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RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF AUTUMN GROVE, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by HEARTHSTONE HOMES, INC., a Nebraska corporation, 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 1 through 199, inclusive, in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska;

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

The Declarant desires to provide for the preservation of the values and amenities of Autumn Grove, for the maintenance of the character and residential integrity of Autumn Grove, and for the acquisition, construction and maintenance of Common Area and Common Area Improvements for the use and enjoyment of the residents of Autumn Grove (hereinafter the "subdivision").

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots now and hereafter encumbered by this Declaration 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 the Lots. 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, and each Lot are and shall be subject to all and each of the following conditions and other terms.

**HEARTHSTONE HOMES
8425 MADISON STREET
OMAHA, NE 68127**

ATTN: JIM ECKER

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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 conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.

2. 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, as measured from the highest adjacent public sidewalk grade elevation. All structures on all Lots shall be painted in earth tone colors.

3. 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" or "For Rent." No business activities of any kind whatsoever, except those home occupation businesses allowed by virtue of city ordinance, shall be conducted on any lot; 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. 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, during the construction and sale of the Lots or any other property owned by the Declarant, its agents or assigns.

4. No exterior television, broadcasting or radio antenna of any sort shall be permitted on any Lot, except, those 18" or less in diameter or diagonal measurement, which shall be screened from public view. 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.

5. 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 (other than in an enclosed structure); nor shall vehicles or parts of vehicles, unlicensed or otherwise offensive to the neighborhood, be visibly stored, parked or abandoned on any Lot. Any and all cars parked within the subdivision must be in running condition with all tires inflated. 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.

6. 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 seven (7) days within a 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 or their guests. 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 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 areas or spaces for private passenger vehicles required by the applicable ordinances of the City of Omaha, Nebraska.

7. 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 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 clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

8. No fence shall be permitted to extend beyond the front line of a main residential structure. No chain link fencing shall be permitted on any Lot. No hedges or mass planted shrubs shall be permitted more than the (10) feet in front of the front building line. If a fence is constructed on any Lot by the developer or by the owner, the owner of any such Lot shall, at his sole expense, maintain and keep such fence in good order, including the removal of graffiti and the prevention of posting of signs, banners or any other thing on said fence, and repair and replace the same with the same style and equal quality fence when and if reasonably necessary.

9. No swimming pool may extend more than one foot above ground level.

10. 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 of any Lot.

11. A public sidewalk shall be constructed of Portland concrete four (4) feet wide by three and one-half (3 1/2") inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) 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 to comply with any requirements of the City of Omaha. It is understood, however, that from time to time because of weather or material shortages the Owner may be allowed to move in prior to sidewalk construction, but only after an escrow has been established to assure such construction when weather and material availability permits.

12. 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.

13. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

14. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog. Dog houses shall only be allowed at the rear of the residence, screened from public view. No dog runs or kennels of any kind shall be allowed on any Lot, including similar areas for pot-bellied pigs.

15. 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, and no vegetation on vacant Lots shall be allowed to reach a height in excess of that allowed by ordinance and regulations of the City of Omaha.

16. 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. The applicable zoning ordinances of the public agency having zoning authority shall determine minimum area of building plot and minimum front, side and rear setbacks.

17. Notwithstanding any provision in this Declaration, Declarant, its agents, successors and assigns, shall be allowed to operate and maintain model homes, sales office trailers and construction trailers within the subdivision. This right does not expire with the sale of the last buildable lot in the subdivision.

18. 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 subdivision to any Lot without the written approval of Declarant.

19. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood.

20. All permanent utility service lines from each Lot line to a dwelling or other improvement shall be underground.

21. 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.

22. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Developer and/or Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein.

ARTICLE II. HOMEOWNERS' ASSOCIATION

1. Definitions.

(A) "Association" shall mean and refer to the Autumn Grove Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns. The Association includes all lots being marketed in the "StoneBridge" neighborhood.

(B) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot that is a part of the Properties, but excluding those having such interest merely as a security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner.

(C) "Properties" shall mean and refer to: Lots 1 through 199, inclusive, all in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

(D) "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.

(E) "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

(F) "Common Area" shall mean and refer to any land owned by the Association or controlled by an easement in favor of the Association or required as a contractual obligation of the Declarant or the Association, such as Common Area Improvements located within public rights-of-ways.

(G) "Common Area Improvements" shall mean and refer only to signs, landscaping, lighting, and sprinkler systems, which may be located from time to time on the Common Area, including those improvements within public rights-of-way.

(H) "Common Area Expenses" means expenditures made on an annual basis by or financial liabilities of the Association, together with any allocations to reserves.

2. General Information. The Association shall be required to maintain the Common Area and the Common Area Improvements in good condition and repair and shall exercise those powers, duties and responsibilities as more particularly set forth in this Declaration, the Articles of Incorporation and the By-Laws of the Association. The fiscal year of the Association shall be the calendar year. The Office of the Association shall be located at such location as the Board of Directors shall designate from time to time.

(a) Autumn Grove will be developed in phases consisting of separate residential lots (referred to as the "Lots"). Additional residential property may be annexed to the Properties by the Declarant or with the consent of two-thirds (2/3) of the votes entitled to be cast. All Lot Owners, by virtue of their ownership of a Lot, are automatically mandatory Members of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote, pursuant to the Declaration and in accordance with the By-Laws. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

(b) The initial Board of Directors of the Association and all officers of the Association shall be appointed by the Declarant and thereafter be elected as provided for in the By-Laws.

3. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, 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 as hereinafter provided, as such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Any obligation of the Declarant to pay any assessments for any Lot owned by Declarant shall not become due until the date of closing of such Lot, at which time the Declarant shall pay all prior years' assessments and the current years' assessment shall be prorated between the parties.

4. Membership. The membership of the Association shall consist of all Owners of the designated Lots within Autumn Grove. Membership in the Association shall be mandatory and no Owner during his ownership of a Lot shall have the right to relinquish or terminate his membership in the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

5. Succession. The membership of each owner shall terminate when they cease to be an Owner of a Lot, and their membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

6. Voting. 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 the Owners of all Lots other than Lots owned by Declarant or Lots that are subject to a mortgage or deed of trust in favor of 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 Owners of all Lots owned by Declarant or Lots that are subject to a mortgage or deed of trust in favor of Declarant. Each Class B Member shall be entitled to twenty votes for each Lot owned. Each Class B Member shall be entitled to one vote for each Lot owned 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, 2010

Except for the Declarant, no Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown in the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association. As set forth in section 3, above, the Declarant, for each lot owned, shall not become obligated to pay any annual assessments for said Lot unless and until the closing of said Lot occurs, at which time Declarant shall pay its pro rata share of said assessments.

7. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray annual Common Area Expenses and administrative expenses of the Association.

