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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR  
VILLAGE ON SPRAGUE TOWN HOMES**

Received - DIANE L. BATTIATO

Register of Deeds, Douglas County, NE

4/1/2005 15:19:29.86



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This Declaration is made on this 22<sup>nd</sup> day of March, 2005, by Triton Homes, L.C., an Iowa limited liability company, doing business in Nebraska as Triton Homes, LLC, hereinafter referred to as "Declarant."

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in Douglas County, Nebraska, which is more particularly described as follows:

Lots 3 through 131, inclusive, and Outlots A, B, C and D, Villages  
on Sprague, a cluster subdivision, as surveyed, platted and  
recorded in Douglas County, Nebraska.

**NOW, THEREFORE**, Declarant hereby declares that all of the Properties described above shall be held, sold, and conveyed subject to all prior easements recorded and 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 upon 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 "VILLAGE ON SPRAGUE TOWN HOME OWNERS ASSOCIATION", its successors and assigns, a Nebraska not-for-profit corporation.

Section 2. "Association Maintenance Obligation" shall mean and refer to the obligation of the Association to provide and pay for all Exterior Maintenance of the Living Units, all Outlot maintenance, repair and replacement obligations, all of the lawn mowing and landscaping work for the Lots within the Properties and any other operation and maintenance obligations contemplated by Article VIII of this Declaration.

Section 3. "Lot 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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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Section 4. "Properties" shall mean and refer to that certain real estate described in Article II of this Declaration, including any plat, division, or subdivision or portion thereof as may hereafter be brought within the jurisdiction of the Association, as well as any Properties that are subsequently added thereto pursuant to the terms of this Declaration.

Section 5. "Common Area" shall mean:

Outlots A and B, Villages on Sprague, a cluster subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 6. "Outlots" shall mean:

Outlots A, B, C, and D, Villages on Sprague, a cluster subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

It is understood that the ingress/egress area which allows access to the individual Lots is contained as a part of the Outlots and that no buildings, garages, residential structures or other structures that would be prohibited by applicable building codes may be constructed on any Outlot. The Outlots are to be owned by the Association at the time of the conveyance of the first Lot to an owner other than Declarant. The Outlots are to be maintained, repaired and replaced solely at the expense of the Association as a part of the Exterior Maintenance described below, except to the extent that Outlot C and Outlot D are to be maintained by the public entity charged with maintenance of the trails.

Section 7. "Living Unit" shall mean and refer to any portion of a residence situated upon a Lot designated and intended for use and occupancy as a residence by a single family.

Section 8. "Lot" or "Lots" shall mean and refer to each individually platted lot shown upon any recorded subdivision plat of the Properties with the exception of the Outlots, and including any lawfully approved and recorded replat of a platted Lot.

Section 9. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration.

Section 10. "Declarant" shall mean and refer to Triton Homes, L.C., an Iowa limited liability company, doing business in Nebraska as Triton Homes, LLC, its successors and assigns, if they are designated as successor in any conveyance.

Section 11. "Exterior Maintenance" shall mean and refer to:

- a. the residing, painting and staining of exterior surfaces as required from year to year, as well as all items of maintenance relating to the exterior of any of the Living Units including, but not limited to, roof replacement and repair, all maintenance, replacement and repair relating to the Outlots, all driveway replacement and repair, and sidewalk repair and replacement as may be determined necessary by the Board of Directors and which must be coordinated through the Board of Directors to insure an ongoing continuity of construction and harmony of architectural design and color scheme. The Lot Owners shall be responsible at their own expense for the repair and replacement of items peculiar to the particular Lot including, but not limited to, heating, ventilation and air

conditioning (HVAC), decks and stoops. Such items shall not be considered Exterior Maintenance and the cost thereof shall not be included as part of any maintenance assessments; and

- b. all lawn mowing and landscaping work necessary on any of the Properties and repair and maintenance of the ingress/egress area of the Properties, including all improvements constructed thereon.

Section 12. "Capital Improvements" shall mean and refer to any construction of, reconstruction of, substantial alteration of, substantial repair of, or substantial addition to the physical amenities, utilities, and improvements upon the Properties.

Section 13. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions to which the Properties are subject.

Section 14. "Plat" shall mean the subdivision plat of Villages on Sprague, recorded with the Douglas County Register of Deeds as Instrument No. 2004164681.

Section 15. "Subdivision Agreement" shall mean the Subdivision Agreement between Declarant and the City of Omaha dated October 20, 2004, adopted by resolution of the Omaha City Council on November 30, 2004, as may be amended from time to time.

Section 16. "OPPD Agreement" shall mean the Agreement between Villages on Sprague Town Homeowners Association and Omaha Public Power District pertaining to street lighting.

## **ARTICLE II.**

### **Property Subject to this Declaration**

Section 1. The property which is subject to and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Douglas County, Nebraska, is more particularly described as:

Lots 3 through 131, inclusive, and Outlots A, B, C and D, Villages on Sprague, a cluster subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 2. Option to Add Additional Property. The Declarant shall have the right and option to add additional property to the terms of this Declaration without the consent or joinder of any of the Lot Owners, the Association, any holder of interest as security for an obligation, or any other person or entity so long as the additional properties are contiguous to the Properties.

