

Andover Forest Policy on In-Ground Pools and Barriers on Greenspace Lots

1. Governing Documents. The Andover Forest Homeowners Association (the "Association") is subject to the terms of its Declaration of Covenants, Conditions and Restrictions (the "Covenants"), Bylaws and Articles of Incorporation, as they may be amended (collectively referred to herein as the "Governing Documents"). Article V, Section 11 of the Covenants states: "No above ground pool shall be erected, constructed or installed on any Lot." Additionally, Article V, Section 21 of the Covenants states: "No fence or wall or similar structure shall be constructed on any portion" of a lot designated on the Andover Forest Plats as a Golf Course Lot, which abuts the former golf course property now known as the Greenspace (referred to herein as "Greenspace Lots"). Provided, however, that "in-ground pools installed on such Lots may be fenced with prior written approval" of the Board of Directors of the Association (the "Board") and "in accordance with Article VI" of the Covenants.

2. Purpose. For the purpose of enforcing the Covenants, this Policy is to specify the requirements for in-ground pools and the barriers surrounding them on Greenspace Lots.

3. Authority. The Board, acting through its authorized agents and pursuant to the Governing Documents, has the power to impose fines, sanctions, and other enforcement penalties. The Board may designate one or more persons or committees to document violations, to determine the type and amount of proposed sanctions, to provide notice of violations and proposed sanctions, to determine whether violations have ceased or abated, to hold hearings concerning violations and sanctions, to make final determinations concerning violations and sanctions, and to pursue self-help remedies to abate violations.

4. Definition of In-Ground Pools. The term "In-Ground Pools" is not defined in the Covenants. For purposes of enforcing the Covenants through this Policy, the term "In-Ground Pool" shall include any swimming pool structure which:

- a. Contains water over 24 inches deep;
- b. Is used, or intended to be used, for swimming or recreational bathing;
- c. Is available only to the family and guests of the homeowner;
- d. Is fully submerged underground; and
- e. Complies with all the requirements herein, specifically including but not limited to paragraphs 5 and 6 below.

5. Requirements for In-Ground Pools on Greenspace Lots. Any In-Ground Pool on a Greenspace Lot must satisfy all of the following requirements:

- a. **Architectural Request Form Approval.** The homeowner must submit an Architectural Request Form to the Board for any In-Ground Pool on a Greenspace Lot, pursuant to Article VI, Section 1 of the Covenants, and all requisite accompanying information, and such must be approved by the Board. In this regard, the Board must approve the "nature, kind, shape, color, height, materials and location" and the "harmony of external design and location in relation to surrounding structures, landscaping and topography" of the In-Ground Pool on the Greenspace Lot.

b. **Permit.** The homeowner must furnish the Board with a copy of a proper Swimming Pool Permit for the proposed In-Ground Pool, issued by the City of Lexington.

c. **Contractor Certification.** The homeowner must furnish the Board with a written Certification from their duly authorized, licensed and insured Contractor, which states that the relevant In-Ground Pool will be installed in accordance with ANSI/NSPI-5 and all other requirements of the Kentucky Residential Building Code(the "KRBC") and all other applicable local, state and federal rules and regulations.

d. **Barriers.** All In-Ground Pools must be surrounded with Barriers that meet the requirements set forth in Paragraph 6 below.

e. **Distance from the House.** All In-Ground Pools on Greenspace Lots must be located an acceptable distance from the relevant house. In determining whether this requirement has been met, the Board will consider all applicable factors and circumstances in each individual case, including but not limited to the size of such In-Ground Pool. In general, the smaller and shallower the In-Ground Pool on a Greenspace Lot, the closer it should be located to the relevant house. As a general guideline, the distance from the back wall of the house to the closest edge of the water in the In-Ground Pool should not exceed a **maximum** amount of one half of the length of such In-Ground Pool at its longest point. However, **less than the maximum** amount of such space may be required in any given case, based on all applicable factors and circumstances.

f. **Nuisance.** No In-Ground Pool on a Greenspace Lot will be allowed if it has significant potential to constitute a nuisance to homeowners in neighboring homes or homeowners using the Greenspace, within the meaning of Article V, Section 4 of the Covenants.

g. **Additional Requirements.** All In-Ground Pools must satisfy any additional requirements reasonably deemed necessary or appropriate by the Board.

