

FILED
BOOK 2000 PAGE 2743

2000 MAY 17 AM 11:32

Carol Hivens
DODGE COUNTY
REGISTER OF DEEDS
COMPUTER INDEX FEE \$50.00

RESOLUTION NO. 2000-038

Council member *Nary Palmer*, offers the following resolution andmoves its adoption, seconded by Council member *Mary C. Schumier-Marsel*

RESOLVED: That BORIS & RHONDA L. BORISOW, owners of Lot 3, Block 5, Washington Heights Third Addition, Fremont, Dodge County, Nebraska, desire to subdivide this property into two (2) lots described as follows:

See Exhibit "A" attached hereto

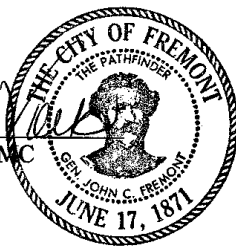
The subdivision of this property is hereby approved subject to receipt of proper easements and an executed Townhouse Ownership Agreement; and the Mayor and City Clerk are hereby directed to sign this resolution on behalf of the City Council.

PASSED AND APPROVED THIS 29th DAY OF*February*

2000


DONALD B. EDWARDS, MAYOR

ATTEST:


KIMBERLY VOLK, CMC
CITY CLERK

SUBRES.DOC

EXHIBIT A
(Borisow subdivision)

Part of Lot 3, Block 5, Washington Heights Third Addition to the City of Fremont, Nebraska, more particularly described as follows:

Beginning at the northwest corner of said Lot 3; thence easterly along the north line of said Lot 3 a distance of 43.16 feet; thence southerly to a point on the south line of said Lot 3 lying 35.22 feet easterly of the southwest corner of said Lot 3; thence westerly along the south line of said Lot 3 a distance of 35.22 feet to the southwest corner of said Lot 3; thence northerly along the west line of said Lot 3 to the Point of Beginning.

Part of Lot 3, Block 5, Washington Heights Third Addition to the City of Fremont, Nebraska, more particularly described as follows:

Beginning at a point on the north line of said Lot 3, lying 43.16 feet easterly of the northwest corner of said Lot 3; thence easterly along the north line of said Lot 3 to the northeast corner of said Lot 3; thence southerly along the east line of said Lot 3 to the southeast corner of said Lot 3; thence westerly along the south line of said Lot 3 to a point lying 35.22 feet east of the southwest corner of said Lot 3; thence northerly to the Point of Beginning.

**TOWNHOUSE OWNERSHIP AGREEMENT
AND COVENANTS FOR THE TOWNHOMES
LOCATED AT
1415 & 1417 NELSON LANE
FREMONT, NEBRASKA**

THIS TOWNHOUSE OWNERSHIP AGREEMENT made and entered into this **28th day of February, 2000**, by and between **Boris & Rhonda Borisow**, of Fremont, Dodge County, Nebraska, hereinafter referred to as "First Party", whether one or more; and **Boris & Rhonda Borisow** of Fremont, Dodge County, Nebraska, hereinafter referred to as "Second Party", whether one or more.

WTTNESSTH:

WHEREAS, First Party is the owner of the real property described as follows, to-wit:

Part of Lot 3, Block 5, Washington Heights Third Addition to the City of Fremont, Nebraska, more particularly described as follows:

Beginning at the northwest corner of said Lot 3; thence easterly along the north line of said Lot 3 a distance of 43.16 feet; thence southerly to a point on the south line of said Lot 3 lying 35.22 feet easterly of the southwest corner of said Lot 3; thence westerly along the south line of said Lot 3 a distance of 35.22 feet to the southwest corner of said Lot 3; thence northerly along the west line of said Lot 3 to the Point of Beginning.

together with all improvements thereon, hereinafter called LOT A.

