

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by GREATER OMAHA COMMUNITY DEVELOPMENT AND HOUSING CORPORATION, a corporation, herein called "Declarant".

WITNESSETH:

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

Lots 1 through 50, both inclusive and Lots 7a, 8a, 25a, 26a, 43a, 44a and Outlot 1, in The Horizon, an addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarant desires to create therein a residential complex with permanent open spaces and other common facilities for the benefit of said complex and the inhabitants thereof; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said complex and for the maintenance of the exterior surfaces of the dwelling units within said complex as well as the said open spaces and other common facilities; and to this end, desires to subject the aforesaid real property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said complex, to create an entity to which would be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Nebraska a non-profit corporation, known as The Horizon Townhomes Association, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, restrictions, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Horizon Townhomes Association, its successors and assigns.

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 which is a part of the Properties, but excluding those having any interest merely as security for the performance of an obligation (mortgages).

Section 3. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 4. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 5. "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 is described as follows:

Outlot 1, in The Horizon, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 6. "Limited Common Area" shall mean all real property owned by the Association as supplemental parking area and available for lease to Owners of individual Lots within the Properties.

Section 7. "Lot" shall mean and refer to all plots of land with the same numerical designation shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 8. "Declarant" shall mean and refer to Greater Omaha Community Development and Housing Corporation, its successors and assigns, if such successors or assigns should at any time acquire all the remaining right, title and interest of Greater Omaha Community Development and Housing Corporation in and to the "Properties" as defined herein.

#### ARTICLE II

#### PROPERTY RIGHTS

Section 1. Owner's 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:

(a) The right of the Association to impose reasonable limitations on the use of the Common Area.

(b) The right of the Association to lease, at such rates as the Board of Directors shall determine, individual parking spaces within the Limited Common Area to Owners of individual Lots for the private use and enjoyment by such Owners, provided that not more than one parking space shall be leased to the Owner of each individual Lot.

(c) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said Common Area.

(d) 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 members. No such dedication or transfer shall be effective unless an instrument approved by two-thirds (2/3) of each class of members present and voting at a meeting duly called for that purpose and agreeing to such dedication or transfer has been recorded, and unless written notice of the time and purpose of a meeting called for that purpose is sent to every member at least thirty (30) days prior to any such meeting.

Section 2 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, 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.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot 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.

Class B. The Class B member shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership, or on January 1, 1984, whichever comes first.

### ARTICLE IV

#### ASSESSMENTS; COLLECTION

Section 1. Covenant to Pay Assessments; Nature of Obligation. The Declarant, for each Lot 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 assessments for such purposes and in such amounts as hereinafter provided. The assessments, together with interest, court costs, and reasonable attorney's fees incurred in the collection thereof, shall be a charge on the land and shall be a continuing lien upon said property against which each such assessment is made. Each such assessment, together with interest, court 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 successive Owners unless expressly authorized by the Association and expressly assumed by said successive Owners.

Section 2. Classes of Assessments; Purposes of Each Class; Miscellaneous Provisions. The Board of Directors is empowered to impose upon each of the Lots contained within the Properties the following classes of assessments, for the purposes, in the amounts, and subject to the terms and conditions, as hereinafter established.

#### A. Basic Annual Assessment.

- (1) Nature of Assessment; Miscellaneous Provisions. The Board of Directors shall annually impose a basic assessment against each of the Lots (excluding the Common Area) situated upon the Properties. This assessment shall be of uniform amount as to all Lots, and shall commence as to each Lot on the first day of the first month following the initial conveyance to a Class A member of that Lot. The first such assessment shall be adjusted on a pro rata basis according to the number of months remaining in the assessment year. The Board of Directors shall fix the

amount of this assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of said assessment shall be sent to every Owner and mortgagee thereto. The due dates shall be established by the Board of Directors. The Board of Directors shall determine the amount of the initial basic annual assessment, which shall not exceed \$500.00. Thereafter, the Board shall annually redetermine the amount of said assessment, provided that the increase for any one year over the preceding year shall not exceed fifteen percent (15) unless assent thereto is given by 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.

- (2) Purpose of Assessment. The funds acquired by the Association from the basic annual assessment shall be devoted to maintenance and improvement of the Common Area; repair, replacement and maintenance of the exterior surfaces of the homes situated upon the Properties; payment of taxes and insurance on the Common Area; removal of snow, ice and debris from parking areas, driveways and walkways upon the Properties; employment of personnel to discharge such security and maintenance functions as shall be directed by the Board of Directors; and such other expenses as may be incurred in the interest of the health, safety, welfare and social and recreational interests of the members of the Association, as determined by the Board of Directors to be consistent with the Articles and By-Laws of the Association.

