

**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN TOWNHOMES**

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROOKHAVEN TOWNHOMES is made by the Lot Owners signed below, representing seventy-five percent (75%) of the Lot Owners.

RECITALS

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Brookhaven Townhomes (“Declaration”) was recorded by Declarant in the office of the Register of Deeds of Douglas County, Nebraska, on or about February 12, 1986, at Book 765 Page 80 (“Original Declaration”); and

WHEREAS, the Original Declaration encumbers Lots 1-13 inclusive, in Brookhaven Replat II, as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, Article VII, Section 3, of the Original Declaration provides that the covenants and restrictions of the Original Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners; and

WHEREAS, the Lot Owners below desire to amend the Original Declaration upon the terms and conditions stated herein.

NOW, THEREFORE, the Lot Owners below hereby declare that the Original Declaration should be and hereby is amended and restated in the following manner and shall supersede the Original Declaration:

**ARTICLE I
DEFINITIONS**

Section 1 “Association” shall mean and refer to the Brookhaven Townhome Association, Inc., a Nebraska Non-Profit Corporation, its successors and assigns.

Section 2 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3 “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4 “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5 “Declaration” shall mean and refer to the Restated Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds in Douglas County, Nebraska, as amended from time to time.

Section 6 “Member” shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association, including a contract seller, who shall each be a member of the Association.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 1 Every owner of a Lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 2 The Association shall have one class of voting membership, which shall include all Owners, who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE III COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1 **Creation of the Lien and Personal Obligation of Assessments**
The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) regular assessments or charges; (2) special assessments for capital improvements; and (3) special assessments for insurance; such assessments to be established and collected as hereinafter provided. The regular assessments, special assessments for capital improvements and special assessments for insurance, together with interest, costs and reasonable attorney fees, 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 interests, 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 **Private Area Maintenance and Easement**
In order to promote uniformity of maintenance and appearance, the Owner for each Lot owned within the properties, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree subject to the approval of the Association through its Board, that:

(a) The Association shall maintain the grounds of each and every Lot (but not the improvements thereon, defined as the original structure, driveway and any patio areas, in which case Section 12 shall be applicable);

(b) No fences or other obstructions as determined by the Board that interfere with the proper maintenance of the area shall be constructed on any Lot and that any proposed construction be specifically approved in writing by the Board prior to the commencement of construction; and

(c) Owner does hereby grant a perpetual easement to the Association at all times upon, over and across such grounds for maintenance purpose, including but not limited to, mowing, watering and tree or shrubbery service. Nothing set forth herein shall be construed to grant to the Association or the Owners of any other Lots the right of use and enjoyment to any Lot within the properties save such Lot and/or Lots as may be owned by said Owner.

Section 3 Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the homes situated upon the properties.

Section 4 Maximum Annual Assessments

(a) From and after January 1 of each year, the maximum annual assessment may be increased each year not more than three percent (3%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of each year, the maximum annual assessment may be increased above three percent (3%) by a vote of two-thirds (2/3) Members of the Association voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5 Assessments

(a) Regular Assessments. Three (3) months before each fiscal year, the Board of Directors of the Association shall adopt and fix, in reasonable itemized detail, an annual Budget of the Working Fund for the then anticipated fiscal affairs and general operations of the Association for the following year, and shall levy and collect monthly assessments from each Lot on the properties which, considering the revenue derived from the Regular Assessments and other sources of income, if any, shall be sufficient to fund the budget for said fiscal year. The Regular Assessments shall be uniform in amount. The Budget and Assessments shall be approved and ratified by the Members of the Association at the annual meeting prior to any other business to be undertaken at said annual meeting.

(b) Special Assessments for Capital Improvements. In addition to the Regular 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 within its jurisdiction, provided that any such assessment shall have the assent of twenty-five percent (25%) of the Members of the Association who are voting in person or by proxy at the meeting duly called for this purpose.

