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## THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE GARDENS VILLAGE CENTER

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE GARDENS VILLAGE CENTER ("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 through 4, Block 1; Lot 1, Block 3; Outlots H, J, M, N, and O, Village Gardens 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska (collectively referred to as Properties) and Outlots F, G, I, K, L, P, Village Gardens 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska (collectively referred to as Common Areas) and the Properties and Common Areas are collectively referred to herein as the Village Center;

WHEREAS, the Village Center is located within Village Gardens, a Planned Unit Development originally 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 Village Center and such other Additional Property (as hereinafter defined) which may hereafter be annexed into the jurisdiction of the Association (as hereinafter defined) for the benefit of all Lot Owners and the Association Members (as hereinafter defined);

WHEREAS, the Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, Common Areas and Additional Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Properties, Common Areas and Additional Property;

NOW, THEREFORE, the Declarant hereby declares that the Properties and Common Areas are hereby subjected to the provisions of this Declaration and the Additional 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:

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

"Articles" shall mean the Articles of Incorporation for the Association and all subsequent amendments thereto.

"Assessments" shall mean those Assessments identified in Article IV, Section 6 hereof and more particularly identified as General Assessments, Special Assessments, and Specific Lot Assessments, and any other amounts or sums due by any Lot Owner to the Association pursuant to the provisions of this Declaration and any Supplemental Declaration including any Amendments to this Declaration and any Supplemental Declaration.

"Association" shall mean the Village Gardens Village Center 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 but not limited to any reasonable reserves and sinking funds which 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.

"Association Maintenance Dues" shall mean and refer to those costs and expenses associated with the on-going maintenance, repair and replacement of landscaping, lighting, surfacing, striping, snow removal, and cleaning of certain parking

stalls, as well as future repair or replacement of landscaping, lighting, surfacing, and striping of public access parking lots within the Village Center.

"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. All Builders must be from the VGAC pre-approved team of Builders or otherwise be approved in advance and in writing by the VGAC.

"Bylaws" shall mean the Bylaws of the Association and all subsequent amendments thereto.

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

"Civic, Community or Church Property" shall mean the real property designated as Type H Lots on Exhibit "A" which is attached hereto and incorporated herein by this reference.

"Closing" shall mean the date upon which Declarant transfers to a purchaser of a Lot the title to a Lot.

"Common Areas" shall mean the real property designated as Outlots F, G, I, K, L and P, and all platted private roadways and public access easements identified on Exhibit "A", attached hereto and incorporated herein by this reference. Common Areas include all water features, landscaping, equipment and other improvements located upon any Common Area real property. The private roadway and public access easement identified as South 60th Street from Hidcote Drive south to Chartwell Drive and located upon the real property described at Lot 1, Block 3, Village Gardens 1<sup>st</sup> Addition, Lancaster County, Nebraska, shall not be a Common Area for purposes of this Declaration.

"Dwelling Unit" shall mean a single unit on a Mixed-Used Property which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping and the like.

"General Assessments" shall mean Assessments levied by the Board of Directors pursuant to Article IV, Section 6 hereof.

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

"Lot" or "Lots" shall mean a platted parcel of land identifiable by lot and block number or an outlot for future development, not including any Common Areas, that is

intended for occupancy by a use permitted by the Village Gardens PUD and fronting on a permitted public or private street or roadway, 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 every person or entity who is a titleholder of record or a contract buyer of record of a fee interest in any Lot subject to the terms of the Declaration, excluding those parties having any interest in a Lot 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).

"Lot Use(s)" shall mean the primary use or uses of a Lot as determined by the Association. Lot Use may include residential use for those Lots containing Dwelling Units.

"Member(s)" shall mean all Lot Owners in the Village Center.

"Mixed-use Property" shall mean the real property designated as Type I Lots on Exhibit "A" which is attached hereto and incorporated herein by this reference.

"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.

"Required Number of Parking Stalls" shall mean and refer to the number of parking stalls required by the then current City of Lincoln Municipal Code Section 27.67.040 or similar ordinance by calculating one (1) parking stall per fifty (50) square feet of the largest assembly area of the Improvement to be constructed on a Type H Lot, less the on-site parking stalls available on the Type H Lot, and less any public street or private roadway parking stalls directly abutting the Type H Lot.

"Right-of-way" shall mean land, property, or property interest, secured and reserved to the public for transportation, utility services, drainage, sidewalk, or other public purposes.

"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.

"Type H Lots" shall mean all Lots located on Civic, Community or Church Property.

"Type I Lots" shall mean all Lots located on Mixed-use 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 Team" or "VGAT" shall mean and refer to the architectural and design firms pre-approved by the Declarant and the VGAC for designing any Improvements on the Lots in the Village Center.

"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 Properties in the Village Center 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 consistent with this Declaration and the Village Gardens PUD. The VGAS for the Village Center shall be on file and available for inspection from the Association.

