



MISC Inst. # 2022069730, Pg: 1 of 7  
Rec Date: 07/08/2022 15:00:22.090  
Fee Received: \$46.00 By: JV  
NE Doc Stamp Tax Fee:  
Douglas County, NE, Assessor  
Register of Deeds DIANE L. BATTIATO

ME

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR ARBOR VIEW WEST VILLAS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR Arbor View West Villas ("Declaration") is made by CHARLESTON HOMES, LLC a Nebraska limited liability company ("Declarant") this 28<sup>th</sup> day of June, 2022.

**Preliminary Statement**

Declarant owns the real estate in Douglas County, Nebraska, which is more particularly described as follows:

Lots 404 through 441, inclusive, in Arbor View, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

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

Declarant desires to provide for the preservation, protection and enhancement of the values and amenities of the Arbor View West Villas Lots, and for the maintenance of the residential character thereof.

NOW, THEREFORE, Declarant hereby declares that all the real estate described above and any other real estate hereinafter made subject to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the properties and the enjoyment of the residents and owners thereof, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

PAUSI

When recorded return to:  
Mark J. LaPuzza  
Pansing Hogan Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

✓ SN

**ARTICLE I**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Every Owner of a Lot shall be a member of the Arbor View West Villas Homeowners Association (the "Association"). Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Attendance at Meetings; Continuing Proxy.** In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant. The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

**Section 3. Membership Classes.** The Association shall have two classes of voting membership:

**Class A.** The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The sole Class B member shall be the Declarant and it shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) the date on which Declarant no longer owns a Lot;
- (b) the date Declarant shall elect, in its sole discretion, that the Class B membership cease and be converted to Class A membership; or
- (c) on December 31, 2030.

**ARTICLE II**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The 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 to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the Owner's Lot and shall be a continuing lien upon the Lot against when each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire the Association as to the amount of any unpaid assessments or dues.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the expenses, charges, and costs of the operation of the Association and the exterior maintenance services of the Lots situated thereon as described in Article II, Section 9.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to a person other than Declarant, the maximum annual assessment shall not exceed One Thousand Eight Hundred and No/100 Dollars (\$1,800.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors of the Association each year without a vote of the members, provided that the amount of the increase does not increase the amount of the annual assessment by fifteen percent (15%) of the total assessment for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the percentage increase permitted in subparagraph (a) above upon recommendation of the Board of Directors of the Association, followed by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Rate of Assessment.** Annual assessments must be fixed, based on the status of each Lot. All Lots which have a villa unit completed and which have been transferred by the builder of the villa unit shall be assessed. Lots on which villa units are under construction, which have a villa unit used as a model or which have not been sold by the builder to third party purchasers shall not be subject to assessment.



**Section 5. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to Lots on the first day of the month following the date on which they are to be assessed. All assessments shall be collected in advance on an annual or quarterly basis as from time to time determined by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment and the due dates shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge (not to exceed \$25), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 6. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum legal rate for individuals allowable in the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his or her own Lot.

**Section 7. Abatement of Assessments.** Notwithstanding any other provision of this Declaration, (i) the Board of Directors may in its discretion, abate all or any part of the dues or assessments in respect of any Lot; (ii) Lots owned by the Declarant shall not be subject to the imposition of dues, assessments or the lien of any assessments; and (iii) no dues or assessments shall be payable on a Lot until such time as the residential structure has been substantially completed and may be occupied as a residence.

**Section 8. Subordination of the Lien to Mortgages/Trust Deeds.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage or trust deed foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

**Section 9. Exterior Maintenance Services.** Exterior maintenance services (as defined in this Section 9) of each villa unit and Lot shall be provided by the Association. The Declarant does hereby reserve and each Owner does hereby consent and grant to the Association and its officers, employees, agents, contractors and repairmen, a perpetual and permanent easement over and across such villa unit and Lot at any reasonable time to make inspections and to perform such exterior maintenance services. "Exterior maintenance services" as used herein shall mean only the mowing, fertilization and application of chemicals to lawns, and driveway and sidewalk snow removal. Exterior maintenance services shall be performed in a manner consistent with and shall at all times comply with the applicable provisions of the Declaration of Covenants, Conditions, Restrictions and Easement for Arbor View West, Instrument Number 2021-144628 as recorded in the office of the Douglas County Register of Deeds ("Residential Declaration of Covenants"). Exterior maintenance services shall not include, without limitation, any painting, window cleaning,

repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owner's Lot, roof repair or replacement, repair or maintenance of gutters, downspouts, sprinkler systems, landscaping, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors and Owner's personal property. All maintenance services that are not the responsibility of the Association shall be the responsibility of each Owner of a villa unit and Lot. In the event that the need for any exterior maintenance services is caused through the negligent acts or omissions of an Owner, or through the negligent acts or omissions of the family, guests, or invitees of an Owner, the cost of such exterior maintenance services by the Association shall be the personal obligation of the Owner of the Lot and shall be in addition to the assessment to which such Lot is subject under this Declaration.

