

SECOND AMENDMENT TO  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by the following Owners: Spyglass Hill, Inc., a Nebraska Corporation. Corn Belt State Bank, an Iowa banking corporation, Westmark Planning Group, Inc., a Nebraska corporation, Marjorie M. Einerson, a single person, Jerry Jerome Habraken and Judith Ann Habraken, husband and wife; Raymond L. Johnson and Margaret L. Johnson, husband and wife; and Winifred Adams, a single person, hereinafter referred to as "Declarants."

WITNESSETH:

WHEREAS, Declarants are the owners of certain property, which is more particularly described as follows:

Lots 1 through 41, inclusive, and Outlots 1 through 3, inclusive, of Spyglass Hill Replat. being a replatting of Spyglass Hill (Lots 1 through 34, inclusive), a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (herein collectively referred to as the "Property")

WHEREAS, the Declarants desire to amend a certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS as set forth below,

NOW, THEREFORE, Declarants hereby amend a certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS on the Property recorded on March 12, 1984 in Book 706, Pages 637 through 646, in the Register of Deed's office of Douglas County, Nebraska, and a certain AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Spyglass Hill, an addition to the City of Omaha, Douglas County, Nebraska, recorded on June 2, 1986 in Book 775, Page 736, in the Register of Deed's office of Douglas County, Nebraska, by substituting this SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS in cancellation of the above-referred to DECLARATION recorded in Book 706, Pages 637 through 646, and the above-referred to AMENDMENT recorded in Book 775, Page 736 and further hereby declare that all property 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 above-described Property and be binding on all parties having any right, title, or interest in the above-described Property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

RECEIVED

JAN 26 3 22 PM '90

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

BK 911 N \_\_\_\_\_ C/O \_\_\_\_\_ FEE 4.70  
PG 457-461 N 87-253 DEL 1/27/90 MC 415  
OF \_\_\_\_\_ COMP \_\_\_\_\_ F/B 51-2775

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## DEFINITIONS

Section 1. "SHPOA" shall mean and refer to the Spyglass Hill Property Owners Association, Inc., a Nebraska corporation.

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 lot as defined herein which is a part of the Property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" 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 SHPOA.

Section 4. "Common Area" shall mean Outlot 3 to be owned by SHPOA for the common use and enjoyment of the Owners. Said Common Area owned by SHPOA shall be used as follows:

Outlot 3 above referred to shall be maintained as a roadway and utility way to provide perpetual, nonexclusive means of vehicular and pedestrian access to Lots 1 through 41 and Outlots 1 and 2 in said replatted subdivision and also to provide space for installation of water, gas, sewer mains, storm sewers, telephone and other electric services to said Lots 1 through 41 and Outlots 1 and 2.

Section 5. "Lot" shall mean and refer to any plot of land shown in the Spyglass Hill Replat (which is presently being processed through the City of Omaha) of the Property with the exception of Outlots 1, 2, and 3, and upon which a dwelling unit or units has been built, or can be built. If a Lot or Outlots 1 or 2 from the Spyglass Hill Replat is subdivided or split into additional Lots or part of Lots capable of containing a dwelling unit or units, each of said Lots created thereby shall be considered separate Lots for purposes of this Second Amendment to Declaration.

Section 6. "Declarants" shall mean all of the Owners of the Property referred to above, and their successors and assigns.

Section 7. "Developer" shall mean Spyglass Hill, Inc., or its successors or assigns.

ARTICLE II

BOOK 911 PAGE 459

MEMBERSHIP IN SHPOA

Section 1. Every Owner of a Lot as defined herein shall automatically be a member of SHPOA. Membership shall be appurtenant to and may not be separated from ownership from any Lot.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easement 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 lot, subject to the following:

- (a) the right of SHPOA to charge a maintenance fee for the Common Area;
- (b) the right of SHPOA to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for an infraction of its published rules and regulations;
- (c) the right of SHPOA to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, provided that the Common Area continues to be used as a roadway and utility way.

Section 2. SHPOA. SHPOA shall be a Nebraska nonprofit corporation which shall adopt By-laws from time to time which shall govern the use of the Property and to be so comprehensive as to cover such items which might otherwise be the subject of these covenants. In the event of a conflict between the provisions of the By-laws of SHPOA and these covenants, these covenants shall prevail.

Section 3. Use Restrictions. All Lots shall be used only for private dwelling purposes and as shall be provided in SHPOA's By-laws.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarants, for each Lot owned within the

Property, hereby covenant, and each subsequent owner by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to SHPOA (1) annual assessments and charges and (2) special assessments for capital improvements, such annual and special assessments to be established and collected as provided in the By-laws of SHPOA. The annual and special assessments, together with interest, cost 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. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of SHPOA as to the amount of any unpaid assessments. Each such assessment, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such Property at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to his or her successor in title unless expressly assumed by them. Lots designated as Common Area shall not be subject to assessment.

Section 2. Subordination of the Lien to Mortgages and Deeds of Trust. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or sale by a trustee pursuant to the deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments on the Lot as to payments which became due prior to such sale or transfer, but shall not extinguish the personal obligation of the Lot Owner who incurred such obligation. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, structure, fence, or television satellite dish may be erected or allowed to remain on any Lot until the plans and specifications thereof shall have been approved in writing by Architectural Control Committee which shall be appointed by the Developer.

#### ARTICLE VI

Section 1. Enforcement. SHPOA, 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 Second Amendment or the By-laws of the SHPOA. Failure of SHPOA or any Owner to enforce any covenant, restriction, or provision of SHPOA's By-laws shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, restrictions, or provisions in the By-laws of SHPOA by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Second Amendment shall run with and bind the land, until January 6, 2009, after which time they shall be automatically extended for successive periods of ten years. This Second Amendment may be amended at any time by an instrument signed by the Owners of not less than sixty-six percent (66%) of the Lots. Any amendment must be recorded.

Section 4. Counterpart Signatures. This document may be signed in counterpart signatures. When the signature pages with signatures and the acknowledgment pages with signatures are attached to a single document, said single document shall be as legally effective as if all of the parties hereto signed said single document and had their signatures acknowledged on said single document.

CORN BELT STATE BANK, an Iowa banking corporation

By: William B. Forbes  
William Forbes, President

STATE OF IOWA            )  
                                  ) SS.  
COUNTY OF WOODBURY )

The foregoing instrument was acknowledged before me, a Notary Public, this 13<sup>th</sup> day of December, 1989, by William Forbes, President of Corn Belt State Bank, an Iowa banking corporation, on behalf of said corporation.

Kim A. Mebus  
Notary Public

