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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF A FURTHER PART  
OF PACIFIC SPRINGS, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION made on the date hereinafter set forth is made by Horgan Development Company, a Nebraska corporation (hereinafter referred to as the "Declarant").

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Douglas County, Nebraska, and described as follows:

Lots 180 through 204, inclusive, Pacific Springs, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are hereinafter referred to as the "Townhome Lots" and individually as each "Townhome Lot."

Declarant, as seller, has entered into an Agreement and Option to Purchase Lots with Apollo Building Corp., a Nebraska corporation ("Apollo"), pursuant to which it has granted Apollo an option to purchase the Townhome Lots. Declarant previously recorded with the Douglas County Register of Deeds a Declaration of Covenants, Conditions, Restrictions and Easements of Third Phase of Pacific Springs, a Subdivision in Douglas County, Nebraska, on November 21, 1996, in Book 1194, at Page 189, Miscellaneous Records (the "Pacific Springs Declaration").

The Declarant desires to provide for the preservation of the values and amenities of the Pacific Springs subdivision, of which the Townhome Lots are a part, and desires to provide for the maintenance of the character and residential integrity of Pacific Springs and for the acquisition, construction and maintenance of common facilities for the use and enjoyment of the residents of Pacific Springs.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Townhome Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Townhome Lots, and the enjoyment of the residents of the Townhome Lots. These restrictions, covenants, conditions and easements shall run with the Townhome Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Townhome Lot, or any part thereof, as more fully described herein. The Townhome Lots are, and each Townhome Lot is and shall be subject to all and each of the following conditions and other terms:

ARTICLE I.  
DEFINITIONS

Terms used in this Declaration with the initial capitalized letter and which are not otherwise defined in this Declaration shall have the meaning ascribed to them in the Pacific Springs Declaration.

ARTICLE II.  
EASEMENTS AND RESTRICTIONS  
RELATING TO GOLF COURSE

1. Declarant expects that a golf course and related amenities and facilities will be constructed, operated and maintained on property with a common boundary with the Townhome Lots (the property on which such golf course is constructed shall be referred to herein as the "Golf Lots"). Declarant anticipates that the proximity of the Townhome Lots to the Golf Lots will enhance the desirability and value of the Townhome Lots to purchasers and their successors and assigns. Nevertheless, purchasers and owners of the Townhome Lots should be aware that: (i) golfers will from time to time hit golf balls from the Golf Lots onto the Townhome Lots; and (ii) normal operation and maintenance of the golf courses will involve operation of mowers and other power equipment during the evening and early morning hours.

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2. The Declarant hereby declares, grants and establishes easements on the Townhome Lots in favor of the Grantees (defined below) for: (i) intrusion of errant shots onto the Townhome Lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, an "errant shot" shall refer to a golf shot which is hit onto any Townhome Lot.

3. The easements granted in this Article are for the use and benefit of the owner of the Golf Lots, its successors and assigns in ownership of the Golf Lots, and any lessee, licensee, permittee or invitee of the owner of the Golf Lots, further including Evergreen Alliance Golf Limited (collectively the "Grantees"). Without limitation of the foregoing, the Grantees shall include any person or entity which contracts to operate a golf course or driving range on the Golf Lots, and any golfer who is duly authorized to play golf on the Golf Lots.

4. No Grantee shall have any liability, obligation or expense to the owner of a Townhome Lot in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not: (i) negligently, intentionally or recklessly hit onto a Townhome Lot; or (ii) hit in violation of the rules established by any operator of a golf course or driving range on the Golf Lots. By accepting title to a Townhome Lot, each owner hereby covenants that it will not sue any Grantee for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future. All Owners, by acceptance of delivery of a deed, assume all risks associated with errant golf balls, and all Owners agree and covenant not to make any claim or institute any action whatsoever against Declarant, the developer, the golf course designer, the golf course builder, the golf course owner, or the builder of the unit arising or resulting from any errant golf balls, any damages that may be caused thereby, or for negligent design of the golf course or siting of the unit.

