

AMENDED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR TOMLINSON WOODS  
LOTS 1 THROUGH 91

THIS DECLARATION, as originally made on the 15<sup>th</sup> day of January, 1980 by THE WOODS JOINT VENTURE, a Nebraska Joint Venture, composed of Equity Services, Inc., an Iowa Corporation, and Creative Real Estate, Inc., a Nebraska Corporation, referred to therein as "Declarant"; and amended on The date set forth, as provided herein.

WITNESSETH:

WHEREAS, Declarant was the owner of the following described real property:

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

WHEREAS, the Declarant desired to create on the above described real property a residential community with private streets, improvements, permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, Declarant desired to provide for the preservation of the values and amenities in said community and for the maintenance of said private streets, improvements, parks, playgrounds, open spaces, and other common facilities; and this end; desired to subject The Properties to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which are delegated and assigns the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated the Tomlinson Woods Homeowners Association, under the laws of the State of Nebraska, as a non-profit corporation, the purpose of which is to exercise the functions aforesaid; and

WHEREAS, Declarant has conveyed the said Lots, subject to certain protective covenants, restrictions, reservations, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declared that all of the Lots described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. Those easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties have or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each OWNER THEREOF.

## **ARTICLE 1. DEFINITIONS**

**Section 1.** "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of Tomlinson Woods Homeowners Association, a Nebraska non-profit corporation, it's successors and assigns.

**Section 2.** "Association" shall mean and refer to the Tomlinson Woods Homeowners Association, a Nebraska non-profit corporation, it's successors and assigns. Unless otherwise provided for herein, any action required or permitted to be taken hereunder by the Association shall be taken on behalf of the Association and it's members by the Board of Directors of the Association.

**Section 3.** "Common Properties" shall mean and refer to those areas of land listed on Exhibit "A" attached hereto areas of land declared to be Common Properties in any Supplemental Declaration filed by the Declarant pursuant to Article 2 of the Declaration. All common properties shall be devoted to the exclusive common use and enjoyment of the Owners of The Properties.

**Section 4.** "Declarant" shall mean and refer to The Woods Joint Venture, its successors and assigns.

**Section 5.** "Living Unit" shall mean and refer to any building situated upon The Properties designated and intended for the use and occupancy as a residence by a single family.

**Section 6.** "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon any recorded map or plat of The Properties, upon which a Living Unit shall be built, or is proposed to be built, with the exception of the "Common Properties". The Lots subject to this Declaration are shown and described on Exhibit "B" attached hereto and by this reference incorporated herein. Any supplemental Declaration hereinafter filed shall similarly reflect those lots thereunder subject to this Declaration, or otherwise legally describe the real property to become subject to the Declaration.

**Section 7.** "Member" shall mean and refer to every person or entity that holds membership in the Association.

**Section 8.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted a Lot which is a part of The Properties, but excluding those having such interest merely as security for the performance of an obligation.

**Section 9.** "The Properties" shall mean and refer to all such properties as are subject to the Declaration or any Supplemental Declaration under the provisions of Article 2 hereof, which shall initially consist of Lots 1 through 91 inclusive, in Tomlinson Woods, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

**Section 10.** "Supplemental Declaration" shall mean and refer to any written instrument filed under the provision of Article 2 hereof, which shall subject additional real estate to this Declaration.

**Section 11.** "Tree" shall mean and refer to any specie of tree larger than 1-inch diameter at breast height.

## **ARTICLE 2. PROPERTY SUBJECT TO DECLARATION**

The properties shall be held, transferred, sold, conveyed and occupied subject hereto. The Association shall have the right at any time subsequent to the filing of this Declaration, to add, annex and subject additional contiguous land in Douglas County, Nebraska, to this Declaration by filing in the Office of the Register of Deeds of Douglas County, a written instrument duly executed and acknowledged by the Association, to the effect that such additional land to be subject hereto shall require written instruments signed by two thirds(2/3) of the membership in the Association. Any real property thereby subjected to this Declaration shall, after said filing, be subject hereto and the owners thereof shall be subject to all the same duties, liabilities and rights hereunder as though said additional property had been originally a part of the real estate described in Article 1 hereof on the date of the filing of this Declaration.