- a. Duration of Option. The option to add additional properties as described above will expire on that date which is ten (10) years after the date upon which the Declaration is recorded. There are no circumstances that will terminate the option before the expiration of said ten (10) year period. However, the Declarant or anyone to whom Declarant has assigned said option as hereinafter set forth, may terminate said option by executing a writing to such effect and recording the same in the same manner as a Deed.

- b. Buildings. Any buildings that may be erected upon any properties added to this Declaration will be compatible with the buildings originally constituting the Association in terms of architectural style, quality of construction, principal materials employed in construction and size.
- c. Applicability of Restrictions. All restrictions in this Declaration effecting the use, occupancy and alienation of the Lots will apply to all Lots initially subject to this Declaration as well as those lots added to the terms of this Declaration. Each lot added to the terms of this Declaration shall also be responsible for an undivided percentage of the Association Maintenance Obligation which percentage shall be fixed at the time that the lot is added to the terms of the Declaration and which percentage shall thereafter be reallocated pursuant to Article V as other lots are added to the terms of this Declaration.
- d. No Assurance of Addition. Nothing herein contained shall bind the Declarant to add any additional property to the terms of this Declaration or to adhere to any particular plan of development for any portion of the additional property that is not added to the terms of this Declaration. None of the terms of this Declaration shall apply in any way to any property not specifically added hereto.
- e. Exercise of Option. Declarant may exercise its option to add one or more other properties by executing and recording an amendment to this Declaration, which amendment shall specifically describe the additional real estate parcel or parcels being added to the terms of this Declaration pursuant to that amendment. Such amendment shall entitle the Lot Owner of the additional lot to membership in the Association. Reallocation of the expenses of the Association shall also be made and the additional lots shall be subject to the payment thereof. The amendment as described above adding any additional lots may not be recorded unless the building being constructed on that lot is substantially complete consistent with the floor plans and building materials relating to the original real estate subject to the terms of this Declaration. All installments of real estate taxes previously coming due and payable as well as accrued/prorated with respect to any additional lot and any special assessment levied against such additional lots shall be paid by Declarant prior to adding such parcel to the terms of this Declaration.
- f. Assignment of Option. The option described in this Section may be assigned by Declarant insofar as it affects any property herein described which have not previously been added to the terms of this Declaration. Any such assignment shall be in writing, shall be recorded among the real estate records in the same manner as a conveyance of the additional property and shall be subject to all of the terms and conditions of this Section.

**ARTICLE III.**  
**Property Rights**

Section 1. Reconstruction of Living Units. If a Living Unit is damaged or destroyed by any cause, the Lot Owner shall be required to initiate repair, restoration or reconstruction of such Unit according to the plans and specifications for such Unit for which a Building Permit was issued for original construction within 30 days, with completion of such repair, restoration, or reconstruction to take no more than 180 days with the following exceptions:

- (a) If such repair, restoration or reconstruction is desired in a manner that differs from the plans and specification of original construction, such changes in plans must be approved by seventy-five percent (75%) of the Lot Owners and if required by applicable zoning and use restrictions, by the City of Omaha, Nebraska.
- (b) Failure by the Lot Owner to initiate and complete repairs, restoration, or reconstruction of the Living Unit as described previously in this Section shall permit the Association to initiate such repairs, restoration or reconstruction or if deemed necessary by the Board of Directors, the removal of said Living Unit and subsequent Lot improvements subject to the consent requirements of subsection (a) hereof, all at the Lot Owner's cost.
- (c) The Lot Owner of a damaged Living Unit shall be responsible for making arrangements for protection of the remaining Living Units from rain, snow, or other weather conditions immediately after any damage or destruction has occurred and during the entire time of any repair restoration or reconstruction in order that no further damage occurs to other Living Units. Failure of the Lot Owner of a damaged Living Unit to immediately provide such protection shall allow for the Association to provide such protection, with the cost thereof being a special assessment relating solely to the damaged Living Unit.

Section 2. Declarant's Reserved Rights. The Declarant hereby reserves the following rights and the Association agrees to cooperate and grant rights to the Declarant and utility companies as necessary and appropriate to accomplish the following:

- (a) Create and dedicate easements for sanitary sewer, drainage power, water, telephone, cable or other utility purposes.
- (b) The right of Declarant to maintain a general sales and construction office in a Living Unit.
- (c) The right of Declarant to sell or transfer its rights and obligations to a successor or assign.

All reserved rights of the Declarant pursuant to this Section, shall expire when the Declarant no longer has title interest in any Lot within the Properties. Exercise of the reserved rights shall not require the consent of the Association, its Board of Directors, or its membership.

Section 3. Ingress/Egress Easement. The Declarant hereby grants a perpetual nonexclusive easement for vehicular and pedestrian ingress and egress over, across and through all paved portions of Outlots A and B, including all of the interior streets, driveways and walkways, as well as from all such paved easement areas across the driveway up to the garage opening of each Living Unit, to all of the Lot Owners, as well as their invitees, tenants and guests and hereby grants to Douglas County, Nebraska and the City of Omaha, Nebraska a perpetual non-exclusive easement for the purposes of allowing all rescue, fire, and emergency vehicles to have access to all Living Units located within the Properties and for the purpose of obtaining access to the individual Lots, all of which easement rights, however, are subject to and conditioned upon the remaining terms, conditions, and restrictions of this Declaration. Maintenance, repair replacement, and snow removal of the Outlots easement area granted herein, including the driveway, interior street and walkway areas described above, shall be performed by the Association as a part of the Association Maintenance Obligation.

