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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS OF ANCHOR POINTE, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA  
(Phase III)**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF ANCHOR POINTE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA (this "Declaration"), made on the date hereinafter set forth, is made by Anchor Pointe Development, LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots 217 thru 302, inclusive, and Outlots "p" through "T", all in Anchor Pointe, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (Phase III); and

Such lots are herein referred to collectively as the "Lots" and individually as a "Lot."

The Declarant desires to provide for the preservation of the values and amenities of Anchor Pointe, for the maintenance of the character and residential integrity of Anchor Pointe, and for the acquisition, construction and maintenance of certain land to be conveyed to and owned by the Association (as defined herein) or controlled by an easement in favor of the Association or required as a contractual obligation of the Declarant or the Association (individually, a "Common Facility" and collectively, the "Common Facilities") for the use and enjoyment of the residents of Anchor Pointe.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements,

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NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements,

all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of Anchor Pointe. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as more fully described herein. The Lots are and shall be subject to all and each of the following conditions and other terms.

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be designated by Declarant for townhome use, or conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, or for other nonprofit use.
2. No residence, building, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or disc, solar heating or cooling device, playground equipment or other external improvement above or below the ground (herein individually referred to as an "Improvement" and collectively as "Improvements") shall be constructed, erected, placed or permitted to remain on any Lot, or right-of-way abutting any Lot, nor shall any grading, excavation or tree removal for any Improvement be commenced, except for Improvements which have been approved by Declarant, as follows:
  - A. An Owner (as that term is defined herein) desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "Plans"). The Plans shall include a description of the type, quality, color (which shall be an earth tone hue) and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the Plans, the Owner shall notify the Declarant of the Owner's mailing address.
  - B. Declarant shall review the Plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be developed 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, in its sole and absolute discretion, to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines, in its sole and absolute discretion, that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

C. 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. 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.

D. No Owner, or combination of Owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height, except that Lots designated for townhome use may have attached townhomes not exceeding two and one-half stories in height. All Improvements on the Lots shall comply with all requirements of the zoning code and municipal code of the applicable governing authority, including but not limited to all set back and side yard requirements.

4. Subject to the specific requirements set forth below, all foundations shall be constructed of poured concrete, concrete blocks, brick or stone. The exposed foundation walls on the front of all main residential structures facing any street must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with Architectural weathered-wood shingles or their equivalent; no three-tab shingles are permitted.

Fireplaces and flues: In the event that a wood-burning fireplace and/or flue is constructed as a part of the dwelling in a manner so as to protrude beyond the outer perimeter of the front of the home, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. In the event that a pre-fabricated unit fireplace which is wood or gas burning or direct vent fireplace is constructed as a part of the dwelling on any Lot and is vented directly through an exterior wall of the dwelling or is vented through the roof of the dwelling with a vent similar in style, size and location to that of a furnace flue, no clay-fired brick or stone enclosure will be required. Provided however, if said pre-fabricated unit fireplace which is wood or gas burning or direct vent fireplace is constructed in such a manner so as to protrude beyond the outer perimeter of a front wall of the dwelling on a Lot, the protrusion for the fireplace and/or flue shall be finished with clay-fired brick or stone.

5. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising signs, billboards, 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 a Lot as "For Sale". A sign erected by a builder for its model home(s) shall not be subject to the sign restrictions set forth herein, but such signs/advertising shall be subject to the approval of Declarant. No business activities of any kind whatsoever shall be conducted on any Lot; nor shall any Lot be used in any way for any purpose which may endanger the health or unreasonably disturb an Owner or Owners of any Lot or any resident thereof. Provided, however, this Paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, its agents or assigns and designated builders, during the construction and sale of the Lots.

6. No outside radio, television, ham broadcasting, earth station, satellite dish or other electronic antenna or aerial shall be erected or placed on any structure or on any Lot, except with the prior written approval of the Declarant, one (1) satellite dish of 24" or less in diameter or diagonal measurement which is screened from view of any street or sidewalk will be permitted per Lot. The foregoing notwithstanding, any earth station, satellite dish or other electronic antenna or aerial specifically exempted from restriction by statute, regulation, binding order of a court or governmental agency shall be maintained in accordance with the strictest interpretation or condition for such use as may be permitted by such order.