## **ARTICLE II**

### **RESTRICTIONS AND COVENANTS**

1. Use. The Properties shall be used 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) Village Gardens Architectural Team (VGAT). Any Improvements designed for the Properties should be designed by the VGAT. Any Improvements not designed by the VGAT will be subject to a formal review process by the VGAC. The formal review process will be at the expense of the person or entity seeking approval of Improvement. The formal review process will consist of the following phases:

(i) Preliminary review consisting of a schematic design and a general concept indicating proposed space uses, building massing, fenestration, signage and any other general aspects of the Improvement.

(ii) Design development review consisting of the preliminary review with material selections, site and grading plan, and other detailed aspects of the Improvement.

(iii) Final review of contract documents consisting of the Lot Development Plan as set forth in paragraph (b) below.

(b) Lot Development Plan. Prior to construction or remodel of any Improvement on any of the Properties, the Lot Owner shall submit a Lot Development Plan to the VGAC for review and approval. The Lot Owner shall satisfy this requirement by submitting the following items to the VGAC as designed and set forth in the VGAS:

- (i) Site Plan including proposed grades;
- (ii) Foundation Plan and proposed finished floor elevations;
- (iii) Building plans including elevation of all facades, floor plans and Lot amenities;
- (iv) Material plans and specifications;
- (v) Exterior colors and materials sheet;
- (vi) Exterior and display lighting plan;
- (vii) Tree preservation plan;
- (viii) Signage plan;
- (ix) Sidewalk plan according to the VGAS; and
- (x) All other data the VGAC may require with respect to any construction activity.

(c) Timing of approval. 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 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 site plan of such Improvement does not conform to the general standard and character of the Improvements to be constructed within the Village Center. 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.

(d) Village Gardens Architectural Standards (VGAS). All Improvements must be in conformance with the VGAS or otherwise be approved in advance and in writing by the VGAC.

3. Grading and Erosion Control. Declarant shall have the sole and exclusive right to establish initial grades, slopes and contours on all Lots. Once such grades, slopes and contours have been established by the Declarant, they shall not be changed in connection with the construction of any Improvement on a Lot without written approval from the VGAC. In no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from abutting Lots and Common Areas.

(a) Damage to an abutting Lot or Common Area. The Lot Owner of the Lot upon which construction is taking place and whose actions or inactions cause or contribute to cause damage to an abutting Lot or Common Area shall be responsible for repairing such damage and returning the abutting Lot or Common Area to its original condition. Upon notice to the Lot Owner from Declarant to repair the abutting Lot or Common Area, the Lot Owner shall have forty-eight (48) hours from delivery of the notice to repair the abutting Lot or Common Area.

(b) Liens for repairs to an abutting Lot. If the Lot Owner fails to make the repairs required in the notice then Declarant may take any measures necessary to repair the damage done to the abutting Lot or Common Area and assess the costs of the measures to the Lot Owner. The costs assessed, when shown of record, shall be a lien upon the Lot Owner's Lot, and until paid, shall bear interest at 18% per annum or the maximum rate allowed by law, whichever is less.

(c) Timing and adequacy of erosion control measures. The adequacy of erosion control measures on a Lot shall be subject to continual review during construction. Lot Owners shall notify the VGAC at least ten (10) days prior to the commencement of construction, and Lot Owners shall install erosion barriers at the Lot Owners' expense prior to commencing construction. If erosion control measures are not in place within forty-eight (48) hours after the commencement of construction, Declarant may take all necessary erosion control measures and charge the cost of the measures to the Lot Owner. Such costs assessed, 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.

(d) Stockpiling dirt. No dirt from grading, excavation or resulting from any other activity on any Lot, may be removed from the Properties without the prior written permission of Declarant. Declarant or the Association may designate an area or areas within the Village Center or Village Gardens for

stockpiling dirt, and those placing dirt in such areas will level it so as to allow for mowing and maintenance.

4. Minimum Standards, Special Requirements and Restrictions. The following general standards, special requirements and restrictions shall guide the VGAC in the review of any and all Lot Development Plans submitted for approval within the Village Center. These standards, requirements and restrictions shall not be relied upon, interpreted or applied as absolute requirements for Lot Development 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 and the VGAS. However, all other Improvements and remodels or additions to existing Improvements and Common Areas after the recording of this Declaration shall be in conformance with this Declaration and the VGAS.

(a) Lot Coverage. The Lot Coverage of any Improvement on any of the Lots shall cover at least ninety (90%) of the total buildable square footage of the Lot unless otherwise approved in advance and in writing by the VGAC. In determining Lot Coverage, the VGAC may include drive-thru lanes and overhangs, permanent outdoor dining areas, designated loading dock lanes, permanent or semi-permanent product displays, and greenhouses. Lot 1, Block 3, Village Gardens 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska, shall be exempted from this Lot Coverage requirement.

(b) Exterior finish requirements. All Improvements constructed on any Lot shall comply with exterior finish requirements set forth in VGAS. Building and site material colors shall adhere to the architectural style of the building. Prior to commencement of construction, exterior colors and materials plan must be submitted and approved by the VGAC as part of the Lot Development Plan under Article III, Section 2, above.