Section 4. Parking Easement. The Declarant hereby grants a perpetual nonexclusive easement for parking on all striped parking stalls installed on Outlots A and B to all of the Lot Owners, as well as their invitees, tenants, and guests, but subject to the rules and regulations in Appendix A, as amended from time to time.

Section 5. Landscaping and Facilities Easement. The Declarant may construct landscaping, (entrance signs and markers, street signs), retaining walls, green areas, fences and an irrigation system for the Properties (referred to herein as "Landscape Facilities"). The Declarant hereby reserves in its favor and grants to the Association a perpetual nonexclusive easement across those portions of the Properties on which a Living Unit is not constructed for the purpose of installation and ongoing use and maintenance of Landscaping Facilities should the Declarant or Association determine that the Landscape Facilities are desired. The location of the Landscape Facilities shall not unreasonably interfere with any driveways, buildings or other structures constructed on the Properties. The easement described shall give the Association the right to come on the Properties at reasonable times in order to repair, maintain and replace the Landscape Facilities, as installed, with all such repair, maintenance and replacement being an Association Maintenance Obligation.

Section 6. Service Road Easement. The Declarant hereby grants and reserves for itself and its agents and contractors a temporary nonexclusive easement for construction staging and ingress and egress for service road purposes to allow for future construction activities over the Common Area for the purpose of allowing the Declarant and its construction equipment and subcontractors to obtain access to the building sites.

Section 7. Utility Easements and Maintenance.

- (a) The Declarant hereby reserves and grants to the Association and Lot Owners a perpetual non-exclusive easement and right-of-way under, over, on, through, across and within each of the Lots and Outlots, for the purpose of the Association and/or the Lot Owners to reconstruct, repair, replace, enlarge, inspect and maintain any and all private sanitary sewers, drainage facilities and water services ("Private Utility Services"), along with all necessary structures and appurtenances thereto, which may be located within the Properties at any time. Declarant agrees to originally design and construct the Private Utility Services to be located within the Properties at Declarant's sole cost and expense. By acceptance of the deed for any Lot within the Properties, the Lot Owners shall be

deemed to have accepted the terms of this easement without any subsequent document or agreement being necessary, and such Lot Owner, by such acceptance, agrees to be obligated to perform all reconstruction, repair, replacement, enlargement, inspection and maintenance relating to the Private Utility Services that are located on each Lot Owner's Lot, subject to the obligations of the Association set forth in Sections 7(b) and (c), hereinafter set forth.

- b. Any work described herein that relates to any utility services shared in common between more than one Lot Owner shall be coordinated exclusively by the Association, and the Association is hereby appointed as attorney-in-fact for all Lot Owners of Lots within the Properties, with such appointment being coupled with an interest, to accomplish such work.
- (c) All costs associated with any work performed pursuant to this Section 7 shall be the obligation of the Association and shall be assessed by the Association as provided in Article V.
- (d) All Lot Owners and the Association shall have the right of access to the Private Utility Services wherever they may be located, whether inside or outside of any structure located on the Properties, and shall have all rights of ingress and egress reasonably necessary for the use and enjoyment of the easement granted herein from property adjacent thereto for an area reasonably necessary to allow for any work to be performed relating to the utility services.
- (e) Upon completion of any reconstruction, repair, enlargement or maintenance of any Private Utility Services or any appurtenance thereto, the party performing such work shall restore the disturbed area in good and workmanlike manner, including restoration of lawns by seeding to a condition comparable to its condition before the performance of such work.

Section 8. Easement for Encroachments. An easement for encroachment purposes is hereby reserved and granted for any encroachment that may exist upon any Lot in the event that the improvements constructed upon that Lot encroach any other Lot as a result of construction, reconstruction, repair, shifting, settlement, or movement in any fashion. Such encroachments and the easements therefore shall not be considered or determined to be encumbrances for the purposes of marketability of title. In the event that any improvements are partially or totally destroyed and then rebuilt, every effort shall be made to correct any such encroachment.

#### **ARTICLE IV.**

##### **Membership and Voting Rights in the Association**

Section 1. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Proxy. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing

proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant. The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

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

**Class A.** The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 the members may determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** Class B member(s) shall be the Declarant and it shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (b) On December 31, 2009.

## **ARTICLE V.**

### **Covenants for Association Maintenance Obligation Assessments**

**Section 1. Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot, 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:

- (a) Annual assessments or charges for Association Maintenance Obligations,
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and



- (c) Taxes or assessments levied by a government or quasi-governmental body on the Properties and spread by the Association or such body pursuant to the allocated percentage established for each Lot for the payment of annual and special assessments.

The annual and special assessments, or governmental or quasi-governmental levies, together with interest, costs, and reasonable attorney's fees incurred in connection with the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney 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, health, safety, and welfare of the Owners of the Properties, and for the improvement and maintenance of the Living Units and buildings situated upon the Properties, including but not limited to the payment of taxes, special assessments for work performed by a governmental or quasi-governmental subdivision, insurance, water charges, utility charges, repair, replacement of, and additions to, the Properties, and for the cost of labor, equipment, materials, management and supervision.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment shall be One Thousand Two Hundred Dollars (\$1,200.00).