7. No tree houses, sheds, doll houses, windmills, exterior storage sheds, or similar structures shall be permitted on any Lot.

8. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles, snowmobiles, recreational vehicles, or other self-propelled 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 or similar chattels 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.

9. 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 forty-eight (48) continuous hours and no more than twenty (20) days combined within any calendar year. No motor vehicle may be parked or stored outside on 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 section 9 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off-street parking spaces/area for private passenger vehicles required by the applicable zoning ordinances.

10. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can, or container or fuel tank shall be permitted unless completely screened from view, except on the designated day each week for pickup purposes. 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. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards in an area no larger than eight (8') by ten (10') feet.

11. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. 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.

12. Fencing is permitted only with Declarant's written approval. If approved, no fence shall be permitted to extend beyond the front line of a main residential structure. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of wood, black wrought iron, black aluminum, or white vinyl, which shall be uniform in appearance. If approved by the Declarant, no fences or walls shall exceed a height of six (6) feet. No fence shall be installed less than six inches (6") above the ground except for fencing material, approved in writing by Declarant, which does not impede the natural flow of storm and other water drainage. No other type of fencing shall be allowed on any Lot unless specific written permission by the Declarant is granted. No traditional (gray) chain link fencing shall be allowed. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. Any fences, hedges or mass planted shrubs installed by or at the direction of the Declarant shall not be subject to the provisions of this paragraph.

13. No swimming pool may extend more than one foot above ground level. Subject to the provisions of paragraph 2 of this Article, any swimming pool allowed by this paragraph shall be fenced. In addition to the requirements of paragraph 2 of this Article, before any above-ground swimming pool may be installed on any Lot, the Owner thereof shall first obtain written approval by the Declarant of an appropriate landscaping plan.

14. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour or intended drainage of any Lot. Any construction activities on any Lot causing damage to any adjacent Lot, including but not limited to removal of vegetation, shall be immediately repaired, including but not limited to re-grading and reseedling, as necessary.

15. A public sidewalk shall be constructed in accordance with the following criteria: five (5') foot width for a normal sidewalk set back from the street. A sidewalk set back from the street has a minimum depth requirement of four (4") inches, while a curb walk's depth must be at least six (6") inches. The sidewalk shall be placed five (5') feet back of the street curb line 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 in order to comply with any

requirements of the applicable governing jurisdiction, by virtue of ordinance or agreement (per City of Omaha Municipal Code).

16. 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. No asphalt overlay of driveway approaches will be permitted.

17. No stable, dog run, kennel or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. No animals, livestock, agricultural-type animals, fowl or poultry of any kind, including, pot-bellied pigs, shall be raised, bred or kept on any Lot. No excessive barking of any dog, or other excessive noise of any kind from any animal, shall be permitted on any Lot. Any dog or other animal that barks or makes other noise outside the home of any Lot at any time shall wear electronic collars to prevent such barking or other noise.

18. Prior to placement on any Lot, any exterior air-conditioning condenser unit shall be first approved by the Declarant according to the requirements set forth in Article I, paragraph 2, and shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, including grass clippings.

19. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

20. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside the Anchor Pointe subdivision to any Lot without the written approval of Declarant.

21. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

22. 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, and such Lot owner shall bear all costs and expenses of the same and shall hold Declarant harmless from any and all liability resulting therefrom.

23. Vehicular ingress and egress to and from a Lot upon the public streets shall be limited to the driveway only and no owner shall construct more than one driveway or other means of vehicular access to the public streets upon a Lot or by Declarant approval.

24. The owner of each Lot shall construct, grade and maintain its Lot in such a manner as to generally comply with the storm water maintenance plan of the subdivision. No owner shall permit water to drain from such owner's Lot(s) onto adjacent Lots, except in a manner which does not damage landscaping or other improvements on any adjacent Lot or Lots.