8. Assessments.

(a) All Owners shall be obligated to pay the assessments imposed by the Board of Directors of the Association to meet the Common Area Expenses of the Association. The Common Area Expenses of the Association shall be equally assessed among all of the Lot Owners. Except for Lots owned by the Declarant, as provided in paragraph 3 of this article, annual Assessments for the estimated Common Area Expenses of the Association shall be due in advance of the first day of January of each year. The method of assessment described herein may not be amended without the written approval of the Declarant, so long as there is a Class B Membership or thereafter, the owners of two-thirds (2/3) of the votes entitled to be cast.

(b) Each Lot Owner's personal obligation of payment of assessments shall be due on the first day of the month in which the closing of the purchase of said Lot occurs.

(c) Assessments shall be based upon the cash requirements deemed to be such aggregate sum the Board of Directors of the Association shall from time to time determine is to be

paid by all of the Lot Owners to provide for the payment of all estimated expenses growing out of or connected with the acquisition, construction, maintenance, repair, operation, alterations and improvements of and to the Common Area and the Common Area Improvements and for the creation of a reasonable contingency and reserve for the same.

(d) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the owner's personal obligation to pay the same.

(e) Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall provide a summary of the Budget to all the Lot Owners, and shall set a date for a meeting of the Lot Owners to consider ratification of the Budget that date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the votes entitled to be cast, or any larger vote specified in the Declaration, reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

9. Association Lien for Non-Payment of Common Area Expenses.

(a) Except for the Declarant as provided in paragraph 3 of this Article, all sums assessed by the Association but unpaid for the share of Common Area Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens of the Lot in favor of any assessing entity, and all sums unpaid on any Mortgage filed of record prior to the filing of the Declaration, including all unpaid obligatory sums as may be provided by such encumbrances. In the event of default in the payment of the assessment, the owner shall be obligated to pay interest at the maximum rate of interest allowable by law, on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees incurred together with such late charges as provided by the By-Laws of the Association. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest, late charges and expenses, including attorney's fees thereon, the name of the owner of the Lot and a description of the Lot. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure on the defaulting owner's Lots by the Association in the manner of a deed of trust or mortgage on real property upon the recording of a notice to claim thereof or by an action at law against the Owner personally obligated to pay the same. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Lot being foreclosed or subject to litigation shall be required to pay the Association the monthly assessment for the Lot during the period of foreclosure or litigation, and the Association shall be entitled to a receiver during foreclosure. The Association

shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.

(c) Any Mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Area Expenses payable with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of this mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. Upon request of a Mortgagee, the Association shall report to the Mortgagee of a Lot any unpaid assessments remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a Mortgagee shall have furnished to the Association notice of such encumbrance.

(d) The recorded lien may be released by recording a Release of Lien signed by one of the Members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas, County, Nebraska.

(e) Notwithstanding any of the foregoing provisions, any Mortgagee who obtains a title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all annual assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. Sixty and no/100 (\$60.00) per Lot.

B. In each calendar year beginning on January 1, 2002, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the 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 Area or Common Area Improvement, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in an amount to Two Hundred and NO/100ths Dollars (\$200.00) per Lot.

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

ARTICLE III.
EASEMENTS

1. A perpetual license and easement are hereby reserved in favor of and granted to Omaha Public Power District, US West Communications, and any company which has been granted a franchise to provide a cable television system in the area subdivided, Metropolitan Utilities District, and Sanitary and Improvement District No. 431 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 signals provided by a cable television system and the reception on, over, through, under and across a 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. 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.

2. A perpetual easement is further reserved for the Metropolitan Utilities District, 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 cul-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. U.S. West Communications, Inc. 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.

4. Other easements are provided for in the final plat of Autumn Grove which is filed in the Register of Deeds of Douglas County, Nebraska and other easements provided for in further platting(s).

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. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Developer and/or Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein. 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 period of forty (40) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years. 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 ten (10) years from the date hereof. 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. 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.

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 18th day of MARCH 1999.

DECLARANT:

HEARTHSTONE HOMES, INC., a
Nebraska corporation,

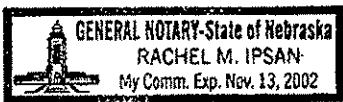
By: 

John J. Smith, President

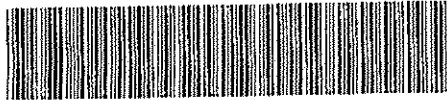
STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 18 day of March 1999 by John J. Smith, President of HearthStone Homes, Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 18 day of March 1999.



Rachel M. Ipsan
Notary Public



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Date

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By

RICHARD N TAKECH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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**AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF AUTUMN GROVE, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS AMENDMENT, made on the date hereinafter set forth, is made by HEARTHSTONE HOMES, INC., a Nebraska corporation, hereinafter referred to as the "Declarant."

RECITALS:

A. On March 25, 1999, HearthStone Homes, Inc., a Nebraska corporation, as Declarant, filed a Declaration of Covenants, Conditions, Restrictions and Easements of Autumn Grove, a Subdivision in Douglas County, Nebraska (hereinafter the "Declaration") in the office of the Register of Deeds of Douglas County, Nebraska at Book 1286 Page 625 of the Miscellaneous Records, a true and correct copy of which Declaration is attached hereto as Exhibit "A," against the following described real property:

Lots 1 - 199, inclusive, all in Autumn Grove a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

B. Article IV. Paragraph 2. of the Declaration provides that for a period of ten (10) years following March 18, 1999, the Declaration may be amended by the Declarant.

C. Declarant wishes to amend the Declaration in order to annex additional real property to the Declaration as provided by the Declaration and to clarify the legal description of lots 50 - 59, inclusive; 85 - 93, inclusive; and Lot 96, all in Autumn Grove, which, subsequent to the recording of the Declaration, were replatted into lots within Autumn Grove Replat One.

WITNESSETH:

NOW, THEREFORE, Declarant hereby declares that the Declaration recorded on March 25, 1999 at Book 1286 Page 625 in the Miscellaneous Records of the office of the Register of Deeds of Douglas County, Nebraska should be and hereby is amended by deleting therefrom the legal description on page one of the Declaration which reads as follows: "Lots 1 through 199, inclusive,

HEARTHSTONE HOMES
ATTN: JIM ECKER
8425 MADISON STREET
OMAHA, NE 68127

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in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska," and inserting in its place and stead the following:

Lots 1 through 49, inclusive, Lots 60 - 84, inclusive, Lots 94 - 95, Lots 97 - 199, inclusive, Lots 205 - 229, inclusive, Lots 252 - 255, inclusive, Lots 267 - 289, inclusive, and Lots 302 - 348, inclusive, all in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 - 65, inclusive, all in Autumn Grove Replat One (formerly legally described as Lots 50 - 59, inclusive, Lots 85 - 93, inclusive, Lot 96, Lots 230 - 251, inclusive, Lots 256 - 266, inclusive, and Lots 290 - 301, inclusive, Autumn Grove).

All other statements in the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 30th day of December 1999.