(c) Roof requirements. The roof of each Improvement constructed upon any Lot will be dictated by a unique architectural style and must comply with VGAS.

(d) 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. Any other desired landscaping or hard surface features at or near a water feature must receive prior written approval from the VGAC.

5. Construction Time Frame. A building permit must be obtained from the City of Lincoln and construction commenced upon a Lot within twelve (12) months from

the Closing on the Lot. Additionally, construction of any Improvement 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. Upon written approval of the VGAC which shall not be unreasonable withheld, Improvements may be built in stages with each stage required to be completed within eighteen (18) months from the date of commencement of excavation or construction of the stage of the Improvement. In the event a building permit has not been obtained or construction is not commenced and completed within two and one-half (2 ½ ) years from Closing, Declarant shall have the option to repurchase 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. Declarant shall exercise this option by sending written notice to the then Lot Owner within one hundred eighty (180) days of the expiration of any of the above timeframes or this option shall be considered waived by the Declarant as to the subject Lot.

6. Driveways, Sidewalks, and Access. All driveways, sidewalks, and other access to a Lot shall be in conformance with the VGAS and the VGAC sidewalk design for the Village Center. All driveways, sidewalks and other access to a Lot shall be installed at the Lot Owner's expense.

7. Garages and Carports. Garages and carports shall be designed and finished to be compatible with and complement any adjoining buildings. Where visible from a public or private street, garage doors shall be limited as set forth in the VGAS.

8. Fences. Fencing is discouraged in the Village Center unless necessary for public safety, required screening or the Lot Use. The scale and the quality of the fence should complement the architectural style of the Village Center and shall be in conformance with the VGAS. Notwithstanding anything to the contrary, the following shall not be permitted without the prior written approval from the VGAC:

(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 or the Properties;

(b) Stockade, railroad ties, and/or pressure treated lumber; or

(c) Chain-link style fencing.

9. Accessory Structures and Appurtenances. Any and all Improvements, accessory structures, and appurtenances made to a Lot must receive prior written approval by the VGAC and be in conformance with the VGAS, including but not limited to, decks, gazebos, free standing flag poles, greenhouses, air conditioning units, electrical or gas meters, solar panels, garbage cans, synthetic fauna and flora, permanent grills, firewood, vegetable gardens, recreation and play equipment, animal houses and runs, hot tubs and spas, and propane tanks.

10. Animals and Animal Runs/Shelters. No stable, shelter or run for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, unless necessary for the Lot Use and the construction plans, specifications and the location of the proposed structure(s) have been approved in advance and in writing by the VGAC whose approval may be contingent upon providing special landscaping or screening for the stable, shelter or run. Conventional household pets are permitted in the Village Center in accordance with the then current City Municipal Code and subject to the condition that the pet(s) is not allowed to disturb the use and enjoyment of the Properties and Common Areas by the Lot Owners, tenants, visitors and invitees of the Village Center.

11. Mailboxes. Individual mailboxes will not be allowed in the Properties. Cluster mailboxes will be provided for all Lots.

12. City Requirements. All Improvements constructed upon the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City.

13. Satellite Dishes and Antennae. All satellite dishes and antennae must be less than one (1) meter in diameter and installed on a Lot in a location not visible to the general public unless that location impairs the installation, maintenance or use of the satellite dish or antenna. The installation, maintenance or use of a satellite dish or antenna will be considered impaired under this paragraph if the location: unreasonably delays or prevents installation, maintenance or use; unreasonably increases the cost of installation, maintenance, or use; or precludes reception or transmission of an acceptable quality signal. If the Lot Owner is unable to install the satellite dish or antenna in a location not visible to the general public, then the Lot Owner shall send written notification to the Association of the installation of the satellite dish or antenna, the location of the satellite dish or antenna, and the reason for failing to install it in a location not visible to the general public.

14. 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 and roadway within the Village Center. The costs of such street trees shall be the responsibility of the Lot Owner at the time of Closing. 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) is 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.

15. Signage. All signage shall be in conformance with Village Gardens PUD, the VGAS, and the City of Lincoln B-3 sign requirements. Regardless of location or building type, the following sign types will not be permitted:

- (a) Flashing or blinking signs;
- (b) Exposed neon-type signs, unless the same is located within the building and approved by the City of Lincoln and the VGAC;
- (c) Roof-mounted signs;
- (d) Mobile signs;
- (e) Rotating signs;
- (f) Temporary signs, unless approved in advance and in writing by the VGAC.

16. Exterior Restrictions. All exterior solar heating, cooling devices, wind powered electric generators, and refrigeration systems of any sort shall not be permitted on any Lot unless such apparatus is approved in advance and in writing by the VGAC and is installed so that it will not detract from the architectural design of the Village Center.

17. 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 deemed offensive or a nuisance by the Association be visibly stored, parked or abandoned on any Lot.