## **ARTICLE 3. PROPERTY RIGHTS IN THE COMMON PROPERTY**

**Section 1. Owner's Easements of Enjoyment.** Every owner and/or member of the Association, shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights of, and rights to the sue of the Common Properties by, an Owner for any period during which any assessment against the Owner's Lot remains unpaid and for any period during which an Owner is in violation of any rules and/or regulations of the Association;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Properties, subject to any then existing ingrees and egress requirements in connection therewith, to any public agency, non-profit corporation (to use for purposes similar to those for which the Association was formed), authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or Members of the Association and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by the owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every owner not less than thirty(30) days or more than sixty(60) days in advance. Declarant, or its assigns, shall have the right at any time to use so much of the Common Properties as is may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such

- use may not interfere with the owners' use and reasonable access to the Common Properties, nor with the Owners' right of ingress or egress to their Living Units;
- (c) the right of the Association to limit the number of guests of the Owners on recreational facilities;
  - (d) the right of the Association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties and facilities, which mortgage shall be subordinate to the rights of the Owners hereunder;
  - (e) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties by Members and by guests of Members.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Properties and facilities, together with any other right, license, privilege or easement conferred upon such owner by this Declaration, to the members of his family, his tenants, guests or contract purchasers who reside on the property.

**Section 3. Title to the Common properties** The Declarant will convey a fee simple title to the Common Properties described in Exhibit "A", attached hereto, free and clear of all encumbrances and liens, except easements, restrictions, covenants, and conditions then of record. The Common Properties may be conveyed by the Declarant to the Association prior to the sale of the Seventy-fifth (75<sup>th</sup>) Lot by Declarant, and shall be conveyed by Declarant to the Association no later than the sale of the Seventh-fifth (75<sup>th</sup>) lot by Declarant.

#### **ARTICLE 4. MEMBERSHIP**

Declarant and every Owner shall be Members of the Association. No owner shall have more memberships than the number of Lots owned by each owner. Memberships shall be appurtenant to and may not be separated from ownership of the lots. Ownership of a Lot or Lots shall be the sole qualification for membership. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

#### **ARTICLE 5. VOTING RIGHTS**

Members (owners) shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

#### **ARTICLE 6. COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each lot owned within the properties, subject to Section 7 of this Article, and each owner of any lot, except those exempt under Section 9 of this article, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenant and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the lot against which each assessment is made. All subsequent purchasers shall take title to the lot subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each assessment, together shall also be the personal obligation of the person who was the owner of the lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successor in title unless expressly assumed by him.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of The Properties and, in particular, annual assessments shall be used for: the Maintenance and repair of the Common Properties; the maintenance and repair of the Roadway Easements; as defined in Article 10, Section 2. herein; snow removal; care and maintenance of private streets over which the Association has an easement; care and maintenance of parks, playgrounds, open spaces and other common facilities; the care and maintenance of the "private improvements," as set forth and defined in a certain Subdivision Agreement between the City of Omaha, the Declarant, and the Association; providing insurance coverage upon the Common Properties as herein set forth; and providing for the recreation needs of the residents of The Properties. Annual Assessments, and annual assessment reserves, are not intended to be for maintenance, repair or replacement of the Living Units or appurtenant structures or improvements, nor for the construction, replacement or major repair of capital improvements upon the Common Properties.

**Section 3. 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 monthly installments of \$25.00, subject to adjustments 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 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. Notice and Quorum for Any Action Authorized Under Sections 3 & 4.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be delivered either personally or by mail to all members not less than ten(10) days or more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall be 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 held more than sixty (60) days following the preceding meeting.

**Section 6. Uniform Rate of Assessment** Both Annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basics.

**Section 7. 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 following the conveyance of the Common Properties, **EXPECT THAT SUCH ASSESMENTS SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE DECLARANT UNTIL DECEMBER 31, 1980.** The first annual assessments shall be adjusted according to the number of months remaining in the calendar year.

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. The budget shall be adopted in November of each year for the coming calendar year and copiers of the budget and proposed annual maintenance and reserve assessments shall be sent to each 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 owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to the owner shall not apply to any budgeting for any period prior to January 1, 1980.