6. Requirements for Barriers Around In-Ground Pools on Greenspace Lots. Any fences or walls surrounding In-Ground Pools on Greenspace Lots ("Barriers") must satisfy all of the following requirements:

a. **Architectural Request Form Approval.** The homeowner must submit an Architectural Request Form to the Board for any Barrier around any In-Ground Pool on a Greenspace Lot, pursuant to Article VI, Section 1 of the Covenants, and all requisite accompanying information, and such must be approved by the Board. In this regard, the Board must approve the "nature, kind, shape, color, height, materials and location" and the "harmony of external design and location in relation to surrounding structures, landscaping and topography" of the Barrier around the In-Ground Pool on the Greenspace Lot.

b. **Permit.** The homeowner must furnish the Board with a copy of a proper Fencing Permit for the proposed Barrier, issued by the City of Lexington.

c. **Contractor Certification.** The homeowner must furnish the Board with a written Certification from their duly authorized, licensed and insured Contractor, which states that the proposed Barrier surrounding the In-Ground Pool will be constructed and installed in accordance with R326.8 of the KRBC and all other requirements of all other applicable local, state and federal rules and regulations.

d. **Border Between In-Ground Pool and Barrier.** There must be an acceptable amount of space between the edge of the water in any In-Ground Pool on a Greenspace Lot and the Barrier surrounding it (the "Border"). In determining whether this requirement has been met, the Board will consider all applicable factors and circumstances in each individual case, including but not limited to the size of such In-Ground Pool. In general, the smaller and shallower the In-Ground Pool on a Greenspace Lot, the smaller the Border should be. As a general guideline, the total square footage of the Border should not exceed a **maximum** of the total square footage of the In-Ground Pool. However, **less than the maximum** amount of Border may be required in any given case, based on all applicable factors and circumstances.

e. **Screening.** If the Board, in the reasonable exercise of its discretion, deems it necessary or appropriate, the Barrier around any In-Ground Pool on a Greenspace Lot may be required to be screened with plantings at least as tall as the Barrier.

d. **Additional Requirements.** All Barriers surrounding In-Ground Pools must satisfy any additional requirements deemed necessary or appropriate by the Board, in the reasonable exercise of its discretion.

7. **Sanctions.** The Board may enforce violations through fines, sanctions, and other enforcement mechanisms, such as the revocation of voting rights or suspension of access to common areas. The nature and amount of any sanction shall be at the discretion of the Board and shall take into account factors such as (i) the nature and seriousness of violation; (ii) prior violations by the Lot owner; (iii) efforts to abate the violation; and (iv) other aggravating or mitigating factors. The Board may impose one-time fines or, for violations of a continuing nature, recurring, such as daily or weekly, fines until the violation is corrected.

8. **Lien.** Any fine or other monetary sanction imposed for the violation of the Governing Documents, together with interest, costs, and reasonable attorney's fees relating to the violation, failure to pay the fine or other monetary sanction, and enforcement of same, shall be the personal liability of the owner(s) of the lot at the time the fine was imposed and shall also be a charge on the lot, and shall constitute a lien on the lot, beginning on the date the fine or other monetary sanction is imposed, and shall be a continuing lien upon the lot until paid in full.

9. **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Governing Documents by self-help (specifically including without limitation entering into said lot(s) to remedy an uncured violation following notice provided for herein), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth herein. In any such action, to the

maximum extent permissible, the person who owned the lot(s) at the time of the violation of which abatement was or is sought shall be liable for all costs and expenses incurred in engaging in such self-help and remedying said violation, including without limitation administrative fees, costs, and expenses of such self-help which shall be considered a fine hereunder, and late fees and interest, and attorneys' and professional fees incurred in pursuing in any rights or remedies available under the Governing Documents, and said amounts shall constitute a continuing lien on the lot(s) or unit as stated herein. In the event that an Owner fails to comply with any Governing Document after being provided notice and opportunity to cure same, or fails to pay any duly levied fine or comply with any other duly levied sanction, then the Association may retain counsel to enforce the Governing Document, pay the fine, or otherwise enforce a sanction, and the costs and expenses of same, including reasonable attorneys' fees, shall be both the personal obligation of the property owner and a lien on the property as set forth herein.

10. Interpretation of Policy. To the extent this Policy conflicts with any provision of the Governing Documents, the Governing Documents shall control; provided, however, that the terms of this Policy shall be given the greatest effect practicable.

11. Reservation of Rights. The Association reserves the right to amend or supplement this Policy at any time. To the extent this Policy does not adequately address every situation that may arise under the Governing Documents, the Association reserves the right to deviate from this Policy where reasonable to address an issue involving signs or decorations under the Governing Documents. Failure to enforce any violation of this Policy or the Governing Documents shall not be deemed a waiver of the Association's rights in any manner.

Adopted by the Board of Directors of the
Andover Forest Homeowners Association

By: Caron Rose

Title: Secretary

Date: 2-6-23