(c) Special Assessments for Insurance. In addition to the Regular Assessments and Special Assessments authorized above, the Association shall levy special assessments on each Lot for the portion of insurance premium due with respect to said Lot and hereinafter provided in Section 14, which shall be paid each month along with the Regular Assessment with respect to said Lot.

Section 6 Notice and Quorum for any Action Authorized Under Sections 3 and 4

Written notice of any meeting called for the purpose of taking any action authorized under Section 3, 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called

subject to the same notice requirement , and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting and written notice shall be sent to all Members not less than thirty (30) days in advance of the subsequent meeting.

Section 7 Uniform Rate of Assessment

Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or periodic basis, as may be established by the Board.

Section 8 Date of Commencement of Annual Assessments; Due Dates

The annual assessments provided for herein shall commence as to all Lots on the first day of the month. The Board of Directors shall provide written notice stating the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The assessments may be collected on a monthly or other periodic basis by the Association. The due dates shall be established by the Board of Directors.

Section 9 Certificate of Payment

The Association shall, upon demand, of and for a reasonable charge, furnish a certificate signed by an officer of the Association or a designated agent 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 the assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10 Effect of Nonpayment of Assessments; Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and a late fee of ten dollars (\$10) will be added to the account. Should any assessment remain unpaid more than sixty (60) days after the due date, an additional fifteen dollar (\$15) fee will be added to the account. Should any assessment remain unpaid more than sixty (60) days, the homeowner will receive written notice that services provided by the Association will be stopped. Should any assessment remain unpaid more than ninety (90) days, the Association will send a request to the homeowner for immediate payment or a notice of delinquency will be recorded against said property. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien of such assessment against the property through proceedings in any court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provide for herein by abandonment of title or transfer of such Owner's Lot.

Section 11 Exterior Maintenance

(a) The Association shall have no duty to repair, replace or maintain any concrete surfaces, buildings, systems, fences or other improvements to the Properties, but may at its discretion, in the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon, including, but not limited to any roofs, gutters, concrete, exterior walls, glass surfaces, doors, door openers, cooling units for air condition systems, which have not been so maintained, repaired or replaced in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

(b) The Owner is responsible for removal of all dead landscaping improvements and the Owner agrees to allow the Association to remove such dead landscape improvements at the

expense of the Owner at the time of replacement and the Owner shall reimburse the Association on demand. The Association must provide the Owner of the Lot two weeks written notice prior to taking action of removing the dead landscaping.

(c) Assessments levied against each Lot may be assessed for, but not limited to, the following:

- (1) Maintenance, including mowing, fertilizing and aerating;
- (2) Operation and maintenance of an underground watering system;
- (3) Painting of the exterior of each dwelling upon each Lot;
- (4) Providing snow removal for driveways, front sidewalks, front stoops, and front steps for each Lot;
- (5) Providing such other services or maintenance as may be deemed appropriate by the Board or by a one-quarter (1/4) vote of the Association.

Section 12 Painting

Section 11 places the primary responsibility for exterior maintenance upon the individual Owner, notwithstanding, all exterior surfaces of units connected by party walls shall be uniformly painted the same colors. To facilitate said uniform color scheme, the exterior painting of all units shall be the responsibility of the Association and there shall be no exterior painting of any individual unit by any Owner.

Section 13 Insurance

(a) Basic Coverage. Insurance policies upon the properties including the structures, but excluding the furnishings and building materials “studs-in” of the individual townhomes, shall be purchased by and in the name of the Association for the benefit of the Association and the Owners of each Lot as their interests may appear. Such insurance shall, however, exclude all glass, concrete, skylights, garage doors and entrance doors.

(b) Additional Coverage. Owners of any Lot are responsible for insurance upon personal property, furnishings, and improvements located on the premises by said Owner as well as personal liability and such other risks as ordinarily covered under homeowner’s insurance.

(c) Special Assessment. The cost of insurance premiums shall be considered in the nature of a special assessment, as hereinabove provided and the Association shall monthly specially assess against each Lot the premium attributable to coverage procured on said Lot under Article III.