18. 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 for personal or business purposes. No grading or excavating equipment, tractor or semi-tractor/trailer shall be stored, parked, kept or maintained in any yards, driveways or streets. This paragraph shall not apply to trucks, tractors or commercial vehicles which are temporarily necessary for the construction of Improvements on Lots.

19. Construction Vehicle and Roll-Off Service. Declarant may designate and enforce locations through and over which all construction vehicles shall enter and exit the Properties during development. During construction of any Improvement on a Lot, a dumpster shall be maintained and no material may be staged or stored in any street, road or on abutting Lots. Dumpsters must be emptied when full. Declarant shall have the right to designate a single provider of roll-off service within the Properties in order to limit and control the number of service trucks operating within the Properties.

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

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

22. Nuisance and Maintenance of Vegetation. No noxious or offensive activity or nuisance shall be carried on in the Village Center. No activity that endangers the health and safety or disturbs the quiet enjoyment of the Lot Owners, tenants, visitors and invitees of the Village Center will be allowed. Grass, weeds, shrubs, trees and other vegetation will be grown and maintained in a neat and trim appearance. Grass, weeds, shrubs, trees and other vegetation that are noxious, diseased, dead, undesirably proliferating, overgrown, or otherwise detracting from the character of the Village Center, will not be allowed.

On vacant Lots, vegetation, other than trees and shrubs for preservation, shall not be allowed to reach a height in excess of eighteen (18) inches. Vacant Lots owned by Declarant shall be exempt from this requirement. In the event vegetation on a vacant Lot reaches a height in excess of eighteen (18) inches, Declarant or the Association may enter upon the Lot and mow and remove the vegetation on the Lot, and to assess the mowing and removal costs against the Lot. Such costs assessed, 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.

23. 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 the plans and specifications for such split, division, combination or subdivision. Declarant's written approval shall not be unreasonably withheld. Any such plans and specifications must be in conformance with the VGAS, the Village Gardens PUD and the City Municipal Code.

24. Alleys and Service Driveways. Parking shall not be allowed in the alley drive lanes. Service driveways must be kept clear and orderly for use by all persons.

25. Party Walls.

(a) General rules of law to apply. To the extent not inconsistent with this Declaration, 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 proportionally by the Lot Owners who share the Party Wall.

(c) Destruction by fire or other casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Lot Owner who shares the Party Wall may restore it, and seek proportionate contribution from the other Lot Owners who share the Party Wall, without prejudice, however, to the right of any Lot Owner(s) to call for a larger contribution from any other Lot Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Declaration, 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 this Declaration shall be appurtenant to the land and shall pass to such Lot Owner's successors in title.

26. Parking. Declarant does hereby establish, give, grant and convey to all Lot Owners for their mutual benefit and the benefit of their respective successors, heirs, assigns, tenants, customers, officers, employees, guests and invitees, a perpetual non-exclusive easement upon and across all the parking lots, sidewalks, driveways, entrance and exit ways, roadways, alleys, and service driveways in the Village Center that are now or hereafter used for pedestrian and vehicular access to and from each Lot for the purpose of allowing pedestrian and vehicular access to and from each Lot and parking upon each designated parking area located with the Village Center. The benefits and corresponding burdens of this perpetual non-exclusive easement shall be appurtenant to and run with the Lots located within the Village Center.

27. Landscape Screens. Pursuant to the City Municipal Code, landscape screens may be installed on some or all of the Common Areas. The Association shall be responsible for the ongoing maintenance, repair and replacement of the landscape screens.

28. Public Access Easements on Lots. The cost of maintenance, repair, and replacement of the roadbed, striping, parking stalls, street trees, and landscaping for a private roadway located on a Lot and subject to a public access easement are the responsibility of the Lot Owner. In the event the Lot Owner fails, refuses or neglects to satisfy this covenant the Association is authorized to make the necessary maintenance, repair and replacement and assess a Specific Assessment to the Lot Owner and against the Lot for such costs.

29. Refuse and Recycling Service. Declarant shall select a provider or providers to provide refuse and recycling collection services for the entire Village

Center. The cost of the refuse and recycling services for a Lot shall be paid by the Lot Owner directly to the service provider and shall not be collected by or paid to Declarant.

### **ARTICLE III**

#### **USE CATEGORIES**

1. **Permitted Uses.** The B-3 and R-3 uses permitted under the Village Gardens PUD and all subsequent amendments thereto are hereby permitted in the Village Center unless specifically restricted or prohibited herein. Notwithstanding any other provision in this Declaration, Lot 1, Block 3, Village Gardens 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska, shall be limited to the R-3 permitted, conditional and special permitted uses under the Village Gardens PUD and all subsequent amendments thereto.

2. **Restricted Uses.** The following B-3 and R-3 uses are not permitted in Village Center without the prior written approval of Declarant, and, if required, a conditional or special permitted use permit from the City: automobile wash facility; motels and hotels; cabinet shops or stores; tailor shops, shoe repairing, upholstery shops, printing, photocopying, household appliances repairs, or similar business establishments; dyeing and drycleaning works; laundry; plumbing and water softener service shops; recycling center; early childhood care facilities; service stations; health care facilities; church steeples, towers, and ornamental spires which exceed the maximum district height; broadcast towers; historic preservation; expansion of nonconforming use; public utility purposes; wind energy conversion systems; and dwellings above the first story of a building which cannot meet the yard requirements of the City Municipal Code.

