, existence or financing of the Association, including but not limited to the purposes, powers and responsibilities, and Association activities regarding the Common Areas, must be approved by the City of Lincoln City Attorney's office in writing and recorded with the Register of Deeds before it shall be effective.

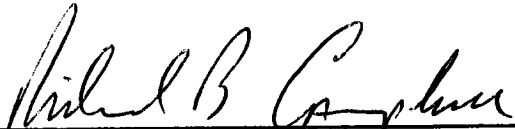
10. Village Gardens PUD Amendment or Final Plant Amendment. Declarant shall have the right at any time to amend the Village Gardens PUD in which the Properties and Common Areas may be located. Members of the Village Gardens covenant not to unreasonably object to any amendment of the Village Gardens PUD provided the amendment does not change the approved use for their Lot. Declarant shall also have the right to alter the Lot configurations in any final plat within the Village Gardens PUD. Upon approval by the City of Lincoln of any amendment to the Village Gardens PUD or final plat located within the Village Gardens PUD, the amended use or

Lot configurations shall be used for applying the Restrictive Covenants contained in this Declaration.

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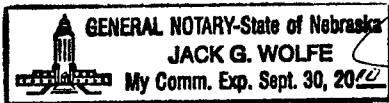
IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions, Restrictions and Easements for Village Gardens to be executed this 26 day of October, 2005.

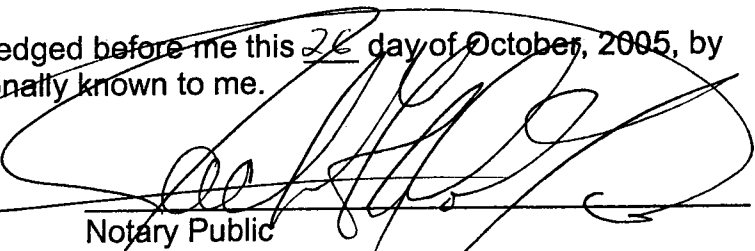
**VILLAGE GARDENS  
DEVELOPMENT COMPANY, LLC**

BY:   
Richard B. Campbell, Manager

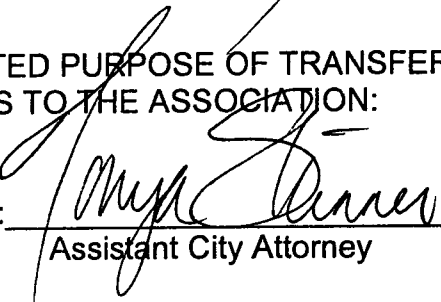
STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER    )

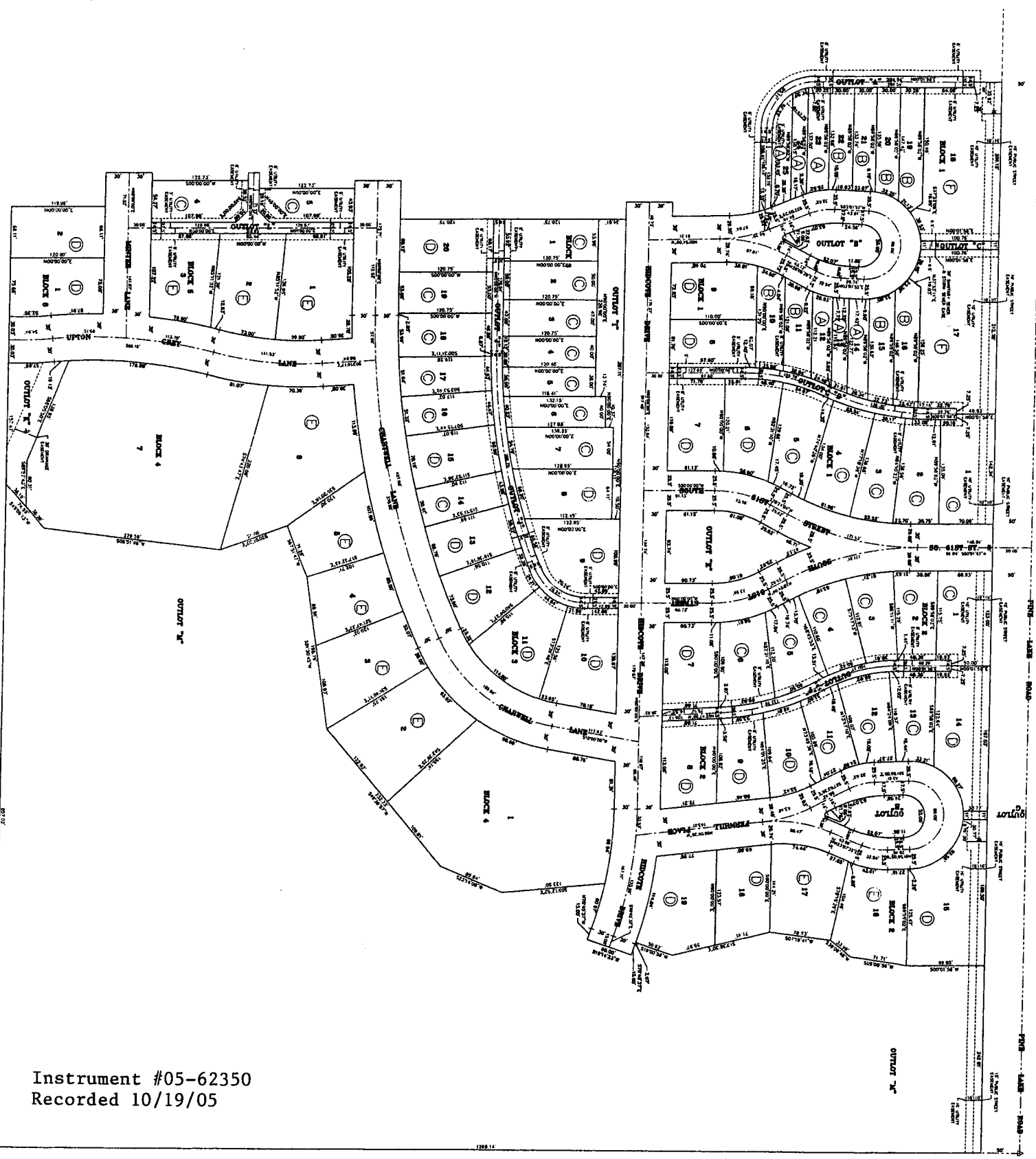
The foregoing was acknowledged before me this 26 day of October, 2005, by Richard B. Campbell, who is personally known to me.



  
Notary Public

APPROVED AS TO FORM FOR THE LIMITED PURPOSE OF TRANSFERRING MAINTENANCE OF THE COMMON AREAS TO THE ASSOCIATION:

BY:   
Assistant City Attorney



Instrument #05-62350  
Recorded 10/19/05