



MISC Inst. # 2019032745, Pg: 1 of 14
Rec Date: 05/15/2019 12:50:27.993
Fee Received: \$88.00 By: JS
NE Doc Stamp Tax Fee:
Douglas County, NE, Assessor
Register of Deeds DIANE L. BATTIATO

After recording return to:
Applewood Heights Manager
P.O. Box 615
Boys Town, NE 68010

AMENDED AND RESTATED COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR APPLEWOOD HEIGHTS
LOTS 1 THROUGH 213 and 215 THROUGH 523, INCLUSIVE

The subdivision of Applewood Heights, Douglas County, Nebraska (the "**Subdivision**") comprises 522 lots (the "**Lots**"). The Lot owners (the "**Owners**") within the Subdivision hereby approve and consent to the adoption of these Amended and Restated Covenants, Conditions and Restrictions for Applewood Heights Lots 1 Through 213 and 215 Through 523, Inclusive (the "**Restated Covenants**"), and agree as follows:

WHEREAS, the Lots are divided into three phases: Phase I (Lots 1 through 213); Phase II (Lots 215 through 365); and Phase III (Lots 366 through 523);

WHEREAS, Phase I is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated November 4, 1980, as amended on November 4, 1981 and January 17, 2012 (the "**Phase I Covenants**"), Phase II is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated September 4, 1984, as amended on July 21, 1988 and January 17, 2012 (the "**Phase II Covenants**"), and Phase III is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated September 1987, as amended on July 21, 1988 and January 17, 2012 (the "**Phase III Covenants**");

WHEREAS, pursuant to Article VI Section B of the Phase I Covenants, Article VI Section B of the Phase II Covenants, and Article VI Section B of the Phase III Covenants, the covenants of each respective phase may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by said covenants;

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WHEREAS, the requisite seventy-five percent (75%) of the Owners in Phase I, Phase II and Phase III voted to adopt these Restated Covenants;

WHEREAS, the Owners are members of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation (the "**Association**"), and the Association's board of directors (the "**Board**") have executed the Restated Covenants on behalf of the Owners; and

WHEREAS, these Restated Covenants shall relate to and affect certain real estate legally described as follows:

Lots 1 through 213 and 215 through 523, inclusive, Applewood Heights, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

NOW THEREFORE, the Owners hereby declare that all of the Lots in the Subdivision shall be held, sold and conveyed subject to this single group of covenants (no longer Phase I, Phase II, and Phase III), which provide the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. These easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the above-described Lots, or any part thereof, and they shall inure to the benefit of each Owner thereof.

ARTICLE I ARCHITECTURAL CONTROL

A. *External Improvement.* No dwellings, additions to a dwelling, fence, wall, driveway, patio, patio enclosure, deck, rock garden, swimming pool, television or radio antenna, satellite dish or receiver, solar collecting panels or equipment, air conditioning equipment, wind-generated power equipment, or other external improvements above or below the surface of the ground (collectively, the "**External Improvements**"), shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading or excavation be commenced without the express written approval of the Association through its Architectural Control Committee (the "**ACC**"). Also see the *Additional Clarification* that follows Section B.

B. *ACC Approval Guidelines.* As part of its review procedure, the ACC shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size, and suitability for residential purposes. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Superficial, cosmetic or minor architecture detail differences in like designs will not constitute a basis for approval. The ACC specifically reserves the right to deny permission to construct or place any of the External Improvements that it determines will not conform to the general character of the Subdivision.

Additional Clarification. Subject to Article I Section B, the Association may adopt written standards which more fully define, explain or clarify any of the foregoing restrictions articulated in Article II, Sections A through T, below. **Table 1** below shows examples of **repairs** that do not

require ACC approval and **improvements** that do require ACC approval. The goal of Table 1 is to ease the approval burden on the ACC and on the Owner who is merely repairing or replacing an item and not changing the appearance of the Lot. It remains the responsibility of the Owner who is making an **improvement** to obtain ACC approval before beginning the improvement work.