3. **Prohibited Uses.** The following B-3 and R-3 uses shall not be permitted in the Village Center: group homes; furnace, heating, sheet metal, electrical shops or electrical contractors, heating and air conditioning contractors; tire stores and sales including vulcanizing; automobile or appliance sales and repair facilities including vehicle body repair shops; food storage lockers; mobile home courts; towers; extracting sand, gravel and soil; cemeteries; and mobile home subdivisions.

### **ARTICLE IV**

#### **VILLAGE GARDENS VILLAGE CENTER 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 Members of the Association in the Properties and Common Areas, including but not limited to:

(a) The administration, improvement, maintenance, operation, repair, and replacement of the Common Areas for the use, benefit and enjoyment of all the Members. 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, their tenants and 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 community nature and architectural goals of the Village Gardens PUD as set forth in the Village Gardens Architectural Standards as well as the exercise, promotion, enhancement and protection of the privileges and interests of the Members in the Village Center.

2. Powers and Responsibilities. The Association has 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 exercised by the Board of Directors and the officers authorized by Board include but are not 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*: landscaping; screening; parking lots; private roadways; alleys; parks; playground equipment (including upsizing); water features; ponds; well house and pump stations; seasonal displays and color décor; signage; street and parking lot lights; public trash receptacles and debris removal; public restrooms; seeding and sodding; street trees; and any other Common Area structure, equipment or property.

(b) The fixing, levying, collecting, abatement, and enforcement of all charges, Association Maintenance Dues , or Assessments made pursuant to the terms of the 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 coverage for the Association, the Board of Directors of the Association, any employees 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 the 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 or 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 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.

(j) The employment of employees for the day-to-day management of the Association's affairs and responsibilities as directed by the Officers and the Board of Directors as well as negotiating, setting and paying salaries to any such employees.

(k) The right to establish rules and regulations for the use of the Common Areas; the right to temporarily close or restrict access to the Common Areas for special events, displays and activities; and the right to establish operating covenants by resolution, rule or regulation for the Village Center.

(l) The doing and performing of acts and the executing of instruments and documents that may be necessary or appropriate to accomplish the purposes of the Association.

3. Membership and Voting. Every person or entity who is a titleholder of record or a contract buyer of record of a fee interest in any Lot subject to the terms of the Declaration is a Member of the Association. Any person or entity who holds an interest merely as security for a performance of an obligation shall not be a Member.

Membership shall be appurtenant to and may not be separated from ownership of any Lot subject to the terms of the Declaration. The Association has two (2) classes of membership, Class A and Class B, as follows:

(a) Class A Members are all Lot Owners with the exception of Class B Members. One (1) vote for each Lot is allowed on each matter coming before the Members of the Association. Multiple Lot Owners of the same Lot shall be entitled to only one (1) vote that may not be cast in fractions.

(b) Class B Members are the Declarant. On each matter coming before the Members of the Association, Declarant has one (1) vote for each platted square foot of the Properties Declarant then owns. Declarant also has the power to veto any matter coming before the Members of the Association. Class B Membership ceases and converts to Class A Membership on the earlier of (i) the date the Declarant sells and conveys all of the platted square footage of the Properties Declarant owns in the Village Center, or (ii) on such earlier date that the Declarant, in its sole discretion, determines and records an instrument in the real property records of Lancaster County, Nebraska ending Declarant's Class B membership. From and after the termination of the Class B Membership, the Declarant will be a Class A Member with respect to the Lots then owned, if any.

(c) Any adoption, amendment or repeal affecting *Article IV, Section 3, Membership and Voting*, shall require an affirmative vote of seventy-five (75%) of the Members entitled to vote.

4. Rights of All Members. Each Member shall have the right to use and enjoy the Common Areas and shall have a non-exclusive 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 Member 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 Village Center 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 reasonable use of the roadways, streets, alleys, pedestrian walkways and service driveways located within the Common Areas by the general public pursuant to any public access easement granted or to be granted by Declarant; and

(e) In conjunction with the Association, the Lot Owner of Lot 2, Block 1, Lincoln, Lancaster County, Nebraska, Village Gardens 1<sup>st</sup> Addition shall have a perpetual access and use easement to Outlots I and G for the reasonable use of the water contained therein for irrigation purposes and for drainage of run-off water from such Lot. This easement shall be appurtenant to and run with the land so long as such Lot or any future subdivision thereof is used as a year-round garden nursery and greenhouse. Maintenance, repair, and replacement of the shoreline, landscaping, piping, pumping, well-house and other equipment appurtenant thereto in Outlots I and G shall be the responsibility of the Association in the same manner as the maintenance, repair and replacement of the other Common Areas.

