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Register of Deeds, Douglas County, NE  
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2016094402

**FIRST AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF INDIAN POINTE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA**

THIS FIRST AMENDMENT TO AND RESTATEMENT OF DECLARATION is made on the date hereinafter set forth by FRK Development, LLC, a Nebraska limited liability company, "Declarant",

**RECITALS**

A. On January 2, 2014, a document entitled Declaration of Covenants, Conditions and Restrictions (hereinafter the "Declaration") for Lots 1 through 160 and Outlots A through C, Indian Pointe, a subdivision in Douglas County, Nebraska, was recorded by Declarant in the office of the Register of Deeds, Douglas County, Nebraska, as Instrument No. 2014000302.

B. Section 4 of Article XIV of the Declaration provides that for a period of 20 years following December 31, 2013, the Declarant will have the right to amend the Declaration in its sole and absolute discretion. The Declaration further provides the authority to the Declarant to add future phases of Indian Pointe to the Declaration and add such lots as members in the Indian Pointe Homeowners Association, Inc., a Nebraska non-profit corporation, as set forth in Section 2, Article VII and Section 1, Article XIV of the Declaration.

NOW, THEREFORE, Declarant hereby declares that the Declaration should be and hereby is amended and restated by deleting therefrom the Declaration in its entirety and adding in its place and stead the following:

0272305 (35)

Record and Return to: James E. Lang, 13340 California Street, Suite 203, Omaha, NE 68154

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS OF INDIAN POINTE, A SUBDIVISION IN DOUGLAS COUNTY,  
**0c-18151** NEBRASKA

(Lots 1 through 266, Indian Pointe, Outlots B through K, Indian Pointe and Outlots A, B and C, Indian Pointe Replat One, being a replat of Outlot A, Indian Pointe, all within Indian **0c-18152** Pointe, a subdivision in Douglas County, Nebraska)

THIS DECLARATION is made on the date hereinafter set forth by FRK Development, LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant".

**WITNESSETH:**

WHEREAS, Declarant, as the owner, recorded the Declaration on January 22, 2014 as Instrument No. 2014000302 with the Register of Deeds, Douglas County, Nebraska, against the following lots:

Lots 1 through 160 and Outlots A through C, of Indian Pointe, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded; and

WHEREAS, the Declarant replatted Outlot A into Outlots A, B and C, Indian Pointe Replat One, a replat of Outlot A, Indian Pointe, a subdivision in Douglas County, Nebraska, which replat is dated May 1, 2014, and recorded on August 21, 2014 as Instrument No. 2014065095 in the Deed records of the Register of Deeds, Douglas County, Nebraska; and

WHEREAS, the Declarant is the owner of the following described property:

Lots 161 through 266 and Outlots D through K, of Indian Pointe, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

and desires to make such property subject to the covenants, conditions, restrictions and easements hereinafter set forth along with the property described in the above first and second Whereas paragraphs; and

WHEREAS, as a result, Declarant desires to make all of the following described property subject to the covenants, conditions, restrictions and easements set forth herein, which property is described as follows:

Lots 1 through 266, Indian Pointe, Outlots B through K, Indian Pointe, and Outlots A, B and C, Indian Pointe Replat One, being a replat of Outlot A, Indian Pointe, all of which are within Indian Pointe, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**SECTION 1. "ASSOCIATION"** shall mean and refer to Indian Pointe Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

**SECTION 2. "OWNER"** shall mean and refer to:

- (a) The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchaser's obligation under the contract.

**SECTION 3. "PROPERTIES"** shall mean and refer to:

Lots 1 through 266, inclusive, of Indian Pointe, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 4. "LOT"** shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split and Outlots B through K, and Outlots A, B and C, Indian Pointe Replat One, a replat of Outlot A, Indian Pointe, all within the Indian Pointe Subdivision.

