

240

SECOND AMENDMENT TO
DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR SOUTHPARK TOWNHOME, A PLANNED DEVELOPMENT

This Declaration, made on the date hereinafter set forth by Richard T. Johnson and Irene O. Johnson, husband and wife, owners of the real property described hereinbelow, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant is the owner/contract purchaser of the following described real property, to wit:

Government Lot 2 in Section 35, Township 13 North, Range 13 East of the 6th P.M. in Cass County, Nebraska, except legal description attached hereto and marked Exhibit "A"

WHEREAS, the Declarant desires to create on the hereinabove described real property a residential community with private streets, improvements, permanent parks, open spaces and other common facilities for the benefit of said community:

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said private streets, improvements, parks, open spaces, and other common facilities; and to this end, desires to subject the hereinbelow described real property to the covenants, restrictions, easements, charges and liens, hereinafter set

Doc # 240
FILED FOR RECORD 2-23-88 AT 1:36 P.M. IN BOOK 135 OF *Miss*
PAGE 466 REGISTER OF DEEDS, CASS CO., NEBR.

*17550

Patricia Manning

COMPARED

forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency which would be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated the Southpark Townhome Homeowner's Association, under the laws of the State of Nebraska as a not for profit corporation, the purpose of which shall be to exercise the functions aforesaid;

WHEREAS, Declarant will convey the described real property, subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to 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 real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest

in the described property or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Amenity Properties" shall mean and refer to those areas of land listed on Exhibit "B" attached hereto and by this reference incorporated herein, and any additional areas of land declared to be amenity properties and any Supplemental Declaration filed by the Declarant pursuant to Article II of the Declaration.

Section 2. "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of Southpark Townhome Homeowner's Association, a Nebraska not for profit association, its successors, and assigns.

Section 3. "Association" shall mean and refer to the Southpark Townhome Homeowner's Association, a Nebraska not for profit association, its successors and assigns.

Section 4. "Common Properties" shall mean and refer to those areas of land listed on Exhibit "C" attached hereto and by this reference incorporated herein, and any additional areas of land declared to be Common Properties and any Supplemental Declaration filed by Declarant pursuant to Article II of the Declaration.

Section 5. "Declarant" shall mean and refer to Richard T. Johnson and Irene O. Johnson, husband and wife, contract purchasers, their successors and assigns.

Section 6. "Living Unit" shall mean and refer to any building situated upon The Properties designated and intended for the use and occupancy as a residence by a single family.

Section 7. "Building Site" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon any recorded map or plat of The Properties, upon which a Living Unit shall be built, or is proposed to be built, with the exception of the Common Properties, as heretofore defined.

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

Section 9. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted lot or building site which is a part of the properties, but excluding having such interest merely as security for the performance of an obligation.

Section 10. "Supplemental Declaration" shall mean and refer to any written instrument filed under the provisions of Article II hereof which shall subject additional real estate to this Declaration.

ARTICLE II

PROPERTIES SUBJECT TO DECLARATION

The property shall be held, transferred, sold, conveyed and occupied subject thereto. The Association shall have the right at any time subsequent to the filing of this Declaration, to add, annex and subject additional contiguous land in Cass County, Nebraska, to this Declaration by filing in the Office of the Register of Deeds of Cass County, Nebraska, a written instrument duly executed and acknowledged by the association to the effect that such additional land is being subjected hereto. The annexation of additional land to be subjected hereto shall require written instrument signed by two-thirds of the membership of the association. Any real property thereby subjected to this Declaration shall, after said filing, be subject hereto and the owners thereof shall be subject to all of the same duties, liabilities and rights hereunder as though said additional property had been originally part of the real estate described in Article I hereof on the date of the filing of this Declaration.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Owner's Easements of Enjoyment. Every Owner and or Member of the Association, shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with title to every building site,

subject to the following provisions:

a. The right of the association to suspend the voting rights and rights to use the Common Properties by an Owner for any period during which any assessment against his building site remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

b. The right of the association to dedicate or or transfer all or any part of the Common Properties, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, not for profit corporation (to use for purposes similar to those for which the association was formed), authority or utility for such purposes and subject to such conditions as may be agreed to by the owners and or members of the association and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days or more than 60 days in advance.