ARTICLE II.  
HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has or will cause the incorporation of Anchor Pointe Homeowners Association, 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 Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks dedicated and non-dedicated roads, paths, ways and green areas; and signs and entrances for Anchor Pointe. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a sanitary and improvement district;

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any 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 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 Facility; and

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Anchor Pointe; and the protection and maintenance of the residential character of Anchor Pointe.

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

A. The right of the Association, its lessor, successor and/or assigns, to promulgate



reasonable rules and charge reasonable admission and other fees for the use of any Common Facility;

- B. The right of the Association to suspend the voting rights and right to use of the Common Facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; and
- C. The right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the Members has been recorded.

Any Owner may delegate, in accordance with the rules and regulations of the Association, his right of enjoyment to the Common Facilities to the members of his/her family.

3. Membership and Voting. The "Owner" of each Lot shall be a Member of this Association. 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 of 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. Membership shall be appurtenant to ownership of each Lot and may not be separated from ownership of each Lot.

Except for Lots owned by the Declarant, the Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association. Lots owned by the Declarant shall each be entitled to twenty (20) votes on each matter properly before the Members of the Association.

4. 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 Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.
- B. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within Anchor 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 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 general administration and management of the Association, and execution of such documents and doing and performance of their duties and responsibilities for the Association.
- I. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.
- J. All undeveloped portions of each Lot shall be maintained at all times by the owner in a well-maintained condition, free of unsightly or unattractive weeds or other growth or the accumulation of rubbish and debris thereon. In the event the owner fails or neglects to maintain its Lot in accordance with this Subsection J, the Association shall have the right to enter onto the Lot to maintain the Lot and the Association may charge the Lot owner for the cost of maintaining the Lot, which charge shall be payable by such owner as a reimbursement assessment within thirty (30) days after being invoiced for the work.
- K. The Declarant is currently the lawful owner of Lot 1, Anchor Pointe Replat One, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska. The Declarant is contemplating the construction of a swimming pool, bathhouse and related improvements on Lot 1, Anchor Pointe Replat One, which lot

and improvements shall be known and referred to herein as "Anchor Pointe Pool". In addition, the Declarant intends to construct a private trail system and "pocket parks" within the Anchor Pointe Subdivision, which shall collectively be known and referred to herein as the "Anchor Pointe Trail System". Immediately following the construction of the Anchor Pointe Pool and the Anchor Pointe Trail System, the Declarant intends to convey and transfer the Anchor Pointe Pool and the Anchor Pointe Trail System to the Association, and the Association shall become the owner of the Anchor Pointe Pool and Anchor Pointe Trail System. As part of that transfer and conveyance, the Association shall obtain a new loan or assume any existing loan to acquire the Anchor Pointe Pool and Anchor Pointe Trail System from the Declarant. The purpose of the Anchor Pointe Pool and Anchor Pointe Trail System is to provide a Common Facility as defined in the Declaration, consisting of the swimming pool, bath house, and other recreational facilities, private trail systems and "pocket parks", for the Owners of the Improved Lots and their families and guests (and the Owners of Improved Lots and their families and guests of all additional phases of the Anchor Pointe Subdivision). Each Owner of an Improved Lot within the Anchor Pointe subdivision shall be a member of and allowed to use the Anchor Pointe Pool and Anchor Pointe Trail Systems. Each Owner of an Improved Lot shall pay monthly membership dues in order to belong to the Anchor Pointe Pool and utilize the Anchor Pointe Trail System ("Anchor Pointe Recreational Dues"). The monthly membership for the Anchor Pointe Pool shall be paid by the Owner of an Improved Lot as part of the annual dues and assessments charged by the Association under the Declaration. The Association shall then segregate that portion of the annual dues and assessments allocated to the Anchor Pointe Recreational Dues and deliver the same to Declarant no less than a quarterly basis, provided, however, that the Association hereby assigns the Anchor Pointe Recreational Dues, any account into which Anchor Pointe Recreational Dues are deposited, and the Association's right, power and authority to declare, levy, collect and enforce the Anchor Pointe Recreational Dues, to Declarant's lender (the "Anchor Pointe Recreational Dues Assignment"), to secure any loan(s), including any and all extensions, modifications, renewals or 'refinancings' thereof, or substitutions therefor, from Declarant's lender to the Association (the "Anchor Pointe Indebtedness") to finance the construction of the Anchor Pointe Pool and/or Anchor Pointe Trail System. The Anchor Pointe Recreational Pool Dues Assignment shall be a present, absolute, effective, irrevocable and complete assignment of the Association's right and power under this Declaration to declare, levy, collect and enforce the Anchor Pointe Recreational Dues. The Anchor Pointe Recreational Dues Assignment shall remain in effect until the Anchor Pointe Indebtedness is paid in full. The lender shall, by separate instrument, grant the Association a revocable license to declare, levy, collect and enforce the Anchor Pointe Recreational Dues (the "Collection License"). The Collection License shall terminate upon the lender's delivery of a written notice to the Association that one or both of the following has occurred: (i) an event of default with respect to Anchor Pointe Indebtedness, or (ii) the Association has failed to declare, levy or collect sufficient Anchor Pointe Recreational Dues to service Anchor