**SECTION 5. "IMPROVED LOT"** shall mean and refer to any Lot included within the Properties upon which shall be erected a completed dwelling, not including model homes or builder owned spec homes which are being offered for sale to the public.

**SECTION 6. "DECLARANT"** shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

**SECTION 7. "DECLARATION"** shall mean this document.

**SECTION 8. "COMMON AREA"** shall mean and refer to Outlots B, C, D, E, F, G and I, Indian Pointe, and Outlots B and C, Indian Pointe Replat One, a replatting of Outlot A, Indian Pointe, and any improvements thereon, which Common Area shall be owned by the Association, and any additional real property owned by the Association. The Association shall own and maintain the Common Area. Outlot A, Indian Pointe Replat One, a replat of Outlot A, Indian Pointe, is owned by Sanitary and Improvement District No. 559 of Douglas County, Nebraska ("SID 559") for stormwater drainage and for post construction stormwater management features. Outlot H is owned by the Declarant. Outlot J is owned by Douglas County, Nebraska. Outlot K is owned by SID 559 for a post-construction stormwater detention basin. Outlots H, J and K are not Common Area.

**SECTION 9. "COMMON FACILITIES"** may include parks (public or otherwise); dedicated and non-dedicated roads, paths, ways and green areas; signs; and entrances for Indian Pointe, and other improvements and facilities owned by the Association and/or the Sanitary and Improvement District.

**SECTION 10. ATHE INDIAN POINTE CLUB@** shall mean and refer to the clubhouse, tennis courts, pool and/or other improvements proposed to be constructed and owned by the Declarant, which may be located within a subsequent phase of Indian Pointe, and which, if developed, will be utilized by the Owners of an Improved Lot within the Properties and subsequent phases, and their family and guests.

**SECTION 11. ACOMMUNITY RECREATION@** shall mean recreational activities consisting of tennis, basketball, swimming, exercising, weight lifting, ping pong, pool, darts, cards, board games, shuffle board, arcade games, watching television, and recreational gatherings of the Owners of Improved Lots and their families and guests and other recreational games and activities which are generally and ordinarily conducted within a community recreational facility setting by and for the Owners of Improved Lots within the Properties and subsequent phases, and their families and guests.

## **ARTICLE II THE INDIAN POINTE CLUB**

**SECTION 1. PURPOSE.** The Declarant may construct a recreational facility within one of the subsequent phases of the Indian Pointe subdivision, which may include a clubhouse, tennis court(s), pool, exercise facility and other recreational improvements and, if constructed, shall be known as the Indian Pointe Club. After construction of such improvements, the Declarant shall remain the owner of the Indian Pointe Club. The purpose of The Indian Point Club shall be to provide a facility for Community Recreation as defined in Article I, Section 11 of these Covenants, which improvements may consist of a clubhouse, pool, tennis courts, fitness facility and other recreational facilities for the Owners of the Improved Lots within the Properties and subsequent phases of the Indian Pointe subdivision and their family and guests. In the event the Indian Pointe Club is constructed, then each Owner of an Improved Lot within the Indian Pointe Subdivision shall be a member of the Indian Pointe Club. Each Owner