WHEREAS, Second Party is the owner of the real property described as follows, to-wit:

Part of Lot 3, Block 5, Washington Heights Third Addition to the City of Fremont, Nebraska, more particularly described as follows:

Beginning at a point on the north line of said Lot 3, lying 43.16 feet easterly of the northwest corner of said Lot 3; thence easterly along the north line of said Lot 3 to the northeast corner of said Lot 3; thence southerly along the east line of said Lot 3 to the southeast corner of said Lot 3; thence westerly along the south line of said Lot 3 to a point lying 35.22 feet east of the southwest corner of said Lot 3; thence northerly to the Point of Beginning.

together with all improvements thereon, hereinafter called LOT B; and,

WHEREAS, there is situated on LOT A and LOT B a family dwelling commonly called a "Townhouse"; one living unit and appurtenant improvements thereto being located on LOT A, and the other living unit and appurtenant improvements thereto being located on LOT B; and,

WHEREAS, there is located on the property line between the two above described lots, a wall common to both of the above mentioned living units; and,

WHEREAS, the parties hereto desire to enter into a contract and agreement in regard to certain matters concerning the upkeep, maintenance and repair of the townhouse and the above described real property.

NOW THEREFORE, in considerations hereinafter set forth, the parties hereto do hereby agree to as follows:

ARTICLE I STRUCTURE

The townhouse on the property herein before described and which is the subject matter of this agreement consists of one residential structure containing two (2) living units.

ARTICLE II COMMON WALL

Located within the townhouse described in Article I is a common wall dividing the adjoining living units, which common wall is hereby declared to be and shall henceforth constitute a "party wall" for the use and benefit of the entire townhouse.

ARTICLE III REPAIR AND BUILDING OF PARTY WALL

Should the party wall, at any time, be damaged or destroyed by any cause other than an act of commission or omission by either party hereto, or their respective agents, employees, permissive occupants, or invitees, or any person acting by, through or under them, the party wall shall be repaired or rebuilt at the parties' joint expense, with said expenses to be proportioned equally among the parties. Should the party wall be injured by any act of commission or omission by either party, or their respective agents, employees, permissive occupants, or invitees, or any person acting by, through or under them, the wall shall be repaired or rebuilt at the party's expense. Any sum received from insurance for any such damage or destruction shall be applied to the cost of such repair or restoration.

The parties hereto agree that they will cooperate with each other in giving and granting access one to the other to their respective living units as may be reasonably necessary to effect any required repairs on or of said wall.

In the event it shall become the obligation of a party hereto to repair at his own expense or share in the expense of repairing said property wall such party fails to pay for such repair or his share thereof, and the other party pays the same, then the party paying such amount shall have a lien for the amount so paid upon the real estate described above owned by the party failing to pay for such repair or his share thereof.

**ARTICLE IV
USE OF PARTY WALL**

The parties herein, their respective heirs and assigns, shall have equal right in all respects to the party wall; and neither party, their heirs or assigns, shall use the wall in any manner whatsoever that may interfere with the equal use of said wall by the other party. Nor may either party use the wall in any manner which will result in damage to the premises of the other party or interfere with the other party's use of their living unit.

**ARTICLE V
REPAIRS AND PAINTING**

The parties hereto agree that in the event the exterior of the entire townhouse shall require repainting, refinishing or repairing of any kind, each of the parties hereto shall share equally in the cost of such repainting, refinishing or repairing. Provided, that in the event the exterior of only one living unit (or a part thereof) shall require repainting, refinishing or repairing, the party owning that unit shall be responsible for causing such repairing, repainting and refinishing to be made, and such party shall bear the sole cost thereof. Any sums received from insurance covering any loss or damage occasioning any repainting, refinishing or repainting shall be applied to the cost of such repainting, refinishing or repairing. Provided further, that all repairing, refinishing and repainting shall be effected in such manner that it will be uniform and consistent with and that it will not detract from the appearance of the townhouse, and all reasonable effort shall be made to keep the exterior of the entire townhouse painted that same color.

The parties further agree that the exterior of each living unit of the townhouse shall be repainted in its entirety at least once every five (5) years. The first five (5) year period shall commence on the date the exterior of each living unit is last repainted. The parties shall acknowledge each repainting by a written document executed by each party hereto.

