

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by Cherry Tree Corporation, a Nebraska corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of the property described as Lots 1-13, Spring Green, a cluster subdivision platted in Douglas County, Nebraska encompassing the planned townhome development consisting of 17 townhomes (P.U.D. and all submittals) entitled Spring Green, and

WHEREAS, these Covenants are executed pursuant to the requirements of Section 56.04.100 of the Omaha, Nebraska Municipal Code (known as the Cluster Plan Ordinance).

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Spring Green Townhome Association, Inc.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any townhome which is a part of the Properties, including contract sellers, but excluding those having interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners including Lots 12 and 13 on the above referenced plat and also including the easementway for ingress and egress (private drive) as well as the walls and fencing, if any, on the perimeter of the development as constructed. The Common Area to be owned by the Association in said Spring Green is to be used for green area, open space, and for installation of sewer, water and gas mains, underground telephone, television, power and similar cables and conduits to serve all the property. The parking areas and private drives will be used to provide vehicular and pedestrian access to all properties in the subdivision. An easement for maintenance, replacement, installation and location of the private drives, street lights, benches, utilities, landscape plan, any other amenities installed by the Declarant and/or the Association shall exist in favor of the Association.

Section 5. "Townhome" shall mean each building site and private dwelling erected on the Properties, regardless of whether it is a detached or attached dwelling structure, but said terms shall not include any part of the common area.

Section 6. "Declarant" shall mean and refer to Cherry Tree Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Townhome from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every townhome, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and right to use of the common areas by an owner for any period during which any assessment against his townhome 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 Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility, or for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective except by an instrument signed by two-thirds (2/3) of Class B members until Class B membership no longer exists and thereafter by 2/3 of Class A members.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Use Restrictions. The property shall be used only for single-family, private dwelling purposes consistent with the P.U.D. No outside signs will be permitted except those of the developer advertising the sale of townhomes. All exterior plantings shall be approved in advance of planting by the Association Board. No statues, synthetic plants, sand boxes, playground equipment, exterior antennas, satellite dishes, outdoor speakers, basketball hoops or permanent flag poles will be permitted. All toys shall be stored out of public view when not in use. Household pets within the Properties and Common Area will be subject to rules, regulations, restrictions, exclusions and special assessments as may be determined by the Association from time to time. In no event shall any owner possess more than one small pet and any such pet shall be on a leash if outside its owner's townhome. All garage doors shall be equipped with automatic door openers and must remain closed at all times except when cars are entering or exiting the garage space. In no event may any barn, shack, trailer, tent, shed or playhouse be built. Except on the day or days when trash and rubbish is collected, no garbage cans or trash receptacles are to be permitted outside except for those as may be owned by the Association Board. Private barbecue grills may not be used in the common areas, and outside use or storage of barbecue grills will be subject to regulation, restriction or exclusion by the Association. Building materials may not be stored except as reasonably necessary to construct a townhome. Parking will be subject to regulation and restriction by the Association. Owners' and tenants' vehicles must be parked within garages. No camper or boat may be parked outside more than seven (7)

days in each calendar year. In no event shall any vehicle or camper, located in a public or private area, be used for occupancy. Noise shall be subject to regulation and control by the Association. Noise emitting vehicles, toys and speakers shall not be permitted where they infringe upon the tranquility of Spring Green. The Association shall be the sole authority on determining "appropriate" noise levels on an individual basis.

Section 4. Easements and Licenses. The Association and its agents, contractors and designees shall have an easement and license to enter any lot, dwelling or structure at any time necessary in order to accomplish changes, replacements or repairs to plumbing, sewers, gas lines, water lines, telephone lines, electrical lines, meters, vents and other appliances or utilities in order to maintain service to or prevent injury or damage to any persons or dwellings or property located within the Properties of the Common Area above described. The Association and the Declarant reserve the right to grant such further easements and licenses under, upon or over said townhomes as may be necessary or required by utilities furnishing gas, water, telephone, electrical and television or other utility services to said Properties or the Common Area above described.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a townhome which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any townhome which is subject to assessment.

Section 2. During the period of Declarant control, Declarant may merge the Association into any adjoining townhome Owner's Association by recording an amendment to that effect with the Douglas County Register of Deeds.

Section 3. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each townhome owned. When more than one person holds an interest in any townhome, all such persons shall be members. The vote for such townhome shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any townhome.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each townhome or townhome site (as shown on the P.U.D.). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1990.

Section 4. Indemnification. Every director and officer shall be entitled during and after the term of office to be fully indemnified by exoneration, reimbursement, or otherwise and to be defended and otherwise saved harmless from all liability including court costs and legal fees for any matter connected with service as a director or officer in the performance of duty to the corporation, provided however, this indemnity shall not apply to fraud, willful misconduct, or gross negligence.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each townhome owned within the Properties, hereby covenants, and each Owner of any townhome by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made which may be foreclosed as a mortgage. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's 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 for 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 to promote the recreation, property values, health, safety, and welfare of the residents in the Properties and for payment of improvements, maintenance, taxes and insurance of the Common Area, and of the Properties.