The Board of Directors shall fix the amount of annual assessment and the amount of late charge referred to in Section 8 of this article 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 and late charges shall be sent to each 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 of Directors to so notify each owner in advance shall not, however, relieve any owner of the duty and obligation to pay such assessment or late charge, or any installment thereof. The Board of Directors shall have the authority, in its discretion, to require that all owners pay the annual assessment in one payment or in all installments becoming due at such time or time during the assessment year and payable in such manner as determined by the Board of Directors. The annual assessments and late charges shall be and become a lien as of the date of the annual assessment and late charge.

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 and late charges

on a specific lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment and late charges therein stated to have been paid.

**Section 8. Effect of Non-Payment of Assessments: The Personal Obligation of the 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 lot which shall bind the lot in the hands of the then Owner, the owner's heirs, successors, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however shall remain the owners personal obligation for the statutory period and shall not pass as a personal obligation to the owners successors in title unless expressly assumed by them.

WHEREAS, the majority vote was approved by the Tomlinson Woods Homeowner's Association on Thursday, May 21, 2001.

Art VI, Section 8, para 2:

Any delinquent assessment or installment thereof not paid within thirty-one (31) days after the due date shall bear a late charge of \$200.00 and annual interest rate of twelve (12) percent will be applied. Such late charge and interest shall become a continuing lien on the Lot the same as unpaid assessments, interest and costs of collection as stated in the preceding paragraph of this section. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty-one day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option.

At sixty-one (61) days past due, an intent to lien notice will be sent, and the associated cost will be added to the assessment. At ninety (90) days past due, a title search will be conducted and a lien will be prepared and recorded against the property by the Association. The associated costs will be added to the assessment. At one hundred-ten (110) days past due, the Association attorney will initiate foreclosure proceedings. There shall be added to the assessment the costs and expenses of such proceedings, including the costs and expenses incurred for filing and notice requirements and reasonable attorney fees incurred thereof. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and such costs, expenses and attorney fees. No owner... (continue to end of paragraph).

**Section 9. Exempt Property** Other than lots exempt under the provisions of Section 7 of this article, all lots shall be subject to a uniform rate, except for lots owned by or conveyed to, and accepted by, any political subdivision of the Federal, State or any local governments, and lots owned by or conveyed to, and accepted by the Association. Such lots shall be exempt from and after the date of the filing of any such conveyance with the Register of Deeds of Douglas County, Nebraska, and until the lot is thereafter conveyed to a party or an entity not qualifying for exemption under this section. Such lots shall also be exempt from special assessments.

**Section 10. Subordination of the Lien to Mortgages.** The liens of the assessment and late charges provided for in Section 8 of this Article and the liens of other charges provide for this Article 8, Section 2©; Article 8 Section 2(f); Article 8, Section 1 ©; and Article 11, Section

5 shall be subordinate to a valid and duly recorded lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment, late charges, or other charges of liens. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lien thereof shall extinguish the liens as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability, or any assessments, late charges, or other charges thereafter becoming due, or from the liens thereof.

## **ARTICLE 7. ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Establishment** The Board of Directors of the Association shall appoint three (3) or more persons to serve as an Architectural Control Committee (the "Committee"). The Board as a whole or one or more members thereof may serve as members of the committee. Such appointees shall serve until resignation or dismissal by the board. Vacancies need not be filled unless the Committee has less than three (3) members remaining, in which event, the Board shall name a replacement at the earliest opportunity.

### **Section 2. Review of Committee**

- (a) **Structures.** No structures, whether affixed to the ground or not, or projections therefrom, whether temporary or permanent in nature, including, but not limited to, living units, accessory buildings, tennis courts, swimming pools, antennae (on a structure or on a lot), flag poles, fences, walls, driveways, patio, patio enclosure, house numbers, or any such other improvements, shall be commenced, constructed, erected, altered, maintained, or improved upon any lot, nor shall any change of exterior color or other work which in any way alters the exterior appearance of any lot or improvement be done, nor shall any fill, grading, excavation, initial landscaping or major revisions thereto, be commenced unless complete plans showing plans for, including, but not limited to, proposed improvements, lot plans, plot layout, exterior design, nature, kind, shape, height, building material, color scheme, location of the structure platted horizontally and vertically, location and size of driveways, landscaping, exterior, elevations, fencing, walls and windbreaks, together with such other information as may be requested by the Architectural Control Committee under the terms of this Declaration and/or the terms of any applicable rules and/or regulations shall have been submitted to the Association's managing agent or manager and thereafter approved in writing by the Architectural Control Committee, which approval shall be based upon the following factors:

- (1) Compliance with the terms and conditions set forth in the Declaration and with the terms and conditions set forth in any applicable rules and/or regulations;
- (2) Inclusion of such information in the plans as may have been reasonably requested by the Committee;
- (3) The general appearance, exterior colors, compatibility and harmony of the structure's external design and location in relation to, and its effect upon, surrounding structures, uses, vegetation, topography, real property which is visible from the lot upon which the structure is to be made, and other relevant architectural factors and the overall community design of the real property subject to this declaration.



- (4) The exterior design, appearance and materials contemplated for the structure;
- (5) The color scheme, finish, proportions, style of architecture, location, height, bulk or appropriateness of the structure;
- (6) Conformity of the plans and specifications to the purposes and general plan and intent of the limitations and restrictions imposed by this Declaration and any applicable rules and/or regulations;

and a copy of such plans, as finally approved, deposited with the Association's managing agent or manager; expect that, the Architectural Control Committee, in its discretion, may permit commencement of such construction, erection, alteration, maintenance, or improvements, to the extent plans therefore have been submitted and approved, prior to the time when complete plans have been so submitted, approved and deposited. The Committee shall have such other powers and duties set forth in this Declaration any applicable rules and/or regulations, the Bylaws of the Association and as delegated by the Board of Directors.

- (b) **Structure Procedures** After submission of such plans, the Architectural Control Committee shall make due consideration thereof and shall approve or disapprove such plans, in whole or in part, in writing within thirty (30) days after submission of all such plans. Any approval of a part of such plans shall be contingent upon final approval of such plans, as a whole. In the event the Architectural Control Committee fails to take any action within thirty (30) days after all such plans have been submitted, approval will not be required and this Article will be deemed to have been fully complied with. A majority vote of the Committee members is required for approval of such plans.
- (c) **Damage Deposit** Each owner, immediately upon receiving any approval of any part of such plans, and prior to the commencement of any construction or major alteration of a Living Unit upon the Owner's Lot, shall make payable to the Association a damage deposit in the sum of \$1,000.00, the purpose of which is to cover the cost of clean-up of or repairs to the Common Properties and streets caused by said construction or major alteration. The Association shall first give written notice to the Owner of said clean-up to be done or repairs to be made before incurring the costs therefore. Upon the Owner's failure to do said clean-up or make said repairs within the period of time set forth in said notice, the Association may incur the costs therefore. The Association shall return any unused amount of the damage deposit to the Owner upon completion of said construction or major alteration or upon completion of said clean-up or repairs, whichever is later. Each owner hereby covenants and agrees to pay to the Association any costs for clean-up or repairs which exceeds the sum of \$1,000.00, within thirty (30) days of receipt of written notice from the Association of such additional costs and upon the Owner's failure to so pay such additional costs to the Association, such additional costs shall be charge on the lot and shall be a continuing lien upon the lot, the effect of which shall be the same as set forth in Article 5.
- (d) **Tree Removal** Every Owner, immediately upon receiving fee simple title to all or any part, parcel or portion of a lot shall secure a performance or cash bond in the amount of \$5,000.00, running to the Associations, the purpose of said bond being to insure the Owner's performance of the provisions of this declaration regarding the removal of trees from the Owner's lot. Evidence of said bond must be filed with the Association's managing agent or manager by the owner immediately upon receiving fee simple title to all or part, parcel or portion of a lot. The Owner must maintain and keep in existence

said bond until the completion of a Living Unit on said lot. No tree upon the lot of an Owner may be moved, removed, cut or destroyed unless complete plans showing the exact tree or trees to be moved, removed cut or destroyed, and the reason therefore, shall have been submitted to the Association's managing agent or manager and thereafter approved in writing by the Architectural Control Committee. Submission of such plans and approval are required even if said performance or cash bond is no longer required.