(d) Association as Agent. The Association is hereby irrevocably appointed agent for each owner and his mortgagee to adjust all claims arising under insurance policies purchased by the Association on the improvements on the properties and to execute and deliver releases upon payment of claims without joinder by the owner. All insurance proceeds shall be applied by the Association towards repairing the damage suffered; provided that the reconstruction or repair shall not be compulsory where the damage exceeds two thirds of the value of the buildings and improvements in such in such case should the owner so elect not to rebuild, the proceeds, along with the insurance indemnity, if any, shall be credited to each owner in accordance with his pro-rata share of the loss sustained by the damage or casualty for which the proceeds shall be payable, and said sums shall be first applied towards satisfaction of any recorded first mortgage against each lot, next towards satisfaction of junior recorded liens in filing and leveling of said lot, and the remainder shall then be paid to such owner. In case the insurance proceeds do not equal the cost of repairs, the excess cost shall be considered a maintenance expense to be assessed and collected by the Association from the owners of the damaged improvements. In

cases of over-insurance, any excess proceeds of insurance received shall be credited to the working fund of the Association.

(e) Additional Insurance. Each Lot Owner may obtain additional insurance at his expense.

Section 14 Sanitary Sewers

It shall be the responsibility of the Association to maintain the portion of Sanitary Sewer that runs from the Lot to the main sewer line located in the street.

**ARTICLE IV
PARTY WALLS**

Section 1 General Rules of Law to Apply

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

Section 2 Sharing of Repair and Maintenance

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3 Destruction by Fire or Other Casualty

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent liability for negligent or willful acts or omission.

Section 4 Weatherproofing

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes that party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5 Right to Contribution Runs with the Land

The right of any Owner to contribution from any other Owner under this Article shall pass to such Owner's successor in title

Section 6 Arbitration

In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one additional arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators.

**ARTICLE V
ARCHITECTURAL CONTROL**

No building, fence, wall 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 structure 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.

ARTICLE VI RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS

Section 1 Restrictions

Every Owner shall have full rights of ownership and enjoyment to his individual Lot, subject to the following restrictions:

(a) Noxious Activity. No noxious or offensive trade or activity shall be carried upon any Lot, nor shall anything be done thereon that may become any annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles, or incinerators shall be erected, placed or permitted on any building plot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means, in such a manner as to conceal them from view. Trailers and recreational vehicles shall not be continuously parked on driveways or side yards for more than 72 hours.

(b) Fences. No fences shall be erected in front of the main residential structure and all weeds and grass shall be cut down to a maximum height of six (6) inches above ground level. All lots shall be kept free of all types of trash and debris.

(c) Outbuildings. No trailer, basement, tent, shack, garage, barn or other building erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of temporary character be used as a residence until all exterior construction is fully completed according to approved plans. No house trailer (single-wide or double-wide) or mobile home shall be allowed to be used as residences for permanent or temporary use except that this paragraph shall not be construed so as to prohibit new factory-built modular housing having a minimum of twelve-inch eaves, an exterior wood, stone or brick and placed on a permanent concrete block or poured concrete foundation.

(d) Livestock and Poultry Prohibited. No cattle, horses, sheep or poultry, hogs, or any other livestock shall be kept or maintained on any Lot. This paragraph shall not be construed, however, as a prohibition with the keeping of ordinary domestic pets.

(e) Exterior Lighting. All exterior lighting shall be installed and maintained so as not to unreasonably disturb adjoining Lots.

(f) Outdoor Toilets. Except for approved chemical temporary toilets to be used only during construction, no outdoor toilets may be constructed or maintained on any Lots.

(g) Lawn Maintenance. All Owners shall have the affirmative duty to maintain in good and orderly fashion any grass and landscape planting on their property.

(h) Sidewalks. As required by the City of Omaha, concrete sidewalks four (4) feet wide by four (4) inches thick shall be constructed for the Association. Said sidewalk shall be constructed and completed by the then Owner at the time of completion of the main residential structure and shall be located four (4) feet back of the curb line.