Section 3. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each townhome which is subject to assessment hereunder including but not limited to a 10' wide strip bordering the property as follows: The Association shall paint exterior building surfaces including gutters, downspouts, windows and walls, and the Association shall plant, maintain, replace, trim and/or mow on a regular basis as may be appropriate, the grass, shrubs and trees. Such exterior maintenance shall not include repair of any roofs, gutters, downspouts, private driveways and sidewalks, sprinkler systems, alarm systems (if any), glass or screen surfaces, patios or garden areas within patio walls, each of which shall be maintained by the individual townhome owners. The Association's duty as to maintenance shall include the private drive within the P.U.D. as well as the drainageways and storm sewers servicing the Area. The Association shall provide for reasonable snow removal from the private drives, driveways and walkways. Individual townhome owners shall water their lawns, and up to 15' of abutting common areas, not less frequently than required by the Association Board.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such townhome is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

In addition, the Association has the right, but not the duty, to perform any repair or maintenance item neglected by any townhome owner, in which event the cost of same shall be assessed against the townhome benefited. The frequency of any repair, maintenance, or replacement to be performed by the Association shall be at the discretion of the Association Board.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first townhome to an Owner, the maximum annual assessment shall be twelve hundred dollars (\$1,200.00) per townhome. Property not built upon shall not be subject to assessment.

- (a) From and after January 1 of the year immediately following the conveyance of the first townhome to an Owner, the maximum annual assessment may be increased each year not more than 30 per cent above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first townhome to an Owner, the maximum annual assessment may be increased above 30 percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (d) The Board may set assessments at a rate reflective of the exterior surface area of each townhome and may take into account higher anticipated exterior maintenance costs for townhomes with wood siding.

Section 5. 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are Voting in person or by proxy at a meeting duly called for this purpose, provided however, no assessment may be approved without the unanimous consent of the Class B members.

Section 6. 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 4 or 5 shall be delivered either personally or by mail to all members not less than 10 days and not more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all townhomes on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each townhome at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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 specified townhome have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 16 per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a Construction Lien foreclosure. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his townhome.

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 any townhome shall not affect the assessment lien. No sale or transfer shall relieve such townhome owner from liability for any assessments levied during their term of ownership.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1.

- (a) The townhomes to be constructed within the P.U.D. shall generally conform to the designations contained in the P.U.D. submittals to the City of Omaha as approved by the city council with respect to location, building materials and such other data as may have been submitted to the City for its review and processing or the final P.U.D. approved. In no event shall over 25% of the area within the P.U.D. be covered by dwelling townhomes. The exterior materials shall consist of cut wood shingles, brick or natural stone, wood or stucco and shall conform generally to the materials indicated and the model presented to the City of Omaha Planning Department in conjunction with submittal of the P.U.D. to that department and the elevations similarly submitted. Street lighting and landscaping shall be in conformance with the P.U.D. Further, the landscaping shall be consistent, aesthetically and otherwise, with the whole of the P.U.D. Unusual structures and other improvements not consistent with these standards shall be prohibited. All exposed foundations shall be covered with stone, stucco or brick. All chimneys shall be brick. Every building, fence, wall or other structure commenced, erected or maintained upon the Property shall conform to the above guidelines and restrictions.
- (b) The storm sewer located in the area of the earthen berm in the natural drainage servicing the P.U.D. shall be a 15 inch storm sewer subject to only to the City of Omaha Public Works Department approval. The storm sewer, the earthen berm and all other devices required by the P.U.D. or constructed to discharge surface water runoff into the storm sewer and to protect the property abutting the P.U.D. on the east from surface water runoff shall be maintained in a reasonable manner so as to adequately perform that function. Such maintenance shall include taking reasonable steps to keep the storm sewer inlet free of dirt, debris and other obstacles.

which could inhibit the discharge of surface water runoff through the storm sewer and maintaining the earthen berm in such manner as to prevent erosion. No grass, weeds or other vegetation may be grown or permitted in a dangerous, diseased or otherwise objectionable state or in other than a neat and trim manner. The area around the storm sewer inlet behind the earthen berm shall be designed, constructed and maintained so that surface water in the normal course will not be allowed to accumulate and stagnate in such area.