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment may be increased by the Board of Directors each year not more than 25% 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 Lot to an Owner other than Declarant, the maximum annual assessment may be increased above 25% by a vote of at least two-thirds (2/3) of the Member votes who vote in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.
- (d) The Board of Directors of the Association shall, after consideration of future costs for Exterior Maintenance, establish a reserve fund for such purposes with the monies necessary for such reserve fund to be part of the annual assessment.

Section 4. 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 Properties, including fixtures and personal property related thereto, provided that any such

assessment shall only be effective after it has secured 2/3 of the Member votes at a meeting duly called for that purpose.

Section 5. Special Assessments for Public Roads or Other Public Purposes. In addition to the annual and special assessments authorized herein, the Association shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities, or other public purposes which a public, quasi public, or governmental authority may assess on any project even though the assessment boundaries may only cover a portion of the Properties falling within this Declaration. Any such special assessment shall be levied against the entire development as a whole with each Lot Owner paying its proportionate share pursuant to its percentage of Association Maintenance Obligation allocation.

The Association may enter into a petition and waiver to contract with the public, quasi-public, or governmental authority concerning any project involving a special assessment. If petition and waiver is used and adopted, the Association, on behalf of all Lot Owners and Members of the Association, shall execute all documents required in connection with said petition and waiver in the form generally required by the public, quasi-public, or governmental authority. The Association may execute such documents only after securing the affirmative vote of two-thirds (2/3) of the Member votes described herein who vote in person or by proxy, at a meeting duly called for that purpose.

Section 6. Rate of Assessment. All annual and special assessments shall be fixed for all Lots by the Board of Directors and shall be collected on a monthly basis and shall be uniform for each Lot.

Section 7. Date of Commencement of Annual Assessments.

A. Initial Lots: The annual assessments provided for herein shall commence as to each of the initial Lots subject to this Declaration on the first day of the month following the conveyance of such Lot to an owner other than the Declarant. During the time that the Declarant is the owner of any such Lots, no assessments shall be assessed or due against the Lots owned by Declarant. 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. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance. At the time of the initial closing of the conveyance of any Town Home from the Declarant the purchaser thereof shall pay to the Association a working capital fund contribution in an amount equal to two months estimated common area charges for the Lot, which amount is not in lieu of future dues or assessments and shall not be refundable.

B. Subsequently Added Lots. The annual assessments provided for herein shall commence as to all subsequently added Lots on the first day of the month following the conveyance of such Lot to an owner other than the Declarant. During the time that the Declarant is the owner of any such Lots, dues shall be abated and no assessments shall be

due. After such Lot has been added to the terms of this Declaration and is subject to assessment after conveyance, such Lot shall be assessed in a similar fashion and pursuant to the same procedures as the initial Lots with no further differentiation.

Section 8. Date of Commencement of Special Assessments. The due date of any Special Assessment under Section 4 of this Article shall be fixed in the resolution authorizing such assessment.

Section 9. Effect of Nonpayment of Assessment: 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 lesser of fifteen percent (15%) or the maximum rate allowed by Nebraska law at the time of such delinquency. In addition to the collection of such delinquent amounts plus interest, the Association shall be entitled to a late payment fee of Twenty-five Dollars (\$25.00) for any payment not received by the within fifteen (15) days to defer the collection costs and to recover any reasonable attorney fees and other expenses involved with the collection of such delinquent amounts, which fees and expenses shall also accrue interest as described above from the date of their incurrence. 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 the manner provided for foreclosure of a Mortgage pursuant to the Nebraska law.

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 the issuance of the Sheriff's Deed or deed in lieu of foreclosure. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI.**

### **Architectural Control**

A. No building, wall, room addition, deck, patio or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein 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 committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, 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.

B. No clothing, sheets, blankets, laundry or other articles shall be hung, displayed or stored outside the Living Unit (except within the garages located thereon) or which may be visible from the outside of the Living Unit (other than draperies, curtains or shades of a customary nature and appearance, and in any event, subject to the rules and regulations of the Board of Directors.) No Owner shall paint or decorate or adorn the outside of his Living Unit nor shall he install outside of his Living Unit any canopy, awning, hot tub, whirlpool bath, spa, permanent or temporary fencing around patios, outside radio or television antenna except that a satellite dish that is one meter or less in diameter may be installed pursuant to FCC guidelines.

Any Lot Owner may, however, install flower planters and flower pots on any patio area owned by the Lot Owner so long as such planters and pots are no wider than 18 inches in diameter with plantings no taller than 5 feet from ground level. The use of the planters and pots described above shall be restricted to the planting and cultivating of flowers and ornamental bushes and shall not be used for the planting and cultivating of vegetables.

C. No Lot Owner shall display, hang, store, or use any sign outside his Living Unit or which may be visible from the outside of his Living Unit without the prior written permission of the Board of Directors. The foregoing notwithstanding, any Lot Owner shall be permitted to display a sign of not more than three square feet in area advertising such Owner's Lot for sale or lease with such sign being located in the area between said Lot and the drive in front of such Lot, all in accordance with the sign ordinances of the City of Omaha, Nebraska.