of an Improved Lot shall pay monthly membership dues in order to belong to the Indian Pointe Club (the AIndian Pointe Club Dues@). The monthly membership Indian Pointe Club Dues shall be paid by the Owner of an Improved Lot as part of the Monthly Assessments charged by the Association under these Covenants. The Association shall then segregate such dues and deliver such dues to the Declarant on a monthly basis. The Indian Pointe Club Dues shall be utilized to maintain, operate and pay for the Indian Pointe Club. The initial monthly Indian Pointe Club Dues shall be \$55.00 per month which shall commence the month following the completion of the Clubhouse. The Declarant reserves the right to increase or decrease such Indian Pointe Club Dues, however, the Declarant shall not charge Indian Pointe Club Dues in excess of \$100.00 per month without the consent of a majority of the Owners of the Improved Lots within the Indian Pointe subdivision. In no event, shall the Indian Pointe Club Dues be increased in excess of \$100.00 per month prior to January 1, 2018. In the event the Owner of an Improved Lot fails to pay his or her Indian Pointe Club Dues, the Association and/or Declarant shall have the authority and power to enforce the collection of such Indian Pointe Club Dues pursuant to these Covenants, further, in the event of such nonpayment, the Association and/or the Declarant shall also have the right to suspend the Owner's the use of the Indian Pointe Club during the period when such Indian Pointe Club Dues are delinquent. The Declarant shall also have the right to establish Rules and Regulations for the operation and use of the Indian Pointe Club, which Rules and Regulations shall be in writing and provided to the Owners of the Improved Lots. Each Owner of an Improved Lot shall execute a statement acknowledging the receipt, review and acceptance of such Rules and Regulations, which receipt must be on file with the Indian Pointe Club in order for such Owner of an Improved Lot and their families and guests to use the facilities at the Indian Pointe Club. Notwithstanding the foregoing, the Declarant shall not construct the Indian Pointe Club within this first or second phase of the Indian Pointe subdivision which consists of Lots 1 through 266 and Outlots A through K, Indian Pointe. The matters set forth in this Section 1 of Article II hereof only state the Declarant's intent, and are not meant to be legally binding upon the Declarant, and Declarant shall have no obligation to construct the Indian Pointe Club, and if not constructed, there shall be no liability to any Owner for Declarant's failure to construct the Indian Pointe Club. Further, Declarant's obligation to construct the Indian Pointe Club is conditioned upon obtaining the proper approvals from the City of Omaha, Nebraska, and other governmental authorities which have jurisdiction over such improvements.

**SECTION 2. USE RESTRICTED TO COMMUNITY RECREATION.** In the event the Indian Pointe Club is constructed, the improvements described herein as The Indian Pointe Club, shall be used only by the Declarant and the Owners of the Improved Lots within the Properties and subsequent phases, and their guests, for Community Recreation as defined in Article I, Section 10, and as a facility for Community Recreation and for no other purpose. The Indian Pointe Club shall not be used for any commercial activity and shall at all times remain a facility for Community Recreation and a non-commercial facility. The Owners of the Improved Lots within the Properties and subsequent phases shall be permitted to reserve and utilize the gathering room within The Indian Pointe Club for recreational gatherings for their families and guests not in excess of 80 persons. The Declarant and/or the Association shall have the right to require a reasonable deposit for the recreational gatherings of the Owners of Improved Lots and their families and guests. In the event the Declarant should ever convey any of its interest in the Indian Pointe Club, and the improvements described herein which constitutes The Indian

Pointe Club, such conveyance shall at all times be subject to the use restrictions of these Covenants which restrict the use of the Club and the Lot it is built on, and the improvements thereon, to Community Recreation for the Owners of Improved Lots within the Properties and subsequent phases, and their families and guests, and for no other purposes.

### **ARTICLE III OUTLOTS D THROUGH K INDIAN POINTE**

The Association shall own and maintain Outlots B and C, Indian Pointe Replat One, a replat of Outlot A, Indian Pointe, Outlots B and C, and Outlots, D, E, F, G and I, which outlots are subject to a recorded permanent sewer easement. At the time of executing this Declaration, Outlot H is owned by the Declarant. Outlot J is owned and maintained by Douglas County, Nebraska, as a wetlands mitigation site. Outlot A, Indian Pointe Replat One, a replat of Outlot A and Outlot K which contain stormwater drainage improvements and post construction water detention basins are owned and maintained by SID 559.