**B. Insurance Assessment.**

- (1) The Board of Directors shall annually, in addition to the basic annual assessment described above, impose an insurance assessment against each of the Lots (excluding the Common Area) situated upon the Properties to defray the cost of insurance for that year for the dwelling unit situated upon each such Lot (but excluding the furnishings and personal property located therein). Such insurance policies shall be purchased by and in the name of the Association, for the benefit of the Association, the owners, mortgagees and lien holders, as their interests may appear. Provision shall be made for the issuance of certificates of insurance to holders of first mortgages upon individual Lots. The insurance shall cover all buildings and improvements upon the Properties in an amount equal to the full insurable value thereof (excluding foundation, walks, drives and excavation costs) as determined annually by the Association, but with co-insurance clauses being permitted. Such coverage shall afford protection against all risks. The Association is also authorized to procure and maintain such other hazard insurance as it may, from time to time, desire. In addition, insurance shall be procured for workmen's compensation coverage and at least \$1,000,000.00 bodily injury and property damage public liability insurance covering the Common Area and such other insurance as the Association may deem advisable from time to time. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon payment of claims without joinder by the Owner. All insurance proceeds shall be applied by the Association toward

repairing the damage suffered; provided that reconstruction or repair shall not be compulsory where the damage exceeds two-thirds of the total value of the buildings and improvements. In such case, and unless otherwise agreed upon in writing by Owners representing three-fourths of the total value of the improvements within the Properties within 120 days after such damage or destruction, the property may be sold and the proceeds, along with the insurance indemnity, if any, shall be credited to each Owner in accordance with his percentage interest in the total value of the Properties, and said sums shall be first applied toward satisfaction of any recorded first mortgage against each Lot, next toward satisfaction of junior recorded liens in order of their priority, and the remainder paid to each Owner. In case the insurance proceeds do not equal the cost of repairs, the excess cost shall be considered a common element expense to be assessed and collected by the Association from the Owners; provided, however, that in such case of under-insurance, the Owners may, by unanimous resolution adopted after the date of loss, elect not to repair the damage. In cases of over-insurance, any excess proceeds of insurance received shall be credited to the common element working funds. Each Lot Owner may obtain additional insurance at his expense.

Section 3. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the maximum interest rate then permitted by the usury laws of the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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 4. 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.

Section 5. Collection of Assessments; Certificate of Payment.

- A. Collection. Assessments shall be paid in twelve equal monthly installments per year. For any Lot subject to a mortgage or deed of trust, all assessments pertaining to that Lot shall be paid to the mortgagee thereof on a monthly basis as a part of the total obligation to said mortgagee. Each Owner, upon closing, shall execute an authorization empowering the mortgagee to add assessment charges to payments coming due under the mortgage loan; to collect the same; and to distribute the same to the Association on a regular monthly basis.
- B. Certificate of Payment; Conclusiveness of Contents. 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. Such certificate shall be conclusive evidence of the facts stated therein.

Section 6. Exempt Property. The Common Area shall be exempt from the assessments established herein.

## ARTICLE V

## ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, sign, structure, items of landscaping or other improvement of any type or description shall be constructed, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, including window-mounted air handling or cooling equipment, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board.

Section 2. In the event said Board of Directors, or its designated architectural control committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully satisfied.

Section 3. A two-thirds (2/3) majority vote of the Board of Directors or its designated committee is required for approval or disapproval of proposed improvements.

Section 4. The said Board or its designated committee shall maintain written records of all applications submitted to it and of all actions taken by it.

## ARTICLE VI

## USE RESTRICTIONS

Section 1. Parcels containing garages designated with a Lot number followed by the designation "A" shall not be sold or conveyed separately, but shall at all times be owned, held and conveyed together with the Lot of identical number containing a dwelling unit.

Section 2. All Lots covered by this Declaration, with the exception of the Common Area, shall be known and described as residential Lots, and shall be used only as residential Lots for single family cluster townhouses, provided, however, that nothing contained herein shall be construed to prohibit Declarant from maintaining an office within the Properties for the conduct of its business with respect to the Properties.