Pointe Indebtedness in accordance with the terms of such indebtedness. Upon the termination of the Collection License, and without any further action of any of the Declarant, the Association or the Association's Board of Directors, the lender (or its designee) shall be authorized, but not obligated, to levy, collect, or pursue any lawful remedy to enforce the collection of, the Anchor Pointe Recreational Dues from any Owner. The Anchor Pointe Recreational Dues shall be utilized to construct, maintain, operate and pay for the Anchor Pointe Pool, Anchor Pointe Trail Systems and service Anchor Pointe Indebtedness. The initial monthly Anchor Pointe Recreational Dues shall be set by the Association's Board of Directors at the first regular meeting of the Association following the earliest to occur of (x) the date that the Anchor Pointe Pool is completed and a Certificate of Occupancy is issued, or (y) the date that the Anchor Pointe Trail System is completed, or (z) the Association has borrowed all or part of the Anchor Pointe Indebtedness from its lender. Thereafter, the Association's Board of Directors shall set the Anchor Pointe Recreational Dues on an annual basis, subject to its Bylaws and the rights of any lender under the Anchor Pointe Recreational Dues Assignment. The Anchor Pointe Recreational Dues are included in the annual assessments of the Association. In the event the Owner of an Improved Lot fails to pay his or her Anchor Pointe Recreational Dues, the Declarant, the Association and, during such time as the Anchor Pointe Recreational Dues Assignment remains in effect, the lender shall have the authority and power to enforce the collection of the Anchor Pointe Recreational Dues pursuant to these covenants. Further, in the event of such nonpayment, the Association and/or the Declarant shall also have the right to not permit the Owner the use of the Anchor Pointe Pool and/or Anchor Pointe Trail System during the period when such Anchor Pointe Recreational Dues are delinquent. The Declarant shall also have the right to establish, change, amend or revise Rules and Regulations for the operation and use of the Anchor Pointe Pool and Anchor Pointe Trail System, which Rules and Regulations shall be in writing and provided to the Owner of an Improved Lot. 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 Association in order for such Owners of Improved Lots and their families and guests (and the Owners of Improved Lots and their families and guests of any additional phase of the Anchor Pointe Subdivision).

Notwithstanding the foregoing, nothing contained herein shall be deemed to limit any right or remedy of any lender against any party under any document or instrument evidencing or securing Anchor Pointe Pool Indebtedness, and lender's rights under Anchor Pointe Recreational Dues Assignment shall impose no obligation on the part of lender to perform any obligation of the Association or Declarant under this Declaration or the Bylaws of the Association. The Association and Declarant hereby irrevocably agree to defend, indemnify and hold lender harmless from any and all liability, loss or damage which lender may incur as a result of Anchor Pointe Recreational Dues Assignment or Anchor Pointe Pool or Anchor Pointe Trail System. Further, lender's rights under Anchor Pointe Recreational Dues Assignment

shall be without regard for the adequacy of the security of Anchor Pointe Indebtedness, the commission or waste or the solvency of the Association or Declarant, and with or without bringing any action or proceeding, by receiver or trustee to be appointed by a court, to enter upon, take possession of, maintain, manage and operate the Anchor Pointe Pool and/or Anchor Pointe Trail System.