### **ARTICLE IV PROPERTY RIGHTS**

**SECTION 1. VOTING RIGHTS.** The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members or such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

**SECTION 2. PARKING RIGHTS.** Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

### **ARTICLE V MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

**SECTION 2.** Members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

**SECTION 3.** The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

**CLASS A:** Class A Members shall be all Owners, including the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or

entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

**CLASS B:** Class B Members shall be the Declarant or its successors and assigns which shall be entitled to three votes for each Lot owned by the Declarant or his successors or assigns (in addition to Declarant's number of votes as a Class A member). The Class B membership shall terminate (with the Declarant or its successors and assigns then still entitled to one vote for each Lot owned by the Declarant or his successors and assigns as a Class A member) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2027.

## **ARTICLE VI COVENANT FOR ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant hereby covenants for each Improved Lot and for each Owner of any Improved Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association;

- (1) Monthly assessments for the repair, maintenance and improvement of the Common Area, and operational expenses of the Association, (the Association Monthly Assessment@), and
- (2) In the event the Indian Pointe Club is constructed, the collection of the Indian Pointe Club Dues for The Indian Pointe Club pursuant to Article II of these Covenants, and
- (3) Special assessments for capital improvements

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

**SECTION 2. PURPOSES OF ASSESSMENTS.** The assessments levied by the Association shall be used to promote the health, safety, recreation and welfare of the residents in the Properties for the ownership, maintenance, construction, reconstruction and repair of the Common Area, the roadway, utilities and improvements within the Common Area, for The Indian Pointe Club dues as set forth in Article II hereof, and other matters as more fully set out in Article VII herein.

**SECTION 3. MONTHLY ASSESSMENTS.** The Board of Directors shall have the authority to levy and assess from time to time against an Improved Lot any monthly maintenance Assessment for the purpose of meeting the requirements of Article VII, Article II and the other requirements of this Declaration.

**SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS.** The Association may levy special assessments from time to time against an Improved Lot for the purpose of meeting the requirements of Article VI herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on or within the Common Area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

**SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4 OF ARTICLE VI.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article VI shall be sent to all Members not less than 10 days or more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

**SECTION 6. RATE OF ASSESSMENT.** The Association Monthly Assessments shall be paid pro-rata by the Owners of all Improved Lots based upon the total number of Improved Lots. The Association Monthly Assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Improved Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Improved Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Improved Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Improved Lot shall be binding upon the Association as of the date of its issue by the Association.



**SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENT; REMEDIES OF THE ASSOCIATION.** Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

**SECTION 8. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

**SECTION 9. ABATEMENT OF DUES AND ASSESSMENTS.** Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period when such Lot is owned by the Declarant.

**SECTION 10. MAXIMUM ANNUAL DUES.** The maximum Association Monthly Assessments, including the Indian Pointe Club Dues to be paid to The Indian Pointe Club, shall not exceed \$100.00 per month through January 1, 2020. Thereafter, the Board of Directors shall be permitted to raise the annual dues, if necessary, however, such annual dues shall not exceed 125% of the aggregate dues charged in the previous calendar year.

**ARTICLE VII  
HOMEOWNERS= ASSOCIATION**

**SECTION 1. THE ASSOCIATION.** Declarant has caused the incorporation of Indian Pointe Homeowners Association, Inc., a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Indian Pointe Subdivision, including:

- (a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of the Common Area and the Common Facilities thereon, for the general use, benefit and enjoyment of the Members and their guests. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and non-dedicated roads, pathways and green areas (including landscaping); and signs and entrances for Indian Pointe. Common Facilities may be situated on the Common Area, on property owned or leased by the Association, on park ground within Indian Pointe, on private property subject to an easement in favor of the Association, on public property, or on property owned by a Sanitary and Improvement District.
- (b) The collection of the Indian Pointe Club Dues for The Indian Pointe Club and segregating and paying such dues to the Declarant pursuant to Article II of these Covenants.
- (c) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Common Area and the Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Area and Common Facilities 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 Area and Common Facilities.
- (d) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Indian Pointe Subdivision; and the protection and maintenance of the residential character of the Indian Pointe Subdivision.
- (e) The enforcement of the Covenants against any person or Owner who is in violation of such Covenants including, but not limited to, bringing the appropriate action in law or equity to enforce the Covenants and to enjoin any violation of these Covenants.