## **ARTICLE VII.**

### **Covenants for Insurance**

#### **Section 1. Maintenance of Insurance.**

a. The Association, on behalf of each Lot Owner, shall obtain and continue in effect adequate casualty and fire insurance, as the Board of Directors of the Association deems appropriate, in an amount equal to the full replacement value, without deduction for depreciation or coinsurance costs, of all of the Living Units, as well as all public liability insurance relating to each Lot and to the Outlots. Such insurance shall name the Association and the Owners of all applicable Lots as insureds and loss payees, as their interests may appear. All losses shall be adjusted by the Association, as Trustee for the benefit of each affected Lot Owner, and for the benefit of any applicable mortgagee, with the proceeds from such adjustment to be used as is described herein concerning reconstruction of Living Units in Article III. The Association is hereby designated as attorney-in-fact (coupled with an interest) for each Lot Owner for the purpose of adjusting any such losses. At the time of the initial closing of the conveyance of any Living Unit from the Declarant, the purchaser thereof shall pay to the Association an amount equal to one year's insurance premium that is the obligation of the Association as set forth herein for such Living Unit which amount shall not be refundable.

b. Each Lot Owner shall be allowed to obtain such additional insurance as they deem appropriate, including any insurance to cover appliances, carpet, furniture, and other personal belongings that may not be covered by the "Master Policy" obtained by the Association. **It shall be the responsibility of each Lot Owner to coordinate such insurance matters in order that each Lot Owner makes their own determination that their own personal possessions, furniture, and other interior items are adequately covered to their satisfaction.**

**Section 2. Public Liability Insurance.** The Association shall provide public liability insurance covering the Outlots, in such amounts as may be determined at the discretion of the Association from time to time, as well as any other insurance that the Association may deem appropriate.

**Section 3. Fidelity Bonds.** The Association may also provide fidelity bonds and workers

compensation insurance for employees and fidelity bonds and errors and omissions insurance for officers and directors in such amounts as is determined by the Association to be necessary from time to time. The Association may, from time to time, provide other forms of insurance as deemed necessary.

## **ARTICLE VIII.**

### **Maintenance Obligations**

Section 1. Exterior Maintenance. The Association will provide Exterior Maintenance upon each Lot and Living Unit which is subject to assessment under Article V and as defined in Article I, Section 10 of this Declaration. The following is a list of certain items that would be an example for the types of maintenance, operation, repair, and replacement to be performed by the Association as part of the Association Maintenance Obligation. This list is not intended, however, to be all-inclusive in any respect:

- a. Private drives and driveways.
- b. Garage floors, but not including repairs due to painting or sealing such floor or any damage caused by the Lot Owner. All garage doors shall be maintained by the Association, but the expenses therefore shall be billed back directly to the Owner of the particular Living Unit as described in Article 1. In addition, all garage door openers shall be the sole responsibility of the individual Lot Owner).
- c. Sidewalks.
- d. Landscaping, including trees and shrubbery.
- e. Shingles
- f. Siding
- g. Street and Exterior lighting
- h. Snow removal
- i. Lawn mowing
- j. Exterior windows and front door
- k. Private sanitary sewer and drainage facilities
- l. Private water mains and facilities
- m. Utilities operation expenses delegated to the Declarant or the Association under the Subdivision Agreement and the OPPD Agreement

No individual Lot Owner shall be allowed in any way to perform any maintenance, repair, or replacement that is to be performed by the Association. A Lot Owner may, however, tend to the potted flowers and potted bushes planted by the Lot Owner as previously described herein and the Association shall have no obligation for the maintenance thereof.

Section 2. Lawn Mowing, Landscaping, Snow Removal and Maintenance of Outlots. The Association shall be responsible for providing all law mowing and landscaping maintenance, repair and replacement relating to the Properties, as well as snow removal from sidewalks, drive areas and driveways on the Lots and Outlots. The Association shall be responsible for performing all of the operational, maintenance, repair and replacement obligations relating to the Outlots, including, without limitation, drive and parking areas, landscaping and utilities and any obligations relating to easements in favor of the Association evidenced by this Declaration or by separately recorded easements documents. All of the costs of the obligations of the Association in this Section shall be an Association Maintenance Obligation.

Section 3. Lot Line Walls. Any walls which are built upon the dividing line between Lots (lot line walls) and which are not open to the elements shall not be altered by the Lot Owner. Any cost of maintenance of such lot line walls shall also be part of the Association Maintenance Obligation, except that any maintenance of such lot line walls caused by the negligent or intentional act or omission of any Lot Owner shall not be an Association Maintenance Obligation but shall be charged back to and be the expense of the Lot Owner causing such maintenance to be performed. Such lot line walls are intended to be constructed as walls in common or party walls and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any damage to such lot line walls that allows for their direct exposure to the outside elements shall be weatherproofed by the Association pending finalization of maintenance thereto.

Section 4. Assessment of Cost. The cost of all Association Maintenance Obligations shall be assessed against all of the Lot Owners and shall be added to and become a part of the annual maintenance assessment or charge to which all Lots are subject under Article V hereof. As part of such annual assessment or charge, it shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article V hereof, may add thereto the estimated cost of the Exterior Maintenance for that year but shall thereafter make such adjustment with the Owner as is necessary to reflect the cost thereof.

Section 5. Negligence in Maintenance. 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. In the event an Owner fails to make Lot or Living Unit repairs that are the responsibility of the Lot or Living Unit Owners relating to HVAC, decks, stoops, or otherwise as required by this Declaration, the Association may cause such repairs to be made and assessed to the Lot Owner responsible after ten (10) days notice to repair has been given to the Lot Owner by the Association in writing. The Association shall invoice the Owner for the cost of such repairs and the Association shall have the same remedies for nonpayment as provided in Article V of this Declaration.

