

DECLARATION OF  
AMENDED AND RESTATED RESTRICTIONS  
FOR INDIAN CREEK ESTATES

This Declaration of Amended and Restated Restrictions is made this 29<sup>th</sup> day of October, 1998, by Indian Creek Estates Homes Association, Inc.,, a Kansas Not-For-Profit Corporation, by and on behalf of itself and the owners of record of the lots of real property which together form the subdivision known as INDIAN CREEK ESTATES located in Overland Park, Johnson County, Kansas,.

This Declaration of Amended and Restated Restrictions is intended to amend, revise, and supersede certain previous declarations for the INDIAN CREEK ESTATES subdivision, and to fully restate all such previous declarations. Said previous declarations are included in the following sets of declarations on file with the Johnson County Register of Deeds: Vol., 1322 Pages 350-359 (filed on or about April 10, 1978); Vol., 1433 Pages 497-505 (filed on or about February 26, 1979); Vol. 1537 Pages 739-748 (filed on or about January 2, 1980); Vol., 1714 Pages 503-511 (filed on or about October 9, 1981); Vol., 1798 Pages 398-406 (filed on or about November 3, 1982); and Vol., 1860 Pages 340-348 (filed on or about May 23, 1983). To the extent additional previous declarations are on file with the Register of Deeds which are not itemized above, it is the parties' intent also to amend such corresponding portions of such other previous declarations as are like the provisions set forth below.

This Declaration of Amended and Restated Restrictions includes only such amendments and revisions to said previous declarations as have been considered by the owners of record of the real property within INDIAN CREEK ESTATES and have been approved upon instruments signed by the required number of lotowners all as set forth in the portions of the above-referenced prior deed restrictions which describe the duration of said deed restrictions,. This Declaration of Amended Restrictions is executed by the individual named below, pursuant to powers of attorney granted by such lotowners to the members of the Board of Directors of the Indian Creek Homes Association, Inc.,, and each of them, with full power of substitution and appointment, to execute this Declaration of Amended and Restated Restrictions, and to effect all such amendments. Certain other amendments have been made to reflect the Association being the successor to the Owner (as defined below) since the time the original restrictions were filed.

This Amended and Revised Declaration is intended to affect, and be effective as to, all real property located within the INDIAN CREEK ESTATES subdivision,. Said real property is as described by, but may not be limited to, the description of real property set forth in the prior deed restrictions, referenced above,. All of said legal descriptions in the previous filings are incorporated by reference as though fully set forth herein. Said real property descriptions are also attached as the Addendum hereto, for reference.

To the extent any amended restriction set forth herein is determined by a court of proper jurisdiction to be invalid or otherwise unenforceable, or to have been improperly filed as to any particular lot, it is the intent of the parties that the remaining amended restrictions remain in the full force and effect, as to all other lots and properties within the INDIAN CREEK ESTATES.

ARTICLE I  
STATEMENT OF INTENT

Owner owned the real estate commonly known as INDIAN CREEK ESTATES in Johnson County, Kansas, as more specifically identified in the Addendum to this Declaration. Owner desired to provide for the preservation of value in the development of said property for residential purposes and for the maintenance of facilities, and, therefore, desired to subject the subject real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property. In connection with the maintenance of certain portions of said real estate, it was the intent and desire of Owner to incorporate The Indian Creek Estates Homes Association as a not-for-profit corporation, with such association to have powers of maintaining and administering the common properties and facilities, enforcing the covenants and restrictions, and collecting and disbursing assessments and charges,

ARTICLE II  
DEFINITIONS

For the purpose of these Restrictions, the following words shall be defined as follows:

- 1) "Association" shall mean and refer to the Indian Creek Estates Homes Association,
- 2) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as Indian Creek Estates.
- 3) "Common Properties" shall mean and refer to all open spaces, street islands, and frontage on certain lots of Indian Creek Estates to be held in the name of the Association and dedicated to the common use and enjoyment of all the lotowners and residents of the properties,
- 4) "Lot" shall mean and refer to any separately-owned parcel as may be shown by the plat of the properties, but excepting the common properties.
- 5) "Dwelling" shall mean and refer to any portion of a building situated upon the properties designed and intended for use and occupancy as a residence by a single family.
- 6) "Lotowner" shall mean and refer to the record owner whether one or more persons or entities of the fee simple title to any lot situated upon the properties, but shall not mean or refer to the mortgagee unless such mortgagee has acquired title pursuant to foreclosure or upon proceeding instead of foreclosure.
- 7) "Owner" shall mean and refer to Indian Creek Estates, a Kansas Partnership.
- 8) "Front Property Line" shall mean the property line of any lot abutting the right-of-way of any street.
- 9) "Outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant,