**SECTION 2. MEMBERSHIP AND VOTING.** Membership and voting in the Association shall be as set forth in Article V of these Covenants. For purposes of this Declaration, the term "Owner" of a Lot means and refers to 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 Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration.

Declarant anticipates that additional phases of Indian Pointe will be developed by Declarant or other developers. From time to time, without the consent or approval of an Owner or Member, the Association may, with Declarant's approval, be expanded to include additional

residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Indian Pointe Subdivision. Such expansion(s) may be effected from time to time by recordation with the Register of Deeds of Douglas county, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration"), provided that if the Subsequent Phase Declaration is recorded by a person or entity other than Declarant, the inclusion of additional residential lots in the Association must be approved by Declarant. Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article V, and the owners of the additional residential Improved Lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

**SECTION 3. PURPOSES AND RESPONSIBILITIES.** The Association shall have the powers conferred upon not for profit 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 shall not be limited to the following:

- (a) The acquisition, development, maintenance, repair, replacement, operation and administration of the Common Area and Common Facilities, and the enforcement of the rules and regulations relating to the Common Area and Common Facilities.
- (b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, boulevards, walking trails, Common Area, or park ground within or near Indian Pointe.
- (c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- (d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering the Common Area and any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.
- (e) 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.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.
- (j) 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.
- (k) The collecting of membership dues for the Indian Pointe Club and delivering such membership dues to the Declarant, or its successors or assigns.
- (l) The enforcement of these Covenants, including, but not limited to, the bringing of the appropriate action in either law or equity to enforce the Covenants and to enjoin the violation of any of the Covenants by way of a temporary restraining order, temporary injunction, permanent injunction and/or mandatory injunction, all parties agreeing that in the event of a violation of the Covenant, the Association shall have no adequate remedy at law, and any and all other rights and remedies provided by law, including an action for damages.

**SECTION 4. MANDATORY DUTIES OF THE ASSOCIATION.** The Association shall:

- (a) Maintain and repair the signs which have or will be installed by Declarant at the residential entrances along West Maple Road and elsewhere, in good repair and neat condition;
- (b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along the Lots and on and along the Common Area, so that such are in good repair and neat condition;
- (c) In the event any Owner of a Lot shall fail to perform and fulfill his obligations and responsibilities under this Declaration, and if such failure continues for thirty (30) days after written notice to the Owner from the Association, the Association shall perform or have performed such obligation or responsibility. If the Association undertakes to perform or have performed the responsibilities of the Owner, the cost of such performance plus a fifteen percent (15%) administrative charge shall be assessed against the Owner, and the Owner shall be obligated to promptly

pay such sums to the Association. Assessment of such costs shall be made by written demand from the Association for payment by the Owner. If such assessment is not paid within thirty (30) days after written demand from the Association, such assessment shall constitute a lien on the Lot, which lien shall attach, have the priority and be enforceable by the Association in the same manner as liens for assessments and dues as provided in this Declaration;

- (d) Maintain, repair, construct, and replace, as necessary the irrigation systems constructed by Declarant.

## **ARTICLE VIII ARCHITECTURAL CONTROL AND PLAN AND IMPROVEMENT APPROVAL**

No residence, building, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio cover enclosure, deck, swimming pool, pool house, flag pole, or other external improvement, above or below ground structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties (hereinafter referred to as an "Improvement"), until the plans and specifications therefore, showing the nature, kind, shape, height, materials, color and location of the same (the "plans") shall have been submitted to and approved in writing, pursuant to Article IX hereof, as to their complying with these Covenants, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to trees, shrubs and plantings, by the Declarant, or the person(s), entity or committee designated by Declarant to review and approve the plans pursuant to this Declaration (the "Plan Reviewer"). Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans pursuant to Article IX hereof. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant or the Plan Reviewer.

