

(ii) The variance will not substantially or permanently injure the use of other property subject to this Declaration;

(iii) The variance will not alter the essential character of the Properties subject to this Declaration;

(iv) The variance will not weaken the general purposes of this Declaration;

(v) The variance will be in harmony with the spirit and purpose of this Declaration; and,

(vi) The circumstances leading the applicant to seek a variance are unique or peculiar to the property or its Owner and are not applicable generally to the Properties subject to this Declaration.

Section 10. Violation of Declaration of Rules and Regulations Adopted Hereafter Deemed Nuisance. Any act of omission, whereby any restriction, condition or covenant of this Declaration or any rule and/or regulation is violated in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association.

Section 11. Grandfathering of Violations. In the event of the existence of any violations of this Declaration, upon the date of its adoption, which violations were not violations of the Declaration prior to amendment, such violations shall be deemed to be non-conforming uses of the property but shall be allowed until such time as they are terminated.

Section 12. Limitation of Liability of Board of Directors. The Board of Directors and the individual voting members of the Board of Directors shall not be liable to any person or entity for any official act of the Board of Directors, except to the extent that the Board of Directors, or any individual voting member of the Board of Directors acted with negligence, malice, wrongful intent or willful misconduct. In all events, the Board of Directors and the individual voting members of the Board of Directors shall be defended and indemnified by the Association in any suit or proceeding brought against it or any voting member; in his capacity as a voting member of the Board of Directors; provided, however, that the Association shall not be obligated to indemnify any individual voting member of the Board of Directors in the event such individual voting member shall be adjudged to be liable for negligence, malice, wrongful intent or willful misconduct in the performance of his duty as an individual voting member of the Board of Directors.

IN WITNESS THEREOF, the Tomlinson Woods Homeowners Association, Inc. has caused these presents to be executed this _____ day of _____, 2003.

TOMLINSON WOODS HOMEOWNERS
ASSOCIATION, INC.,
A Nebraska Non-Profit Corporation

By: _____
President

THE BY-LAWS OF
TOMLINSON WOODS HOMEOWNERS ASSOCIATION

10/2003

BY-LAWS

OF

TOMLINSON WOODS HOMEOWNERS ASSOCIATION

ARTICLE I

BY-LAWS

Section 1. Description

These are the By-laws of Tomlinson Woods Homeowners Association, a Nebraska non-profit corporation with its registered offices at Omaha, Nebraska.

Section 2. Seal

The corporate seal shall bear the name of the Corporation and the words Omaha, Nebraska, Corporate Seal.

Section 3. Membership

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot, (as defined in the Declaration of Covenants, Conditions, Restrictions and Easements) which is subject by covenants of record to assessment by the Association, including contract buyers who shall be deemed to be owners herein, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot, which is subject to assessment by the Association.

Each Lot shall be entitled to one vote. When more than one member owns an interest in any Lot, the vote for said Lot shall be exercised as the members owning said Lot shall determine among themselves, but in no event shall more than one vote be cast with respect to each Lot.

Section 4. Property Submitted

Lots 1 through 91, inclusive, Tomlinson Woods, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 5. Application

Every owner, as defined in Article I, Section 8 of the Declaration of Covenants shall be a member of the Association and subject to these By-Laws, the Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration") and the Rules and Regulations.

ARTICLE II

MEMBERS

Section 1. Annual Members' Meetings.

The first annual meeting of the Board of Directors shall be in November, 1981, on a date to be chosen by the initial Board of Directors. Subsequent annual members' meetings shall be held during the month of November of each year thereafter.

At the first annual meeting the members, with one vote per Lot, shall elect one-third (1/3) of the entire Board for a term of one year, one-third (1/3) of the entire Board for a term of two years, and one-third (1/3) of the entire Board for a term of three years; and at each annual meeting thereafter the members, with one vote per Lot, shall elect no less than two (2) and no more than four (4) directors for a term of three years.

Section 2. Special members' Meetings.

Special meetings of the Association members may be called by the President or Vice President or by a majority of the Board of Directors and must be called upon receipt of written request from a majority of members. Notice of a special meeting shall state the time and place of such meeting and the purpose thereof. No business, except that stated in the notice shall be transacted at the special meeting.

Section 3. Place of Meetings

Meetings of the Association members shall be held in the office of the Association, or at such other suitable place convenient to the members as shall be determined by the Board of Directors.

Section 4. Notice of Meetings.

It shall be the duty of the Secretary to mail a written notice of each annual or special meeting of the Association members not less than ten (10) nor more than fifty (50) days in advance of the meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Lot owner of record, at their address or at such other address as such Lot owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided by this Section shall be considered service of notice.

Section 5. Quorum.

A quorum for Association members' meetings shall consist of the presence, in person or by proxy, of a majority of members, unless otherwise provided in these By-Laws or the Declaration of Covenants, Conditions, Restrictions and Easements.

Section 6. Voting.