C. *ACC Approval Process.* Any Owner wanting to make an External Improvement shall submit the following documents, materials and/or drawings to the ACC:

1. Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks;
2. Complete construction plans, including, but not limited to, exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials;
3. A review fee as determined by the ACC; and
4. The applicant's name, address and telephone number shall appear on each set of plans submitted to the ACC.

Documents submitted for approval shall be clear, concise, complete, consistent and legible. Documents may be submitted on paper or electronically. Samples of materials to be included in the External Improvement may be required of the applicant at the discretion of the ACC.

Submissions made on paper shall be made in duplicate, and the comments and action of the ACC will be identically marked on both copies of said submissions. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the ACC. Submissions made electronically will be returned electronically with a copy retained for the records of the ACC. The ACC may from time-to-time amend or modify its review process, provided notice of any such amendments or modifications is provided in writing to the Owners. All forms can be found on the web site of the Applewood Heights Homeowners Association.

D. *ACC Approval/Disapproval.* The ACC shall give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents required above and, if required, the review fee. The ACC's written approval or disapproval shall be mailed or emailed to the applicant at the address on the submitted plans. The ACC may from time-to-time amend or modify its approval/disapproval process, provided notice of any such amendments or modifications is provided in writing to the Owners.

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Table 1—Examples of **repairs** not needing ACC approval and **improvements** needing ACC approval.

- ACC approval IS NOT required for general **repairs**, where the intent is to replace broken or worn out items or sections of existing objects to make objects operable or functional again, and when using the same materials without changing the overall appearance of the property or Lot.
- ACC approval IS required for additions or **improvements** of whole objects on the exterior of the house or Lot.

REP = “Replacement of whole with same or essentially the same”

ITEM	“Repair” Approval NOT REQUIRED	“Improvement” Approval REQUIRED	Restrictions/Details (Article & Sections)
AC or Heat Pump	Parts or whole	If relocating	Art II, Sec L
Basketball Post	Existing	1st time on property	Art II, Sec F
Deck or patio	Damage or REP	Expansion or New	Art I, Sec A
Driveway/Sidewalk	Damage or REP	Expansion or New	Art II, Sec H, R
Exterior Door	Existing	New location or color	Art I-A; Art II-T
Exterior Paint	REP	New color	Art II, Sec T
Exterior Siding/Brick	Damage or REP	New material or color	Art II, Sec T
Fence	Damage or REP	New or different material	Art II, Sec E
Garbage bin screen	REP Existing	Whole new	Art II, Sec E, J
Home Furnace	<i>Approval not needed—check Omaha building codes</i>		Art I, Sec A
Interior Remodeling	<i>Approval not needed</i>		Art I, Sec A
Radon Mitigation	Not visible from street	Visible from street	Art I, Sec A
Rock/Mulch Cover	Existing or REP	Replacing grass or expansion	Art I, Sec A
Roof	Damage or REP	New material or color	Art II, Sec G
Swimming Pools	Parts or REP	Whole new	Art II, Sec F
Swings/Jungle Gym	Existing or REP	Whole new	Art II, Sec F
Vegetation/Trees	Removal or REP	More than 3 total trees in front	Art II, Sec P, S
Windows	Damage or REP	Any with new style	Art I, Sec A

Any potential improvements not listed above will require ACC approval.

ARTICLE II RESTRICTIONS

A. *Single Family Residences.* Lots shall be used only for single family residential dwelling purposes, and no Lot shall contain more than one (1) detached, single family dwelling (a “**Dwelling**”). No building shall be created, altered, placed or permitted to remain on any Lot other than the one Dwelling, and each Dwelling shall conform to the requirements in **Table 2**, below.

For purposes of Table 2, “**area**” means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, or garages. The maximum height of the Dwelling shall be two (2) stories. The basement is not considered a story if it is one hundred percent (100%) above grade on one side, and essentially below grade on the other three (3) sides. All Dwellings shall have attached, enclosed, side-by-side, two or more car garages which must contain a minimum area of four hundred (400) square feet.

Table 2—Restrictions on new construction.