Section 6. Easement for Access. For the purpose solely of performing the Association duties described by this Article VIII, the Association, through its duly authorized agents or any employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day; provided, however, in the event that there is breakage or leakage in the water system or sewer system upon a Lot, no notice need to be given to enter upon the Lot for the purpose of repairing the water system or sewer system. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Properties. The Owner or occupant of a Lot shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within said easement areas which might interfere in any way with the use and patrolling of any of the utility service and drainage located in the easement areas. In addition, an easement for maintenance is hereby granted in favor of the Association over and across each Lot for the purposes of the Association performing its duties under the terms of this Declaration.

**ARTICLE IX.**  
**Additional Restrictions**

Section 1. Subject to the ability of the Declarant to own and/or occupy any of the Living Units for model home, sales purposes or management office, each of the Living Units is intended to be used for residential purposes only, provided, however, that the Declarant shall be allowed to place a construction trailer or other similar construction-related facility on the Properties. No business or commercial use shall be permitted in any of the Living Units if such use generates more than two vehicle visits per day to the Living Unit, provided, however, that no daycare or child care facility shall be allowed at any time, and no music lessons or tutoring shall be performed at any time. Any home office that complies with the above restrictions shall be allowed, subject, however, to any city ordinance that may apply.

Section 2. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each living unit shall be permitted to have no more than one (1) dog or one (1) cat, not to exceed 45 pounds in weight, or to have two (2) cats not to exceed 35 pounds in total weight, or to have one (1) cat and one (1) dog not to exceed 35 pounds in total weight, provided, however, that no Pit Bull Terriers or Rottweilers shall be allowed in any case. In the event that any amendments are made to this Declaration which further restrict the keeping of pets, all pets that had existed at the time of such amendment shall be "grandfathered" and shall be allowed to remain in the Living Unit, provided, however, that no replacement pets acquired after the date of the amendment would be allowed if they violate any such amendment. All pets must be kept on a leash and each Owner shall be responsible for cleaning up any waste or mess made by the pet. Any damage done by pets including dragging chains, digging, scratching or chewing, shall be the responsibility of the owner of such pet, including, but not limited to, any damage done to landscaping. The Association shall have the right to require removal of pets in the individual cases where such pets are or become legal nuisances and unreasonably disturb the quiet enjoyment of the Properties by the Owners. The Association may levy a \$25.00 per incident charge for any pet waste that is not cleaned up by the owner of such pet.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 4. Mailbox designs shall be only as approved by the Board of Directors, or the architectural control committee. No sign shall be placed upon any Lot except those customarily used to identify the name of the resident and the street address of the subject Lot, and real estate signs for the sale or rental of a Lot.

Section 5. No trash receptacles or garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable height and approved by the Board of Directors. This restriction shall not exclude the placement of waste containers outside of such area if required by governmental regulation or by terms of a contract with a commercial operator.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, or storage facility, either temporarily or permanently except for a sales trailer temporarily used by the Declarant.

No commercial vehicles, tanks, or commercial equipment of any kind shall be located, stored, or parked on any Lot, provided, however, that the Declarant shall be allowed to place a construction trailer or similar construction related facility on the Premises. No recreational vehicles, including but not limited to, boats, snowmobiles, and trailers, shall be parked or stored on any Lot for more than 7 days out of the year unless stored in the garage, provided, however, that no such items shall be stored inside a garage unless the particular garage used for such storage is still used for the storage of the appropriate number of automobiles (i.e. one automobile in a one-car garage and two automobiles in two car garage). It is not intended that garages shall be used as storage areas, thus requiring automobiles that would otherwise be parked in the garage to be parked in the driveway or in other parking areas. No fence of any kind shall be allowed on any lot at any time.

Section 7. No fence of any kind shall be allowed on any Lot at any time, except for fences required/installed as part of the original site plan or as required at any time by the City of Omaha, and except for any silt/erosion control fences or other fences installed by the Declarant as part of the construction of the Living Units.

Section 8. Lot Owners shall not be allowed to place any personal property, including, but not limited to, play equipment, portable or permanent basketball hoops or similar recreational equipment, storage sheds, animal runs or shelters, hot tubs, whirlpool baths, or spas on their lot or in their Living Unit unless located inside such Living Unit, provided, however, that normal and customary lawn and patio furniture shall be allowed.

Section 9. Any lease arrangement of a Living Unit shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the By-Laws and Articles of Incorporation of the Association and any rules and regulations established by the Board of Directors; shall contain the agreement of the lessee to be bound by the terms of such documents and shall provide that any failure of the lessee to comply with the terms of such documents or rules shall be a default under the lease or rental agreement. All leases shall be required to be in writing and any Owners leasing or renting a Living Unit, shall, prior to the commencement of the lease or rental term, deliver to the Secretary of the Association and to any management company involved for the Association a complete copy of the lease or rental agreement. No lease shall be for a period of less than thirty (30) days. Any Owner who leases their Living Unit shall remain liable for all the actions of the tenant relating to this Declaration and any rules of the Association. Other than the foregoing, the Owners of the respective Living Unit shall have the absolute right to lease the same.