The owner or owners of each Lot (s), or some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast the vote for such Lot (s) at all meetings of members. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time by written notice to the Secretary, by the member or members so designating. In instances of other than individual ownership, any or all of such owners may be present at any meeting of the members and (those constituting a group acting unanimously), may vote or take any other action as an individual owner either in person or by proxy. A fiduciary shall be the voting member with respect to any Lot owned in a fiduciary capacity. Each Lot shall have one vote.

Section 7. Majority Vote.

The vote of a majority of members at a meeting at which a quorum shall be present shall be binding upon all members for all purposes except where in these By-Laws or the Declaration, a higher percentage vote is required.

Section 8. Procedure.

The President shall preside over members' meetings, and the Secretary shall keep the minute book wherein the resolutions shall be recorded.

Section 9. Adjournment.

If any meeting of the members cannot be held because a quorum has not attended, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number and Qualification

The authorized number of directors of this Association shall be not less than three (3) nor more than seven (7) until changed by amendment of the By-Laws of the Association. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. The directors must be members of the Association.

Section 2. Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things except as by law or by these By-Laws may not be delegated to the Board of Directors by the owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common areas and facilities.

- (b) Determination of the common expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the Association.

- (c) Collection of the assessments (which for the purpose of these By-Laws shall mean such portion of the common expenses as are payable by the respective Lot owners) from owners.

- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the common areas, facilities and property.
- (e) Adoption and amendment of rules and regulations covering the details of the operation and use of the Association owned property and facilities.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required there for.
- (g) Making of repairs, additions and improvements to or alterations of the Association owned property in accordance with the other provisions of these By-Laws and the Declaration.

Section 3. Committees

The Board of Directors may appoint one or more committees to manage certain affairs of the Association as designated by a resolution adopted by the Board of Directors. Such committee(s) shall consist of members of the Association and not less than two Directors as solely determined by the Board of Directors.

Section 4. Managing Agent and Manager.

The Board of Directors may employ a managing agent and/or a manager at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. Any such managing agent and/or manager employed by the Board of Directors shall serve as an ex officio member of the Board of Directors, without voting rights, by virtue of such employment so long as same shall continue.

As an ex officio member of the Board of Directors, without voting rights, any managing agent and/or manager employed by the Board of Directors is expressly excluded from any reference to the Board of Directors or Directors as used herein, except for this Section. It is intended that the managing agent and/or manager employed by the Board of Directors and serving as an ex officio member of the Board of Directors, without voting rights, not receive the benefits nor be subject to the obligations of the Board of Directors of the Association as provided herein, including, but not limited to, the limitation of liability set forth in Section 15 of this Article.

Section 5. Election and Term.

The Directors shall hold office for a term of three years. The terms of the Directors shall be staggered such that no less than two (2) and no more than four (4) Directors shall be elected each year.

Section 6. Removal of Directors.

At any regular or special meeting of Association members, any one or more of the members of the Board of Directors may be removed with or without cause by a majority vote of the Lot owners and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any members of the Board of Directors whose removal has been proposed by the Association members shall be given an opportunity to be heard at the meeting.

Section 7. Vacancies

Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Association members, shall be filled by vote of a majority of the remaining Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors for the remainder of the terms of the vacating member and until a successor shall be elected in accordance with these By-Laws.

Section 8. Annual Board Meeting

The annual meeting of the members of the Board of Directors shall be held immediately following the annual meeting of the Association members or it may be held jointly with the annual meeting of members at time and place as shall be fixed by the Board of Directors. No notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present thereat.

Section 9. Regular Meetings.

The following changes were made by vote of homeowners and proxies at the November 17th Annual Homeowners Association meeting:

Regular meeting of the Board of Directors may be held at such time and place and shall be determined from time to time by a majority of the members of the Board of Directors but at least two such meeting shall be held during each calendar year, in addition to the annual meeting. Notice of regular meetings of the Board of Directors shall be given to each member of the Board by mail, "OR ANY ELECTRONIC MEANS," at least three business days prior to the day of the meeting. "SAID MEETINGS MAY BE HELD BY ANY ELCTRONIC MEANS."

Section 10. Special Board Meetings.

The following changes were made by vote of homeowners and proxies at the November 17th Annual Homeowners Association meeting:

Special meeting of the Board of Directors may be called by the President upon five (5) business days' notice to each member of the Board, given by mail, or "ANY ELECTRONIC MEANS", which notice shall state the time, place and purpose of the meeting. Special meeting of the Board of Directors shall be called by the President or Secretary in like manner and like notice on the written request of at least three (3) members of the Board of Directors unless there are less than three (3) members, in which event, upon the written request of the one or two remain members. "SAID MEETINGS AND/OR MAY BE HELD BY ANY ELECTRONIC MEANS."

Section 11. Waiver of Notice

Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice to him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum.

At all meetings of the Board of Directors a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjournment at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 13. Fidelity Bonds.

The Board of Directors may obtain adequate fidelity bonds for all Directors, officers and employees, if necessity, of the Association handling or responsible for Association funds. If the Board of Directors elects to obtain fidelity bonds, the premiums on such bonds shall constitute an Association expense.

Section 14. Compensation

No members of the Board of Directors shall receive any compensation from the Association for acting as such; provided, however, members of the Board of Directors shall receive reimbursement for expenses actually incurred. A Director may be an employee of the Association, and a contract for management of the Association may be entered into with a Director (s) or a corporation in which the Director (s) has a financial interest.