- (e) **Tree Removal Procedures.** After submission of such plans, the Architectural Control Committee shall make due consideration thereof and shall approve or disapprove such plans, in whole or in part, in writing within thirty (30) days after submission of all such plans. Any approval of a part of such plans shall be contingent upon final approval of such plans as a whole. In the event the Architectural Control Committee fails to take any action within thirty (30) days after all such plans have been submitted, approval will not be deemed to have been fully complied with. A majority vote of the Committee members is required for approval of such plans.
- (f) **Bond Forfeiture.** In the event an Owner of a Lot or the Owner's agents or assigns shall move, remove, cut or destroy any tree on the Owner's Lot without first obtaining written Architectural Control Committee approval therefore, the Owner shall forfeit to the Association the \$5,000.00 bond which the Owner has posted pursuant to Section 2(d) of this Article or, in the event said performance or cash bond is no longer required to be in existence, then the Association shall first give written notice to the Owner requiring the Owner to submit plans, within the period of time set forth in said written notice, to the Association's managing agent or manager showing replacement for the trees which the owner moved, removed, cut or destroyed without the requisite approval. Upon approval of such plans by the Architectural Control Committee, the owner shall complete such approved replacement within the period of time set forth by the Architectural Control Committee. Upon the Owner's failure to so submit such plans or to so complete such approved replacement within the period of time set forth by the Architectural Control Committee, the Association may incur the costs for such replacement. Each Owner hereby covenants and agrees to pay to the Association any costs incurred for such replacement within thirty (30) days of receipt of written notice from the Association of such costs and upon the Owner's failure to so pay such costs to the Association, such costs shall be a charge on the Lot and shall be a continuing lien on the Lot, the effect of which shall be the same as set forth in Article VI.
- (g) **Disapproval Statement.** In any case where the Architectural Control Committee shall disapprove any such plans submitted pursuant to the terms of this Declaration, or shall contingently approve the same upon modification upon specified conditions, such disapproval or contingent approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the Architectural Control Committee shall, if requested, make reasonable efforts to assist and advise the Owner in order that an acceptable proposal can be prepared and submitted for approval.

**Section 3. Records.** The Architectural Control Committee, by the Association's managing agent or manager, shall maintain written records of all applications submitted to it, the dates submitted, and of all action it takes in reference thereto and the dates submitted, and of all action it takes in reference thereto and the dates such action is taken.

**Section 4. Limitation of Liability.** The Architectural Control Committee shall use reasonable judgment in approving or disapproving all plans submitted to it. The Board of Directors, the Architectural Control Committee and the individual voting members of the Board

of Directors and the Architectural Control Committee shall not be liable to any person or entity for any official act of the Board of Directors or the Architectural Control Committee in connection with submitted plans, except to the extent that the Board of Directors, the Architectural Control Committee, or any individual voting member of the Board of Directors or the Architectural Control Committee acted with negligence, malice, wrongful intent, or willful misconduct. Approval by the Architectural Control Committee does not necessarily assure approval by the appropriate government board or commissions for Douglas County, Nebraska. Notwithstanding that the Architectural Control Committee has approved plans, the Board of Directors, the Architectural Control Committee and the individual voting members of the Board of Directors and the Architectural Control Committee shall not be responsible or liable to any owner, developer or contractor with regard to a loss, liability, claim or expense which may arise by reason of such approval or with regard to the construction of the proposed structure. The Board of Directors, the Architectural Control Committee, and the individual voting members of the Board of Directors and the Architectural Control Committee shall not be responsible in any way for any defects in any plans submitted, revised or approved in accordance with the provisions of this declaration, or for any structural or other defects in any work done according to such plans. In all other events, the Board of Directors, the Architectural Control Committee and the individual voting members of the board of Directors and the Architectural Control Committee shall be defended and indemnified by the Association in any such suit or proceeding brought against the Board of Directors, the Architectural Control Committee or the individual voting members of the Board of Directors or the Architectural Control Committee in their capacity as individual voting members; provided, however, that the Association shall not be obligated to indemnify any voting member of the Board of Directors or the Architectural Control Committee 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 or the Architectural Control Committee.