In the event it shall become the obligation of a party hereto to pay for or contribute to the cost of repainting, refinishing or repairing the exterior of the townhouse (or a part thereof) and such party fails to pay the same, and the other party pays such cost, then the party paying the same shall have a lien for the amount so paid upon the real estate described above owned by the party failing to pay such costs or his share thereof.

In the event the townhouse has permanently colored siding, soffits and fascia, specific requirements above regarding painting will apply only to painted surface areas.

**ARTICLE VI
ROOF REPLACEMENT AND REPAIR**

The parties hereto both agree that in the event it is necessary to reroof or repair the roof of the townhouse, each of the parties hereto will contribute to the cost of such

reroofing or roof repair. In the event the roof of one part of the townhouse shall be damaged and it is possible to repair such roof without completely reroofing or without effecting the roof of the other living unit of the townhouse, the party who owns the living unit in need of reroofing or roof repair shall be responsible for reroofing such living unit and causing such repairs to be made, and said party shall bear the entire cost thereof. Any sums received from insurance covering loss or damage which occasioned such reroofing or roof repair shall be applied to such reroofing or roof repair. Any reroofing or roof repair made by one of the parties hereto to the roof covering his living unit of said townhouse shall be made using, whenever possible, the same style and kind of roofing material then existing on that portion of the roof of said townhouse not then being roofed or repaired.

The parties further agree the roof (including sub-surface covering if in need of repair) of the townhouse shall be replaced in its entirety at least every twenty (20) years. The first twenty (20) year period shall commence on the date of this agreement. Each succeeding twenty (20) year period shall commence on the date that the roof was last replaced. The parties shall acknowledge the performance of this paragraph by written documents executed by each party unless both parties agree that the replacement of the roof is not necessary.

In the event it shall become the obligation of a party hereto to reroof or make repairs to said roof at his cost or share in the cost thereof, and the other party pays the same, then the party paying said costs shall have a lien for the amounts so paid upon the real estate described above owned by the party failing to pay for such costs or his share thereof.

ARTICLE VII DAMAGE TO OR DESTRUCTION OF TOWNHOUSE

In the event the townhouse or any part hereof shall be destroyed (or damaged to such an extent that it is not reasonably habitable) by fire or other casualty, then, unless otherwise agreed by the parties hereto and the holder or holders of all mortgages covering LOT A and LOT B, the townhouse shall forthwith and with due diligence be reconstructed by the parties hereto in such a manner as to place said townhouse in as nearly as possible the same condition as it existed prior to any such damage or destruction. In the event the townhouse is reconstructed after such damage or destruction, the parties hereto agree that they will each bear that share of the costs of such reconstruction attributable to their respective living units of the townhouse. Any sums received from insurance covering such loss, damage or destruction shall be applied to the cost of reconstruction.

If either party fails to perform his obligation under this article, the other party may take such action as is reasonably necessary to reconstruct the damaged or destroyed living unit or units and the party paying the cost thereof shall have a lien upon the real property above described owned by the party failing to perform his obligation under this article to the extent of his share of the costs of such reconstruction.

**ARTICLE VIII
NEGLIGENCE OF A PARTY**

Notwithstanding any other article in this Agreement, if damage shall be caused to the townhouse by reason of the fault or negligence of one of the parties hereto, or their respective agents, employees, permissive occupants, or invitees, or any person acting by, through or under them, that party shall be fully responsible for causing such damage to be repaired and for the payment of the cost of such repairs.

In the event that it shall become the obligation of the party hereto to repair at his own expense, by reason of the fault or negligence of himself, or his agents, employees, permissive occupants, or invitees, or any person acting by, through or under them, and such party fails to repair or cause to be repaired or pay for such repair, and the other party causes such repair to be made or pays for the same, then the party paying such amount shall have a lien for the amount so paid upon the real estate described above owned by the party failing to make such repairs and failing to pay for the cost thereof.

**ARTICLE IX
UTILITIES AND MAINTENANCE**

Each party shall be responsible for the cost of maintaining and keeping serviceable that part of utilities, including the sewer, directly serving his living unit. The parties agree that, should any maintenance, repair or replacement be required on any utility, including sewer which serves both units, that the parties will share equally in said costs.