## **ARTICLE IX GENERAL RESTRICTIONS, COVENANTS AND OTHER PROVISIONS**

**SECTION 1. RESTRICTIONS.** Every Owner shall have full rights of ownership and full use and enjoyment of his or her Lot, subject to the following restrictions:

- (a) No single family residence shall be created, altered, placed or permitted to remain on any lot other than one detached single family residential dwelling which does not exceed 2-1/2 stories in height with an attached three (3) car garage (one 2 car garage door and one single car garage door, or 3 single car garage doors). No structure, building or porch shall be constructed, erected, installed or situated within 25 feet of the front lot line of a Lot, and all improvements on the Lot shall comply with all other setback requirements of the Zoning Code of the Municipal Code of the City of Omaha, Nebraska. At a minimum, all ranch style homes shall have 1,600 finished square feet on the main floor; and all two story and story and half style homes shall have at least 2,000 finished square feet, 1,000 of which shall be on the main level.

All minimums set in this paragraph shall be exclusive of garages, basements, breeze-ways, patios, etc.

- (b) In the event that a wood-burning fireplace and/or flue is constructed as part of the dwelling on a Lot in a manner so as to protrude beyond the outer perimeter of the front of the dwelling, the enclosure of the fireplace and flue shall be constructed of or finished with, brick or stone. The front of a dwelling/residence on any Lot shall be covered with not less than 1/3 masonry, brick or stone.
- (c) No tree houses, tool sheds, doll houses, windmills, or similar structure shall be permitted on any Lot. The entire Lot shall be sodded. At least one tree with at least a 2-1/2 inch diameter shall be placed in the front yard of the Lot upon completion of the dwelling on the Lot. No trees shall be planted in the dedicated street right of way located between the street curb and the sidewalk. All yards shall be sodded and trees planted within one year from the date that construction for the dwelling on the Lot was commenced. The location of any exterior air conditioning condenser unit shall be placed in the rear yard or any side yard so as not to be visible from public view. All utility service lines from each Lot line to a dwelling or other improvement shall be underground.
- (d) No fences shall be permitted to extend beyond the front line of the main residential structure on a Lot. No fences or enclosures of any type or nature whatsoever shall be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Declarant. No sheds, clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon. No basketball hoop shall be attached to the dwelling or any structure. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Declarant, a satellite dish measuring 18 inches or less in diameter may be erected so long as such satellite dish is hidden from the view of the adjoining Properties.
- (e) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets. No such pet shall be kept, bred or maintained for commercial purposes. No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than household pets, which shall be limited to those numbers permitted under the laws and ordinances of the City of Omaha. All pets shall be confined to the Lot by fencing or leashed when outside the residential structure and patio area. All unpleasantries created by

the household pet shall be the responsibility of the Owner, and he or she shall be obligated to clean up after the animal. No Dog Runs shall be allowed.

- (f) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.
- (g) No advertising signs, streamers, posters, banners, balloons, exterior illumination, billboards, or other rallying devices or unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising the Lot/residence "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. No business activities of any kind shall be constructed within any Lot except for home office usage. The foregoing restriction in this Article shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, or its agents and assigns, during the development and sale of Lots.
- (h) No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure or a temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of construction on and sale of the Lots within the Properties. Declarant or its assigns may also erect and maintain model homes for sales purposes, and rental and lease purposes, and may operate such office or offices therein for so long as it deems necessary for the purpose of selling, renting or leasing the Properties.
- (i) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulations, restriction or exclusion by the Association.
- (j) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Declarant.
- (k) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, detailed landscaping plans, and plot plans (herein collectively referred to as the "plans") to Declarant or

the Plan Reviewer. Such plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant or the Plan Reviewer of the Owner=s mailing address.