5. Association Activities Regarding the Common Areas. The Association and each Member, 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 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 Member, 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 Center regarding continuous and permanent maintenance of the Common Areas. In the event the Association dissolves, the Members shall remain jointly and severally liable for the cost of administering, insuring, maintaining, repairing, replacing, adding and improving the Common Areas.

6. Assessments. The Association, through the Board, may fix, levy and charge each Member with Assessments under the provisions of the Declaration, the Articles and the Bylaws. The 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 Declaration. Except as otherwise specifically provided herein, the 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 the Board's judgment is exercised in good faith.

(a) Types of Assessments. Each Lot Owner, other than Declarant, by acceptance of a deed to any Lot in the Village Center, whether or not it is expressed in such deed, covenants and agrees to pay to the Association General Assessments, Special Assessments, and Specific Assessments as identified and provided for in the Declaration. Lot Owners of Type H Lots shall be exempt from General and Special Assessments, but not Specific Assessments.

(b) General Assessments. General Assessments are levied annually to enable the Association to pay all expenses of the Association that are determined by the Board to benefit all or a simple majority of the Members. Such expenses shall include all expenses of the Association except: (i) Special Assessments; and (ii) Specific Assessments. The initial annual General Assessment shall commence and be due and payable at Closing as to all Lots covered by the Declaration or any Supplemental Declaration or any amendment to the Declaration or Supplemental Declaration. If Closing occurs on a date other than January 1, the General Assessment will be prorated according to the number of months remaining in the calendar year. Thereafter, annual General Assessments will be levied for each calendar year in advance and will be due and payable as specified by the Board. General Assessments shall be fixed at a uniform rate per Lot Use(s) by taking a factor determined by the Board and assigned to the Lot Use(s) and multiplying the factor times the total square footage of the Improvements located on the Lot. Mixed-use Lots shall be assessed an average of the factors for the multiple Lot Uses present on the Lot, or if the Lot Uses are distinguishable by floor, the General Assessment for the Lot shall be the total of the rates assessed to each floor per Lot Use.

(c) Special Assessments. In addition to or apart from the other Assessments authorized by the Declaration, the Board may levy one or more Special Assessments to defray the cost of any construction, reconstruction, repair or replacement of a capital improvement in the Common Areas. The levy may be in one year or extended over multiple years. A capital improvement includes but is not limited to fixtures, personal property, equipment, and the labor costs associated therewith.

(i) Any Special Assessment exceeding fifty-percent (50%) of the current year's General Assessments for all affected Lots requires an approval by the majority of the Members in attendance at a meeting that are affected by and entitled to vote on the Special Assessment. In determining whether the Special Assessment exceeds fifty-percent (50%) of the General Assessments, the Board will obtain a written estimate for the work to be completed, including labor and materials, and divide the estimate by the total amount of the current year's General Assessments for all affected Lots.

(ii) Identification of a Special Assessment and the reason for the Special Assessment must be contained in the Notice of the meeting. The notice must be provided to all affected Members.

(iii) Special Assessments will be paid as determined by the Board. The Board may permit installment payments beyond the fiscal year or years for which the Special Assessment was imposed. Special Assessments will be allocated among all affected Members in the same manner as General Assessments.

(d) Specific Assessments. The Association has the power to levy Specific Assessments against a particular Lot for the following purposes:

(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;

(ii) To cover the costs, including reasonable attorney's fees, incurred in bringing a Lot into compliance with the 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, guests or tenants.

7. Association Maintenance Dues for Type H Lots. The Association, through the Board, may fix, levy, and charge each Member owning a Type H Lot with Association Maintenance Dues.

(a) Required Number of Parking Stalls. The Required Number of Parking Stalls will be determined by the VGAC in conjunction with the approval of the Lot Development Plan in *Article II, Section 2, Plan Approval*, and determined in accordance with the then current City of Lincoln Municipal Code Section 27.67.040 or similar ordinance. Type H Lots are only required to contribute to

Association Maintenance Dues in proportion to their Required Number of Parking Stalls compared to the total number of public access parking stalls.

(b) Determination of Association Maintenance Dues. The Association Maintenance Dues levied and collected by the Association under this provision shall be committed and expended for the purposes identified herein. As specifically provided herein and limited by paragraph (a) above, the Association Maintenance Dues 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 determination, collection, and expenditure of Association Maintenance Dues shall be final and conclusive so long as the Board's judgment is exercised in good faith and in accordance with this Declaration.

(c) Amendments affecting Type H Lots. Any adoption, amendment, or repeal affecting *Article IV, Section 7, Association Maintenance Dues for Type H Lots*, shall require a majority vote of the Members (other than the Declarant) then owning Type H Lots. Additionally, any repeal or amendment of the exemption from General Assessments and Special Assessments described in *Article IV, Section 6, Assessments* (including subparagraphs) for Type H Lots shall require a majority vote of the Members (other than the Declarant) then owning Type H Lots.