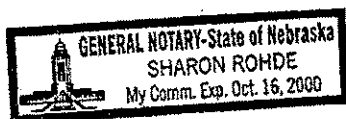
HEARTHSTONE HOMES, INC., a
Nebraska corporation, Declarant,

By: [Signature]
John J. Smith, President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of December 1999 by John J. Smith, President of HearthStone Homes, Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 30 day of December 1999.



[Signature]
Notary Public

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04484 99 625-636

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Date

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By

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RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF AUTUMN GROVE, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by HEARTHSTONE HOMES, INC., a Nebraska corporation, 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 1 through 199, inclusive, in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska;

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

The Declarant desires to provide for the preservation of the values and amenities of Autumn Grove, for the maintenance of the character and residential integrity of Autumn Grove, and for the acquisition, construction and maintenance of Common Area and Common Area Improvements for the use and enjoyment of the residents of Autumn Grove (hereinafter the "subdivision").

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots now and hereafter encumbered by this Declaration 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 the Lots. 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, and each Lot are and shall be subject to all and each of the following conditions and other terms.

HEARTHSTONE HOMES
8425 MADISON STREET
OMAHA, NE 68127 EXHIBIT A

ATTN: JIM ECKER

Page 1 of 12

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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 conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.

2. 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, as measured from the highest adjacent public sidewalk grade elevation. All structures on all Lots shall be painted in earth tone colors.

3. 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" or "For Rent." No business activities of any kind whatsoever, except those home occupation businesses allowed by virtue of city ordinance, shall be conducted on any lot; 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. 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, during the construction and sale of the Lots or any other property owned by the Declarant, its agents or assigns.

4. No exterior television, broadcasting or radio antenna of any sort shall be permitted on any Lot, except, those 18" or less in diameter or diagonal measurement, which shall be screened from public view. 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.

5. 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 (other than in an enclosed structure); nor shall vehicles or parts of vehicles, unlicensed or otherwise offensive to the neighborhood, be visibly stored, parked or abandoned on any Lot. Any and all cars parked within the subdivision must be in running condition with all tires inflated. 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.

6. 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 seven (7) days within a 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 or their guests. No grading or excavating equipment,

Page 2 of 12

EXHIBIT A
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tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section 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 areas or spaces for private passenger vehicles required by the applicable ordinances of the City of Omaha, Nebraska.

7. 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 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 clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

8. No fence shall be permitted to extend beyond the front line of a main residential structure. No chain link fencing shall be permitted on any Lot. No hedges or mass planted shrubs shall be permitted more than the (10) feet in front of the front building line. If a fence is constructed on any Lot by the developer or by the owner, the owner of any such Lot shall, at his sole expense, maintain and keep such fence in good order, including the removal of graffiti and the prevention of posting of signs, banners or any other thing on said fence, and repair and replace the same with the same style and equal quality fence when and if reasonably necessary.

9. No swimming pool may extend more than one foot above ground level.

10. 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 of any Lot.

11. A public sidewalk shall be constructed of Portland concrete four (4) feet wide by three and one-half (3 1/2") inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) 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 to comply with any requirements of the City of Omaha. It is understood, however, that from time to time because of weather or material shortages the Owner may be allowed to move in prior to sidewalk construction, but only after an escrow has been established to assure such construction when weather and material availability permits.

12. 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.

13. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

14. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog. Dog houses shall only be allowed at the rear of the residence, screened from public view. No dog runs or kennels of any kind shall be allowed on any Lot, including similar areas for pot-bellied pigs.

15. 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, and no vegetation on vacant Lots shall be allowed to reach a height in excess of that allowed by ordinance and regulations of the City of Omaha.

16. 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. The applicable zoning ordinances of the public agency having zoning authority shall determine minimum area of building plot and minimum front, side and rear setbacks.

17. Notwithstanding any provision in this Declaration, Declarant, its agents, successors and assigns, shall be allowed to operate and maintain model homes, sales office trailers and construction trailers within the subdivision. This right does not expire with the sale of the last buildable lot in the subdivision.

18. 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 subdivision to any Lot without the written approval of Declarant.

19. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood.

20. All permanent utility service lines from each Lot line to a dwelling or other improvement shall be underground.

21. 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.

22. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Developer and/or Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein.

ARTICLE II HOMEOWNERS' ASSOCIATION

1. Definitions.

(A) "Association" shall mean and refer to the Autumn Grove Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns. The Association includes all lots being marketed in the "StoneBridge" neighborhood.

(B) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot that is a part of the Properties, but excluding those having such interest merely as a security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner.

(C) "Properties" shall mean and refer to: Lots 1 through 199, inclusive, all in Autumn Grove, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

(D) "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.

(E) "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

(F) "Common Area" shall mean and refer to any land owned by the Association or controlled by an easement in favor of the Association or required as a contractual obligation of the Declarant or the Association, such as Common Area Improvements located within public rights-of-ways.

(G) "Common Area Improvements" shall mean and refer only to signs, landscaping, lighting, and sprinkler systems, which may be located from time to time on the Common Area, including those improvements within public rights-of-way.

(H) "Common Area Expenses" means expenditures made on an annual basis by or financial liabilities of the Association, together with any allocations to reserves.

2. General Information. The Association shall be required to maintain the Common Area and the Common Area Improvements in good condition and repair and shall exercise those powers, duties and responsibilities as more particularly set forth in this Declaration, the Articles of Incorporation and the By-Laws of the Association. The fiscal year of the Association shall be the calendar year. The Office of the Association shall be located at such location as the Board of Directors shall designate from time to time.

(a) Autumn Grove will be developed in phases consisting of separate residential lots (referred to as the "Lots"). Additional residential property may be annexed to the Properties by the Declarant or with the consent of two-thirds (2/3) of the votes entitled to be cast. All Lot Owners, by virtue of their ownership of a Lot, are automatically mandatory Members of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote, pursuant to the Declaration and in accordance with the By-Laws. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

(b) The initial Board of Directors of the Association and all officers of the Association shall be appointed by the Declarant and thereafter be elected as provided for in the By-Laws.

3. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, 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 as hereinafter provided, as such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Any obligation of the Declarant to pay any assessments for any Lot owned by Declarant shall not become due until the date of closing of such Lot, at which time the Declarant shall pay all prior years' assessments and the current years' assessment shall be prorated between the parties.

4. Membership. The membership of the Association shall consist of all Owners of the designated Lots within Autumn Grove. Membership in the Association shall be mandatory and no Owner during his ownership of a Lot shall have the right to relinquish or terminate his membership in the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Page 6 of 12

EXHIBIT A
Page 6 of 12

5. Succession. The membership of each owner shall terminate when they cease to be an Owner of a Lot, and their membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

6. Voting. 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 the Owners of all Lots other than Lots owned by Declarant or Lots that are subject to a mortgage or deed of trust in favor of 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 Owners of all Lots owned by Declarant or Lots that are subject to a mortgage or deed of trust in favor of Declarant. Each Class B Member shall be entitled to twenty votes for each Lot owned. Each Class B Member shall be entitled to one vote for each Lot owned 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, 2010

Except for the Declarant, no Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown in the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association. As set forth in section 3, above, the Declarant, for each lot owned, shall not become obligated to pay any annual assessments for said Lot unless and until the closing of said Lot occurs, at which time Declarant shall pay its pro rata share of said assessments.

7. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray annual Common Area Expenses and administrative expenses of the Association.

8. Assessments.

(a) All Owners shall be obligated to pay the assessments imposed by the Board of Directors of the Association to meet the Common Area Expenses of the Association. The Common Area Expenses of the Association shall be equally assessed among all of the Lot Owners. Except for Lots owned by the Declarant, as provided in paragraph 3 of this article, annual Assessments for the estimated Common Area Expenses of the Association shall be due in advance of the first day of January of each year. The method of assessment described herein may not be amended without the written approval of the Declarant, so long as there is a Class B Membership or thereafter, the owners of two-thirds (2/3) of the votes entitled to be cast.

(b) Each Lot Owner's personal obligation of payment of assessments shall be due on the first day of the month in which the closing of the purchase of said Lot occurs.

(c) Assessments shall be based upon the cash requirements deemed to be such aggregate sum the Board of Directors of the Association shall from time to time determine is to be

paid by all of the Lot Owners to provide for the payment of all estimated expenses growing out of or connected with the acquisition, construction, maintenance, repair, operation, alterations and improvements of and to the Common Area and the Common Area Improvements and for the creation of a reasonable contingency and reserve for the same.

(d) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the owner's personal obligation to pay the same.

(e) Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall provide a summary of the Budget to all the Lot Owners, and shall set a date for a meeting of the Lot Owners to consider ratification of the Budget that date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the votes entitled to be cast, or any larger vote specified in the Declaration, reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

9. Association Lien for Non-Payment of Common Area Expenses.

(a) Except for the Declarant as provided in paragraph 3 of this Article, all sums assessed by the Association but unpaid for the share of Common Area Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens of the Lot in favor of any assessing entity, and all sums unpaid on any Mortgage filed of record prior to the filing of the Declaration, including all unpaid obligatory sums as may be provided by such encumbrances. In the event of default in the payment of the assessment, the owner shall be obligated to pay interest at the maximum rate of interest allowable by law, on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees incurred together with such late charges as provided by the By-Laws of the Association. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest, late charges and expenses, including attorney's fees thereon, the name of the owner of the Lot and a description of the Lot. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure on the defaulting owner's Lots by the Association in the manner of a deed of trust or mortgage on real property upon the recording of a notice to claim thereof or by an action at law against the Owner personally obligated to pay the same. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Lot being foreclosed or subject to litigation shall be required to pay the Association the monthly assessment for the Lot during the period of foreclosure or litigation, and the Association shall be entitled to a receiver during foreclosure. The Association

shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.

(c) Any Mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Area Expenses payable with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of this mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. Upon request of a Mortgagee, the Association shall report to the Mortgagee of a Lot any unpaid assessments remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a Mortgagee shall have furnished to the Association notice of such encumbrance.

(d) The recorded lien may be released by recording a Release of Lien signed by one of the Members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas, County, Nebraska.

(e) Notwithstanding any of the foregoing provisions, any Mortgagee who obtains a title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all annual assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. Sixty and no/100 (\$60.00) per Lot.

B. In each calendar year beginning on January 1, 2002, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the 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 Area or Common Area Improvement, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in an amount to Two Hundred and NO/100ths Dollars (\$200.00) per Lot.

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

ARTICLE III.
EASEMENTS

1. A perpetual license and easement are hereby reserved in favor of and granted to Omaha Public Power District, US West Communications, and any company which has been granted a franchise to provide a cable television system in the area subdivided, Metropolitan Utilities District, and Sanitary and Improvement District No. 431 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 signals provided by a cable television system and the reception on, over, through, under and across a 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. 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.

2. A perpetual easement is further reserved for the Metropolitan Utilities District, 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 cul-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. U.S. West Communications, Inc. 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.

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EXHIBIT A
Page 10 of 12

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4. Other easements are provided for in the final plat of Autumn Grove which is filed in the Register of Deeds of Douglas County, Nebraska and other easements provided for in further platting(s).

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. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Developer and/or Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein. 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 period of forty (40) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years. 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 ten (10) years from the date hereof. 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. 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.

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 18th day of MARCH 1999.

DECLARANT:

HEARTHSTONE HOMES, INC., a
Nebraska corporation,

By: 

Lynn J. Smith, President

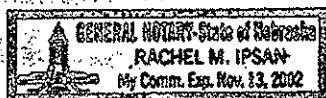
Page 11 of 12

EXHIBIT A
Page 11 of 12

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 18 day of March 1999 by John J. Smith, President of HearthStone Homes, Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

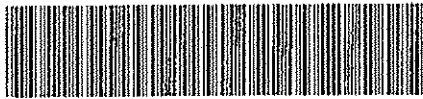
Witness my hand and Notarial Seal this 18 day of March 1999.



Rachel M. Ipsan
Notary Public



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15858 98 282-304

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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City of Omaha
Hal Daub, Mayor

September 15, 1998

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CITY CLERK
OMAHA, NEBRASKA

15558
4 Agreements
Res# 2677
Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Telefax (402) 444-5248

Don W. Elliott, P.E.
Public Works Director

Honorable President

and Members of the City Council,


The attached Resolution approves the Subdivision Agreement between Construction Sciences, Inc., West Bay, Inc., The Autumn Grove Home Owners Association, Sanitary and Improvement District (S.&I.D.) 431 of Douglas County, Nebraska and the City of Omaha. This Subdivision Agreement covers the public improvement of Autumn Grove, a subdivision located Southwest of 156th and "Q" Streets.

This Subdivision Agreement stipulates which public improvements will be built by S.&I.D. 431, those which will be paid for by special assessment and those to be paid for by General Obligation of S.&I.D. 431. The estimated total cost of improvements is \$3,919,623.00 of which \$1,591,133.00 will be paid by General Obligation. Included in the General Obligation is \$133,280.00 to purchase Lot 204, containing 4.165 acres to be used as a public park. If S.&I.D. 431 is annexed by the City, any outstanding General Obligation Debt would be assumed by the City.

The Public Works Department requests your consideration and approval of the attached Resolution and Subdivision Agreement.

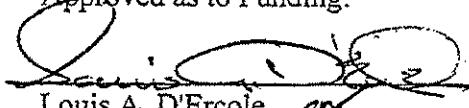
Respectfully submitted,

This action has been reviewed and found to be in conformance with the Master Plan.