**Section 5. Appeal from Architectural Control Committee Decision.** Any owner may appeal an adverse decision of the Architectural Control Committee to the Association's Board of Directors, who may reverse or modify such decision by a two-thirds (2/3) vote of all of the then members of the Board of Directors of the Association.

## Article VIII.

**Section 1. Common Scheme Restrictions for Lots.** The following restriction are imposed as a common scheme upon all Lots for the benefit of each other's Lot and the Common Properties, and may be enforced by any Owner of a Lot or of the Common Properties, or the Association.

- (a) All exterior painting will be of an earthy color and any repainting or changing of color of any Living Unit shall be consistent with the approved original plans and specifications for the Living Unit and shall have prior approval of the Architectural Control Committee using the provisions set forth in Sections 2(a) and 2(b) of Article VII.
- (b) No Lot shall be used except for residential purposes.
- (c) No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.
- (d) No structure of a temporary character, including, but not limited to, a trailer, basement, tent, shack, barn or other outbuilding shall be

- erected upon, or used on any Lot at any time as a residence, either temporarily or permanently.
- (e) No Living Unit shall be moved from outside The Properties to any Lot within The Properties.
  - (f) No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations.
  - (g) No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading or excavating equipment or other heavy machinery or equipment, vehicle, aircraft or any other similar type of mobile-unit shall undergo repair outside of a garage on any Lot at any time, nor shall same be stored outside a garage or in any manner be left exposed on any Lot at any time.
  - (h) Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time, however, family gardens are permitted.
  - (i) No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the Living Unit and not exposed to view from the outside of the Living Unit. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any living Unit unless completely screened from view from every street and from all other lots. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Living Unit or garage, except when in actual use and unless completely screened from view from every street and from all other Lots. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothesline shall be permitted outside of any Living Unit at any time. Any exterior air conditioning condenser unit shall be placed in the rear or side yard.
  - (j) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the Living Unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further that the total number of dogs and cats kept within the Living Unit or on the Lot shall not exceed two. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the Living Unit except for the single doghouse permitted in Section (k) of this Article.
  - (k) No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed dog house have been first approved in writing by the Architectural Control Committee using the provisions set forth in Sections 2 (a) and 2 (b) of Article VII.
  - (l) No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any Lot, except that on a Lot for which the construction of a Living Unit is not yet complete, two signs of a size no greater than 4.5 square feet shall be permitted temporarily until the construction of said Living Unit is complete and on all other Lots one real estate for-sale or for-rent sign of a size no greater than 4.5

square feet shall be permitted temporarily on such Lot until the sale of the Lot or the rental of the Living Unit.

- (m) Exposed portions of the foundation of each Living Unit are to be covered with either siding or brick.
- (n) WHEREAS, the majority vote was approved by the Tomlinson Woods Homeowner's Association on June 3, 2002.

Art. VIII, Section 1 (n):

Living unit roofs shall be covered only with wood shingles or shakes, or with shingle or shakes of synthetic material of earth color approved by the architectural committee.

- (o) All Living Units shall have indoor garage space for a minimum of two automobiles, and shall have driveway space for a minimum of two automobiles.

- (p) WHEREAS, the majority vote was approved by the Tomlinson Woods Homeowner's Association on Thursday, May 21, 2001.

Art. VIII, Section 1 (p):

- (p) Fences shall be preferably by wood, left natural wood color or painted to blend with the Living Unit exterior color. However, the Architectural Committee may approve an alternative fence material on a case-by-case basis. Fences erected in the front yard of a Living Unit are discouraged, but will be considered by the Architectural Committee on a case-by-case basis.

- (q) A Living Unit on which construction has begun must be completed within one (1) year from the date the foundation was dug for said Living Unit.

- (r) Each Owner shall mow, cut, prune and clear his Lot and shall remove any and all unsightly growth, including, but not limited to, brush, weeds and growth infected with noxious insects or contagious plant diseases. The association shall give written notice to each Owner of a Lot who has failed to comply, and upon the Owner's failure to do so within the period of time set forth in said notice, the Association shall incur the costs necessary to cut, mow, prune, clear or remove any growth. Each Owner hereby covenants and agrees to pay to the Association for such costs incurred within thirty (30) days of receipt of written notice from the Association of such costs to the Association, such costs shall be a charge on the Lot and shall be a continuing lien upon the Lot, the effect of which shall be the same as set forth in Article VI.

