

MA

AMENDED AND RESTATED
BYLAWS
FOR
CHERRY GARDEN CONDOMINIUM PROPERTY REGIME

described as

Units 1 through 18, in Cherry Garden Condominium Property Regime, a condominium organized under the Laws of the State of Nebraska pursuant to Master Deed and Declaration recorded in book 1965, page 146, Douglas County, Nebraska, and any amendments thereto.

ARTICLE I
NAME AND LOCATION

These Bylaws (9th Revision) are made by

Return to: Cherry Garden Condominium Association, Inc.

a Nebraska nonprofit corporation, home office addressed at

810 South 37th Avenue, Omaha, NE 68105.

They are subject to the Nebraska Condominium Act and the Nebraska Nonprofit Corporation Act.

Return: Cherry Garden Condominium Association, Inc.
810 South 37th Avenue
Omaha, NE 68105

MB

ARTICLE II
DEFINITION OF TERMS

1. "Association" means Cherry Garden Condominium Association, Inc., a Nebraska nonprofit corporation; formerly Cherry Garden Apartments, Inc., originally incorporated on 17 August 1949.
2. "Board" or "Board of Directors" or "Executive Board" means the body, regardless of name, designated in the Declaration to act on behalf of the Association.
3. "Bylaws" means secondary laws of the Association that govern its internal affairs and deal with routine operation and administrative matters.
4. "Common Elements" means all portions of the Condominium other than the Units.
5. "Common Expenses" means Association expenditures or financial liabilities, together with any allocations to reserves. Each Unit Owner owes 1/18th of the annual estimated budget (payable monthly) and special assessments.¹
6. "Condominium" means real estate described as Cherry Garden Condominium Property Regime, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.
7. "Declaration" means the Master Deed and Declaration that created the Condominium, filed with the Register of Deeds in Douglas County on 17 November 1993, in book 1965, page 146.
8. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
9. "Proxy" means a written agreement between a Member and another under which the Member authorizes the other to vote. A Proxy is void if it is not notarized or purports to be revocable without notice. A Proxy terminates one (1) year after its date of signature, unless it specifies a shorter term.²
10. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, defined under "Apartment" in the Declaration.
11. "Unit Owner" or "Member" means a Person or Persons who owns a Unit as named on the individual Unit deed recorded with the Register of Deeds of Douglas County; but does not include a Person having an interest in a Unit solely as security for an obligation. Each Member has fee simple ownership of a Unit and an undivided interest in the Common Elements.
12. "Unit Resident" is similar to an occupant³ in possession of a Unit; however, a Unit Resident means a natural individual only. If serving on the Board as a non-Member, must have voting rights for that Unit via a current Proxy.

¹ Neb. Rev. Stat. § 76-844.d, § 76-873.c.2, § 76-873.e

² Neb. Rev. Stat. § 76-868.b

³ Declaration Section 1.o

ARTICLE III
MEMBERS, VOTES, LIEN RIGHTS

1. Members. The membership of the Association at all times shall consist exclusively of all the Unit Owners.⁴ Members shall be, either with direct or indirect interest (excluding Units owned by the Association), limited to two (2) Units. If the Person is other than a natural individual, the Member must be in good standing with its respective state.
2. Votes. There being eighteen (18) Units, each Unit is allocated one (1) vote; however, a vote for a Unit owned by the Association cannot be cast.⁵ Members shall be, either with direct or indirect interest, limited to two (2) votes. Those authorized to vote by Proxy are each limited to two (2) votes. Therefore, no one Person may cast more than two (2) votes.
3. Lien rights. Refer to Neb. Rev. Stat. § 76-874 addressing lien for assessments and fines and the Declaration Section 10.b for enforcement.

ARTICLE IV
MEETINGS

1. An annual Member meeting shall be held once each year in January.
2. Special Member meetings may be called by the President, a majority of the Board, or by Members having twenty percent (20%) of the votes in the Association.⁶
3. Board meetings may be held quarterly or more frequently if deemed appropriate.
4. Conduct. *Robert's Rules of Order: Newly Revised* shall guide the conduct of Association meetings.
5. Notice of meetings ("Notice"). Neither less than fourteen (14) nor more than thirty (30) days in advance of any meeting, the Secretary shall cause Notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address, including electronic, designated in writing by the Member. The Notice of any meeting must state the time and place of the meeting and the items on the agenda.⁷
6. Location. Member meetings and Board meetings may be held at such places within the state of Nebraska, County of Douglas, as may be designated by the Board.