8. Abatement of Dues and Assessments. Notwithstanding any other provision of the Declaration, the Articles and the Bylaws, the Board may abate all or part of the Association Maintenance Dues and Assessments for any Lot. The Board will abate all Association Maintenance Dues and Assessments for all Lots owned by the Declarant.

9. Liens and Personal Obligations for Dues and Assessments. The Association Maintenance Dues and Assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Member at the time when the Association Maintenance Dues and Assessments first become due and payable. The Association Maintenance 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 Association Maintenance Dues and Assessments are charged. The personal obligation for delinquent Association Maintenance Dues and Assessments shall not pass to the successor in title to the Lot at the time the Association Maintenance Dues and Assessments become delinquent unless such Association Maintenance Dues and Assessments are expressly assumed by the successor in title. Each successor in title will take title to a Lot subject to a lien for delinquent Association Maintenance Dues and Assessments. Each successor in title is bound, prior to taking title to a Lot, to request a certificate as to Association Maintenance Dues and Assessments.

10. Effect of Nonpayment of Dues or Assessments; Remedies of the Association. Any installment of Association Maintenance Dues or Assessments which is not paid when due is delinquent. Delinquent Association Maintenance Dues and 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 Maintenance Dues and Assessments shall be and become a lien as of the date such amounts first become due and payable. The Association may bring an action at law against the Member personally obligated to pay the Association Maintenance Dues and Assessment. The Association may foreclose the lien against the Lot. The Association may pursue any other legal or equitable remedy allowed by law to recover the delinquent Association Maintenance Dues and Assessments. As part of any legal action, the Association is entitled to recover the interest, costs and reasonable attorneys' fees incurred by the Association in recovering the delinquent Association Maintenance Dues and Assessments. No Member may waive or otherwise escape liability for Association Maintenance Dues, Assessments, and lien provided for in the Declaration and Bylaws by claiming non-use of the Common Areas or abandoning the Lot. The mortgagee of any Lot may cure any delinquency of a Member by payment of all Association Maintenance Dues and Assessments, together with interest, costs and fees. The Association may assign to a mortgagee all of its rights with respect to a lien and right of foreclosure for the delinquent Association Maintenance Dues and Assessments.

11. Subordination of the Lien to Mortgagee. The lien of Association Maintenance 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 a lien for Association Maintenance Dues and Assessments.

12. Certificate of Dues and Assessments and Compliance. With the permission or at the request of the Member, the Association may, upon written request and for a reasonable charge, furnish Certificates, signed by an officer of the Association, setting forth the following:

(a) Status of Association Maintenance Dues and Assessments. Whether the Association Maintenance Dues and Assessments on a specific Lot are paid through to the date of the request, the amount of any delinquent sums, and the due date and amount of the next succeeding Association Maintenance Dues, Assessments or installment thereof.

(b) Status of compliance. Whether there are any known violations of this Declaration or the VGAS or any other rule or regulation of the Association for which the Lot may be or has been subject to an unpaid Specific Assessment.

(c) Time to respond and waiver. The Association will either grant or deny requests for certificates of Association Maintenance Dues and

Assessments and compliance within thirty (30) days after receipt of the written request. Failure of the Association to either grant or deny the request within thirty (30) days shall operate as a denial of the request. Issuance of such certificate(s) shall preclude the Association from taking enforcement action with respect to any delinquency or condition that the Association had actual or constructive notice as of the date of the Certificate, but that the Association failed to identify on the certificate(s).

## **ARTICLE V**

### **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. **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 Association Maintenance 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.

3. **Amendment.** For a period of twenty (20) years from the date of this Declaration and so long as Declarant is a Lot Owner, Declarant may amend this Declaration in any manner Declarant determines to be appropriate, subject, however, to the provisions of *Article IV, Section 7(c), Amendments affecting Type H Lots*. Unless

specifically limited herein, any portion of this Declaration may be amended by an instrument signed by two-thirds (2/3) of the Lot Owners and appropriately recorded.

4. 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.

5. 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.

6. 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 seventy-five (75%) of the then Lot Owners and the instrument is then recorded prior to the commencement of any ten-year period. Provided, however, that termination of the Declaration shall not terminate the perpetual non-exclusive easements granted to the Lot Owners pursuant to the provisions of *Article II, Section 26, Parking*.

7. 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.

8. Village Gardens PUD Amendment or Final Plat Amendment. For a period of twenty (20) years from the date of this Declaration and so long as Declarant is a Lot Owner, Declarant shall have the right to amend the Village Gardens PUD. The Lot Owners and Members of the Village Gardens Village Center Association covenant not to unreasonably object to any amendment of the Village Gardens PUD provided the amendment does not change the approved use for a Lot, nor the perpetual non-

exclusive easements granted pursuant to *Article II, Section 26, Parking*. For a period of twenty (20) years from the date of this Declaration and so long as Declarant is a Lot Owner, 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 this Declaration except that there shall be no changes to the perpetual non-exclusive easements granted pursuant to *Article II, Section 26, Parking*.