**ARTICLE III**  
**USE OF LOTS**

**Section 1**

- A. Only one single family dwelling may be constructed upon any lot conveyed for residential purposes.**
- B. No trucks larger than a full-sized pick-up or standard sport utility vehicle, no boats, trailers, buses, campers, or recreational vehicles, tractors, or mowers shall be parked on the driveway, front, side or back yards, for a period longer than allowed by applicable City of Overland Park, Kansas, ordinances; or if the same becomes an annoyance or nuisance to the neighborhood,**
- C. No radio, television, or satellite dish larger than 18 inches in diameter, or other type of transmitting or receiving antennae may be erected or maintained outside of or on top of any residence without the prior written consent of Association, nor shall any acceptable satellite dish be mounted on the front of any residence. No windmills or wind driven electrical generating systems of any type may be erected or maintained outside of or on top of any residence on any of the lots without the prior written consent of Association. No solar or sun energy systems of any type may be erected or maintained outside of or on top of any residence on any of the lots without the prior written consent of Association.**

**Section 2**

**Setback Lines**

**No part of any residence, except as hereinafter provided, may be erected or maintained on any of the lots nearer to the front street or the side street than is the front building line or the side building line shown on the fifth plat of Indian Creek Estates,**

recorded in the office of the Register of Deeds of Johnson County, Kansas, in book 52 of Plats, at page 49, on the lot or lots in which said residence is erected, provided that Indian Creek Estates, the Kansas Not-For-Profit Corporation, shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such lot, to change any building line that is shown on said plat on any such lot or lots, so long as the change conforms to such front, rear and side setback lines as are contained in the Municipal Building Code for the City of Overland Park, Kansas, as the same is now enforced or may hereafter be amended.

### Section 3

#### Dwelling Size

Any residence one story in height erected on any of said lots shall contain a minimum of twelve hundred (1200) square feet of enclosed floor area; any split level residence shall contain a minimum of fifteen hundred (1500) square feet of enclosed floor area; any one and one-half story and two story shall contain a minimum of sixteen hundred (1600) square feet of enclosed floor area of which at least eight hundred fifty (850) square feet shall be on the first floor. The words "enclosed floor area" as used herein shall mean and include in all cases area on the first and second floor of the residence enclosed and finished for all-year occupancy computed on outside measurement of the residence and shall not mean or include any area in basement, garage, porch or attic finished or unfinished. No residence erected on any of said lots shall be more than two stories in height, unless consented to in writing by the Association. Association shall have and hereby reserves the right to reduce the floor area requirement set forth above, provided the total reduction for any one residence may not exceed twenty (20) percent of such minimum floor area requirement for such residence.

### Section 4

#### Approval of Plans

No residence or outbuilding may be erected on, or moved onto, the above described property unless and until the plans, elevations, location and grade thereof have been submitted to the Association and by it, approved in writing; nor shall any change, alteration or addition be made in the exterior of any such residence or outbuilding after the original construction thereof, until approval thereof has been given, in writing, by the Association.

### Section 5

#### Walls and Roofs

A Exterior walls of all buildings, structures, and appurtenances thereto shall be made of brick, stone, stucco, wood shingles, wood siding, wood paneling, glass blocks, and/or vinyl or aluminum architectural products similar in appearance to brick, stone, wood siding or wood paneling or any combination thereof. Except, however, vinyl architectural products must be at least 44 millimeters in thickness and of equal or superior specifications to those of Alside Charter Oak™ Reinforced Premium Vinyl Siding, and aluminum architectural products must be of equal or superior specifications to those of Aluminum Industries, Inc., Master Alloy Vinylgrain(TM) Residential siding.