ARTICLE V
QUORUM

1. A quorum is present throughout any Member meeting if Persons entitled to cast thirty-five percent (35%) of the votes which may be cast for election of the Board are present in Person or by Proxy at the beginning

⁴ Neb. Rev. Stat. § 76-859

⁵ Neb. Rev. Stat. § 76-868.d

⁶ Neb. Rev. Stat. § 76-866

⁷ Neb. Rev. Stat. § 76-866, Declaration Section 22

of the meeting.⁸ Arrangements for an electronic meeting may be made only if approved by the presiding officer over the meeting of the Association.

2. A quorum is deemed present throughout any Board meeting if individuals entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.⁹

ARTICLE VI
MEMBER VOTING

1. If only one of the multiple owners of a Unit is present at a meeting of the Association, he or she is entitled to cast the vote allocated to that Unit. If more than one of the multiple owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners.¹⁰
2. Votes allocated to a Unit may be cast pursuant to a Proxy duly executed by a Member. If a Unit is owned by more than one (1) Person, each owner of the Unit may vote or register protest to the casting of votes by other owners of the Unit through a duly executed Proxy. A Member may not revoke a Proxy given pursuant to this section except by actual notice of revocation to the presiding officer over a meeting of the Association.¹¹
3. The option to vote by mail ("Absentee Ballot") is reserved for Member consent to Bylaw amendments and for election of directors. Each Member shall receive a printed ballot with a space for the voter's signature, date, and a notary seal. An Absentee Ballot is void if it is not notarized. Absentee Ballots shall neither be allowed nor mixed with votes of Persons that attend a meeting when a decision is influenced by meeting procedures, such as debate, before the votes are cast. No Absentee Ballots shall be allowed for budgetary decisions.
4. A record of the vote, along with the means of voting, must be in the meeting minutes.

ARTICLE VII
BOARD OF DIRECTORS AND OFFICERS

1. The Board shall consist of at least three (3) and no more than four (4) directors.¹² Three (3) of which have to be Members; the fourth, if not a Member, must be a Unit Resident.
 - a. Terms on the Board: Staggered two (2) year terms.
 - b. Electing the directors. At the annual Member meeting, vacant Board positions are filled by election. Nominations may only be accepted from the floor during the meeting if there are no Absentee Ballots.
 - c. Qualifications. Natural individuals¹³ elected to the Board must be either Members or Unit Residents and must not have an outstanding balance with the Association. Members other than a natural individual may only

⁸ Neb. Rev. Stat. § 76-867.a

⁹ Neb. Rev. Stat. § 76-867.b

¹⁰ Neb. Rev. Stat. § 76-868.a

¹¹ Neb. Rev. Stat. § 76-868.b

¹² Neb. Rev. Stat. § 76-861.f, § 76-864.a.1

¹³ Neb. Rev. Stat. § 21-1969

qualify through Unit Resident status. They must be eligible to vote at any meeting; however, if there is a conflict of interest, they must abstain from voting. The Board is required to exercise ordinary and reasonable care.¹⁴

d. Compensation. Neither director nor officer shall receive compensation for any service rendered to the Association; however, any director or officer may be reimbursed for actual expenses incurred in the performance of duties.

e. Removal. Any director or officer may be removed from the Board at any time, with or without cause, on the affirmative vote of a majority of the Board whenever, in its judgment, the best interest of the Association will be served thereby. The Members, by a two-thirds (2/3) vote of all Persons present and entitled to vote at any Member meeting at which a quorum is present, may remove any director or officer of the Board with or without cause.¹⁵

f. Vacancies. Officers may fill vacancies in the Board for the unexpired portion of any term by election.¹⁶

2. The titles of the officers are: President, Vice-President, Secretary, and Treasurer.¹⁷ All of the officers must be directors on the Board.