Section 10. Except as expressly permitted by the Board of Directors of the Association, in its sole discretion, and except as provided herein relating to flower boxes and planters, no gardens, shrubs, flowers or other plants shall be planted by any Owner on any Common Area or Lot.

Section 11. No one shall be allowed to block access to any garage or driveway unless the Living Unit affected is owned by the individual creating such blockage.

Section 12. All visitor/guest parking is intended to be temporary in nature. All visitors and guests staying for extended periods are to park their vehicles in the driveway of their host. Parking in the Common Area shall be permitted only in designated areas. Parking in the ingress/egress easement area is subject to control by the Board of Directors of the Association, which may limit such parking in the Board of Directors' sole discretion. All non-exclusive parking



areas in the Common Area are reserved for visitors and guests and shall not be used by Lot Owners.

Section 13. Any construction or earth moving on any Lot(s) owned by the Lot Owner (whether greater or less than one (1) acre in size) shall be in compliance with all laws relating to storm water discharge permitting. The Lot Owner understands and agrees that he/she is the sole responsible permittee for the Lot(s) with respect to compliance with all terms, provisions and requirements of the NPDEES Storm Water Discharge Permit No. 2 and the storm water pollution prevention plan which includes the Lot(s). Lot Owner shall protect, defend, indemnify and hold Declarant and other Lot Owners harmless from any and all damages, claims, liabilities, fines penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to: (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot(s) identified above; and (ii) any alleged violation of any NPDES or storm water discharge rule or regulation, after the date of sale of the Lot(s), which occur while the Lot Owner owns the Lot.

## **ARTICLE X**

### **General Provisions**

Section 1. Enforcement. The Association, and its Board of Directors, or any Lot Owner, or their successors and assigns, shall have the right to enforce, by any proceedings at law or equity any restrictions, conditions, covenants, reservations, liens, and charges and rules and regulations now or hereafter imposed by the provisions of this Declaration or by the Association as set forth in the By-laws. Any such enforcement shall allow for the reimbursement of reasonable attorney fees and costs to the successful enforcer. Failure by the Association or any Lot 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. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

Section 3. Binding/Amendment. These Covenants shall inure to the benefit of the Lot Owners, the Association, and their successors and assigns, shall be deemed covenants running with the land and shall remain in full force and effect for a period of thirty (30) years, after which time they shall automatically extend for successive thirty (30) year periods, unless terminated during the last year of the thirty (30) year effective period by an instrument signed and subsequently recorded in the office of the Register of Deeds of Douglas County, Nebraska by Lot Owners owning not less than two-thirds (2/3) of the Lots. This Declaration may be amended or modified at any time by an instrument signed by Owners holding not less than seventy-five percent (75%) of the Member votes, however, that any such amendment to Article V must be consented to by the Declarant so long as the Declarant owns any Lot that is a part of this Declaration. Any amendment will be effective only after it is recorded with the Register of Deeds of Douglas County, Nebraska. Notwithstanding anything to the contrary provided herein, however, the obligation of the Association to maintain Outlots in a safe condition and in compliance with all applicable governmental regulations cannot be released by any amendment without the prior written consent of the City of Omaha, Nebraska. Any amendment may be prepared and filed by the Declarant if it relates to correction of technical or typographic errors or for clarification only with such amendment not requiring the percentage votes as described above. No amendment that adds additional property to the terms of this Declaration pursuant to

Article II herein, shall require the consent of any Owner other than the Declarant, as described in Article II. No Amendment to this Declaration shall change the ability to extend the effectiveness of these Covenants as described above, however.

Section 4. Violation. If a Lot Owner or the Association or any of them or their successors and assigns, or tenants shall violate or attempt to violate any of the Covenants or Restrictions herein contained, it shall be lawful for any person or persons owning any other Lots, the Association, or Declarant, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant or Restriction and either to prevent him or them from so doing or to recover damages for such violation. In the event of any such suit or proceeding, the prevailing party shall be entitled to recover from the nonprevailing party, an amount equal to all costs, including reasonable attorney fees, incurred by such prevailing party in the preparation for and prosecution of such suit or proceeding.

Section 5. Rules and Regulations. The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, By-Laws or this Declaration in order to regulate the use of the Living Units and Lots and the conduct of the occupants which may jeopardize the health, safety and welfare of other occupants involving noise or other disturbing activity or which may cause damage to any of the Properties or the improvements located thereon, regulating or prohibiting animals, regulating the exterior appearance of the Properties including, by way of illustration and not limitation, balconies and patios, window treatments and signs and other displays, regardless of whether inside or outside an apartment, implementing the Articles of Incorporation, the By-Laws or this Declaration. Attached hereto and incorporated herein by this reference as Appendix A are the initial Rules and Regulations that restrict the Lots and Lot Owners. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declaration, By-Laws and Rules and Regulations of the Association. Such fines shall not exceed the sum of Ten Dollars (\$10.00) per day unless agreed to by a majority vote of the Members of the Association.