(i) Unobstructed Vision. As an aid to freer movement of vehicles at street intersections and in order to provide adequate protection for the safety of children, pedestrians, operators of vehicles and/or property, all fences, walls, gateways, ornamental structures, hedge, shrubbery and other fixtures shall be so constructed, built and maintained so as to provide clear, unobstructed vision at corners of street intersections.

(j) Buildings or Uses Other Than for Residential Purposes. Said Lots shall be used only for residential purposes except such Lots, or portions thereof, as may hereinafter be conveyed or dedicated for public, church, educational or charitable uses.

(k) Architecture. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than dwellings not to exceed two and one-half (2 ½) stories in height, a private garage, attached breezeways and other out-buildings incident to such residential uses.

(l) Garages and Driveways. Each dwelling shall contain at least one attached, or basement single car garage, and driveway constructed of concrete, which is a minimum of ten (10) feet wide with sufficient area to provide off-street parking for at least two automobiles.

(m) Prefabricated Structures. Prefabricated structures and structures moved from other locations shall not be permitted except that new factory-built modular housing having a minimum of twelve-inch eaves, an exterior of wood, stone or brick and placed on a permanent concrete foundation may be utilized provided that the plans and specification thereof have been approved by the Board.

(n) Billboards Prohibited. No signs whatsoever, including but without limitation to commercial signs, political signs and similar signs visible from streets and neighboring property or roads shall be erected or maintained upon any Lot, except such signs as shall be required by legal proceedings; residential identification signs of a combined total face area of three (3) square feet or less for each residence during the time of construction of any residence or other improvement; job identification signs having a maximum face area of nine (9) square feet per sign and of a type usually employed by contractors, subcontractors, and tradesmen; and not more than one "For Sale" or "For Rent" sign having a maximum face area of nine (9) square feet.

(o) Vehicle Repairs, RVs, Boats & Trailers. No vehicle repairs, other than emergency repairs or repairs of a minimal nature needed to be performed to move vehicles off the Properties, shall be allowed on the Properties. The Association is expressly authorized to tow away, at an offending owner's expense, any vehicle referred to in this Section which is in violation hereof or in violation of the rules and regulations governing parking as may be adopted by the Board of Directors. No boats, trailers, campers, canoes, recreational vehicles, vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes, or vehicles with commercial writings on their exterior shall be stored, allowed to remain or parked in driveways, except in an area, if any, designated by the Board of Directors or except as otherwise permitted by the Association's Board of Directors.

(p) Clothes Lines. No outside clothes lines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any of the Lots.

(q) Television Antennas and Satellites. No television antenna or radio receiver, satellite dish exceeding 18" in diameter, or other similar device shall be attached to or installed on any Lot, unless contained entirely within the interior of a dwelling or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot, which may unreasonably interfere with the reception of television or radio signals within the Properties.

(r) Awnings. No awnings or sunscreens of any type shall be affixed to any building or structure within the properties without written consent of the Board.

(s) Playground Equipment, Swimming Pools. No playground equipment or swimming pool or other obstruction as determined by the Association in its sole and absolute discretion, shall be installed on any Lot. In the event of a violation of this section, the Association shall have the right to enter upon such Lot and remove such obstruction.

Section 2 Utility Meters

Each Lot shall have separate water, electrical gas and/or other applicable utility meters for separate reading.

Section 3 Utility Service Lines

Each Lot shall be serviced by separate utility service lines.

**ARTICLE VII
GENERAL PROVISIONS**

Section 1 Enforcement

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3 Amendment

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any amendment must be recorded.

THIS RESTAED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROOKHAVEN TOWNHOMES IS HEREBY APPROVED by the following Lot Owners, representing seventy-five percent (75%) of the Lot Owners.

NAME	STREET ADDRESS	DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____
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26. _____	_____	_____
27. _____	_____	_____