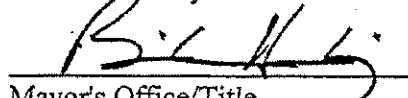

Don W. Elliott, P.E.
Director
7-29-98
Date


Robert C. Peters
Acting Planning Director
8-3-98
Date

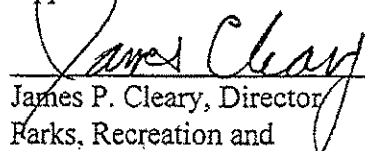
Approved as to Funding:


Louis A. D'Ercole
Finance Director
7/30/98
Date

Referred to City Council for Consideration:


Mayor's Office/Title
8/26/98
Date

Approved:


James P. Cleary, Director
Parks, Recreation and
Public Property Department
7/31/98
Date

P:\PW1\6308.SAP



CITY OF OMAHA**LEGISLATIVE CHAMBER**

Omaha, Nebr. September 15, 1998

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, Construction Sciences, Inc. and West Bay, Inc. propose to build a subdivision to be known as Autumn Grove which will be located Southwest of 156th and "Q" Streets; and,

WHEREAS, Sanitary and Improvement District (S.&I.D.) 431 has been formed to build public improvements in this subdivision; and,

WHEREAS, The Subdivider and S.&I.D. 431 wish to construct a sanitary sewer system and connect said system to the Sanitary Sewer System of the City of Omaha; and,

WHEREAS, The Subdividers have or will create the Autumn Grove Homeowners Association to own and provide ongoing maintenance for the outlots; and,

WHEREAS, the parties wish to agree upon the manner and the extent to which public funds may be expended in connection with public improvements to be constructed within the area to be developed or serving the area to be developed and the extent to which the contemplated public improvements specifically benefit property in the area to be developed and to what extent the cost of the same shall be specially assessed; and,

WHEREAS, S.&I.D. 431 agrees to pay \$211,898.22 as a sewer connection fee to be used for the construction of the sewers in the South Branch Papillion Creek Watershed; and,

WHEREAS, The Subdividers agree to sell Lot 204 which contains 4.165 acres to S.&I.D. 431 for \$133,280.00 to be used as a public park; and,

WHEREAS, a Subdivision Agreement has been prepared setting forth all the provisions mentioned above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

By.....
Councilmember

Adopted.....

.....
City Clerk

Approved.....
Mayor



CITY OF OMAHA

LEGISLATIVE CHAMBER


Omaha, Nebr.....September 15, 1998.....

PAGE -2-

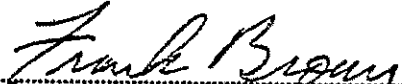
THAT, the Subdivision Agreement between the City of Omaha, Sanitary and Improvement District 431 of Douglas County, Nebraska, Construction Sciences, Inc., West Bay, Inc. and The Autumn Grove Home Owners Association, as recommended by the Mayor, providing for the public improvements, park acquisition and sewer connection to the Omaha Sanitary Sewer System, is hereby approved.

P:\PWI\6309A.SAP

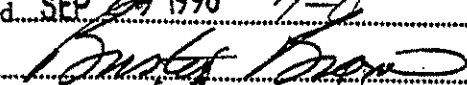
APPROVED AS TO FORM:


ASSISTANT CITY ATTORNEY DATE 7/29/98

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

By 
Councilmember

Adopted SEP 29 1998 7-2


City ClerkApproved 
Mayor

BY


CITY CLERKIMPRINTED SEAL
REGISTER OF DEEDS

2530 ✓

NO. 2677

Resolution by

Res. that the Subdivision Agreement between the City of Omaha, Sanitary and Improvement District 431 of Douglas County, Nebraska, Construction Sciences, Inc., West Bay, Inc., and The Autumn Grove Home Owners Association, as recommended by the Mayor, providing for the public improvements, park acquisition and sewer connection to the Omaha Sanitary Sewer System, is hereby approved. The Subdivision is to be known as Autumn Grove and is located Southwest of 156th and "Q" Streets.

P:PW16309A.SAP

19 ✓

Presented to City Council

SEP 15 1998 19

SEP 29 1998 #2677 Adopted, 17-0
City Council
City Clerk

Buster Brown

City Clerk

Construction
Autumn Grove
Sewer
West Bay

#97165
AUTUMN GROVE

SUBDIVISION AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of Oct., 1998, by and between CONSTRUCTION SCIENCES, INC., WEST BAY, INC., (hereinafter referred to as "Subdivider"), THE AUTUMN GROVE HOME OWNERS ASSOCIATION, SANITARY AND IMPROVEMENT DISTRICT NO. 431 OF DOUGLAS COUNTY, NEBRASKA, (HEREINAFTER REFERRED TO AS District"), and the CITY OF OMAHA, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City").

WITNESSETH

WHEREAS, Subdivider is the owner of the land included within the proposed plat attached hereto as Exhibit "A", which parcel of land (hereinafter referred to as the "Area to be Developed") is outside the corporate limits of the City and within the City's zoning and platting jurisdiction; and,

WHEREAS, the Subdivider proposes that the District will build public improvements in the area to be developed; and,

WHEREAS, the Subdivider and the District wish to connect the system of sanitary sewers to be constructed by the District, within the area to be developed, to the sewer system of the City; and,

WHEREAS, the Subdivider has or will create the Autumn Grove Home Owners Association to be comprised of Lots 1 - 199, inclusive, and Outlots A, B, C, and D, of Autumn Grove.

WHEREAS, the parties wish to agree upon the manner and the extent to which public funds may be expended in connection with public improvements to be constructed within the area to be developed or serving the area to be developed and the extent to which the contemplated public improvements specially benefit property in the area to be developed and to what extent the cost of same shall be specially assessed.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

For the purpose of this Agreement, the following words and phrases shall have the following meanings:

- A. The "cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorneys' fees, testing expenses, publication costs, financing costs and miscellaneous costs. In this connection, financing costs shall include all fiscal agent's warrant fees and bond fees, and interest on warrants to date of levy of special assessments. The date of levy of special assessments shall mean within six (6) months after acceptance of the improvement by the Board of Trustees of the District.
- B. "Property benefited" shall mean property within the Subdivider's subdivision (Exhibit "A") which constitutes building sites. Outlots A, B, C, & D are not building sites.
- C. "Street intersections" shall be construed to mean the area shown on the attached street intersection drawing (Exhibit "B").
- D. "General obligation" shall mean unassessable capital costs.
- E. "Park Property" shall mean Lot 204 of Autumn Grove per the plat (Exhibit "A"), acquired as public property for public recreational purposes, and as such is not a building site.