- (s) WHEREAS, the majority vote was approved by the Tomlinson Woods Homeowner's Association on Thursday, May 21, 2001.
- Art. VIII, Section 1 (s):

- (s) Outside video antennas or dishes shall be approved by the Architectural Committee. Other outside antennas and aerials are not permitted.
- (t) All chimneys and flues projecting from a Living Unit shall be equipped with a "spark arrester," so as to prevent a fire hazard resulting from the elimination of sparks out of the chimneys and flues.

**Section 2. Common Scheme Restrictions for the Common Properties.** The following restrictions are imposed as a common scheme upon the Common Properties for the benefit of each Lot and the Common Properties, and may be enforced by any Owner of the Common Properties, or the Association.

- (a) No use shall be made of the Common Properties, which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Properties.
- (b) No Owner, other than the Declarant, its successors and assigns, shall place any structure whatsoever upon the Common Properties, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to and use of any part of the Common Properties to all members, unless such structure or activity is first approved by a majority of the Board of Directors or by a committee appointed by the Board of Directors having authority delegated by the Board of Directors to so approve such structure or activity.
- (c) The use of the Common Properties shall be governed by such rules and/or regulations of the Association for the welfare and common good of all the Owners.

## **ARTICLE IX. INSURANCE**

Insurance shall be obtained and maintained and the proceeds thereof disposed of by the Association as follows:

Section 1. Coverage. The Association shall obtain and maintain in effect for the improvements upon the Common Properties, one or more policies of insurance against the perils of fire, lightning, malicious mischief and vandalism with extended coverage in amounts equivalent to the full replacement costs of any damage or destruction caused by any such peril, without deduction for depreciation. Such coverage shall include "contents coverage". The association shall obtain and maintain in effect public liability insurance in such limits as determined by the board of Directors, but in no event less than \$500,000/\$1,000,000/\$100,000 covering the common Properties with the Association, Board of Directors, its employees and agents as insured's. The association shall also obtain and maintain workman's compensation coverage and such other coverage as determined by the Board of Directors.

**Section 2. Valuation and Coverage Amount.** Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a casualty company or otherwise of the full replacement of the improvements on the Common Properties, without

deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effected pursuant to this article.

**Section 3. Liability of Board.** The Board of Directors and the individual voting members of the Board of Directors shall not be liable to any party upon the amount of insurance coverage obtained in settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from negligence, malice, wrongful intent or willful misconduct.

## **ARTICLE X. EASEMENTS**

The Properties are, and shall perpetually be, unless any thereof is terminated, subject to all and each of the following easements for common use, construction, maintenance, support, repair, recreational and other access, private and public sewer and utility line construction and services and roadway easements.

**Section 1. Utility Easement.** Declarant hereby grants to itself and to each member of the Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, a perpetual easement, together with rights of egress, ingress, and other access thereto, for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines, or other facilities in and under the Common Properties, and each Lot, as confined to noninterference with any driveway, sidewalk or structural element of any approved or permitted Living Unit on any Lot. While the utility easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the build able area of each Lot. The grantees of the above described easement further agree that subsequent to the construction of their respective improvements on The Properties, they shall reduce said blanket utility easement to a specific metes and bounds easement setting forth the actual amount of The Properties used for said improvements, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket utility easement to a specific metes and bounds utility easement. Each such Grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil excavated for any purpose hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so. The easement as to any of the Common Properties shall be determined and granted by the Association in the manner set forth in the Bylaws, as from time to time amended.

**Section 2. Roadway Easement.** Declarant hereby reserves and grants to itself, and to the Association, their successors and assigns, a perpetual easement, together with rights of egress, ingress, and other access thereto, for the purpose of constructing, maintaining, repairing and reconstructing roadways

over, under, and upon the Common Properties, and each Lot, as confined to noninterference with any structural elements of any approved or permitted Living Unit upon the Properties. While the roadway easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the build able area of each Lot. Provided, however, that subsequent to the initial construction of the roadways on the Properties, the Association and the Declarant hereby agree to reduce said blanket roadway easement to a specific metes and bounds easement setting forth the actual amount of the Properties used for said roadways, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket roadway easement to a specific metes and bounds roadway easement. Declarant hereby reserves and grants for itself and each member of the Association, each Owner, contract purchaser and lessee (while in possession of and Living unit in the Properties) their families, guests, employees, agents and invitees, and easement for access, ingress, egress, use and enjoyment upon and over each such roadway as traffic to and from each Lot and the Common Properties.