Section 2. No building or other structure shall be externally painted, altered, resurfaced, commenced, erected or maintained upon the property until the plans, specifications and working drawings for said building or structure shall have been submitted to and approved as provided in this Section by the Architectural Review Committee as to the following criteria:

- (a) conformity with the P.U.D. and Section 1 of this Article V and;
- (b) harmony of external design and color, landscaping and external materials with surrounding structures, topography, and existing mature trees.
- (c) The Architectural Review Committee shall consist of three persons, two of whom shall be chosen by the Association Board of Directors and one of whom (the "neighborhood representative") shall be an owner of property immediately abutting the P.U.D. on the East or South. Should the owners of the abutting property not agree among themselves as to whom the representative should be that person shall also be chosen by the Board of Directors from and among those abutting property owners who are willing and able to serve. The neighborhood representative shall be given prompt notice of any matters requiring approval of the Architectural Review Committee. Upon the occurrence of the later of the passage of ten years from the date of this declaration or after all townhomes designated on the P.U.D. plan are built any rights, duties and obligations of the Architectural Review Committee shall fall upon the Board of Directors of the townhome owners or homeowners association who shall otherwise be fully possessed of such rights of review and approval. Failure of the Architectural Review Committee to act within 30 days of a written submittal to it shall be deemed approval of the plans. The Architectural Review Committee shall have an obligation to meet and engage in a timely and good faith review of any plans submitted. The plans may be approved with an affirmative vote of at least two of the three members of the Committee.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the townhomes shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party wall, and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owner of each townhome using the wall.

Section 3. 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 Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, 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.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. All arbitrators must be selected within 15 days of selection of an arbitrator and the arbitrators shall meet and issue a decision within 30 days of appointment.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement.

- (a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) The covenants and restrictions contained in Article V shall run to and shall be for the benefit of the Association and the owners of property abutting immediately to the east or south of the P.U.D. and may be enforced by any owner of such property by any proceeding at law or in equity provided, however the right of owners abutting to the east and south to enforce the covenants and restrictions in Article V Section 1(a) shall expire when all townhomes, landscaping, street construction, street lighting and other exterior improvements shown in the P.U.D. submittals have been completed. Failure by any such owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to enforce such covenant or restriction thereafter. Any such Article V covenant or restriction shall be waived or modified only upon the written consent of the owners of two-thirds of the total property immediately abutting on a front footage basis to

the east and South of the P.U.D. combined; provided however, that the covenants and restrictions in Article V Section 1(b) may not be modified except by the written consent of each of the owners of Lots 110, 111 and 112, Indian Hills Village, immediately abutting the P.U.D. on the East subject however to the Right of the Association or successor owner to comply with orders of any competent court or a requirement of the City of Omaha Public Works Department with respect to the berm and/or storm sewer.

Section 2. Insurance. Insurance shall be maintained and the proceeds thereof disposed of as follows:

- (a) The Association shall procure and maintain for each townhome within the limits of all real property included in membership or for each group thereof sharing any one or more common structural elements for the benefit of all of the contract purchasers or owners thereof and all of the mortgagees thereof according to their respective interests therein one or more policies of insurance against the perils of fire, lightning, malicious mischief, and vandalism with extended coverage in amounts equivalent to full replacement costs less deductible, if any, of any damage or destruction caused by any such peril; and all members shall be entitled to procure and maintain any additional insurance with the same or additional coverage.
- (b) The proceeds of all such insurance shall be applied, disposed of, and used to effect repairs or replacements in the event of damage or destruction covered by such insurance; and the Association may effect any repairs or replacements not so covered and fix an extra charge for the reasonable costs of such repairs or replacements.
- (c) Liability and other insurance may from time to time be procured and maintained as determined by the Board of Directors.
- (d) All premiums and other costs of insurance may from time to time be allocated among the members as determined by the Board of Directors.

Section 3. 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.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than seventy percent (70%) of the townhomes, and thereafter by an instrument signed by the owners of not less than sixty-five percent (65%) of the townhomes. Any amendment must be recorded. Notwithstanding the foregoing, no such amendment shall be effective to modify the covenants and restrictions of Article V running in favor of owners of property abutting immediately on the East or South of the P.U.D. unless such owners have consented to such amendment in the manner (and subject to the limitation) provided in Section 1(b) of this Article VII for the waiver or modification of such covenants and restrictions.

Section 5. Additional Building Restrictions. No more than the private dwellings shown on the P.U.D. approved by the City Council may be erected in the P.U.D. Said private dwellings may be attached or detached structures. For each private dwelling, there must be constructed concurrently with the dwelling a fully enclosed attached or detached garage for at least two cars with an enclosed floor area of at least 400 square feet. No structure shall exceed two stories in height at the front elevation. The finished living floor areas of each private dwelling including the garage shall contain at least 1900 square feet.

Section 6. Declarant reserves the right to amend the foregoing covenants at any time before conveyance of more than 14 townhome units for the purpose of clarifying, expanding or narrowing the scope of any burden, benefit or obligation contained herein, provided however, this paragraph may not be used as a basis for amendment of Article V.

EXECUTED August 27th, 1984.

CHERRY TREE CORPORATION

By: John M. Hosking
President

STATE OF)
) ss.
COUNTY OF)

On this 27th day of August, 1984, before me, a notary public in and for said county and state, personally appeared John M. Hosking, to me known to be the identical person who subscribed the name of CHERRY TREE CORPORATION to the foregoing instrument as its President and acknowledged the execution thereof to be HIS voluntary act and deed and the voluntary act and deed of said corporation.

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

Ruby Scott Owens
NOTARY PUBLIC



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