- B. Windows, doors and louvers shall be of wood, metal, vinyl or vinyl-clad wood and glass.
- C. Roofs shall be covered with wood shingles, wood shakes, laminated composition asphalt roof shingles, built-up asphalt, slate, cement tile or clay

tile. Specifications for laminated composition asphalt roof shingles must also: (a) be of architectural shingle style with shadow lines and/or relief imitating a wood shingle or wood shake; (b) have a 30 or more year manufacturer's warranty; and (c) have the appearance and color range of natural cedar tone or weathered wood cedar shingles or shakes.

Alternative products to any of the above roofing or siding specifications must be reviewed and approved by the Board of Directors.

## Section 6

### Temporary Dwellings

No structure of a temporary nature and no trailer, mobile home, basement, tent, garage, barn or other outbuilding shall at any time be used as a residence. No residence shall be moved from another location to any lot herein.

## Section 7

### Fences

No fences, walls, posts or dog runs may be erected upon any of the lots in Indian Creek Estates without the prior written consent of Association, Perimeter Fences constructed of wire or chain link are expressly prohibited.

## Section 8

### Animals

No animal of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, as long as they are in compliance with the Municipal Code for the City of Overland Park, Kansas, as the same is now enforced or may hereafter be amended,.

## Section 9

### Driveways

All driveways must be improved with hard surface, consisting of a minimum of four (4) inches of reinforced concrete or other materials approved in writing by Association. Gravel driveways or driveways consisting of a crushed rock base with prime and seal coat will not be permitted.

## Section 10

### Signs

No sign, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any of said lots without the consent, in writing, of Association; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each lot or tract as sold and conveyed, which advertising board shall not be more than five (5) square feet in size and may be used for the sale and exclusive purpose of advertising for sale or lease the lot or tract upon which it is erected.

## Section 11

### Oil Tanks

No tanks for the storage of fuel may be maintained on any of the lots hereby restricted, above the surface of the ground without the consent, in writing, of Association,.

## Section 12

### Trash and Nuisances

No trash, garbage, ashes, junk, junk cars, or other refuse or debris shall be thrown dumped, or placed on any lot, on the streets, or the common properties, or be permitted to accumulate or remain on any lot, Household trash, yard debris, and the like shall not be placed on curbs or driveways for pickup by haulers until the night before such pick-up and removal is expected,.

Noxious weeds and plants shall be kept seasonally mowed and dead or unsightly growth removed on improved lots,

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, including mechanical work on automotive or other equipment of any kind.

It is understood that Owner shall retain the right to keep and maintain such materials and equipment they deem to be reasonably necessary to further development of this and adjacent property owned by Owner.

## Section 13

### Miscellaneous Provisions

- A. **Garage Doors:** All overhead garage doors located on the lots hereby restricted shall be kept closed, when not attended,.
- B. **Exterior Clotheslines and Poles:** No exterior clothesline or poles may be erected or maintained on any of the lots hereby restricted unless approved by Association in writing,.
- C. **Exterior Christmas Lights and/or Decorations:** No exterior Christmas lights and/or decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 15<sup>th</sup> of each calendar year.
- D. **Garage, Porch or Basement Sales:** No garage, porch or basement sales may be conducted on any of the lots hereby restricted without the prior consent, in writing, by Association.
- E. **Dogs Running at Large:** Dogs shall be confined, No dogs shall be allowed to run at large on the property hereby restricted,.
- F. **Exterior Basketball Goals:** No exterior basketball goals shall be erected on any of the lots hereby restricted without prior consent, in writing, by the Association.
- G. **Swimming Pools:** No above ground swimming pools may be constructed or maintained on any of the lots hereby restricted without prior consent, in writing, by Association,.
- H. **Greenhouses:** No greenhouses may be constructed or maintained on any of the lots hereby restricted, without prior consent in writing, by Association.
- I. **Air Conditioners:** No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence.
- J. **Lights:** No bright light (mercury vapor or sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Association.

## Section 14

### Utilities

All utilities from Owner's source into building sites shall be underground. Owner reserves the right to locate, erect, construct, maintain, and use or authorize the location, erection, construction, maintenance, and use of drains, sanitary and storm sewers, gas and water main and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor over and upon any part of said land described herein.

#### Section 15

#### Homes Association

The owner of each building lot to which these restrictions and covenants apply, automatically becomes a member in a Homes Association entity, and is to participate in the conduct and operation of the Association.