- (l) Declarant or Plan Reviewer shall review such plans in light of the conditions and restrictions in Article VIII and IX of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant or the Plan Reviewer in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Indian Pointe subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. Unusual designs and improvements and home designs such as dome houses, A-frame houses and log cabins will not be approved unless the Declarant or Plan Reviewer determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If Declarant or Plan Reviewer determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality residential community, Declarant or Plan Reviewer may refuse approval of the proposed Improvement. Declarant shall have the right to terminate the Plan Reviewer and appoint another Plan Reviewer or review and approve the plans itself pursuant to this Declaration.
  
- (m) The exposed front (street facing) foundation walls and any side or rear foundation walls that front to the street, such as the side foundation walls on a house on a corner lot, must be constructed of or faced with brick, stone, poured foundation with brick pattern with a color matching the exterior color of the dwelling, or other material approved in writing by Declarant or Plan Reviewer. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of poured concrete, concrete blocks, brick or stone. Roof shingles shall be heritage type shingles with a minimum 30 year rating weathered wood in color, or another type of shingle approved by the Declarant. No three-tab roof shingle shall be permitted. All exterior colors must be submitted for approval to and approved in writing by the Declarant



or Plan Reviewer. Only exterior colors of certain earth tone hues will be acceptable.

- (n) No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.
- (o) No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside of any Lot, except 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 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. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.
- (p) No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted outside, except for pickup purposes. Declarant may specify one trash collector company to be used by all property owners, with the cost of such trash collector to be paid by the property owners. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. Produce or vegetable gardens may only be planted and maintained in rear yards, and the size of such garden shall not exceed ten (10%) percent of the total lot size.
- (q) Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.
- (r) No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by Declarant. No fence may be installed without the prior written approval of the Declarant. All fences shall be wood

cedar that is six feet in height of a board on board scalloped design, decorative black rod iron, or powder coated aluminum which is six feet in height. No painting of fences is permissible and natural color stains shall only be permitted on wood fencing. All decorative rod iron fences shall be of a black color only. There shall be no chain link or wire fences. In all events, installed fences must comply with applicable set back, height and other fence requirements imposed by the City of Omaha. No fences or walls shall exceed a height of six (6) feet or be of a different material than set forth in this paragraph unless otherwise approved by Declarant.

- (s) No tennis courts shall be allowed on any residential lots.
- (t) No swimming pool may extend more than one foot above ground level.
- (u) Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. Grading plans must be submitted to and approved by Declarant or Plan Reviewer prior to commencement of Improvements to any Lot. Declarant or Plan Reviewer shall review the grading plans in light of commercially recognized development and engineering standards. No excavation dirt shall be spread across any Lot in such fashion as to materially change the grade or contour of any Lot, unless approved by Declarant or Plan Reviewer.
- (v) A public sidewalk shall be constructed of concrete four (4) feet wide and at least four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) or five (5) feet back of the street curb line (per City of Omaha sidewalk requirements) and shall be constructed by the Owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.
- (w) Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete and be made by the Owner. No asphalt overlay of driveway approaches will be permitted.
- (x) The Declarant has or may create a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with generally accepted engineering principles. No building shall be placed, nor any Lot graded to interfere with such water drainage plan nor cause damage to the building or neighboring buildings. Silt fences shall be used to comply with this paragraph.

- (y) No grass, weeds or other vegetation shall be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees shall 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, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.
- (z) All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.
- (aa) Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations and designs as it may determine appropriate in its sole and absolute discretion.

## **ARTICLE X BOUNDARY FENCES**

**SECTION 1.** Declarant may construct a boundary fence along West Maple Road. The Boundary Fence is situated on the south boundary line of the Indian Pointe Subdivision. All such lots are collectively referred to as the "Boundary Lot(s)".