3. Election of officers by the Board.¹⁸ The Board shall elect the officers at a Board meeting following the annual Member meeting. The officers shall take office upon election. The President may not hold more than one (1) office. One director may serve as both Secretary and Treasurer. A failure to elect a President, Vice-President, Secretary, or Treasurer shall not affect the existence of the Association. Every odd-numbered year, a biennial report shall be sent to the Secretary of State in Nebraska.¹⁹

a. President shall be the chief executive officer of the Association; shall preside at all Board meetings and Member meetings; shall see that orders and resolutions of the Board are carried out; shall execute any documents duly authorized by the Board; shall co-sign all checks where two (2) signatures are required, as determined by the President; and may cause an audit of Association books.

b. Vice-President shall act in the place of the President in the event of the President's absence or inability or refusal to act; and shall exercise and discharge such other duties as may be required by the President or by the Board.

c. Secretary shall record all votes cast; shall take and file in the Association minute book the minutes and resolutions of all meetings; shall serve Notice of Board meetings and Member meetings; shall keep appropriate current records showing the Members of the Association and Unit Residents together with their contact information; and shall perform such other duties as required by the Board.

¹⁴ Neb. Rev. Stat. § 76-861.a

¹⁵ Neb. Rev. Stat. § 76-861.g

¹⁶ Neb. Rev. Stat. § 76-861.b

¹⁷ Neb. Rev. Stat. § 76-864.a.1

¹⁸ Neb. Rev. Stat. § 76-864.a.2

¹⁹ Neb. Rev. Stat. § 21-19,172

d. Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association; shall disburse such funds as directed by resolution of the Board; shall sign all checks of the Association; shall keep proper books of account; may cause an annual audit of the Association books; may engage a certified public accountant (CPA) for services other than an audit, subject to Board approval; shall prepare a report of income and expenditures to be presented to the membership at its regular annual meeting; shall prepare or cause to have prepared and filed all necessary federal and state governmental forms, including tax forms; and shall make available to the Board a monthly listing of accounts receivable.

4. Neither the directors nor officers of the Association shall be personally liable to the Unit Owners for any mistake in judgment or for any acts or omissions of any nature whatsoever except such acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and officers' and their respective heirs, personal representatives, and successors and assigns.²⁰

ARTICLE VIII
POWERS AND DUTIES OF THE BOARD²¹

1. The Board shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are authorized by Nebraska law, the Declaration, the Articles of Incorporation, or these Bylaws; including, but not limited to:

a. Adopt and amend any rules and regulations ("House Rules") deemed necessary for the benefit of the Association or the Condominium. Only the Board has the authority to set policy for the Association.

b. Adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners. Only the Board has the authority to open bank accounts for the Association.

c. Delegate duties.²² If a property management firm is hired, the firm shall have a professionally certified property manager ("Managing Agent"). A contract shall specify the delegated duties; it must be signed and limited to a term of no longer than one (1) year. The Board may hire and discharge the Managing Agent.

d. Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and House Rules for the Association.

e. Impose reasonable charges for the preparation and recordation of resale statements, or statements of unpaid assessments.

f. Obtain required master policy insurance for the Association which prohibits partition. Make sure the insurance agent follows Neb. Rev. Stat. § 76-871 and provide for the indemnification of the Board and maintain directors' and officers' liability insurance.²³

²⁰ Declaration Section 6.c

²¹ Neb. Rev. Stat. § 76-860

²² Neb. Rev. Stat. § 76-864.a.4, Declaration Section 6.b

²³ Declaration Section 6.c, Section 13

g. The Association owns Unit 17 and Unit 18. The Board shall have the tenants of each Unit 17 and Unit 18 sign a residential lease agreement for a term of one (1) year minimum.

2. Amendments to the Declaration.²⁴ Neither director nor officer may amend the Declaration without first obtaining legal counsel and any other appropriate professional.

3. Record retention. The Association shall keep appropriate financial records. All financial and other records of the Association shall be made reasonably available for examination by any Member.²⁵ Paper records are stored and retained indefinitely at the principal office of the corporation; including, but not limited to: the Secretary's minutes, the Treasurer's annual financial reports, and governing documents.