SECTION 1

Subdivider and District covenant that Subdivider shall, and the District covenants that the District will contemporaneously with the filing of the final plat, present to the City Clerk for the benefit of the City binding contracts in full force and effect calling for the timely and orderly installation of the following public improvements, according to the terms of those contracts. That the District shall also provide and deliver to the City written confirmation of a binding agreement between the District and its fiscal agent calling for the placement of the warrants or bonds of the District for the installation of the improvements set forth herein:

- A. Concrete paving of all streets dedicated, per the plat (Exhibit "A"), all of said paving to be twenty-five (25) feet in width, except for those streets with a width greater than twenty-five (25) feet, which streets shall be extra-width paving, if any (approved by the Public Works Department), as shown on paving plan prepared by E & A Consulting Group, a copy of which is attached hereto as Exhibit "B".
- B. All sanitary sewer mains, manholes and related appurtenances constructed in dedicated street rights-of-way and easements, per plat (Exhibit "A"), same to be located as shown on sanitary sewer layout prepared by E & A Consulting Group, a copy of which is attached hereto as Exhibit "C".
- C. Storm sewers, inlets, manholes, open channel improvements and related appurtenances constructed in street rights-of-way and easements, per plat (Exhibit "A"), plans and specifications for said sewer improvements to be approved by City prior to starting construction of said improvements to be located as shown on storm sewer plan prepared by E & A Consulting Group, a copy of which is attached hereto as Exhibit "B".
- D. Water and gas distribution mains located within dedicated street rights-of-way dedicated per plat (Exhibit "A") to be installed by the Metropolitan Utilities District. (Contract with MUD will be provided as soon as available, but in no event longer than four months from the date of execution of this agreement).
- E. Street lighting for public streets dedicated per plat (Exhibit "A") to be installed by the Omaha Public Power District. (Contract with OPPD will be provided as soon as available, but in no event longer than four months from the date of execution of this agreement).
- F. Underground electrical service to each of the lots in the area to be developed to be installed by the Omaha Public Power District. (Contract with OPPD will be provided as soon as available, but in no event longer than four months from the date of execution of this agreement).
- G. Sidewalks along both sides of all public streets within the area to be developed shall be constructed by the Subdivider or District according to the following schedule:
 - (1) Sidewalks shall be constructed immediately abutting vacant lots as soon as the lots comprising sixty-five percent (65%) of the abutting footage on such side have been built upon.
 - (2) Sidewalks shall be constructed immediately abutting built-upon lots as soon as weather permits.
 - (3) Sidewalks along "Q" Street and 156th Street shall be constructed after substantial completion of the "Q" Street and 156th Street improvement projects, as a General Obligation of the District, except as provided in Section II, letter L. below which provides for some special assessments..



- (4) In any event, all sidewalks shall be constructed upon any public streets adjacent to the plat within three (3) years of the recording of the subdivision plat.

H. Park Acquisition and Improvement. Lot 204 of Autumn Grove shall be acquired by the District to be used as a public park. The subdivider agrees to sell Lot 204 containing 4.165 acres to the District for \$32,000 per acre or a total cost of \$133,280.00. The District may expend up to an additional 20% soft costs to complete the purchase to include the associated legal, fiscal and interest fees. Subdivider shall contemporaneously with the filing of the final plat, transfer title of Lot 204 to the District. Improvements as proposed for the park shall not exceed \$140,000 including associated engineering, legal, fiscal, and interest fees. The park construction agreements shall be approved by the Parks and Recreation Department of the City of Omaha prior to bidding and/or acceptance by the District.

SECTION II

The parties agree that the entire cost of all public improvements paid for by the District and set out in Section 1 herein shall be defrayed as follows:

- A. One hundred percent (100%) of the entire cost of all street and sidewalk construction shall be paid by special assessment against the property benefited within the area to be developed, except for street intersections and certain extra-width and major street paving, either of which may be a general obligation, as indicated in Exhibit "B". Grading or paving of major streets may be a general obligation.
- B. One hundred percent (100%) of the entire cost of all sanitary sewers, including manholes and other appurtenances, shall be paid by special assessment against property benefited within the area to be developed, provided,
- (1) Connection charges paid to other sanitary and improvement districts shall be specially assessed to the extent of special benefit to properties in the District, and the remainder may be general obligation of the District.
 - (2) The District's total cost of any outfall sanitary sewer line to be constructed by the District, within the boundaries of the District, shall be specially assessed except that portion of the sanitary outfall sewer which the pipe size is greater than 8" diameter may be a general obligation of the District.
 - (3) The total cost of any outfall sanitary sewer serving the entire District constructed outside the District boundary by the District may be a general obligation of the District, as indicated in Exhibit "C".
- C. The cost of storm sewers and appurtenances may be a general obligation of the District.
- D. The cost of permanent detention basins, if required, including the cost of land acquisition by the District, may be a general obligation of the District.
- E. One hundred percent (100%) of the entire cost of water distribution system serving the area to be developed shall be specially assessed against the property benefited within the area to be developed. One hundred percent (100%) of the entire cost of water and gas approach mains may be a general obligation of the District. All refunds from MUD shall be credited to the Bond Construction Account of the District.
- F. One hundred percent (100%) of the entire cost of monthly contract charges paid to the Omaha Public Power District for furnishing lighting of public streets shall be paid from the operating fund of the District.



- G. The entire cost of the installation of electrical power service and gas distribution system shall be specially assessed against the property within the area to be so developed. The refunded charge from the Omaha Public Power District and MUD shall be credited in accordance with law, and if so credited to the District, it shall be credited to the Bond Construction Account of the District.
- H. Any payments to other sanitary and improvement districts, sanitary districts or municipalities for any fees or charges will not be a general obligation of the District, except as otherwise provided in this agreement.
- I. Payments for interceptor sewer connection charges to the City of Omaha may, as provided in Section IX herein, be a general obligation of the District.
- J. One hundred percent (100%) of the entire cost of park improvements or contributions to the City of Omaha Parks, Recreation, and Public Property Department for regional park construction may be a general obligation of the District.
- K. No funds of the District are to be used for the installation or maintenance of telephone equipment.
- L. One hundred percent (100%) of the entire cost of concrete sidewalks along major streets may be a general obligation of the District except that portion adjacent to non-single-family residential lots which shall be specially assessed or paid for privately.
- M. Street identification signs may be a general obligation. All street signage must be approved by the City Traffic Engineer prior to installation.
- N. The initial construction cost of grading and piping for temporary sediment and erosion control facilities shall be paid for privately. Removal of sediment from erosion control basins and other related maintenance of erosion control facilities will be paid from the District's general fund. The costs of removal of the entire sedimentation basin at the appropriate time may be a general obligation.

SECTION III

Credit or funds of the District may be used to pay for any public improvements specified in this Agreement, but not for any other purpose. PROVIDED, HOWEVER, the District may issue warrants for the purpose of paying for repairs, maintenance and operating costs of the District, such warrants to be paid out of funds obtained by the District through its general fund tax levy, or where allowed by law, may be paid from special assessments or fees or charges. Maintenance, repair and reconstruction of a public improvement shall not be a general obligation of the District nor shall construction warrants be issued therefor without the prior written approval of the City Engineer. The District shall not acquire any interest in real property without the prior approval of the City of Omaha.

SECTION IV

- A. City covenants and agrees that should the City, by reason of its annexation of the District, or any area thereof, prior to District's levy of special assessments for the improvements authorized in this Agreement thereby succeed to said District's power to levy special assessments, that City will levy same in accordance with this Agreement.
- B. All parties covenant and agree that nothing in this Agreement shall be construed so as to oblige the City to annex the area to be developed or any part thereof.
- C. The District shall not sue nor fund any lawsuit to prevent any annexation of property within



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the District by the City except in the event the City annexes only a part of the District, the District does not waive its right to contest a proper division of assets and liabilities.

