

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 38th day of November, 1984, by WARREN M. NEGLEY and BETTE D. NEGLEY (collectively the "Declarant").

PRELIMINARY STATEMENT

Declarant is the legal and equitable owner of certain property located in Ralston, Douglas County, Nebraska, more particularly described as:

Lots 1 through 12, Terrace 83 Townhomes, a Subdivision, as surveyed, platted and recorded in Ralston, Douglas County, Nebraska (hereinafter the "Property").

Declarant is in the process of constructing ten (10) townhomes respectively on Lots 1 through 10, of the Property. Each townhome is intended for use as a single family residence. Declarant intends to construct a two unit duplex on Lot 11 of the Property.

Declarant desires to protect and enhance the values and residential amenities of the Property by maintaining the uniform appearance of the townhomes, and providing for permanent open spaces and parking facilities for the common benefit of the residents of the townhomes.

Declarant has therefore executed this Declaration of Covenants, Conditions and Restrictions, and created an association with the power to maintain and administer the common properties and facilities, administer and enforce the covenants and restrictions, and collect and disburse the dues and assessments authorized by the Declaration.

Declarant hereby declares that all of the Property and each of the Lots thereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens established in this Declaration (referred to collectively as "covenants and restrictions"). The covenants and restrictions shall run with the land, and shall be binding on all parties having or acquiring any interest in the Property or any Lot and shall further run to the benefit of each townhome owner.

ARTICLE I.  
Definitions

The following words when used in this Declaration or in any supplemental declaration shall have the following meanings unless the context clearly requires another meaning:

Section 1. Lot. "Lot" or "Lots" shall mean and refer to each or all of the following Lots:

Lots 1 through 12, Terrace 83 Townhomes, a Subdivision, as surveyed, platted and recorded in Ralston, Douglas County, Nebraska.

Section 2. Common Area. "Common Area" shall mean the following described Lot:

Section 5. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot; excluding however those parties having any interest in any of such lots merely as security for the performance of an obligation (such as a contract seller, the Trustee or Beneficiary of a deed of trust, or a mortgage). The purchaser of a Lot under a land contract shall be considered to be the Owner of the Lot for purposes of this Declaration.

Section 6. Declarant. "Declarant" shall mean and refer to WARREN M. NEGLE and RICHARD M. HOLMES, their successors and assigns.

Section 7. Association. "Association" shall mean and refer to TERRACE 83 TOWNHOMES ASSOCIATION, a Nebraska not-for-profit corporation, its successors and assigns.

Section 8. Member. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II.  
Property Rights

Section 1. Owners' Easements of Enjoyment. Each Owner and the family members of the Owner residing in the Owner's Townhome shall have a nonexclusive right and easement to use and enjoy the Common Area in common with other Owners; subject to the following:

(a) The rules and regulations relating to the use and enjoyment of the Common Area which have been adopted and certified to by the Association. Such rules and regulations shall apply uniformly to all Owners, and shall not authorize exclusive use of any part of the Common Area by any Owner.

(b) The right of the Association to suspend the right and easement to the use of the Common Area by an Owner: (i) during any period in which any dues or assessments against his Lot remains unpaid; or (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) Rules and regulations relating to use and enjoyment of the Common Area by invitees and guests of an Owner.

(d) The Use Restrictions set forth in Article VII hereof.

Section 2. Mandatory Approval of Improvement, Modifications, and Reconstruction. The exterior of the Townhomes and the Lots shall be maintained in a uniform manner by the Association. The exterior of the Townhomes shall not be improved, modified, repaired, painted, shingled or otherwise changed or altered without written approval of the Association. Further, no tool shed, satellite receiving disc, skylight, chimney, building, fence, heating, solar or cooling device or other improvement shall be constructed or installed on a Lot or Townhome without written approval of the Association.

Further, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, material, and location of the same shall have been submitted to and approved in writing by the Association.

ARTICLE III.  
Membership and Voting

Each Owner of a Lot shall be a Member of the Association. At such time as Lot 11 has improvements constructed upon it each unit on such lot shall be entitled to one vote on all matters. It is intended at such time the number of total votes available on all Association matters shall increase from eleven (11) to twelve (12). Membership shall be appurtenant to each Lot, and may not be separated from ownership of the Lot.