Type of Dwelling	Minimum Area
1. One-story house with attached garage	1,300 sq. ft. on the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor)
2. One-story house with basement garage	1,400 sq. ft. on the main floor
3. One and one-half story and two-story houses	1,800 sq. ft. total area above the basement level 1,000 sq. ft. minimum area on the main floor
4. Split entry (bi-level) house	1,400 sq. ft. on the main floor
5. Tri-level (split-level) house	1,700 sq. ft. total area above grade

B. *Dwelling Location.* All Dwellings shall be located at least thirty (30) feet from the front Lot line, at least five (5) feet from the side Lot lines and at least twenty-five (25) feet from the rear Lot line. On corner Lots, either street side may be designated by the Owner as the front, and either non-street side as the rear, but Dwellings must be at least fifteen (15) feet from the other street side Lot line. For purposes of this restriction, eaves, open patios and steps shall not be considered part of the Dwelling.

C. *Foundations.* The exposed portions of the foundation on the front of each Dwelling shall be covered with clay-fired brick or stone. The exposed portion of the foundation on the rear of every Dwelling shall be covered with clay-fired brick, siding, or shall be painted. If Dwelling is located on a corner Lot, the exposed portions of the foundation on the sides of the Dwelling facing the street are to be covered with clay-fired brick or stone and the exposed portions of the foundation on the sides of the Dwelling not facing a street shall be covered with clay-fired brick, siding, or shall be painted.

D. *Fireplaces.* In the event that a fireplace is constructed as a part of a Dwelling and said fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude

beyond the outer wall of the rear or side of the Dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. An exception is that a fireplace protruding out the back of a house may have the same exterior as the rear wall of the house.

E. *Fences.* Replacement fences may follow any existing fence line; new fences, or a change in fence placement or material, must have ACC approval. Fences shall be constructed only of wood, wrought iron, brick, stone and such other materials that are pre-approved by the ACC. Wire fences, chain-link fences, and snow fences are not permitted.

F. *Detached and Temporary Structures.* Detached structures including, but not limited to, sheds, carports, trailers, tents, shacks or barns are not permitted on any Lot. Decorative detached structures such as gazebos, covered porches, swing sets, and children's play structures may only be constructed if pre-approved by the ACC. Clotheslines are not permitted on Lots or Dwellings. Satellite dishes or antennas are permitted on Lots or Dwellings if they are not visible from the street at the front of the Dwelling; also, the location proposed must be pre-approved by the ACC.

G. *Roofs.* All Dwellings shall be roofed with:

1. Wood shakes, wood shingles, or synthetic wood shake shingles with the appearance, color, texture, and thickness of natural wood shakes;
2. Any material pre-approved by the ACC; provided, however, that the ACC shall only approve of materials similar in appearance, texture and quality as those materials enumerated in item 1 above. The ACC shall at all times maintain and publish a list of pre-approved roofing materials. The list can be found on the web site of the Applewood Heights Homeowners Association.

H. *Sidewalks.* The maintenance of public sidewalks is the responsibility of the Owners. The extent of sidewalks, location, construction details, materials and grades shall be in accordance with the regulations of the City of Omaha and any revisions thereof.

I. *Animals.* Dogs, cats, or other household pets may be kept within the Dwelling, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Owner's Lot and are not permitted to run loose outside the Owner's Lot. No livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, and no stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot.

J. *Garbage Receptacles.* No garbage, recycling, or yard waste receptacles shall be permitted to remain outside of any Dwelling unless completely screened from view from every street and from all other Lots. When placed outside for collection, the garbage, recycling and yard waste receptacles shall not be placed outside before 5:00 p.m. on the night preceding collection and must be collected by 6:00 p.m. on the day of collection.

K. *Maintenance Equipment.* No garden, lawn or household maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Dwelling except while in actual use.

L. *HVAC Equipment.* All heating, ventilation, and air conditioning (HVAC) equipment shall (i) be placed in the rear yard of a Lot, and (ii) shall not be placed within twelve (12) feet of either side Lot line or the rear Lot line upon which the Dwelling is situated; provided, however, that the ACC may grant a waiver as to either or both of the preceding requirements.

M. *Vehicle Storage.* No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored or maintained outside of the garage of a dwelling. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer overnight on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles must be done in the garage. The dedicated street right-of-way located between the pavement and the Lot line of any Lot shall not be used for the parking of any vehicles, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the Properties, or upon the streets thereof, must be in operating condition.

