

Fee Bk ✓ \$ 30⁰⁰
Index ✓
Compare ✓
Computer ✓

1067

FILED
BOOK 238 PAGE 742
94 NOV 21 AM 11:44
Carol Mirona
REGISTER OF DEEDS
DODGE COUNTY, NE

**TOWNHOUSE OWNERSHIP AGREEMENT
AND
COVENANTS PERTAINING TO WASHINGTON HEIGHTS TOWNHOMES**

THIS TOWNHOUSE OWNERSHIP AGREEMENT made and entered into this 1st day of November, 1994 by and between Nekamo Properties, of Douglas County, Nebraska, hereinafter referred to as "First Party", whether one or more ; and Nekamo Properties, of Douglas County, Nebraska, hereinafter referred to as "Second Party", whether one or more.

WITNESSETH:

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

North 39.75 ft. of Lot 22, Block 3, Washington Heights 4th Addition to the City of Fremont, Dodge County, Nebraska.

together with all improvements located thereon, hereinafter called Lot A and

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

Lot 22, except the north 39.75 ft., Block 3, Washington Heights 4th Addition to the City of Fremont, Dodge County, Nebraska.

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 the 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 as follows:

**ARTICLE I
STRUCTURE**

A. The "Townhouse" on the property hereinbefore described and which is the subject matter

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 that 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 THE 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 repairing 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 a 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.

roof repair. Any re-roofing 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 re-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.

In the event it shall become the obligation of a party hereto to re-roof 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 thereof 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 SEWER MAINTENANCE

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; and

(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 recording 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 is 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.

(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 (a) refer to and identify the Affidavit of Non-Payment of costs or expenses which created the lien which has been satisfied, (b) state the legal description of the property affected, and (c) 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 in contravention of any restrictive covenants which may have heretofore been placed upon Lot A and Lot B. In addition the parties agree as follows:

1. No exterior shades, awnings or window guards will be used by either party of his living unit without written consent of the other party.

2. No birds, animals, snakes, rodents or insects shall be kept or maintained on the above described property except for domestic purposes. Dogs and other animals, except when confined to a living unit, must be kept on a leash.

3. No structural changes or additions shall be made to the Townhouse. Neither party shall erect any structure, including fences, either permanent or temporary, on his real property without the written consent of the other party. If a fence is erected it must be constructed out of wood or wrought iron.

4. No boats, house trailers, motor homes or large trucks of any type or description may be stored outside of the garage area of each living unit for a period exceeding ten (10) days.

5. No lumber, metals, bulk materials, refuse or trash shall be kept or stored, or allowed to accumulate on the above described real property, except building materials may be stored during

removed from view when not in use or unless the same is enclosed by a fence or other enclosure at least six (6) inches higher than such hanging articles, provided such fence or other enclosure is allowed. No machinery shall be placed or operated upon the above described real property except such machinery as is usual in maintenance of the living unit.

8. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

9. No live trees shall be removed except those removed for placement of main building and placement of landscaping.

10. Garden plots are allowed, however, they are not allowed in the front lawn area. Landscaping is not considered gardening.

11. Satellite Television dishes are not allowed in the area.

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 thereon), 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 thereon), 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 hereunder signed their name(s) the day and tear first written above.

State of Nebraska
 County of Douglas, ss

The foregoing instrument was acknowledged before me this 1st day of November, 1994, by J. Stephen Corvine, First Party.

My commission expires: Joanne Melies
 Notary Public



State of Nebraska
 County of Douglas, ss

The foregoing instrument was acknowledged before me this 1st day of November, 1994, by J. Stephen Corvine, Second Party.

My commission expires: Joanne Melies
 Notary Public