ARTICLE IV.  
Association

Declarant has caused the Association to be incorporated under the Nebraska Nonprofit Corporation Act for the purpose of regulating, maintaining and preserving the Common Areas and the Lots. The Association shall have the following powers and responsibilities with regard to the Common Areas and Lots:

- (a) To promulgate, enact, amend and supplement rules and regulations relating to the use and enjoyment of the Common Area and Lots; provided always that such rules and regulations are uniformly applicable to all Lots and Owners and conform with this Declaration.
- (b) To maintain, repair and preserve the exterior and structure of the Townhomes, and the lawns, walks and drives on the Lots.
- (c) To insure the Townhomes against property damage and casualty, and to repair, rebuild and reconstruct damaged Townhomes.
- (d) To exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time.
- (e) To fix, levy, collect, abate, and enforce all charges, dues, or assessments made pursuant to the terms of the Declaration.
- (f) To take general responsibility for administration and management of the Association, and execute such documents and do and perform such acts as may be necessary or appropriate to the taking of such responsibility.
- (g) To acquire by purchase or otherwise, hold for investment or otherwise, or dispose of for profit or otherwise, any interest in real or personal property, wherever located, in connection with the affairs of the Association.
- (h) To do and perform such acts, and execute such documents, as may be necessary or appropriate to accomplish the purposes of the Association and to approve and adopt a set of Bylaws by which the Association shall be run and maintained.

ARTICLE V.  
Exterior Maintenance

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows:

ARTICLE VI.  
Covenant for Dues and Assessments

Section 1. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

Section 2. Lien and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first became due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot(s) in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

Section 3. Purpose of Dues. The dues collected by the Association may be used exclusively for the following purposes:

(a) For the improvement, repair, upkeep, mowing, snow removal, landscaping, watering, lighting, paving, painting, maintenance and insurance of the Common Area for the use and enjoyment of the Members.

(b) For payment of any taxes and assessments levied or assessed against such Common Area by any governmental body or entity having lawful jurisdiction to do so.

(c) For the exterior maintenance, repair, and reconstruction of all Townhomes and other related expenditures necessary or appropriate to maintain the Lots, Common Area and exterior of the Townhomes in a neat, well-kept condition.

(d) For property, casualty and liability insurance coverage of the Townhomes, the Owners, and the Association.

Section 4. Maximum Dues. The Board of Directors of the Association may levy and fix the dues at an amount not in excess of the following:

(a) Until January, 1986, the maximum monthly dues shall be Fifty Dollars (\$50.00) per Lot.

(b) In each calendar year beginning in January, 1987, the dues may be increased to not more than twenty-five percent (25%) over the highest dues charged in the previous calendar year.

Section 5. Assessments for Extraordinary Maintenance Costs. In addition to the dues, the Board of Directors may levy and assess assessments of

Section 7. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots.

Section 8. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

Section 9. Effect of Nonpayment of Assessments - Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

Section 10. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE VII.  
Use Restrictions

Section 1. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the

may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same from the insurance proceeds available.

All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 2. The use and enjoyment of the Common Area shall be subject to the rules and regulations adopted and revised from time to time by the Board of Directors of the Association, to the restrictions referred to in Article II, Section 1, and to the restrictions hereinafter set forth.

Section 3. No use shall be made of the Common Area or any Lot which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Property or any part of the Property.

Section 4. No Owner shall place any structure or improvement whatsoever upon the Common Area or any Lot, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Owners.

Section 5. Each Lot shall be used exclusively for single-family residential purposes.

Section 6. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale"; nor shall the Property 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. Further, no business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards of Declarant, their agents or assigns.

Section 7. 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 the Property at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on the Property. No unused building material, junk or rubbish shall be left exposed on the Property except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

Section 8. 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 the Property (other than in an enclosed structure). No motor vehicle may be parked or stored outside of the Property, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-

Section 10. Landscaping or gardening may only be conducted in Lots or Common Area in accordance with the rules and regulations of the Association or with the prior written approval of the Association.