c. The right of the association to limit the number of guests of Owners on recreational facilities and common property.

d. The right of the association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties and facilities, which mortgage shall be subordinate to the rights of the owners hereunder.

e. The right of the association to charge reasonable admission and other fees for the use of the Common Properties by Members and by guests of Members.

f. The right of the association, through its Board of Directors, to pass and amend, from time to time, rules and regulations governing the use of certain parts or all of the Common Properties for the welfare and common good of all the Owners within The Properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Properties and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests or contract purchasers who reside on The Property.

Section 3 Title to the Common Properties. The Declarant will convey a fee simple title to the Common Properties described in Exhibit "C", attached hereto and incorporated herein by reference, to the association free and clear of all encumbrances and liens, except easements, restrictions, covenants and conditions then of record. The Common Properties may be conveyed by the Declarant to the Association on or before the sale of all of the Building Sites as described herein.

ARTICLE IV

AMENITIES PROPERTY

Section 1. Owners Easements of Enjoyment. Every Owner and or Member of the Association, shall have a right and easement of enjoyment in and to the Amenity Properties which shall be appurtenant to and shall pass with the title to every building site, with the express purpose to provide access to Owners and or Members to lakes, river, open areas and improvements located thereon, provided that said right and easement are subject to and inferior to the Declarant and or its Lessors. Said easement is subject to the following provisions:

- a. The right of the association to suspend the voting rights and rights to use of the amenity properties by an Owner for any period during which an assessment against his Building Site remains unpaid; and for a period not to exceed 60 days for

any infraction of its published rules and regulations.

b. The right of the Declarant to limit the number of guests of Owners on recreational facilities on the amenity properties.

c. The right of the Declarant to borrow money for the purpose of improving the amenity properties and facilities and in aid thereof to mortgage said amenity properties and facilities.

d. The right of the Declarant to charge reasonable admission and other fees for the use of improvements on the amenity properties by members and by guests of members or by other Lessees.

e. The right of the Declarant, from time to time, to set forth rules and regulations governing the use of the amenity properties for the welfare and common good of all the owners.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the amenity properties and facilities, together with any right, license, privilege or easement conferred upon such Owner by this declaration, to members of his family, his tenants, guests or contract purchasers who reside on the property.

Section 3. Title to the Amenity Properties. The Declarant

will reserve in themselves, or their assigns, fee simple title to the amenity properties as described in Exhibit B, attached hereto and incorporated herein by reference.

ARTICLE V

MEMBERSHIP

Declarant, and every owner as defined in Article I, Section 9, under this declaration, shall be a member of the Association. No owner shall have more memberships than the number of living units owned by such owner. Membership shall be appurtenant to and may not be separated from ownership of the living units. Ownership of living units, or building site, or portion thereof, shall be the sole qualification for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

ARTICLE VI

VOTING RIGHTS

Members/Owners shall be entitled to one vote for each living unit, or building site, or portion thereof. When more than one person holds an interest in any living unit, all such persons shall be members. The vote for such living unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any living unit.

ARTICLE VII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Oligation of Assessments. The Declarant, for each building site owned within the properties, subject to Section 7 of this Article, and each Owner of any building site or part thereof, except those exempt under Section 9 of this Article, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, hereby covenant and agree to pay to the Association: (1) Annual assessment or charges, and (2) Special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title to the building sites, or parts thereof, subject to said lien, and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessments, together with interest, costs and reasonable attorneys' 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 of the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied

by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of the properties, and, in particular, annual assessments shall be used for: the maintenance and repair of the common properties; the maintenance and repair of the roadway easements, as defined in Article XI, Section 2, herein; snow removal; care and maintenance of streets over which the Association has an easement, care and maintenance of open spaces and other common facilities; providing insurance coverages upon the common properties; and providing for the recreational needs of the residents of the properties. Annual assessments and annual assessment reserves, are not intended to be for maintenance, repair or replacement of living units or appurtenant structures or improvements, nor for the construction, replacement or major repair of capital improvements upon the common properties.