N. *Rubbish, Debris and Building Materials.* All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials and commercial dumpsters may be placed on Lots during construction or remodeling activities occurring on or at such Lots, and then only in as neat and inconspicuous a manner as possible.

O. *Public Nuisance.* No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity so as not to disturb the Owners of adjacent Lots.

P. *Vegetable Gardens.* Vegetable gardens shall be permitted only if maintained in the rear yard of any Lot, behind the Dwelling on said Lot.

Q. *Signage.* No advertising signs or posters of any kind shall be erected or placed on any Lots, except that residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted; provided, however, that such restrictions as to signage shall not apply to signs erected or placed by the Association.

R. *Driveways.* No driveway shall be constructed of gravel, crushed rock or any other material except concrete, brick or such other materials pre-approved by the ACC.

S. *Vegetation and Trees.* All Lots shall maintain grass or sod on the front, side and rear yards. Grass or sod should be maintained at a height below six (6) inches. No dangerous, diseased or otherwise objectionable shrubs or trees may be maintained on any Lot so as to constitute an actual or potential public nuisance or detract from a neat and trim appearance. Approval from the ACC is not necessary to remove a tree, but approval must be obtained in the case where adding one or more trees would result in more than three trees in the front yard. Lists of trees

recommended by the Nebraska Forest Service can be found on the website of the Applewood Heights Homeowners Association.

T. *Paint and Exterior Siding.* All Dwellings shall be painted or sided in an earth-tone color. Any exterior painting on a Dwelling or exterior door that changes the color of the Dwelling or door, and the installation or replacement of siding or doors on a Dwelling that changes the color or look of the Dwelling shall require approval from the ACC, as outlined in Article I and Table 1.

ARTICLE III APPLEWOOD HEIGHTS HOMEOWNERS ASSOCIATION

A. Every Owner shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot.

B. The Association will have the right, in general, without any part of its net earnings inuring to the private benefit of its members, to promote and sustain their social welfare, and otherwise provide for their health, pleasure, recreation, safety and other non-profitable interests by (i) acquiring, maintaining, operating, and contributing to the acquisition, maintenance or operation of, or otherwise making available for use, any one or more area entrances or entry structures, parks, swimming pools, tennis courts and other recreational equipment, facilities, grounds or structures, (ii) providing weed and other actual or potential nuisance abatement or control, security services, or other community services, (iii) exercising architectural control and securing compliance with, or enforcement of, applicable covenants, easements, restrictions and similar limitations, (iv) fixing and collecting or abating dues, assessments, covenant violation fees, or other charges for financing its operations, (v) delegating by contract or otherwise to any other Nebraska non-profit corporation general responsibility for administration and executive management of its affairs, and (vi) undertaking any one or more other activities appropriate, convenient or necessary to promote or sustain any such interest. The Association may also (a) acquire by purchase or otherwise, (b) hold for investment or otherwise, or (c) dispose of for profit or otherwise any interest in personal or real property wherever located, and (d) engage in any other venture for the mutual non-profitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as from time to time amended.

C. The manner in which dues, assessments, covenant violation fees, or other charges levied against each Lot by the Association are collected and enforced shall be set out in the Association's Articles of Incorporation, By-Laws, or other Board resolutions, as may be adopted from time-to-time.

D. The dues, assessments, covenant violation fees, or other charges provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect any lien for dues, assessments or other charges; however, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any dues, assessments or other charges thereafter becoming due or from any lien thereof.

ARTICLE IV
EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of, and granted to, Metropolitan Utility District of Omaha, Omaha Public Power District, and any company or companies which have been granted a franchise to provide any type of telecommunication system within the Subdivision, their successors and assigns, to erect and operate, maintain, repair and renew, cables, conduits and other instrumentalities, including wireless connections, and to extend wires for the carrying and transmission of electric current for light, heat and power and for the transmission of present and future signals and sounds of all kinds and the reception thereof, including signals provided by a cable television system and their reception, under easements as specified in the final plat or as modified by due process, and license being granted for the use and benefit of all present and future Owners of said Lots; provided, however, that said easements are granted upon the specific condition that if said utility companies fail to construct wires or conduits along any of said easements within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed or hereafter moved without replacement within sixty (60) days after their removal, then these easements shall automatically terminate and become void as to such unused or abandoned easements. No permanent building shall be placed in perpetual easements, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

B. All telephone, electric power, cable television and future utility lines of all types, from property lines to Dwellings, shall be underground.