Section 6. Construction. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

Section 7. Condemnation. The Association shall have control over any eminent domain or condemnation proceedings, negotiations, settlements and agreements, relating to the Common Area or any part thereof. The Association is hereby appointed attorney-in-fact for each of the Lot Owners for the purpose of handling all such matters

**BY ACCEPTANCE OF A DEED FOR ANY LIVING UNIT DESCRIBED HEREIN, EACH LOT OWNER SHALL BE DEEMED TO HAVE AGREED TO THE FOLLOWING LANGUAGE:**

**I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS; AND THAT BY ACCEPTING A DEED FOR A LIVING UNIT IN THIS DEVELOPMENT; I VOLUNTARILY WAIVE MY RIGHT TO THIS PROTECTION FOR THIS LIVING UNIT WITH RESPECT TO CLAIMS BASED UPON THIS DECLARATION.**

IN WITNESS WHEREOF, Triton Homes, L.C. has caused this instrument to be executed this 22 day of March, 2005.

TRITON HOMES, L.C., an Iowa limited liability company

By: [Signature]  
Title: president/manager

STATE OF <sup>MB</sup> ~~Iowa~~ Iowa )  
COUNTY OF Polk ) ss.

On this 22<sup>nd</sup> day of March, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joel Goodman, to me personally known, who, being by me duly sworn, did say that he/she is the president/manager of Triton Homes, L.C., an Iowa limited liability company and that said instrument was signed and sealed on behalf of said Triton Homes, L.C. by authority of its Members and Managers; and the said Melissa Bosma acknowledged the execution of the instrument to be the voluntary act and deed of said limited liability company, by it and by him/her voluntarily executed.

[Signature]  
Notary Public

00194288.4



CONSENT BY MORTGAGEE TO  
DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR  
THE VILLAGE ON SPRAGUE TOWN HOMES

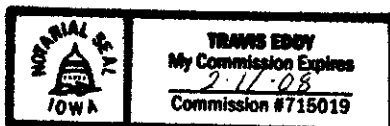
Commercial Federal Bank hereby consents to the terms of the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for The Village on Sprague Town Homes, and hereby acknowledges that the lien of the mortgage held by Commercial Federal Bank dated December 16, 2004, filed on December 20, 2004, as Instrument No 2004169000 of the records of the Douglas County Register of Deeds, shall be subordinate to the terms of the foregoing Declaration.

COMMERCIAL FEDERAL BANK, a Federal  
savings bank

By: Chris Watkins  
Title: Vice President

STATE OF IOWA                    )  
  ) ss.  
COUNTY OF Polk                )

On this 25 day of March, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Chris Watkins, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President of the corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of the corporation by authority of it Board of Directors; and that Chris Watkins as such officer, acknowledge the execution of the foregoing instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.



[Signature]  
Notary Public

**APPENDIX A  
THE VILLAGE ON SPRAGUE  
RULES AND REGULATIONS**

General Rules

1. All guests must be accompanied by a resident/owner.
2. Residents/owners are personally responsible and liable for any damage to the buildings, furniture, or equipment caused by any resident/owner or his guests.
3. Residents/owners are to leave all areas and facilities used in an orderly condition.
4. Residents/owners may use barbecue grills, provided the grills are placed five (5) feet or more from any buildings or any fences.
5. Personal property shall not be left unattended in any common areas other than the garage spaces.
6. For the safety of all residents/owners, please limit driving speeds through the complex to twenty-five (25) miles per hour.

Garages

1. Residents/owners shall use only the garage spaces which are allocated to their respective units.
2. Residents/owners are prohibited from using or storing any of the following items in the garages:
  - (1) Flammable materials and liquids;
  - (2) Combustible materials;
  - (3) Materials identified with hazardous labels; and
  - (4) Compressed gases.
3. Garage doors shall be kept closed when garages are not in use.

Outside Parking

1. Parking outside the buildings is permitted only in designated areas and, except for the driveway Limited Common Elements which are reserved for the Owners of the Units to which they are, respectively, allocated, are always on an unreserved basis unless otherwise prohibited.
2. Any abandoned vehicle will be towed at its owner's expense, without prior notice to the owner.
3. Any nonoperational vehicle parked outside of any garage for a period of more than seven (7) days will be towed at its owner's expense, without prior written notice to the owner.
4. Vehicles parked outside the buildings shall not obstruct the garages or driveways of others.

Pets.

1. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each living unit shall be permitted to have no more than one (1) dog or one (1) cat, not to exceed 45 pounds in weight, or to have two (2) cats not to exceed 35 pounds in total weight, or to have one (1) cat and one (1) dog not to exceed 35 pounds in total weight, provided, however, that no Pit Bull Terriers or Rottweilers shall be allowed in any case.
2. In the event that any amendments are made to this Declaration which further restrict the keeping of pets, all pets that had existed at the time of such amendment shall be "grandfathered" and shall be allowed to remain in the Living Unit, provided, however, that no replacement pets acquired after the date of the amendment would be allowed if they violate any such amendment.
3. All pets must be kept on a leash and each Owner shall be responsible for cleaning up any waste or mess made by the pet.

4. Any damage done by pets including dragging chains, digging, scratching or chewing, shall be the responsibility of the owner of such pet, including, but not limited to, any damage done to landscaping. The Association shall have the right to require removal of pets in the individual cases where such pets are or become legal nuisances and unreasonably disturb the quiet enjoyment of the Properties by the Owners. The Association may levy a \$25.00 per incident charge for any pet waste that is not cleaned up by the owner of such pet.

#### Fines

As is described in the Declaration, breach of these Rules and Regulations may subject the violator to a \$10.00 per day fine