Section 3. Annual Assessment. Until January 1, 1989, the maximum annual assessment shall be \$420.00 per owner, payable monthly in twelve (12) equal monthly installments of \$35.00, subject to adjustment as hereinafter set forth;

(a) From and after January 1, 1989, the annual assessment may be increased each year not more than five percent above the assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1990, the annual assessment may be increased above 10% of the annual assessment for the previous year by a vote of two-thirds of the members that are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors must fix the annual assessment.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common properties, within the roadway easements, including fixtures or personal property relating thereto, provided that, any such assessment shall have the assent of a majority of the votes of members, whether voting in person or by proxy, at meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be delivered either personally or by mail to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting

called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all the votes. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments may be fixed at a uniform rate for all building sites or subparts thereof, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all building sites or parts thereof on the 1st day of the month following the conveyance of the common properties, except that such assessments shall not be applicable to any building site or part thereof owned by the Declarant until December 31, 1989. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The Board of Directors shall adopt a budget for each calendar year, which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar or fiscal year and provide funds for reserves as herein set forth. The budget shall be adopted in February of each year for

the coming calendar year, and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each Owner on or before March, preceding the year for which the budget is made. The budget shall be amended during a current year when necessary, the copies of the amended budget and proposed increases or decreases in assessments shall be sent to each Owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of the same to Owner shall not apply to any budgeting for any period prior to December 31, 1985.

The Board of Directors shall fix the amount of annual assessment to be assessed against each building site or subpart thereof at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto to at least twenty (20) days prior to the due date of this assessment, or the first installment thereof, including the due dates and amounts thereof. Failure of the Board to so notify each Owner in advance shall not however, relieve any Owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion, to require that all Owners pay an annual assessment in one

payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be due and become a lien as of the date of the annual assessment.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific building site have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessments: The Personal Obligation of the Owner; the Lien; Remedies of the Association. If any assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent, and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien upon the property shall bind such property in the hands of the Owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid

within thirty days (30) after the due day shall bear interest from the due date at the rate of twelve percent (12%) per annum. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty day (30) period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the lot, and there shall be added to the amount of such assessment the costs of preparing and filing of the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, a reasonable attorney's fee to be fixed by the Court, together with the costs of the action. No Owner may waive or otherwise escape the liability for the assessment provided for herein by nonuse of the common properties or abandonment of his building site. The Mortgagee of the subject property 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 such Mortgagee all of its rights, with respect to such lien, and rights of foreclosure to the Mortgagee.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of the

subject property shall not affect the assessment lien. However, any sale or transfer pursuant to foreclosure proceeding or in any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to sale or transfer. No sale or transfer shall relieve such property from liability for any assessments thereafter becoming due, or from the lien thereof.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Board of Directors of the Association shall appoint three (3) or more persons to serve as Architectural Control Committee ("The Committee"). The Board as a whole, or one or more members thereof may serve as members of the Committee. Such appointees shall serve until resignation or dismissal by the Board. Vacancies need not be filled unless the Committee has less than three (3) members remaining, in which event a replacement shall be named at the earliest opportunity by the Board.

Section 2. Review of Committee.

(a) Structures. No structures, whether residences, accessory buildings, tennis courts, swimming pools, antennae, flag poles, fences, walls, driveways, patio, patio enclosure, house numbers, or any other such improvements, shall be constructed or maintained

upon any building site, nor shall any grading or excavation be commenced unless complete plans, specifications, showing the exterior design, height, building material and color scheme thereof, the location of the structure platted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fences, walls, and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee, and copies of such plans, specifications, and lot plans as finally approved, deposited with the Architectural Control Committee. The Committee shall have such other powers and duties as set forth in this declaration, the by-laws of the Association and as delegated by the Board of Directors.

