

FILED SARPY CO. NE.	
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<i>Clay M. Rogers</i> REGISTER OF DEEDS	Counter <u>JHD</u> Verify <u>[Signature]</u> D.E. <u>[Signature]</u> Proof <u>[Signature]</u> Fee \$ <u>72.00</u> Ck <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Cng <input type="checkbox"/> 1,234

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Clay M. Rogers, #13559
 DWYER, SMITH, GARDNER, LAZER,
 POHREN, ROGERS & FORREST
 8712 West Dodge Road, Suite 400
 Omaha, NE 68114
 TEL: 402.392.0101
 Fax: 402-392-1011

**AMENDED DECLARATION OF COVENANTS, CONDITIONS AND
 RESTRICTIONS AND EASEMENTS OF HARRISON WOODS
 TOWNHOMES, A PART OF HARRISON WOODS, A SUBDIVISION IN
 SARPY COUNTY, NEBRASKA**

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant",

WITNESSETH:

WHEREAS, Declarant, whether one or more, is the owner of certain property in Sarpy County, Nebraska, more particularly described as follows:

**Lots 51 A & B through 57 A & B of Harrison Woods, a
 subdivision in said Sarpy County, Nebraska.**

WHEREAS, Declarant desires to amend the original Declaration of Covenants, Conditions, Restrictions and Easements of Harrison Woods Townhomes, A Part of Harrison Woods, a Subdivision in Sarpy County, Nebraska, dated 21 December 2001 and recorded with the Sarpy County Register of Deeds on 26 December 2001 as Instrument No. 2001-43088, hereinafter the "Original Covenants," as set forth herein;

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described shall be held, sold and conveyed subject to the amendments of

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easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Treatment of Original Covenants

Article I, Article II and Article V of the Original Covenants shall remain unchanged by these Amendments.

Article III of the Original Covenants shall be deleted in its entirety.

Except as amended, modified, altered or deleted herein, the Original Covenants and these Amended Covenants shall have full force and affect as to the Lots identified herein. Any conflicts between terms and provisions between the Original Covenants and the Amended Covenants shall be read and interpreted so as to meet the intentions contained in these Covenants. In the event of irreconcilable conflicts between the Original Covenants and the Amended Covenants, the Amended Covenants shall prevail.

ARTICLE II

Article IV of the Original Covenants shall be deleted and replaced by the following language:

NOW, THEREFORE, Declarant has caused the incorporation of HARRISON WOODS TOWNHOME ASSOCIATION II, INC., a Nebraska not for profit corporation (referred to in this Article as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Harrison Woods, including:

(a) The acquisition, construction, landscaping, improvement, equipment, operation, repair, upkeep and replacement and the maintenance and repair of the improvements to the Lots as set forth herein.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of Harrison Woods, provided always that such rules are uniformly applicable to all Members.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Harrison Woods; and the protection and maintenance of the residential character of Harrison Woods.

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1. Association: "Association" shall mean and refer to Harrison Woods Townhome Association II, Inc., a Nebraska nonprofit corporation, its successors and assigns.

2. Covenants: "Covenants" shall refer to the Original Covenants and these Amended Covenants as exist on each Lot.

3. Owner: "Owner" shall mean and refer to:

- (a) The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

4. Properties: "Properties" shall mean and refer to:

Lots 51 A & B through 57 A & B Harrison Woods, a subdivision in said Sarpy County, Nebraska.

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

5. Lots: "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split of a duplex zoned Lot.

6. Improved Lot: "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

7. Assessable Lot: "Assessable Lot" shall mean and refer to any Improved Lot that the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

8. Declarant: "Declarant" shall mean and refer to all persons and entities signing this instrument, and their successors and assigns.

9. Voting: The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and

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for any period not to exceed 60 days for any infraction by any such Owner, or members or such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

10. Parking Rights: Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be permitted under local ordinances and as may be permitted by the Covenants.

11. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be affected from time to time by the Declarant by recordation with the Register of Deeds of Sarpy County, Nebraska, of an Amendment of Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall become subject to this Declaration.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

12. Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

A. Members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

13. Voting: The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, including the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Members shall be the Declarant who shall be entitled to two votes for each Lot owned by the Declarant. The Class B membership shall terminate with the Declarant then continuing to be entitled to one vote for each Lot owned by the Declarant as a Class A Member upon the occurrence of the first of the following dates:

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- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership; or
- (b) January 1, 2005.

14. Purposes & Responsibilities: The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

- (a) The landscaping, mowing, repair and maintenance of such Lots as may be approved and authorized by the Board of Directors.
- (b) The enforcement of these Covenants and Declarations and all amendments thereto.
- (c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- (d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any improvement to a Lot against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.
- (e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.
- (f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- (g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- (h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.
- (i) General administration and management of the Association in the performance of their duties and responsibilities for the Association.

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(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

(k) The carrying out of the duties and obligations that are contained in the Bylaws of the Association.

15. Mandatory Duties: The Association shall be solely responsible to employ and hire companies to perform the following outdoor maintenance: (1) snow removal from Association walks and drives; (2) mowing of front, back and side of each lot; (3) removal of all grass, leaves and yard waste; and (4) all other exterior maintenance necessary to ensure uniformity and quality of the outdoor appearance of the townhome regime as may be approved and authorized from time to time by the Board of Directors.

16. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Assessable Lot and for each Owner of any Assessable Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association;

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association,

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment shall be made. Each such assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assume by them.

17. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the Properties, the enforcement of the Covenants and such other obligations as may be from time to time approved and authorized by the Board of Directors.

18. Monthly Assessments. The Board of Directors shall have the authority to levy and assess from time to time against an Assessable Lot any monthly maintenance Assessment for the purpose of meeting the requirements of these Covenants.

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19. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article VII herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on or within the Common Area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

20. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under these Covenants shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership 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 such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

21. Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the board of directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

22. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner

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may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

23. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

24. Maintenance: Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed by the Declarant, except such improvements within any Assessable Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner.
- (c) Maintenance, repair, snow removal and grounds, improvements, and utility improvements.
- (d) Electrical service for operation of common lighting, gates and other exterior improvements.
- (e) Trash removal, unless otherwise provided by local governmental authority.
- (f) The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces, including walks, driveways, patios, foundations, doors, windows, and decks.
- (e) Declarant shall further have the right to temporarily turn off any sprinkler system on a Lot for purposes of completing and carrying out any maintenance, as identified herein.

25. Special Assessments: Special assessments may be assessed for, but are not limited to, the following:

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- (a) Maintenance, repair, snow removal.
- (b) Maintain, repair, including painting, of all exterior walls, with the exception that the Association shall not assume the duty to repair or replace glass surfaces, including, but not limited to, window glass and door glass. The Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditioning systems.
- (c) Maintain, repair and replace gutters.
- (d) Maintain, repair and replace roofs.

26. Architectural Control: No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefore, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans, as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications.

27. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Association, a satellite dish measuring 18 inches or less in diameter may be erected so long as such satellite dish is hidden from the view of the adjoining Properties.
- (b) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets. No such pet shall be kept, bred or maintained for commercial purposes. No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than household pets, which shall be limited to one (1) per household and which a

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household pet shall not exceed twenty pounds (20) in weight. All pets shall be confined to the Lot by radio controlled fencing or leashed when outside the residential structure and patio area. All unpleasantries created by the household pet shall be the responsibility of the Owner, and he shall be obligated to clean up after the animal.

- (c) No noxious, offensive, or illegal activity shall be carried on the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.
- (d) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size. Nothing herein contained shall prevent the use of any Lot by the Declarant, its agents, and the Association as a sales and rental office, or as a model home or both, and while any Lot is so used, they shall have the right, for themselves, or their nominees, to place signs on the premises advertising such office or model home, or both.
- (e) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.
- (f) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulations, restriction or exclusion by the Association.
- (g) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

28. Party Walls: Party walls shall be constructed, maintained and repaired as follows:

- (a) General Rules of Law to Apply. Each wall which is built as part of the original construction of any dwelling upon a Lot, and which is placed on the dividing line between any adjoining Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party

walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- (b) **Sharing of Repair & Maintenance.** The cost of reasonable repairs and maintenance of any party wall shall be shared by the Owners who make use of such party wall in proportion to the length of each Lot and party wall.
- (c) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner or Owners shall thereafter make use of such party wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from other Owners under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) **Weatherproofing.** Notwithstanding any other provision of this Section, an Owner, who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repair of damage caused by the elements.
- (e) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (f) **Arbitration.** In the event of any dispute arising and concerning a party wall, or under the provisions of this Section, each Owner involved shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and all Owners shall be bound by any decision arrived at by a majority of all such arbitrators. Arbitration shall be governed by the Uniform Arbitration Act, to the extent consistent with the foregoing provisions.

28. **Insurance:** The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

29. **Access:** The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

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ARTICLE III

Article VI of the Original Covenants shall be deleted and replaced by the following language:

1. **Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of 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.


2. **Severability:** Invalidation of any one or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

3. **Duration:** The Covenants shall run with and bind the land in perpetuity. These Covenants may be amended at any time during the initial twenty (20) year term, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Covenants. The Declarant shall have the right to amend these Covenants for any reason during the initial term of five (5) years from the date these Covenants are recorded.

4. **Declarant Status:** The Declarant or its successor or assign may terminate its status as Declarant under these Covenants, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers of the original Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed these Declarations of Covenants, Conditions and Restrictions this 30 day of July, 2002.

HARRISON WOODS TOWNHOME
ASSOCIATION II, INC., a Nebraska Non-
Profit Corporation, Declarant

By: 
Rick Bergholz, President

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STATE OF NEBRASKA)
)SS.
COUNTY OF DOUGLAS)

Before me the undersigned, a notary public, personally came Rick Bergholz, President of Harrison Woods Townhome Association, Inc., a Nebraska Non-Profit Corporation, to me personally known to be the Declarant, and acknowledged the execution of the above to be his voluntary act and deed on behalf of Harrison Woods Townhome Association, Inc.

WITNESS my hand and notarial seal this 30 day of July, 2002.

Susan Kay Zajac
Notary Public
State of Nebraska
Exp. August 21, 2005

Susan Kay Zajac
Notary Public