SECTION V

Subdivider and District covenant and agree that the District created by the Subdivider will:

- A. Abide by and incorporate into all of its construction contracts the provisions required by the regulations of the City pertaining to construction of public improvements in subdivisions and testing procedures therefor.
- B. Except as may otherwise be agreed to by City, all of said District's levy of special assessments shall be made in such a manner so as to assure that the entire burden of the levy is borne, on an equitable basis, by lots or parcels which are truly building sites. If any lot, parcel or other area within the area to be developed is not a building site by reason of insufficient size or dimensions, or by reason of easements or similar burdens, or for any other reason, then no portion of the total amount shall be levied against said unbuildable lot, parcel or other area.
- C. The District shall provide the following information to the City Engineer at least twenty (20) days prior to the meeting of the Board of Trustees of the District held to propose the levy of special assessments:
 - (1) A detailed schedule of the proposed special assessment and/or the amount of general obligation costs of any improvement or acquisition.
 - (2) A plat of the area to be assessed.
 - (3) A full and detailed statement of the entire cost of each type of improvement, which statement or statements shall separately show:
 - (a) The amount paid to the contractor.
 - (b) A special itemization of all other costs of the project, including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, including, but not limited to, interest on all warrants to date of levy of special assessments, estimated fiscal agent's warrant fees and bond fees.
 - (c) A special itemization of all costs of the District not itemized in (a) and (b) above.
- D. The District agrees that it will not unreasonably delay acceptance of an improvement and that District shall levy special assessments within six (6) months after acceptance of the improvement.

In addition to the above notice requirement, the District shall also, twenty (20) days prior to the Board of Equalization hearing of the District, give notice in writing to the City that the Board of Equalization will be convened on that date for the consideration of the levying of special assessments and equalization and apportionment of debt.

SECTION VI

- A. The District agrees to annually levy a minimum ad valorem property tax rate of 88 cents per \$100 of taxable valuation for the tax collection years through the year that all district warrants can be paid on a cash basis and/or converted to bonded debt.



- B. On or about June 1 of each year following the issuance of district bonds, the District's fiscal agent will deliver to the City Finance Director for review and approval, a cash flow projection by year for a fifteen (15) year period. The cash flow projection shall include, but not be limited to, existing and projected taxable valuation, a projected annual debt service levy, existing and projected cash receipts, cash disbursements and available balances in the bond fund and general fund of the District.
- C. The District's Board of Trustees agrees to adopt tax rate levies sufficient to fund the succeeding years general and bond fund projected obligation as required in the cash flow projections.

SECTION VII

In the performance of this Agreement, the District shall not discriminate against any parties on account of race, national origin, sex, age, political or religious affiliations in violation of federal or state laws or local ordinances.

SECTION VIII

- A. Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the District to connect its sewer system to the sewer system of the City for a period not to exceed ten (10) years, in such manner and at such place or places designated on plans submitted by the District and approved by the City.
- B. Upon the completion of any sanitary outfall sewer, if any, built by the District, the City shall be granted and they shall accept control and operation of the facility. The District shall convey by proper legal instrument all its rights, easements, title, and interest in such Sanitary Outfall Sewer to the City. The form of acquisition shall be upon approved City forms.
- C. Without prior written approval by the City, the District shall not permit any sewer lines outside the presently described boundaries to be connected to: The sewer or sewer lines of the District, any sewer from the District's boundaries to the sewers of the City, any outfall sewer of the City, or any sewage treatment plant of the City. The City shall have exclusive control over connections to its sewers whether inside or outside the District's boundaries. The District shall not collect connection charges for such connections.
- D. At all times, all sewage from and through said District into the City sewer system shall be in conformity with the ordinances, regulations, and conditions applicable to sewers and sewage within the City as now existing and as from time to time may be amended.
- E. Before any connection from any premises to the sewer system of the District may be made, a permit shall be obtained for said premises and its connection from the proper department of the City, which permit shall be obtainable on the same terms, conditions, and requirements of the City and for the same permit fee of the City applicable from time to time to permit property outside the City to connect to the sewer system of the City; it being expressly understood that the City reserves the right to collect all connection charges and fees as required by City ordinances or rules now or hereafter in force; all such connections shall comply with minimum standards prescribed by the City.
- F. Notwithstanding any other provisions of this Agreement, City retains the right to disconnect the sewer of any industry, or other sewer user within the area to be developed, which is discharging into the sewer system in violation of any applicable ordinance, statute, rule or regulation.



- 12
- G. The District warrants that it has not employed or retained any company or person, other than a bona fide employee working for the District, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working for the District, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability. The District shall require the same warranty from each contractor with whom it contracts in any way pertaining to its sewage system. The prohibition provided for herein shall not apply to the retention of an attorney or other agent for the purpose of negotiating the provisions of this Agreement where the existence of such agency has been disclosed to the City.
- H. Subletting, assignment or transfer of all or part of any interest of the District hereunder is prohibited without prior written approval of the City of Omaha.
- I. The District expressly agrees that it is and shall be:
- (1) Bound by and to any provisions of any ordinances, rules and regulations hereafter made and adopted by the City of Omaha applicable to sanitary and improvement districts whose sewers connect directly or indirectly with or into sewers or sewage systems of the City of Omaha; and,
 - (2) Bound by any terms and provisions which by ordinance, resolution or rule of the City of Omaha shall hereafter adopt or provide as being applicable to or required in contracts with sanitary and improvement districts or in order to permit or continue the discharge of any sewage from a sanitary and improvement district to flow into or through any part of the sewer or sewage system of the City of Omaha.
- J. The District agrees to collect an "equivalent front footage charge" in conformance with the following:

Where the property with which sewer connection is sought to be made is not within the bounds of a regular sanitary sewer district or private sewer district or where such property has not been assessed or has not paid for the construction of the sewer to which connection is sought to be made, then in such case the Chief Plumbing Inspector of the Permits and Inspections Division shall not issue a permit for such sewer connection until the property owner shall have paid to the improvement district an equivalent front footage charge for the number of front feet of the entire property with which such connection is sought to be made. The equivalent front footage charge shall be the current charge in conformance with the requirements of the Omaha Municipal Code. The front footage charge collected shall be used to defray the general obligation of the sanitary and improvement district.

SECTION IX

A. Payment for Construction of Interceptor Sewers.

The District shall make payment to the City of Omaha for the fee in the amount of \$211,898.22 for the construction of interceptor sewers. This fee is computed as follows for the lots shown on the plat (Exhibit "A").

Lots 200 & 201	
10.561 ac. Church @ \$2938.00	= \$31,028.22



Lot 202, R6 Multifamily 264 Units @ \$270.00 per Units	= \$71,280.00
Lot 203, R6 Multifamily 30 Units @ \$270.00	= \$8,100.00
Lots 1 - 199, R4 Single Family 199 Lots @ \$510.00	= \$101,490.00
TOTAL:	\$211,898.22

The park lot, Lot 204 & Outlots A, B, C, & D are non buildable lots and therefore not subject to interceptor fees.