(b) Structure Procedures. After submission of such plans and requests, the Architectural Control Committee shall make due consideration thereof and shall approve or disapprove all plans and requests in writing within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after so requested, further approval will not be required and this Article will be deemed to have been fully complied with. A

majority vote of the Committee members is required for approval of proposed improvements.

Section 3. Guidelines and Restrictions. All exterior painting will be of a earthy color, and any repainting or changing of color, repainting of any living unit shall be consistent with the approved original plans and specifications for the living unit and shall have the prior affirmative consent of the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the properties conform to and harmonize with existing surroundings and structures.

Section 4. Records. The Committee shall maintain written records of all applications submitted to it, the date submitted, and of all actions taken in reference thereto and the dates such action was taken.

Section 5. Liability. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within The Properties by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

ARTICLE IX

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a Common Scheme upon Building Sites and Common Properties for the benefit of each Owner and may be enforced by any Owner of a Building Site or of the Common Properties or the Association.

a. No Building Site shall be used except for residential purposes, provided that, the Association may grant a variance to this provision.

b. No noxious or offensive activity shall be carried on upon any Building Site, Common Properties or Amenity Properties.

c. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be erected upon, or used, on any Building Site any time as a residence, either temporarily or permanently.

d. Dwellings shall not be moved from outside of Southpark Townhome to any Building Site.

e. No unused building material, junk or rubbish shall be left exposed except during actual building operations on any Building Site. No repair of automobiles will be permitted outside of garages on any Building Site at any time.

f. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading or excavating equipment or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage of a living unit.

g. Except for the purposes of controlling erosion on vacant areas, no field crops shall be grown upon any area of the property at any time, however, family gardens are permitted.

h. No incinerator or trash burner shall be permitted on any Building Site unless the same is incorporated into the living unit and not exposed to view from outside of the living unit. No garbage or trash can or container shall be permitted to remain outside of any living unit unless completely screened from view from every street and from all other areas in the planned development. No fuel tanks are permitted.

i. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any living unit except when in actual use unless completely screened from any street and from other areas of the property. No garage door

shall be permitted to remain open except when in entry to and exit from the garages are required. No clothes-line shall be permitted outside of any living unit at any time. Any exterior air conditioning condensor unit shall be placed in the rear or side yard.

j. Motor vehicles shall be utilized on designated roadways only. The use of all terrain vehicles, motorcycles, dirt bikes and similar vehicles will not be allowed on any portion of the described properties, except for ingress and egress.

k. No Owner may remove, cut down or transplant any vegetation on any portion of the common properties or amenity properties, except by Declarant.

l. No animals, livestock, fowl or poultry of any kind except horses with approval according to rules and regulations promulgated by the association, shall be raised, bred or kept on any building site, except that dogs, cats and other household pets maintained within the living unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further, that the total number of dogs and cats kept within the living unit shall not exceed two (2).

m. No sign, billboard or other structure for advertising or the display of advertising material of any

kind shall be erected, altered, placed or permitted to remain on the properties, except that real estate for sale or for rent signs of a size no greater than 2.0 square feet shall be permitted temporarily in the yards of the living units which are being offered for sale or rent.

n. Exposed portions of the foundation on the front of each living unit are to be covered with either siding or brick, and exposed portions of the foundations on the sides and rear of each living unit shall be covered with brick or siding or shall be painted.

o. A living unit on which construction has begun must be completed within one year from the date the foundation was dug for said living unit.

p. Use of the common properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

ARTICLE X

INSURANCE

Insurance shall be obtained and maintained and the proceeds thereof disposed of by the Association as follows:

Section 1. Coverage. The Association shall obtain and maintain in effect public liability insurance in such limits as determined by the Board of Directors, but in no event less than 500,000/1,000,000 covering the common properties with the

Association, Board, its employees and agents as insureds.