#### ARTICLE IV COMMON PROPERTIES

The Owner, or its assigns, shall have a right over all streets to develop adjacent land and Owner shall have a right of access oil all streets for the purpose of developing adjacent land. The Association may levy assessments against the lot owners for the purpose of maintaining the common properties. A personal obligation of any lot owner to pay such assessments shall remain her personal obligation and shall not pass to his successors in title unless expressly assumed by such successors.

#### ARTICLE V GENERAL PROVISIONS

#### Section 1

#### Duration

The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or its successors and assigns, or by the lot owner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date the original Declaration was recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by the then lot owners of two-thirds of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Agreement is sent to every lot owner at least 60 days in advance of any action taken.

#### Section 2

#### Notices

Any notice required to be sent to any member or lot owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a member or lot owner on the records of the Association at the time of such mailing.

**Sections 3**

**Enforcement**

**Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violation or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants and failure by the Association or any lot owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. However, any such action to enforce any particular resident's violation of these covenants must be brought within 24 months of the date when the violation occurred.**

**Section 4**

**Severability**

**In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way affect any other provisions which shall remain in full force and effect.**

**Section 5**

**Amendment**

**By written consent of the owners of the areas of land within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the Office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended.**

**BY \_\_\_\_\_**

**Sally O'Grady, Director and Secretary,  
Indian Creek Estates Homes Association, Inc.,  
As attorney-in-fact for the lotowners who have executed  
Written ballots adopting the amendments contained  
Herein.**

**STATE OF KANSAS            )  
  ) SS:  
COUNTY OF JOHNSON    )**

**BE IT REMEMBERED, that on this \_\_\_\_\_ day of April, 1999,  
came Sally O'Grady, who is personally known to me to be the same person  
who executed the within instrument of writing as attorney-in-fact for the lot  
owners of record, and duly acknowledged at the execution of the same.**

**IN WITNESS WHEREOF, I have hereunto subscribed my name  
and affixed my official seal the day and year last above written.**

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**Notary public**

ADDENDUM

The real estate which is the subject matter of the Declaration of Amended and Restated Restrictions of INDIAN CREEK ESTATES, located in Johnson County, Kansas, is legally described as follows:

A part of the North Half of the Southeast Quarter of Section 13, Township 13, Range 24, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the East line of the Southeast Quarter of said Section 13 and 165 feet South of the Northeast corner thereof, as measured along said East line; thence S 1degree34'18" E, along the East line of the Southeast Quarter of said Section 13 and 165 feet South of the Northeast corner thereof, as measured along said East line; thence S 1degree34'18" E, along the East line of the Southeast Quarter of said Section 13, a distance of 75 feet; thence S 88degrees25'42" W, along a line perpendicular to the East line of the Southeast Quarter of said Section 13, a distance of 70.62 feet, to a point of curvature; thence Westerly and Southwesterly, along a curve to the left, having a radius of 195 feet and central angle of 26degrees20'25", a distance of 89.65 feet, to a point of curvature; thence Southwesterly, Westerly and Northwesterly along a curve to the right, having a radius of 263.73 feet, a central angle of 55degrees45'12" and whose initial tangent bearing is S 62degrees 05'17" W, a distance of 256.63 feet, to a point of reverse curvature; thence Northwesterly and Westerly along a curve to the left, having a radius of 175 feet, a central angle of 30degrees07'29" and whose initial tangent bearing is N 62degrees09'31" W, a distance of 92.01 feet, to a point of tangency; thence S 87degrees43' W, a distance of 280 feet, thence S 2degrees17' E, a distance of 110.07 feet; thence S 48degrees 45' W, a distance of 254.80 feet; thence N 66degrees W, a distance of 78.07 feet; thence S 35degrees08'56: W, a distance of 254.80 feet; thence S 28degrees W, distance of 121.36 feet; thence S 32degrees10' W, a distance of 201.99 feet; thence S 10degrees W, a distance of 95.12 feet; thence S 40degrees W, a distance of 56.45 feet; thence S 62degrees W, a distance of 43.21 feet; thence N 79degrees59'39: W, a distance of 143.85 feet; thence Northeasterly, along a curve to the left, having a radius of 820 feet, a central angle of 0degrees49'16" and whose initial tangent bearing is N 10degrees00'21" E, a distance of 11.75 feet; thence N 80degrees11'41" W, a distance of 120 feet; thence N 0degrees08' W, a distance of 256.33 feet; thence Westerly along a curve to the right, having a radius of 465 feet, a central angle of 5degrees06'42" and whose initial tangent bearing is N 88degrees34'59" W, a distance of 41.48 feet; thence N 6degrees31'43" E, a distance of 155.43 feet; thence N 33degrees16'44" W, a distance of 95.15 feet; thence N 80degrees36' W, a distance of 119.29 feet; thence N 45degrees25' 34" W, a distance of 156.36 feet; thence N 2degrees17' W, a distance of 283.03 feet, to a point on the North line of the Northeast Quarter of said Section 13, thence N 87degrees43'12" E, along the North line of the Northeast Quarter of said Section 13, a distance of 1103.50 feet; thence S 2degrees17' E, a distance of 175.01 feet; thence N 87degrees43'E, a distance of 20 feet to a point of curvature; thence Easterly and Southeasterly, along a curve to the right, having a radius of 225 feet and a central angle of 30degrees07'29", a distance of 118.30 feet, to a point of reverse curvature; thence Southeasterly, Easterly and Northeasterly, along a curve to the left, having a radius of 175 feet, a central angle of 63degrees13'14" and whose