Section 15. Liability

The members of the Board of Directors shall not be liable to the Lot owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The owners shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Lot owner arising out of any contract made by the Board of Directors or out of the indemnity in favor of the members of the Board shall be limited to one-ninetieth (1/90) of the total liability thereunder.

ARTICLE IV

OFFICERS

Section 1. Designation.

The officers of the Association shall consist of a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board of Directors, and such additional officers as the Directors shall from time to time deem necessary. Any person may hold two or more offices, but no one person shall hold the offices of President and Secretary or President and Vice President simultaneously. Members of the Board of Directors may also be officers. The President shall be elected from the members of the Board of Directors.

Section 2. Election.

The officers of the Association shall be elected annually by a majority vote of the Board of Directors at the annual Board meeting, and shall hold office at the pleasure of the Board.

Section 3. Removal.

Upon the affirmative vote of a majority of the Board of Directors, any officer may be removed, with or without cause, and his successor shall be elected at any regular, annual, or special meeting of the Board called for that purpose.

Section 4. President.

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association members and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of Nebraska, including but not limited to, the power to appoint committees from among the members from time to time as he may at his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President.

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

Section 6. Secretary.

The Secretary shall take the minutes of all meetings of the Association members and of the Board of Directors and shall keep same at the principal office of the Association unless otherwise instructed by the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of the Secretary of a corporation organized under the laws of the State of Nebraska.

Section 7. Treasurer

The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He shall be responsible for the depository of all monies and other valuable effects in the name of the Board of Directors or the managing agent, in such depositories as may from time to time be designated by the Board of Directors, and he shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the laws of the State of Nebraska.

Section 8. Compensation.

No officer shall receive any compensation from the Association for acting as such.

Section 9. Agreements, Contracts, Etc.

All agreements, checks, contracts and other instruments shall be signed by two officers of the Association or by such other person or persons as may be designated by the Board of Directors.

ARTICLE V

BUDGETS AND ASSESSMENTS

Section 1. Budget.

The Board of Directors shall adopt a budget for each calendar year, which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar (fiscal) year and provide funds for reserves as herein set forth and as set forth in the Declaration. The budget shall be adopted in November of each year for the coming calendar year and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each Lot owner on or before December 31, preceding the year for which the budget is made. Budgets may be amended during a current year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each Lot owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to each Lot owner shall not apply to any budgeting for any period prior to January 1, 1981.

Section 2. Annual Assessment.

Until January 1, 1980, the maximum annual assessment shall be Three Hundred and no/100 (\$300.00) Dollars per Lot, payable monthly in 12 equal installments of \$25.00, subject to adjustment as hereinafter set forth:

- (a) From and after January 1, 1980, the annual assessment may be increased each year not more than ten percent above the assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 1980, the annual assessment may be increased above ten percent of the annual assessment for the previous year by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) The Board of Directors must fix the annual assessment.

Section 3. Certification of Annual Assessment.

The Board of Directors shall fix the amount of annual assessment to be assessed against each Lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Lot owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the Board to so notify each Lot owner in advance shall not, however, relieve any Lot owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion to require that all Lot owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be and become a lien as of the date of the annual assessment.

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 specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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 Common Properties, or within the Roadway Easements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Effect of Non-Payment of Assessments: The Personal Obligation of the Lot Owner; The Lien; Remedies of the Association.

If any assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Lot owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Lot owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid within thirty days (30) after the due day shall bear interest from the due date at the rate of nine percent (9%) per annum. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the Lot owner personally obligated to pay the same or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Lot owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot. The Mortgagee of the subject property shall have the right to cure any delinquency of a Lot owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

ARTICLE VII

AMENDMENT

Section 1. Amendment of Owners

There shall be no amendment to these By-Laws unless owners of sixty-six and two-thirds percent (66-2/3%) or more of the members shall have voted therefor in the affirmative at a special or annual meeting.

ARTICLE VIII

RECORDS

Section 1. Records and Audit.

The Board of Directors or the managing agent shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meetings of the Board of Directors, minutes of the meetings of members, and financial records and books of account of the Corporation, including a chronological listing of receipts and expenditures, as well as a separate account for each Lot which, among other things, shall contain the amount of each assessment against such Lot, the date when due, the amounts paid thereon, and the balance remaining unpaid.

ARTICLE IX

MISCELLANEOUS

Section 1. Notices.

Any notice required to be sent to any Member, Owner or Mortgagee shall be deemed to have been properly sent when mailed, postpaid, 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; provided, that it shall be the sole responsibility of each contract

purchaser and mortgagee to notify the Association, in writing of its interest in a Lot prior to the responsibility arising in the Association to notify said contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 2. Invalidity.

The invalidity of any part of the By-laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 3. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws, or the intent of any provisions thereof.

Section 4. Gender

The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 5. Nonwaiver.

No restrictions, conditions, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce same, irrespective of the number of violations or breaches thereof which may occur.