

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by BROOK HOLLOW, INC., and HAL GROVE, INC., hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property, which is more particularly described as:

Lots 1 through 34, inclusive, in Spyglass Hill, an Addition to the City of Omaha in Douglas County, Nebraska.

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 or 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 Spyglass Association, Inc., a Nebraska non-profit 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 properties, including contract sellers, but excluding those having such 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. The Common Area to be owned by the Association at the time of the conveyance of the first lot as described as follows:

Lots 31 through 34 in Spyglass Hill, an Addition to City of Omaha in Douglas County,

Nebraska. Lot 31 may be developed for a swimming pool and other recreational uses and Lot 33 shall be maintained as a roadway and utility way to provide perpetual, nonexclusive means of vehicular and pedestrian access to Lots 1 through 30 in said subdivision and also to provide space for installation of water, gas, sewer mains, storm sewers, telephone and electric services to said Lots 1 through 30.

Lots 32 and 34 shall be maintained as green areas, and may be used for storm water swales or conduits, and as easement ways for all utility installations.

Section 5. "Lot" shall mean and refer to any plot of land shown upon a recorded subdivision map of the Properties with the exception of the Common Area, and upon which a dwelling unit or units has been built, or is buildable. If a lot from the original platting is subdivided or split into additional lots or parts of lots capable of containing dwelling units they shall be considered separate lots for the purpose of this Declaration.

Section 6. "Declarant" shall mean and refer to Brook Hollow, Inc. and Hal Grove, Inc., their successors and assigns if such successors or assigns should acquire more than one undeveloped lot 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 lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any Period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public

agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded except as otherwise dedicated or reserved herein.

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

Section 3. Use Restrictions. All lots shall be used only for private dwelling purposes. Household pets within the Properties and Common Area will be subject to regulation, restriction, exclusion and special assessment as may be determined by the Association from time to time. All garage doors must remain closed at all times except when cars are entering or exiting the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view in a manner approved in writing by the Association. Construction of any outbuilding is prohibited. 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. Automobile parking will be subject to regulation and restriction by the Association. Outdoor parking of boats, campers, or recreational vehicles and erection of outdoor radio or TV antennas are prohibited. Any lot may be converted to common area purposes if and when the Association acquires title thereto. The exterior color of units may not be changed without the express written approval of the Association Board.

Section 4. Easements and Licenses. The Association and its agents, contractors and designees shall have an easement and license to enter any dwelling or structure on any lot at all times, but without any obligation, 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 or 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 lots 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 lot as defined herein 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 lot which is subject to assessment.

Section 2. 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 lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. Each duplex unit shall be deemed to consist of a separate lot for purposes of voting and assessment for class A and B.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. 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, 1993.

## ARTICLE IV

## COVENANT FOR MAINTENANCE AND INSURANCE ASSESSMENTS

Section 1. Creation of the Lien and personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot 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. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any 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. Lots dedicated as common areas shall not be subject to Assessment and may not vote.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement, maintenance and insurance of the Common Area, and of the homes situated upon the Properties.

Section 3. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide limited exterior maintenance upon each lot which is subject to assessment hereunder, as follows: mowing, fertilizing, watering, planting of trees, shrubs and grass and snow removal on walks and drives. Owners of dwelling units shall be responsible for all other maintenance and repair of their units and they shall not permit waste but instead shall in a timely fashion maintain the exterior appearance of their unit in a clean, uniform, and orderly manner free of discolored or peeling paint or stain, provided however, the Association may without obligation, maintain the exterior paint or stain on all duplex units and assess the cost or anticipated cost thereof to duplex unit owners. Owners of attached units shall cooperate in color selection and exterior maintenance responsibilities. Each Unit owner shall be exclusively responsible for prompt repair of broken glass. In the event any unit owner fails in their obligation the Association Board, thirty (30) days after written demand, may at its election, perform exterior maintenance including painting, roofing, staining, repairing glass or otherwise, as may be necessary to cause the property to comply with this section. The cost of any Board ordered repair whether on duplex units or otherwise shall become a lien upon the unit or units repaired without further Board action and the unit owner(s) shall be personally obligated to reimburse the actual costs incurred. The Association may elect to provide garbage and trash pick-up service, or any other exterior service, repair or maintenance, and may include the cost thereof in the assessments.

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 lot is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

Section 4. Payment of Assessments. The annual assessments shall be payable in 12 equal monthly installments one month in advance on or before the first day of each month; provided, however, that the Directors may establish a different method of payment upon notice to the owners. Special assessments shall be payable in the manner, amounts and times specified by the Directors.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments and the lien for exterior maintenance 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 each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum. 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 nor 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 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 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. Rate of Assessment. The total annual assessments shall be levied at an equal rate against each family dwelling unit; provided, however, that until January 1, 1990 the maximum annual amount that may be levied against any lot upon which there is no completed dwelling as of January 1st of that year shall not exceed \$100.00 per year.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. 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 lot 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 lot have been paid.

Section 9. 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 14 percent (14%) per annum or the highest lawful rate, whichever is lower. 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 Mechanics 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 lot.

Section 10. 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 lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior painting, resurfacing, addition to or change or alteration therein be made until the plans and specifications showing the size, nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Declarant until December 31, 1993 (and thereafter by the Board of Directors of the Association). In the event said Declarant or Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The finished above grade floor area of each family dwelling unit shall contain the following minimum finished living areas: 1,200 square feet for all duplex units; 1,400 square feet for a free standing ranch; 1,500 square feet for any free standing structure containing 1 1/2 stories; and 1,800 square feet for any free standing full two story unit.

## ARTICLE VI

## GENERAL PROVISIONS

Section 1. Enforcement. 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. 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 lots and thereafter 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. Special Rights of Mortgagees. Any notice required to be given to an owner must be similarly given to all mortgagees of record covering said Lots 1 through 30 in Spyglass Hill to be binding upon them. In addition to the required consents by owners, it is also required that all such mortgagees of record execute written consents to the dedication, the assessments, the amendments and annexations referred to respectively in Article II, Section 1(c); Article IV, Section 5; and Article VI, Sections 3 and 4 above.

Section 5. Special Building Requirement. When each home is constructed, it shall include an exterior electric light or lights located as prescribed in the plans approved by the Association and equipped with a photo-electric cell which will turn on the light(s) during all periods of darkness. Each lot owner will maintain such light(s) in working condition at all times and with the wattage prescribed by the Association.

## ARTICLE VII

## 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 which forms a common wall dividing two



dwelling units shall constitute a party wall, and, to the extent not inconsistent with this Article, the general rules of law regarding party walls 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 lot 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 Owner thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, 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.

EXECUTED this 8th day of March, 1984.

BROOK HOLLOW, INC.

BY Harold E. Grove  
President

HAL GROVE, INC.

BY Harold E. Grove  
President