initial tangent bearing is S 62degrees09'31" E, a distance of 193.10 feet, to a point of reverse curvature; thence Northeasterly and Easterly, along a curve to the right, having a radius of 225 feet, a central angle of 33degrees 48'27" and whose initial tangent bearing is N 54degrees37'15" E, a distance of 132.76 feet, to a point of tangency; thence N 88degrees25'42" E, a distance of 70.62 feet, to the point of beginning, containing 16.942 Acres, more or less of unplatted land.

Lots Nine (9) through Seventeen (17), inclusive, in Block One (1), Lots Twenty-one (21) through Forty-five (45), inclusive, in Block Two (2); Lots One (1) through Twenty-seven (27), inclusive in Block Three (3), all being situated in Indian Creek Estates, 2<sup>nd</sup> Plat, a subdivision in the City of Overland Park, in Johnson County, Kansas, according to the recorded plat thereof. Said plat, document No. 1194365, being recorded in the Office of the Register of Deeds of Johnson County, Kansas, in Volume 46, at Page 8.

Lots Four (4) through Thirty (30), inclusive, in Block Five (5), Lots Thirteen (13) through Twenty-two (22), inclusive, in Block Six (6), Lots One (1) through Eight(8), inclusive, in Block Seven (7), all being situated in Didian Creek Estates, 3<sup>rd</sup> Plat, a subdivision in the City of Overland Park, in Johnson County, Kansas, according to the recorded plat thereof. Said plat, document No. 1343084 being recorded in the Office of the Register of Deeds of Johnson County, Kansas, in Plat Book 50, at Page 50.

Lots Twenty-three (23) through Thirty (30), inclusive, in Block Six (6); Lots Nine (9) through Twenty-nine (29), inclusive, in Block Seven (7); Lot Thirty-one (31), in Block Five (5); Lots One(1) through Four (4), inclusive, in Block Four (4), all being situated in Indian Creek Estates, 4<sup>th</sup> Plat, a subdivision in the City of Overland Park, in Johnson County, Kansas, according to the recorded plat thereof. Said plat, document No. 1377370 being recorded in the office of the Register of Deeds of Johnson County, Kansas, in Plat Book 52, at Page 8.

Lot Forty-six(46), in Block Two(2); Lots Twenty-eight(28) and twenty-nine(29), in Block Three (3); Lots Five (5) through Thirty-five(35), inclusive, in Block Four(4); Lots Thirty-two (32) through Forty-eight (48), inclusive, in Block Five (5); Lots Thirty-one(31) through Thirty-seven(37), inclusive, in Block Six(6); Lots Thirty (30) through Fifty-two(52), inclusive, in Block Seven(7), all being situated in Indian Creek Estates, 5<sup>th</sup> Plat, a subdivision in the City of Overland Park, In Johnson County, Kansas, according to the office of the Register of Deeds of Johnson County, Kansas, in Plat Book 52, at Page 49.