In the event it shall become the obligation of a party hereto to replace or make repairs to said utilities, including sewer, at his cost or share in the cost thereof, and the other party pays the same, then the party paying said costs shall have a lien for the amounts so paid upon the real estate described above owned by the party failing to pay for such costs or his share thereof.

**ARTICLE X
LIENS**

Any liens to which a party may hereto be entitled on the property of the other party hereto under the terms of this agreement shall be created and perfected in the following manner. The party who pays the cost or expense created by an obligation under this agreement may record an Affidavit of Non-Payment of said costs or expense in the office of the Register of Deeds in Dodge County, Nebraska, stating: (a) the legal description of the property upon which the lien is claimed; (b) the name(s) of the owner(s) of said property; (c) the amount of the cost or expense unpaid and for which claim is made. The lien shall be deemed created and perfected at the time of the filing and record of the Affidavit of Non-Payment and such lien shall be superior to all other charges. Liens of encumbrances which may thereafter in any manner arise or be unpaid upon the property, whether arising from or unpaid by judgment or decrees or by any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by law made superior; (d) any lien

created and perfected according to this agreement may be foreclosed by suit by the party filing said lien in like manner as a mortgage on real property if foreclosed. A suit to recover a money judgment for unpaid costs or expenses under this agreement shall be maintainable by the parties filing the lien without foreclosure or waiving the lien securing the same; and, (e) in the event a lien is created and perfected according to this agreement and thereafter the costs or expenses plus interest at the rate of ten percent (10%) per annum from the date the lien is filed shall be fully paid, the party filing the lien shall, within ten (10) days following payment, file with the Register of Deeds of Dodge County, Nebraska, an Affidavit of Payment of costs or expenses, which affidavit shall (1) refer to and identify the Affidavit of Non-payment of costs or expenses which created the lien which has been satisfied; (2) state the legal description of the property affected; and, (3) state the name(s) of the owner(s) of the property. Recording of the Affidavit of Payment of costs or expenses shall fully and completely release the lien referred to in said affidavit and said affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully released and discharged.

ARTICLE XI USE OF THE PROPERTY

The parties hereto further agree that they will so use their respective properties above so described in such manner that they will not interfere with the other party's use of his property and will not maintain or create a nuisance in their respective uses of their living units or on their part of the property, and they will not do anything which is contravention of any restrictive covenants which may have theretofore been placed upon LOT A and LOT B. In addition, the parties agree to abide by the Declaration of Covenants for said Townhouses, Fremont, Dodge County, Nebraska, and any amendments thereto, as attached hereto and made a part hereof.

ARTICLE XII INSURANCE

First Party agrees to obtain and keep in full force and effect, at First Party's sole cost and expense, a policy of insurance insuring LOT A and the improvements located thereon (including but not limited to the party wall located between LOT A and LOT B) against loss or damage by fire, windstorm, rainstorm, tornado, water damage occasioned by broken or otherwise defective water pipes and appurtenances thereto, whether such water pipes and appurtenances are located or situated in or on LOT A or LOT B, and other casualty of like nature. Said policy of insurance shall be in an amount never less than the balance due on any mortgage covering LOT A or ninety percent (90%) of the value of said LOT A (including all improvements located there), whichever amount be the greater.

Second Party agrees to obtain and keep in full force and effect, at Second Party's sole cost and expense, a policy of insurance insuring LOT B and the improvements located thereon (including but not limited to the party wall located between LOT A and LOT B) against loss or damage by fire, windstorm, rainstorm, tornado, water damage occasioned by broken or otherwise defective water pipes and appurtenances thereto, whether such water pipes and appurtenances are located or situated in or on LOT A or LOT B, and other casualty of like nature. Said policy of

insurance shall be in an amount never less than the balance due on any mortgage covering LOT B or ninety percent (90%) of the value of said LOT B (including all improvements located there), whichever amount be the greater.

**ARTICLE XIII
NO AMENDMENTS, ETC.**

This agreement cannot be amended, modified, revoked or altered without the written consent of all parties owning the above described lots.