5. The owner of the Golf Lots may from time to time change the configuration and layout of the golf courses or driving range on the Golf Lots. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Townhome Lot. Nevertheless, no Owner of a Townhome Lot shall have any right to object to, or in any manner limit changes to the golf courses on the Golf Lots, and the easements granted in this Article shall remain fully effective as to all of the Townhome Lots after such changes.

6. The Golf Lots are private property. Owners of Townhome Lots and their invitees shall comply with all the rules and regulations of the operator of the Golf Lots relating to use of and play on the Golf Lots.

### ARTICLE III. HOMEOWNERS' ASSOCIATION

1. The Association. PACIFIC SPRINGS HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association") has been incorporated for the benefit of the residents of Pacific Springs. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Pacific Springs, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas (including landscaping); and signs and entrances for Pacific Springs. Common Facilities may be situated on property owned or leased by the Association within the Pacific Springs subdivision, on private property subject to an easement in favor of the Association, on public property, or on property dedicated to a Sanitary and Improvement District.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

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

2. Membership and Voting. Pacific Springs Phase I was initially divided into twenty-nine (29) separate residential lots, Pacific Springs Phase II was initially divided into one hundred forty-three (143) separate residential lots, and Pacific Springs Phase III (excluding Townhome Lots) was initially divided into sixty-five (65) separate residential lots, and this phase of Pacific Springs is divided into twenty-five (25) separate residential lots (for purposes of Article III of this Declaration, the term "Lots" shall mean all of the residential lots which are included in the Association including the Townhome

Lots as defined by this Declaration). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

Declarant anticipates that additional phases of Pacific Springs may be developed by Declarant or other developers. From time to time, without the consent or approval of an Owner or Member, the Association may, with Declarant's approval, be expanded by Declarant to include additional residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Pacific Springs Subdivision. Such expansion(s) may be effected from time to time by Declarant's recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration"), provided that if the Subsequent Phase Declaration is recorded by a person or entity other than Declarant, the inclusion of additional residential lots in the Association must be approved by Declarant. Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article III, 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.

3. Purposes and 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 acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.
- (b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, within or near Pacific Springs.
- (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 Common Facility 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, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.
- (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 mowing, maintenance and improvement of the Golf Lots during any period in which the Golf Lots are used as a park for the benefit of the Lots.

4. Mandatory Duties of the Association. The Association shall:

(a) Maintain and repair the signs which have or will be installed by Declarant at the residential entrance at 174th Street, in good repair and neat condition;

(b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along the mixed-use lots, so that such are in good repair and neat condition;

(c) Maintain, repair, construct, and replace, as necessary, the wells and irrigation systems constructed by Declarant in accordance with the easements reserved in the Final Plat.

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

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant or Apollo. Lots owned by the Declarant or Apollo shall not be subject to imposition of dues, assessments or Association liens.

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

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) Sixty and no/100 Dollars (\$60.00) per Lot.

(b) In each calendar year beginning on January 1, 1998, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

11. Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

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

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

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

ARTICLE IV.  
EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U S West telephone company, and any company which has been granted a franchise to provide a cable television system within the Townhome Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 383 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Townhome Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Townhome Lots and all exterior lots that are adjacent to presently platted and recorded Townhome Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Townhome Lots that are not adjacent to presently platted and recorded Townhome Lots. The term exterior Townhome Lots is herein defined as those Townhome Lots forming the outer perimeter of the subdivision. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all streets; this license being granted for the use and benefit of all present and future owners of these Townhome Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. In the event that ninety percent (90%) of all lots within the Pacific Springs subdivision are not improved within five (5) years after the date on which U S West telephone company files notice that it has completed installation of telephone lines to the lots in the Pacific Springs subdivision (herein the "Subdivision Improvement Date"), then the telephone company may impose a connection charge on each unimproved Townhome Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). A Townhome Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Townhome Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Townhome Lot in question by officials of the City or other appropriate governmental authority.

Should such charge be implemented by the telephone company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) the telephone company sends each owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Townhome Lot.

4. Other easements are provided for in the final plat of Pacific Springs which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2041, Page 55).