**Section 10. Insurance.** Each villa unit Owner shall provide homeowners insurance with respect to the improvements (villa units) in an amount equal to at least the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like units. Upon request of the Association from time to time, each Owner shall provide written evidence of this insurance coverage.

### **ARTICLE III RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS**

**Section 1. Reservations to Declarant.** Declarant hereby reserves for the benefit of itself, and grants to the Association and all agents, contractors, employees and other designees of Declarant or the Association, an easement for ingress, egress and access to enter upon or over the Lots as necessary or appropriate to provide the exterior maintenance services and any other duties, or obligations of Declarant or Association under this Declaration.

**Section 2. Priority of Residential Declaration of Covenants.** The Lots are restricted by the Residential Declaration of Covenants and the Lots and Owners are subject to the terms thereof and this Declaration shall be supplemental thereto. In the event of any conflict between the terms of the Residential Declaration of Covenants and the terms of this Declaration, the terms of the Residential Declaration of Covenants shall prevail.

### **ARTICLE IV ARCHITECTURAL CONTROL**

**Section 1. General Requirements.** No dwelling, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, treehouse, swimming pool, television or radio antenna, satellite dish, flag pole, solar collecting panels or equipment, tool shed, or other external improvements (including landscaping) above or below the surface of the ground shall be built, erected, placed, planted, altered, or otherwise

maintained or permitted to remain upon any of the Properties, nor shall any grading, excavation, or tree removal be commenced without compliance with the Residential Declaration of Covenants.

**Section 2. Interference with Exterior Maintenance Services.** The obligation of the Association to provide exterior maintenance services shall not be impaired by any action of the owner or any improvements constructed on any lot. Specifically, in addition to all other obligations related thereto, no fence shall be installed with an opening that is less than forty-eight inches (48") in width, unimpeded when the gate is fully open. Any fence, or any other Improvement, on any Lot may only be installed in compliance with the Residential Declaration of Covenants. An in-ground sprinkler system is required to be installed on all lots. Association dues shall not be abated, in whole or in part, for any Lot upon which the Association is prevented from providing exterior maintenance services by the owner of such Lot.

## **ARTICLE V GENERAL PROVISIONS**

**Section 1. Powers.** Except for the authority and powers specifically granted to the Declarant, the Declarant, the Association, or any owner of a Lot named herein shall have the right, but not the obligation, to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions, and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant, Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date of recording of this Declaration. Thereafter this Declaration may be amended, modified or terminated by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

**Section 3. Changes and Amendments.** By written consent of the Declarant for a period of fifteen (15) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to a Lot may be waived, modified, or amended for any Lot, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Project and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. 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 requested waiver, modification, or amendment.

**Section 4. Termination of Status.** 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, the Declarant may appoint a successor, or in the absence of such appointment 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.

**Section 5. Notices.** Any notices required herein to be delivered to an Owner shall be deemed sufficient if personally delivered to an Owner or if deposited in the United States Mail, by certified or registered mail, prepaid and addressed to the Owner at the residential address assigned to the Owners Lot. The effective date of notices shall be the date of delivery if personally delivered or the date of mailing if mailed.

**Section 6. Miscellaneous.** Invalidation of any covenant or provision in this Declaration by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Time is of the essence for purposes of this Declaration.

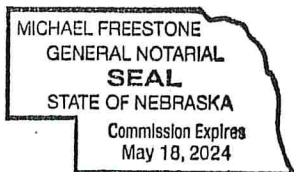
IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Declaration effective as of the 28<sup>th</sup> day of June, 2022.

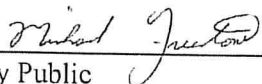
CHARLESTON HOMES, LLC, a Nebraska limited liability company,

By:   
Marc Stodola, Manager

STATE OF NEBRASKA    )  
  ) ss  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2022, by Marc Stodola, Manager of Charleston Homes, LLC, a Nebraska limited liability company, on behalf of the company.



  
Notary Public