Section 11. Basketball hoops, swing sets or other recreational equipment may only be installed or maintained on the Lots or Common Area in accordance with the rules and regulations of the Association, or with the prior written approval of the Association.

ARTICLE VIII.  
Party Wall

The walls ("Party Walls") dividing the Townhomes subject to this Declaration shall be Party Walls benefiting each Townhome to which such wall adjoins. The Owners of the Townhomes adjoining each Party Wall shall be deemed to own to the middle of such Party Wall.

(a) For the purpose of reconstructing or maintaining the Party Walls and otherwise exercising the rights conferred by this Declaration, each Owner owning an adjoining Townhome shall have the right, at reasonable times, to enter upon the Townhomes adjoining such Party Walls.

(b) The Owners of Townhomes adjoining a Party Wall shall have the right to use such Party Wall for its intended purpose but shall not impair the Party Wall benefits and support to which the adjoining Townhome is entitled.

(c) The cost of repairing or rebuilding any portion of a Party Wall used by both adjoining Townhomes shall be borne equally by the Owners of such Townhomes to the extent the Association does not collect insurance proceeds covering such repair or rebuilding.

(d) Should any Party Wall be totally or partially destroyed by fire or other cause or casualty, either Owner of a Townhome shall have the right to reconstruct such Party Wall at his own expense if he alone intends to continue to use such Party Wall. In the event both Owners of adjoining Townhomes intend to continue to use such Party Wall, to the extent the Association does not collect insurance proceeds covering such casualty, then both Owners shall bear the cost of reconstruction. Each of such Owner shall be responsible for insuring the portion of the Party Wall deemed to be owned by him in the event the Association elects not to secure such coverage.

(e) Any Party Wall may be extended or increased in size upon mutual agreement of the Owners of both adjoining Townhomes and both such Owners shall be entitled to use such Party Wall as modified, with any modification however being subject to the provisions of this Declaration and the written approval of the Association.

(f) Neither Owner of an adjoining Townhome shall make an opening or otherwise alter a Party Wall without the written consent of the other and the Association.

choose one arbitrator, and such arbitrators shall choose one additional arbitrator and the determination and binding decision on such dispute shall be made by a majority of all the arbitrators.

ARTICLE IX.  
Easements and Licenses

Section 1. Association Easements and Licenses. A. The Association and its agents, contractors and designees shall have an easement and license to go upon any Lot at all times necessary in order to accomplish changes, replacements or repairs to sewers, gas lines, water lines, telephone lines, cable lines, electrical lines, meters, vents and other utilities, or in order to maintain service to or prevent injury or damage to any persons, Townhomes or other or property located within the Property. The Association and its agents shall have an easement and license to at reasonable times and in a reasonable manner go upon and into the improvements on Lot 7 for the purposes of maintaining its irrigation controls and systems.

B. The Association and its agents, contractors and designees shall have a general easement and license including all reasonable rights of access, for purposes of maintaining, removing snow, mowing, fertilizing, planting and renewing lawns, trees, shrubbery, and gardening on all exterior portions of the Lots and for the purpose of maintaining, preserving, renewing, painting and repairing the exteriors of the Townhomes situated on the Lots.

Section 2. Declarant's Easements. Anything to the contrary herein notwithstanding, Declarant hereby reserves for as long as it owns any Lot, a non-exclusive easement and right-of-way over the Common Area, and over all Lots not conveyed, for the purpose of constructing and maintaining such Lots, and displaying of advertising signs.

ARTICLE X.  
General Provisions

Section 1. Enforcement. The Association, or any Owner or such Owner's grantees, assigns or heirs shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or any other dues for such violation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of covenant or restriction by judgment or court order shall not affect any other covenants, restrictions or other provisions hereof, each of which shall nevertheless remain in full force and effect.

Section 3. Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land until terminated by a written and recorded instrument executed by the Owners of at least seventy-five percent (75%) of the Lots.

Section 4. Amendment. This Declaration may be amended by the Declarant in any manner which it may determine in its full and absolute discretion for a period of two (2) years from the date of its execution.