Section 2. Liability of Board. The Board of Directors shall not be liable to any party upon the amount of insurance coverage obtained in settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

ARTICLE XI

EASEMENTS

The Properties are, and shall perpetually be, unless any are terminated, subject to all and each of the following easements for common use, construction, maintenance, support, repair, recreation and other access, private and public sewer and utility line construction and services, and roadway easements.

Section 1. Utility Easement. Declarant hereby grants to itself and to each of the Association, Nebraska Public Power District, Lincoln Telephone and Telegraph Company, Minnegasco, any Cass County rural water district, and their respective assigns and successors, a perpetual easement, together with rights of egress and ingress and other access thereto for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines or other facilities in and under the common properties or amenity property, and including each building site as confined to

noninterference with any driveway, sidewalk or structural element of any approved or permitted living unit on any building site. While the utility easement granted herein is a blanket easement, the easement shall not, nor is it intended to interfere with the orderly development of a building site, and the grantees of the above-described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the available area of each building site. The grantees of the above-described easement further agree that subsequent to the construction of their respective improvements on the properties, that they shall reduce said blanket utility easement to a specific metes and bounds easement, setting forth the actual amount of the properties used for such improvements, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket utility easement to a specific metes and bounds utility easement. Each such grantee, by acceptance or use of this easement right, shall be deemed to agree to restore and compact the surface of the soil excavated for the purposes hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do .

so. The easements as to any of the common properties shall be determined and granted by the Association in the manner set forth in the by-laws as from time to time amended.

Section 2. Roadway Easement. Declarant hereby reserves and grants to itself, and to the Association, their successors and assigns, and to the Owners, their successors and assigns, a perpetual easement, together with rights of egress, ingress and other access thereto, a roadway easement to the following described real property:

Referring to the Center Quarter Corner of said Section 35; thence N 0 degrees 00" E, (assumed bearing along the West line of the Northeast Quarter) 274.0'; thence N 90 degrees E, 33.0', to the true point of beginning on the Easterly county road right-of-way line; thence N 0 degrees 00" E, (along said right-of-way), 40.97'; thence N 77 degrees 30' 27" E, 94.66'; thence North 87 degrees 33' 37" E, 190.42', to a point of curvature; thence following the arc of a 268.55' radius curve to the right, 109.09' to a point of reverse curvature; thence following the arc of a 92.02' radius curve to the left, 46.39', to a point of tangency; thence N 81 degrees 57' 00" E, 93.00', to a point of curvature; thence following the arc of a 10' radius curve to the left, 15.71', to a point of tangency; thence N 8 degrees 03' 00" W, 137.09'; thence N 63 degrees 30' 22" E, 21.08'; thence S 8 degrees 03' 00" E, 380.62'; thence N 88 degrees 45' 42" W, 20.27'; thence N 8 degrees 03' 00" W, 130.00', to a point of curvature; thence following the arc of a 25 radius curve to the left, 33.60', to a point of tangency; thence N 85 degrees 03' 00" W, 40.00', to a point of curvature; thence following the arc of a 143.33' radius curve to the right 68.66', to a point of reverse curvature; thence following the arc of 111.57' radius curve to the left, 67.83', to a point of tangency; thence S 87 degrees 33' 37" W, 261.54'; thence S 77 degrees 30' 27" W, 100.0' to the point of beginning.

Section 3. Telephone and Electric Power Service Lines. All

telephone and electric power service lines from and to the living units shall be underground.