5. Mandatory Duties of Association. The Association shall maintain, in a generally neat and clean condition, any and all entrance ways, fence, signs and landscaping which have been installed in easement or other areas of Anchor Pointe and center islands dividing dedicated roads, in generally good and neat condition. The Association shall also maintain, in a generally neat and clean condition, the trail system, the 'pocket parks' along the trail system, lakes, ponds and water features, including but not limited to a future splash park, which shall be installed in the Anchor Point subdivision on property owned by or controlled by easement in favor of the Association, including those maintenance areas located within Outlots "A" through "E", inclusive, all within Anchor Pointe. The Association shall also provide maintenance and repair to those sidewalks abutting the rear of any double-fronted lots. The Association shall pay for any and all costs associated with the upgrading of any street lighting and signage that is normally and customarily provided by OPPD.

6. Covenant for and Imposition of Dues and Assessments. Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay dues and assessments as provided for herein. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board of Directors.

7. Abatement of Dues and Assessments. Notwithstanding any other provisions of this declaration, the Board of Directors shall 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 such Lot is owned by the Declarant or any of Declarant's designated builders.

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

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the powers and responsibilities of the Association described in Sections 4 and 5 of this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

- A. Six Hundred and No/100th (\$600.00) Dollars per Lot.
- B. In each calendar year beginning on January 1, 2019, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.
- C. Assigning, in full or in part (i) the Association's right, power and authority to declare, levy, collect and enforce assessments or otherwise exercise any powers or perform any acts or obligations on behalf of the Association with respect to declaring, levying, collecting or enforcing assessments, including, without limitation, the power to exercise any remedy to collect assessments, and (ii) proceeds derived from or collected pursuant to the Association's assessment power.
- D. From time to time, but no less than annually, determine, declare, levy and take all necessary steps to collect or enforce the collection of such dues and assessments as are necessary (i) to fulfill the Association's obligations under Article II, Section K hereinabove, and (ii) to service Anchor Pointe Pool Indebtedness.

11. Assessments for Extraordinary Costs.

- A. In addition to the annual dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate special assessments in each calendar year shall be limited in an amount to Two Hundred and No/100th Dollars (\$200.00) per Lot. Notwithstanding the foregoing, the Association shall levy a one-time charge for the mailbox allocated to each Lot, which one-time charge shall be determined by the Association on annual basis.
- B. The Association may levy special assessments from time to time against an Improved Lot for the purpose of meeting the requirements of Article II herein for the costs of

any construction, reconstruction, repair or replacement of capital improvements on or within the Common Facility, provided that, except for those pertaining to Anchor Pointe Pool, any such assessment or expenditures for capital improvements shall require the prior consent of (i) Declarant (unless Declarant has terminated its status as provided in Article IV, Section 3 of the Declaration, then such appointee as therein provided), (ii) lender, its successors and/or assigns (but only during any such time as any portion of Anchor Pointe Pool Indebtedness remains outstanding), and (iii) 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.

12. Excess Dues and Assessments. With the approval of seventy-five (75%) percent of the Members of the Association, the Board of Directors may establish annual dues and/or assessments in excess of the maximums established in this Declaration.

13. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots owned by a person or entity other than the Declarant and shall be abated with respect of any Lot during the period such Lot is owned by the Declarant or any of Declarant's designated builders, as provided in Section 7 of this Article.

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

15. Effect of Nonpayment of Assessments; Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, or the maximum legal rate of interest, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

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

17. Subsequent Phase Declaration. Declarant reserves the right, without consent or approval of any other Owner, to expand the Association or amend this Declaration to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time to time by Declarant or Declarant's assignee by recordation with the Register of Deeds of Douglas County, Nebraska of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording 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 II and this Declaration, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

18. Each Lot owner understands and acknowledges that all of the Lots are located within the corporate limits of Sanitary and Improvement District No. 567 of Douglas County, Nebraska (the "SID"). Each Lot owner further understands and acknowledges that, pursuant to Neb. Rev. Stat. § 31-740, the board of trustees of the SID has the ability to contract for solid waste collection services.