**ARTICLE XIV
BINDING AGREEMENT**

It is further agreed between the parties hereto that this agreement shall run with the land and be binding upon the parties hereto and their heirs, legatees, devisees, successors in interest, assigns and representatives of the parties hereto.

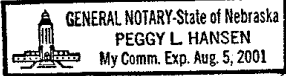
IN TESTIMONY WHEREOF, the parties hereto have thereunder signed their name(s) the day and year first written above.

x Boris Borisow
x Rhonda Borisow
First Party

x Boris Borisow
x Rhonda Borisow
Second Party

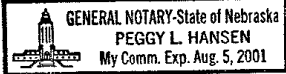
COUNTY OF Dodge)
STATE OF NE)

Before me, a Notary Public, personally came Boris & Rhonda Borisow First Party, known to me to be the _____ of _____, and the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed ~~and the voluntary act and deed of said company.~~

WITNESS my hand and notarial seal this 28 day of Feb., 2000

Peggy L. Hansen
Notary Public

COUNTY OF Dodge)
STATE OF NE)

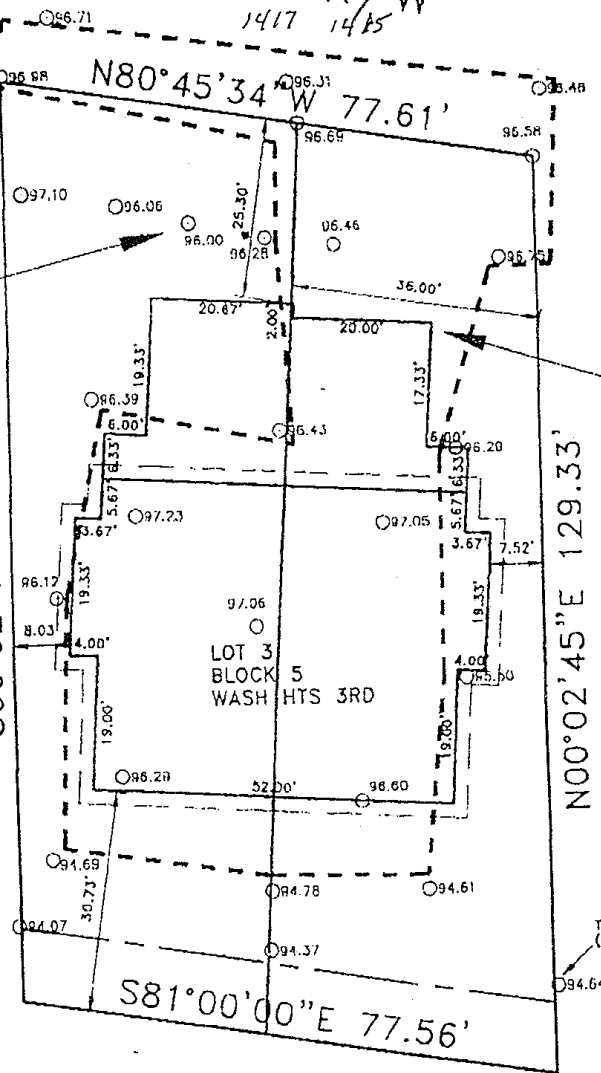
Before me, a Notary Public, personally came Boris & Rhonda Borisow, Second Party, known to me to be the _____ of _____, and the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act, ~~and deed and the voluntary act and deed of said company.~~

WITNESS my hand and notarial seal this 28 day of Feb., 2000

Peggy L. Hansen
Notary Public

Borisow townhome

11404

S00°02'45"W 129.66'



1199.0 Floodproof
Existing grade 1196.0

TYPICAL EXIST. ELEV.
(ADD 1100 TO GET USGS)

NEBRASKA.
Stephen W. Dodd 11/3/59
STEPHEN W. DODD, LS-503

BENCH MARK
BOLT UNDER OIL FILL ON HYDRANT
NEBRASKA & NELSON.
ELEV. = 1198.95

Boris & Rhonda L. Borisow
Lot 3, Blk. 5, Washington Hts. 3rd
Fremont, Dodge County, NE

ZONED: R-2 DATE: 2/2000

2/2