ARTICLE V
GENERAL PROVISIONS

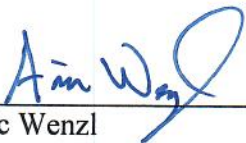
A. The Board, the Association, any Owner or contract purchaser of a Lot shall have the right to enforce by a proceeding at law, or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of these Restated Covenants, either to prevent or restrain any violation of same, or to recover damages or other fees for such violation. Failure by the Board, the Association, any Owner or contract purchaser of a Lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. The covenants and restrictions of these Restated Covenants shall run with and bind the land for a term of twenty-five (25) years from the date that these Restated Covenants are recorded, and shall be automatically renewed and extended for successive periods of five (5) years each, unless and until the then Owners of a majority of said Lots execute and record an instrument terminating these covenants. These Restated Covenants may be amended by an instrument signed by the Owners of not less than sixty-five percent (65%) of the Lots covered by these Restated Covenants.

C. Invalidity of any one of these covenants by judgments or court order will in no way affect any of the other provisions hereof which shall remain in full force and effect.

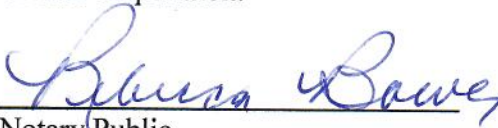
IN WITNESS WHEREOF, the undersigned members of the Association's Board, on behalf of the Owners, have, effective as of this 14th day of May, 2019, executed these Amended and Restated Covenants, Conditions and Restrictions for Applewood Heights Lots 1 Through 213 and 215 Through 523, Inclusive, a subdivision in Douglas County, Nebraska.

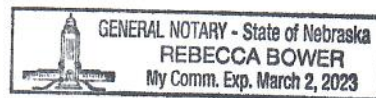
**Applewood Heights Homeowners Association
Board of Directors
(1 of 5)**

By: 
Aric Wenzl

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of May, 2019 by Aric Wenzl, Director and President of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation, on behalf of said corporation.


Notary Public



Applewood Heights Homeowners Association
Board of Directors
(2 of 5)

By: Jeremy Maskel
Jeremy Maskel

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3rd day of May, 2019 by Jeremy Maskel, Director and Vice President of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation, on behalf of said corporation.

Marci A. Carroll
Notary Public



**Applewood Heights Homeowners Association
Board of Directors
(3 of 5)**

By: Joan Luebbert
Joan Luebbert


STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1 day of May, 2019 by Joan Luebbert, Director and Secretary of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation, on behalf of said corporation.

Laurel L Trapp
Notary Public

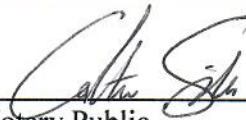
LAUREL L TRAPP
General Notary - State of Nebraska
My Commission Expires Apr 20, 2021

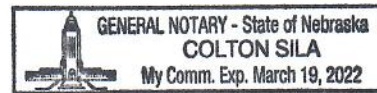
Applewood Heights Homeowners Association
Board of Directors
(4 of 5)

By: 
Mike Palmer

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10 day of May, 2019 by Mike Palmer, Director and Treasurer of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation, on behalf of said corporation.


Notary Public

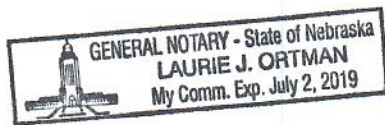


Applewood Heights Homeowners Association
Board of Directors
(5 of 5)

By: Paul Schoomaker
Paul Schoomaker

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1 day of May, 2019 by Paul Schoomaker, Director and Member-at-Large of the Applewood Heights Homeowners Association, a Nebraska non-profit corporation, on behalf of said corporation.



Laurie J. Ortmann
Notary Public