### ARTICLE III. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, CenturyLink and any company which have been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities District of Omaha, and Sanitary and Improvement District No. 567 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including five (5') foot wide strip of land abutting the front and the side boundary lines of the Lots; and eight (8') foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16') foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16') foot wide easement will be reduced to an eight (8') foot wide strip, when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines,



hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5') foot wide strip of land abutting all cull-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easement ways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. A perpetual easement is further reserved in favor of Declarant and the Association, and their successors and assigns to, at their option, create, install, repair, reconstruct, paint, maintain, and renew a bufferyard and/or fence standards and related accessories located on, over and upon the rear most ten (10) foot wide strip of land abutting the rear boundary lines of all Lots on the perimeter of the Anchor Pointe subdivision. Fence placement shall be within one (1) foot of the interior (home side) of said ten (10) foot easement.

4. An exclusive perpetual easement, and reasonable access thereto, is hereby reserved in favor of Boyer Young Easement Holding Company, and its successors and/or assigns, to erect, install, construct, operate, maintain, repair and remove poles, wires, cables, conduit, and other related facilities and appurtenances thereof, above and below ground, and to extend thereto or therein wires and/or cables for the carrying or transmission of electric current for light, heat and power, and for the transmission of signals and sounds of all kinds, including signals provided by a cable television system, internet access system, telephone system, and/or any other communication system, and the reception related thereto, on, over, under, through and across a ten foot (10') strip of land abutting all interior boundary lines of the easements set forth in the final plat of Anchor Pointe (Phase III) which is filed in the Register of Deeds of Douglas County, Nebraska (Instrument No. 2019091781), and any replat thereof.

5. CenturyLink and/or any other telecommunications company may, upon completion of its distribution system, require a connection charge on some or all of the Lots at the time service is requested.

6. Other easements are provided for in the final plat of Anchor Pointe (Phase III) which is filed in the Register of Deeds of Douglas County, Nebraska (Instrument No. 2019091781).

#### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot 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 to either prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) 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 (75%) percent of said Lots, which termination or amendment shall thereupon become binding upon all Lots. For a period of ten (10) years following the date hereof, Declarant, its successors or assigns, shall have the sole, absolute and exclusive right to amend, modify or supplement all of any portion of this Declaration from time to time by executing and recording one or more duly acknowledged amendments to this 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.

3. Anchor Pointe Development, LLC, a Nebraska limited liability company, may assign its rights as Declarant hereunder at any time, by filing an Assignment of Declarant Rights with the Douglas County Register of Deeds. In addition, Anchor Pointe Development, LLC, a Nebraska limited liability company, 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 termination filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. 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.


*[Signature(s) on Following Page(s)]*

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 25<sup>th</sup>  
day of NOVEMBER, 2019.

DECLARANT:

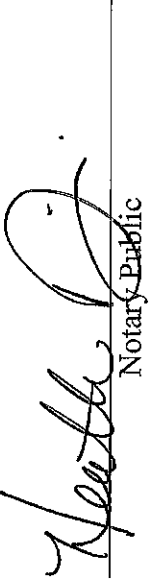
ANCHOR POINTE DEVELOPMENT,  
LLC, a Nebraska limited liability company

By: Boyer Young Development  
Company, a Nebraska corporation, it's  
Administrative Member,

By:   
Tim W. Young, President

STATE OF NEBRASKA )  
) ss.  
COUNTY OF SARPY )

The foregoing instrument was acknowledged before me this 25 day of  
November, 2019, by Tim W. Young, known to me to be the President of Boyer Young  
Development Company, a Nebraska corporation, the Administrative Member of Anchor Pointe  
Development, LLC, a Nebraska limited liability company, on behalf of said limited liability  
company.

  
Notary Public

{Seal}

State of Nebraska - General Notary  
HEATHER DEMBINSKI  
My Commission Expires  
August 15, 2022