B. Additional Plats.

In the event the Subdivider shall plat additional lots which will be in the District which he wishes to connect to the Omaha sewer system, this Agreement shall be amended by the parties to provide payment of the current fee for the additional lots before any sewer permits are issued by the City of Omaha.

C. Special Sewer Connection Fee.

The District and the City agree that payment made under Section IX-A of this Agreement shall constitute a Special Sewer Connection Fee for the area described in Section IX-A and shall be collected by the District as a Special Sewer Connection Fee or shall be levied as a Special Assessment against the real estate described in Section IX-A as follows:

(1) Amount of Special Sewer Connection Fee.

The real estate shall be charged the special sewer fee amount as set forth in Section IX-A for each lot or parcel.

(2) Time of Collection.

The Special Sewer Connection fee shall be collected by the District from the owner of each lot or parcel of real estate or levied as a Special Assessment in the amount as shown in Section IX-A prior to the time any such lot or parcel is built upon and before the building sewer is connected to the sanitary system of the District.

(3) Extent of Collection.

The Special Sewer Connection fee will be collected by the District on each lot from the date of this Agreement until the District has collected by such payment or through Special Assessment the entire amount paid by the District to the City, as described in Section IX-A. The entire proceeds collected by the District will be used by the District to pay off the warrants or other debts incurred by the District in obtaining the funds paid to the City as required in Section IX-A.

D. City Sewer Connection and Sewer Use Fees to be Paid.

The City may collect, within the area to be developed, the City's sewer connection and permit fees, as provided by existing City ordinances, and its sewer use and connection fees as now or hereafter existing. Such fees shall be in addition to the payments provided for in Section IX-A herein, however, the City shall reduce its "Special Connection Fee-Papillion Creek Watershed" for any lot listed in Section IX-A herein, by the amount paid by the District



for that lot pursuant to that section and collected by the District from the party for whom the connection is made.

E. Issue of Sewer Permit.

No sewer permit will be issued by the City for any construction on any lot in the area described in Section IX-A until proof is furnished to the City of payment to the District of the Special Sewer Connection Fee of levy of the Special Assessment for that particular lot as called for in Section IX-A.

F. Audit of District's Records.

The City shall have access at all times to the District records for the purpose of auditing the accounts pertaining to collection of the Special Sewer Connection Fee.

G. Upon execution of this Agreement, the District shall make payment to the city in cash or warrants immediately convertible into cash in the amount as stated in Section IX-A of this Agreement. The City shall accept and retain such moneys to make progress payments for the design, construction and construction supervision for building interceptor sewers.

SECTION X

A. Installation of entrance signs or related fixtures and any median landscaping and related fixtures shall be paid for by the Subdivider. Plans for such proposed improvements that are to be located in public right-of-way and a proposed maintenance agreement for the improvements must be submitted to the City for review and approval prior to the installation of improvements.

B. No separate administrative entity nor joint venture, among the parties, is deemed created by virtue of the Subdivision Agreement.

C. The administration of this Subdivision Agreement shall be through the offices of the undersigned officers for their respective entities.

D. The Erosion Control Plan between the Subdivider and the Papio-Missouri River Natural Resources District is attached hereto and incorporated herein as Exhibit "D". Costs for erosion control shall be paid by Subdivider. Papio-Missouri River Natural Resources District must approve said plan prior to City Engineer's second signature. All sediment basins are to remain in place until 75% of the Lots are fully developed or until a substitute permanent sediment basin is operable and written permission is received from the Public Works Department to remove the basins.

E. Prior to any construction in the wetlands for either the streets' crossing and or any public storm sewer system thereon, the subdivider shall have obtained a 404 Permit from the Corps of Engineers and be approved by the City.

F. The Subdivider will be limited to occupancy of 200 single family units and 144 apartment units as shown on Exhibit "E" until substantial completion of the Q Street Improvement project without submitting another acceptable traffic study.

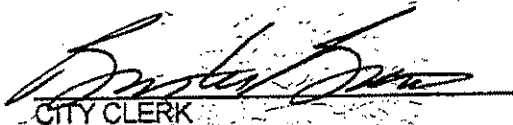
G. This Subdivision Agreement shall be binding upon the parties, their respective successors and assigns, and runs with the land as shown on Exhibit "A".

H. Outlots A, B, C, & D are green space/ landscape areas and will initially be owned and maintained by the Subdivider. Ownership of said Outlots will be contemporaneously transferred to the Autumn Grove Home Owners Association with the filing of the plat. From the date of transfer of ownership, the Outlots will be maintain by the Autumn Grove Home Owners Association.




IN WITNESS WHEREOF, we the executing parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the day and year first above written.

ATTEST:



CITY CLERK

CITY OF OMAHA

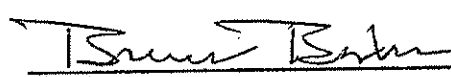

MAYOR 10/5/98
Date

ATTEST:

IMPRINTED SEAL
REGISTER OF DEEDS


Clerk


SANITARY AND IMPROVEMENT
DISTRICT NO. 431 OF DOUGLAS
COUNTY, NEBRASKA


Chairman 7/23/98
Date


WEST BAY, INC.


Thomas E. Smith, President 7/22/98
Date

CONSTRUCTION SCIENCES, INC.


John J. Smith, President 7/22/98
Date

AUTUMN GROVE HOME OWNERS ASSOCIATION


John J. Smith, President 7/20/98
Date

APPROVED AS TO FORM


ASSISTANT CITY ATTORNEY 7/29/98
Date



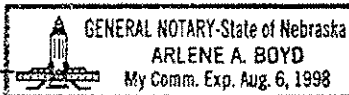
ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 22nd day of July, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Thomas E. Smith, President, WEST BAY, Inc. who is personally known by me to be the identical person whose name is affixed to this Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed as such officer of said Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Arlene A. Boyd
Notary Public



Seal

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 22nd day of July, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John J. Smith, President, CONSTRUCTION SCIENCES, INC. who is personally known by me to be the identical person whose name is affixed to this Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed as such officer of said Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Sharon Rohde
Notary Public

Seal

ACKNOWLEDGEMENT OF NOTARY

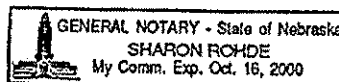
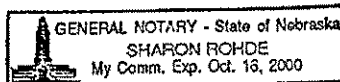
STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 22nd day of July, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared John J. Smith, President, AUTUMN GROVE HOME OWNERS ASSOCIATION who is personally known by me to be the identical person whose name is affixed to this Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed as such officer of said Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Sharon Rohde
Notary Public

Seal



ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 2nd day of July, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared BRUCE BAHE, Chairman of Sanitary and Improvement District 431, who is personally known by me to be the identical person whose name is affixed to this Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed as Chairman of said Sanitary and Improvement District.

WITNESS my hand and Notarial Seal the day and year last above written.

Sharon Rohde
Notary Public

Seal