ARTICLE IX FISCAL YEAR AND BUDGET

1. The fiscal year of the Association shall coincide with the Gregorian calendar year.

2. Assessments shall be based on a budget adopted at least annually by the Association.²⁶

3. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to the Members by Notice setting a date for a Member meeting to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.²⁷

ARTICLE X UNIT OWNERS AND UNIT RESIDENTS

1. Assessments. Each Unit Owner shall pay monthly and special assessments to the Association. No Unit Owner may waive or otherwise escape liability for the assessments by non-use of the Common Elements or abandonment of the Unit.²⁸ Thirty (30) days after the due date, the Board may begin collections.

a. Monthly assessments are due the first (1st) day of each month. After the tenth (10th) day of that month, any unpaid assessments are delinquent making the Unit Owner liable for a late fee of twenty-five dollars (\$25).²⁹ Prepayments shall only be accepted within the fiscal year.

²⁴ Neb. Rev. Stat. § 76-864.a.5

²⁵ Neb. Rev. Stat. § 76-876

²⁶ Neb. Rev. Stat. § 76-873.a

²⁷ Neb. Rev. Stat. § 76-861.c

²⁸ Declaration Section 10.a

²⁹ Neb. Rev. Stat. § 76-860.a.11

b. Any past-due assessments or fines shall bear interest from the date of delinquency at a rate of sixteen percent (16%) per annum.³⁰

2. Leasing of Units. The Association was formed to promote and protect the co-operative aspects of residence and was established to enhance and perfect the value, desirability, and attractiveness of the Condominium. In furtherance of such purposes, Unit Owners may lease their Unit to a Unit Resident pursuant to a residential lease agreement for a term of no shorter than one (1) year. Such residential lease agreement along with the name and contact information for the Unit Resident(s) shall be provided to the Association to use to contact the Unit Resident in the case of an emergency. If a Unit Owner fails to comply with the leasing provisions upon written notice from the Board, the Unit Owner will be assessed a monthly fine of one hundred dollars (\$100) for each month of non-compliance.

3. Unoccupied Units. If the Unit Resident, whether a Unit Owner or a tenant, intends to leave such Unit unoccupied for a period of more than one (1) month, the Unit Resident shall notify the Association prior thereto.

4. Resale. A Unit Owner may request from the Board a seller's information package for the resale of a Unit. The Board shall furnish such information within ten (10) business days to the Unit Owner at a reasonable cost, if any.³¹ Other specific information may incur additional fees from the Unit Owner.

ARTICLE XI
METHOD OF AMENDING THE BYLAWS³²

1. A Member may propose to amend the Bylaws by submitting to the Board any desired amendments.

2. These Bylaws may be amended at an annual or special Member meeting where the Board has provided proper Notice of the proposed change to the Members, including a copy of the current Bylaws and proposed amendment. An amendment will pass upon an affirmative majority Member vote. An Absentee Ballot may be included, at the discretion of the presiding officer of the meeting. The Board shall record the outcome of the votes along with the means of voting.

3. Upon approval of the amendments, the revised or amended Bylaws shall be filed with the Register of Deeds in Douglas County with a statement that shows the outcome of the vote and whether or not the number of votes cast was sufficient for approval. Previous versions become obsolete.

4. In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with the Nebraska Condominium Act.³³

³⁰ Neb. Rev. Stat. § 45-101.03, § 76-873.b

³¹ Neb. Rev. Stat. § 76-884

³² Neb. Rev. Stat. § 76-864.a.6

³³ Neb. Rev. Stat. § 76-840.c

Approval, by Members was required with sixteen (16) votes entitled to be cast. Total votes FOR: 11 and AGAINST: 0.

(eleven) (zero)

Means of voting: Voice by roll call

The number of votes cast was sufficient for approval by the membership.

Member meeting date: Sunday 18 October 2020

Amending Original Covenants
MISC Inst # 2019056879
MISC Inst # 2010059810

EXECUTED by the President of Cherry Garden Condominium Association, Inc. at Omaha, Nebraska

on this 19 day of October 2020.

Melanie Arnold, President

STATE OF NEBRASKA

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me this

19th day of October 2020 by Melanie Arnold.

Notary Public

My commission expires

August 4th, 2021

NOTARY SEAL