Section 3. Each two bedroom townhouse within the Properties shall be occupied by not more than three persons, two of whom must be related by blood or marriage, and each three bedroom townhouse within the Properties shall be occupied by not more than five persons, four of whom must be related by blood or marriage.

Section 4. No noxious or offensive trade or activity shall be carried on upon any Lot covered by this Declaration nor on the Common Area, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

Section 5. No house trailer, basement, tent, shack, barn, or other out-building shall be built, erected or placed upon any Lot covered by this Declaration.

Section 6. No trailer, boat, truck or recreational vehicle may be maintained, stored or kept on any of the Lots covered by this Declaration, unless housed completely within a garage on said Lot.

Section 7. No animals of any kind (except fish or caged birds) shall be kept or maintained on any Lot covered by this Declaration.

Section 8. No outdoor antenna of any type and for any purpose shall be erected or placed on any Lot covered by this Declaration.

Section 9. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road, or portion of the Common Area, nor on any of the Lots covered by this Declaration unless placed in a suitable container discreetly concealed so as to not be visible from other Lots, streets, or the Common Area.

Section 10. The grounds of each Lot and the dwelling located thereon shall be maintained in a neat and attractive manner. Care and maintenance of law areas within the individual Lot boundaries shall be provided by the Association, provided, however, that maintenance of plants, shrubs and similar vegetation placed thereon shall be the obligation of the individual Owner, who shall maintain the same in a neat and orderly condition. Upon the Owner's failure so to do, the Board the Directors of the Association, or its designated architectural control committee may, at its option, after giving the Owner fifteen (15) days written notice sent to his last known address, perform such maintenance functions when, and as often as, the same is necessary in its judgment.

Section 11. The cost of such maintenance referred to in Section 10 of this Article shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the next monthly assessment to which such Lot is subject.

Section 12. Any Owner shall be empowered to bring an action in his or her own name for the enforcement of the use restrictions set forth herein.

Section 13. The Declarant shall be entitled to rent each dwelling unit within the Properties prior to the initial sale thereof.

ARTICLE VII

PARTY WALLS

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

Section 2. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the Association shall restore it in accordance with the insurance provision hereof, without prejudice, however, to the right of the Association to call for contribution from the Owner and Owners responsible under any rule of law regarding liability for grossly negligent or willful acts or omissions.

Section 3. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the Board of Directors shall act as arbitrators of such dispute and the decision of a majority of the Directors shall be final and conclusive of the question involved.

ARTICLE VIII

MAINTENANCE OF EXTERIOR OF STRUCTURES ON LOTS

The Association shall be responsible for and shall provide for maintenance and repair of all exterior surfaces of the buildings, party walls and fences located on the individual residential Lots included within the Properties. The cost of such maintenance and repair shall be borne by the Association, which shall provide for

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the payment of same out of the regular annual assessments coming into its hands. Such maintenance shall include, but not be limited to, painting or staining of wood surfaces, tuckpointing of mortar, maintenance of exterior doors including garage doors, and repair and replacement of gutters, downspouts, shingles, siding panels and bricks. Exterior glass shall be replaced or repaired, when necessary provided that the cost of replacement of exterior glass shall be the responsibility of the individual Owner and shall be added to his annual assessment and become due and payable as dictated by the Board of Directors. Maintenance required because of damage caused other than by ordinary wear and tear shall be the responsibility of the individual Owner and shall likewise be added to his annual assessment and come due and payable as dictated by the Board of Directors.

## ARTICLE IX

### 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 way effect any other provisions which shall remain in full force and effect.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Roof Overhang Easement. If any portion of the roof or eaves of a residence shall encroach upon the Common Properties or any adjoining Lot, there shall exist in the air above the ground with three (3) feet of the lot line to which the encroaching residence abuts an easement for the purposes of construction and maintenance of the said encroaching portion of the roof or eaves, provided, however, that no roof overhang of any description shall encroach on any adjoining property by an amount greater than three (3) feet, and further provided that this easement shall not extend to or include any easement, license or right upon the surface or subsurface of said adjoining property.

Section 5. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date of recording of this Declaration, 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 Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots, provided that Declarant may, within five (5) years of the date of this instrument, amend this Declaration without the consent of Class A members.

Section 6. FHA/VA Approval. As long as there is Class B membership, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration

- (a) Dedication of Common Area or amendment of this Declaration of Covenants, Conditions and Restriction.