**SECTION 2.** Declarant hereby declares that the Boundary Lots are subject to a permanent and exclusive right and easement in favor of Declarant and the Indian Pointe Homeowners Association to maintain, repair and replace the Boundary Fence and any signs installed on or near the Boundary Fence. Without limitation of the rights and easements granted by this Declaration, the Declarant or Association may come upon any of the Boundary Lots for the purpose of constructing, installing, repairing, maintaining, removing, and replacing the Boundary Fence

**SECTION 3.** The rights and easements granted in this Article shall fully and finally terminate as to any Boundary Lot if: (I) the owner of the Boundary Lot gives written notice to the Association that the Association has failed to maintain the Boundary Fence on the Owner=s Lot in neat and orderly condition and in good repair; and (ii) the Association fails to place the Boundary Fence on the Owner=s Lot into good order and repair within ninety (90) days after the written notice.

## **ARTICLE XI INSURANCE**

The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

**ARTICLE XII  
ACCESS TO LOTS**

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

**ARTICLE XIII  
UTILITY METERS AND SERVICE LINES**

In order to facilitate the installation, operation, maintenance and repair of an underground watering system, such Lots as shall be designated from time to time by the Association shall have a dual metering system for water so as to permit the drawing of water for watering of the lawns, shrubs, trees and other vegetation located upon the Lots. It is understood that the amount of water metered for the residential use on any such Lot shall be paid for by the Owner of each Lot receiving water.

**ARTICLE XIV  
GENERAL PROVISIONS**

**SECTION 1. ADDITIONAL PHASES OF INDIAN POINTE.** Declarant anticipates that additional phases of Indian Pointe will be developed by Declarant or other developers. From time to time, without the consent or approval of any Owners or Members, the Declarant, or its assigns, may expand these Covenants to include additional residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Indian Pointe Subdivision. Such expansion(s) may be effected from time to time by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the ASubsequent Phase Declaration). Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the ALots for purposes of the Covenants, and the owners of the additional residential Improved Lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

**SECTION 2. ENFORCEMENT.** The Declarant, Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration either to prevent or restrain any violation, or to recover damages or other dues for such violation. Failure of the Declarant, the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 3. SEVERABILITY.** Invalidation of any one or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

**SECTION 4. TERM AND AMENDMENT.** The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date of this Declaration. Thereafter the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the Owners of not less than seventy-five percent (75%) of said Lots, which termination or amendment shall thereupon become binding upon all Lots. Notwithstanding anything contained in this Declaration to the contrary, for a period of twenty (20) years following the date hereof, the Declarant and its successors and assigns, shall have the sole, absolute and exclusive right to amend, modify or supplement all of any portion of the Declaration from time to time by executing and recording one or more duly acknowledged Amendments to the Declaration in the Office of the Register of Deeds of Douglas County, Nebraska. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration as set forth above.

**SECTION 5. TERMINATION OF DECLARANT STATUS BY DECLARANT.** The Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, or at such time of Declarant no longer owning any Lots subject to this Declaration, the rights of the Declarant shall automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association or individual to serve as Declarant with the same authority and powers as the original Declarant.

**SECTION 6. ASSIGNMENT OF ARCHITECTURAL REVIEW AND APPROVAL.** The Declarant shall have the right to assign its authority as set forth in this Declaration for review and approval of building plans and improvements to the Board of Directors of the Association or to an Architectural Control Committee, and upon such assignment, such persons or entity shall have the authority to approve building plans and Improvements as set forth in this Declaration.

**[Signature page to follow]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration of Covenants, Conditions and Restrictions this 4th day of November, 2016.

**FRK DEVELOPMENT, LLC, a  
Nebraska limited liability company**

By: Frank R. Krejci  
Frank R. Krejci, Manager

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

Before me the undersigned, a notary public, personally came Frank R. Krejci, personally known to me to be the Manager of FRK DEVELOPMENT, LLC, a Nebraska limited liability company, and acknowledged the execution of the above to be his voluntary act and deed on behalf of said company.

WITNESS my hand and notarial seal this 4th day of November 2016.



James E. Lang  
Notary Public