Section 4. Sanitary Sewer. Declarant hereby grants to themselves and its assigns a sanitary sewer system easement for the placement and maintenance of a sanitary sewer system with the same being 5.0' either side of a line described as follows:

Referring to the Center Quarter corner of Section 35, Township 13 North, Range 13; thence N 0 degrees E, (assumed bearing), along the West line of the North-east Quarter, Section 35-13-13, 403.26'; thence N 90 degrees E, (perpendicular to said West line of North-east Quarter, Section 35), 661.15', to the true point of beginning; thence N 5 degrees 08' 53" W, 220.00'; thence N 50 degrees 08' 53" W, 290.00'; thence N 8 degrees 08' 53" W, 150.00'; thence N 50 degrees 08' 53" W, 320.00'; thence N 39 degrees 51' 07" E, 620.00', to the termination of said easement.

ARTICLE XII

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, the Owners of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a period of ten years from the date hereof, after which time said covenants shall be automatically extended for successive period of ten (10) years, unless an instrument, signed by a majority of the Owners of all the properties, agreeing to change such covenants, in whole or in part, is filed with the Register .

of Deeds of Cass County, Nebraska.

Section 2. Amendments. The Covenants and Restrictions of this Declaration may be amended by the Declarant, or their assigns, until such time as the Declarant has conveyed fee simple title to the common properties. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the building sites covered by this Declaration. Written notice of any proposed amendment, and a meeting to be called for such purpose, must be sent at least sixty (60) days, but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The Notice must contain the full text of the proposed amendment and the date, including a time and place of meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Notices. Any Notice required to be sent to any members, Owner, or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post paid to the last known address of the person who appears as member or Owner on the records of Association at the time of the mailing, with such mailing to be by regular first class mail. It is the responsibility of the assignee, contract purchaser, or Mortgagee to notify the Association in writing of its interest. In an absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising


by reason of performing its duties hereunder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction herein. Any failure by the Association or Declarant to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of any subsequent right to do so.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 20th day of January, 1988.


RICHARD T. JOHNSON


IRENE O. JOHNSON

STATE OF NEBRASKA)
COUNTY OF CASS) ss.

On this 26th day of January, 1988, before me, a Notary Public duly commissioned and qualified in and for said County, personally came Richard T. Johnson and Irene O. Johnson, husband and wife, to me known to be the identical persons who signed the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Beverly Baumgart
Notary Public



EXHIBIT "A"

LEGAL DESCRIPTION

A tract of land located in the NE 1/4 (Gov't Lot 2) of Section 35-T13N-R13E of the 6th P.M., Cass County, Nebraska, more fully described as follows:

Referring to the Center 1/4 Corner of said Section 35-T13N-R13E; thence N 0° E, (assumed bearing), along the West line of the NE 1/4, 600.00' to the true point of beginning; thence continuing N 0° E, along said West line of the NE 1/4, 990.70' to the Southerly bank of the Platte River; thence Easterly, more or less, along the Southerly bank, the following courses and distances:

N 83 12 55 E, 75.53'; N 86 51 37 E, 237.36'; S 87 35 51 E, 143.13; N 81 15 14 E, 92.07'; N 80 21 45 E, 107.52'; S 84 11 50 E, 8.05';

thence S 0° W, (parallel with the West line of the NE 1/4), 887.17'; thence N 90° W, 510.00'; thence S 0° E, 150.00'; thence N 90° W, 150.00' to the point of beginning. Said tract contains a calculated area of 12.55 Acres, more or less. Said tract also contains a previously described 1.00 Acre tract.

EXHIBIT "B"

Government Lot 2 in Section 35, Township 13 North, Range 13 East of the 6th P.M. in Cass County, Nebraska except a tract of land in the Northeast Quarter of Section 35, Township 13 North, Range 13 East of the 6th P.M. described as follows:

Referring to the Center Quarter Corner of said Section 35, Township 13 North, Range 13 East of the 6th P.M.; thence N 0 degrees E, (assumed bearing), along the West line of the Northeast Quarter 600.00 feet to the true point of beginning; thence continuing North 0 degrees E, along said West line of the Northeast Quarter 990.08' to the Southerly bank of the Platte River, thence Easterly, more or less, along the Southerly bank, the following courses and distances:

N 83 12 55 E, 75.53"; N 86 51 37 E, 237.36'; S 87 35 51 E, 143.13; N 81 15 14 E, 92.07'; N 80 21 45 E, 107.52'; S 84 11 50 E, 8.05';

thence S 0 degrees W, (parallel with the West line of the Northeast Quarter), 887.19'; thence N 90 degrees W, 510.00'; thence S 0 degrees E, 150.00'; thence N 90 degrees W, 150.00' to the point of beginning. Said tract contains a calculated area of 13.55 acres, more or less. Said tract also contains a previously described 1.00 acre tract, and

Also except the following:

A fractional part of the West Half of the Northeast Quarter (sometimes known as Government Lot 2), in Section 35, Township 13 North, Range 13 East of the 6th P.M., Cass County, Nebraska, more fully described as follows:

Referring to the Center Quarter Corner of said Section 35, thence running N 0 degrees 00" E, (assumed bearing along the West line of the Northeast Quarter), 274.0'; thence N 90 degrees E, 33.0', to the true point of beginning on the Easterly county road right-of-way line; thence N 0 degrees 00" E, (along said right-of-way) 40.97'; thence N 77 degrees 30' 27" E, 94.66'; thence N 87 degrees 33' 37" E, 158.32'; thence N 22 degrees 50' 28" W, 109.72'; thence N 19 degrees 40' 26" E, 70.0'; thence S 61 degrees 36' 38" E, 100.00'; thence S 79 degrees 36' 40" E, 117.38'; thence N 63 degrees 30' 22" E, 270.78'; thence S 7 degrees 25' 00" E, 454.57'; thence N 88 degrees 45' 42" W, 391.53'; thence N 22 degrees 50' 28" W, 199.50'; thence S 87 degrees 33' 37" W, 169.68'; thence S 77 degrees 30' 27" W, 100.0', to the point of beginning, containing 4.00 acres.

5240

34

EXHIBIT "C"

A fractional part of the West Half of the Northeast Quarter (sometimes known as Government Lot 2), in Section 35, Township 13 North, Range 13 East of the 6th P.M., Cass County, Nebraska, more fully described as follows:

Referring to the Center Quarter Corner of said Section 35, thence running N 0 degrees 00" E, (assumed bearing along the West line of the Northeast Quarter), 274.0'; thence N 90 degrees E, 33.0', to the true point of beginning on the Easterly county road right-of-way line; thence N 0 degrees 00" E, (along said right-of-way) 40.97'; thence N 77 degrees 30' 27" E, 94.66'; thence N 87 degrees 33' 37" E, 158.32'; thence N 22 degrees 50' 28" W, 109.72'; thence N 19 degrees 40' 26" E, 70.0'; thence S 61 degrees 36' 38" E, 100.00'; thence S 79 degrees 36' 40" E, 117.38'; thence N 63 degrees 30' 22" E, 270.78'; thence S 7 degrees 25' 00" E, 454.57'; thence N 88 degrees 45' 42" W, 391.53'; thence N 22 degrees 50' 28" W, 199.50'; thence S 87 degrees 33' 37" W, 169.68'; thence S 77 degrees 30' 27" W, 100.0', to the point of beginning, containing 4.00 acres.

306

EXHIBIT "E"
CALCULATION OF ALLOCATION

Unit Number	Allocated Interest in Common Elements
101	4.00%
102	4.00%
103	4.00%
104	4.00%
105	4.00%
106	4.00%
107	4.00%
108	4.00%
109	4.00%
110	4.00%
111	4.00%
112	4.00%
113	4.00%
114	4.00%
115	4.00%
116	4.00%
117	4.00%
118	4.00%
119	4.00%
120	4.00%
121	4.00%
122	4.00%
123	4.00%
124	4.00%
125	4.00%
	<hr/>
	100%