9. Arbitration. All claims, disputes and other matters between the Declarant and the Lot Owners or between the Association and the Members arising out of or relating to this Declaration or the Village Gardens PUD shall be decided by arbitration in accordance with the rules of the American Arbitration Association.

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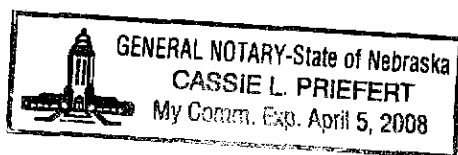
IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions, Restrictions and Easements for Village Gardens Village Center to be executed this 21 day of November, 2006.

**VILLAGE GARDENS  
DEVELOPMENT COMPANY, LLC**

BY: *Richard B. Campbell*  
Richard B. Campbell, Manager

STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing was acknowledged before me this 21 day of NOVEMBER, 2006, by Richard B. Campbell, who is personally known to me.

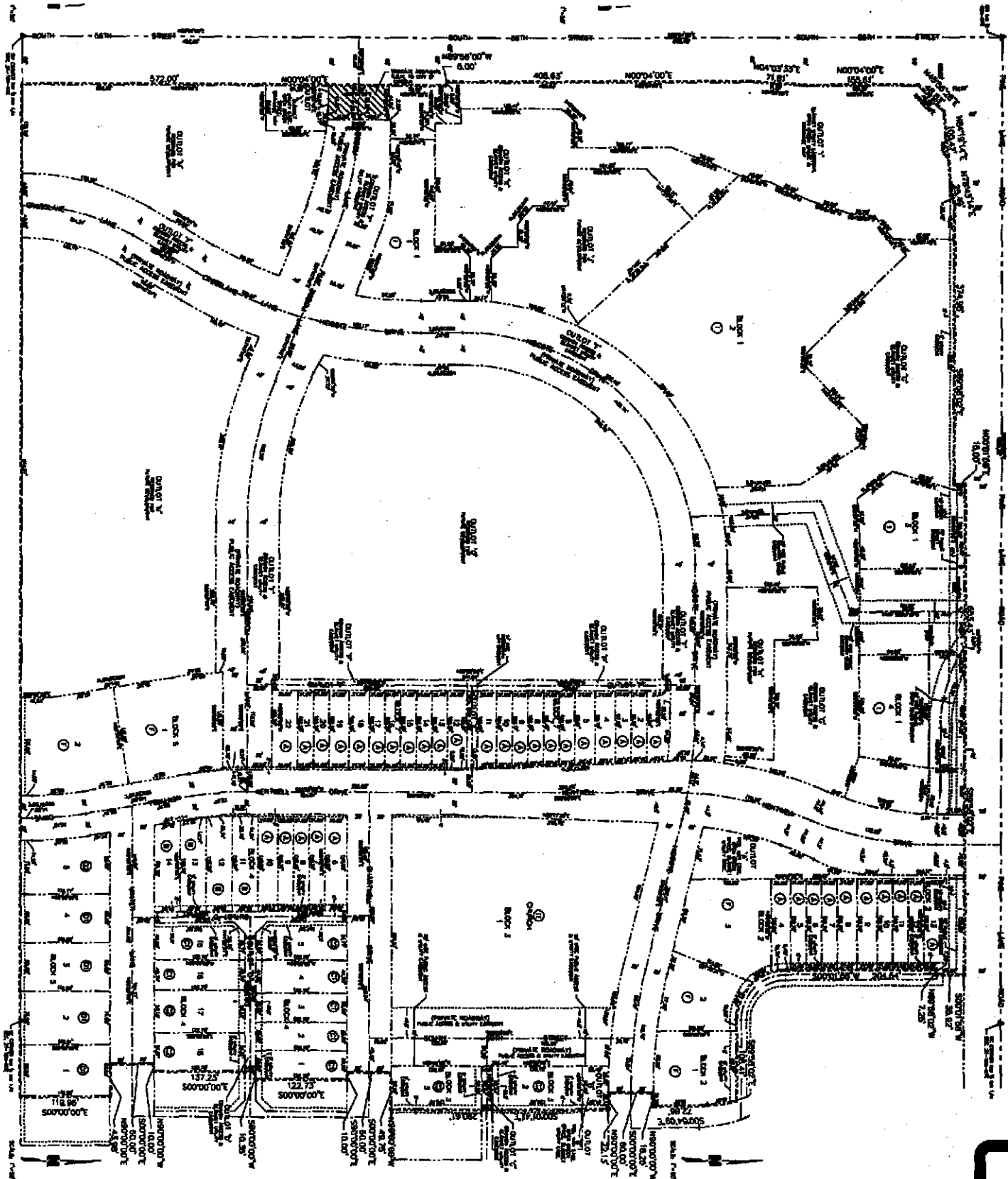


*Cassie L. Priefert*  
Notary Public

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

BY: *Andrew*  
Assistant City Attorney

# VILLAGE GARDENS ADDITION 1



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**EXHIBIT**