**Section 3.** All telephone and electric power service lines from property line to dwelling shall be underground.

#### **ARTICLE XI. GENERAL PROVISIONS**

**Section 1. Duration.** The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

**Section 2. Amendments.** The covenants and restrictions of this Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion, until such time as the Declarant has conveyed fee simple title to sixty-seven (67) of the Lots. Thereafter this Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Owners of Lots covered by this Declaration. Written notice of any purpose must be sent at least thirty (30) days, but not more than (90) days, prior to such meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

**Section 3. Notices.** Any notice required to be sent to any Member, Owner or Mortgage under the provisions of this Declaration 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, writing if 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 the liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

**Section 4. Enforcement.** Enforcement of the covenants and restrictions of this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction or any limitation, obligation, lien or charge provided for herein shall in no event be deemed a waiver of the right to do so thereafter. Further, the Association, or its duly authorized agents, shall have the right at any time and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon the Owner's Lot for purposes of enforcing, without any limitation, the covenants and restrictions of this Declaration.

**Section 5. Non-Compliance Assessment.** Should any Owner cause or allow to be caused any violation of the covenants and restrictions of this Declaration and allow such violation to continue after written notice to such Owner and the expiration of a period of time during which to comply, as set forth in the written notice, a Non- Compliance Assessment may be levied by the Association against such Owner. The amount of such assessment may include: (1) costs incurred by the Association in attempting to secure compliance, including reasonable attorney fees; and (2) non- compliance penalties in the amount of \$25.00 for such violation upon its first occurrence, together with \$10.00 per day for each day during which the violation continues to occur and \$50.00 for such violation upon subsequent occurrences, together with \$20.00 per day for each day during which the violation continues to occur, or such other amounts as may from time to time be established by the Association.

**Section 6. Severability.** Each and every provision contained herein shall be deemed independent and severable, and the invalidity or partial invalidity provision, or portion thereof, shall in no way affect the validity or enforceability of any other provision, which shall remain in full force and effect.

**Section 7. Interpretation.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires. Any situation not expressly permitted or prohibited herein shall be dealt with by the Association through any rules and/or regulations adopted hereafter or by resolution.

**Section 8. Rules and Regulations.** The Association, acting through its Board of Directors and subsequent to the provisions of this Declaration, may adopt rules and regulations consistent with the expressed or implied purposes of this Declaration, which govern, but need not necessarily be limited to: use of Lots, the Common Properties and any recreational facilities owned by or under the control of the Association; procedures for the adoption, levy, collection and enforcement of assessments; general conduct of Owners, members of their

immediate family, and their guests and invitees on Common Properties or while using recreational facilities owned or controlled by the Association; pet control; noxious, offensive or dangerous activity; nuisances; residential exterior maintenance; services; financial matters; enforcement of this Declaration; interpretation and clarification of this Declaration; building and landscaping control; design construction matters; and any rules and/or regulations adopted hereafter.

Prior to the adoption of any rules and/or regulations, or an amendment or repeal of any then existing rules and/or regulations, the Board of Directors shall give notice of the proposed action to the Owners and provide to the Owners an opportunity to submit views or otherwise participate informally in conference relative to the proposed actions. Notice of the proposed actions shall be given pursuant to Article XI, Section 3. Any such notice shall state the time, place and nature of the proceedings, which shall be held not less than ten (10) days after mailing, the authority under which the action is proposed, and either the terms or substance of the proposed rules and/or regulations or a description of the subjects and issues involved. At the time and place specified in the notice, the Association shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views or arguments and to present the same orally unless the Board of Directors deems it unnecessary. The Board of Directors shall consider the submissions prior to taking any action. In the event the Board of Directors adopts the initial proposal, any action taken shall become effective ten (10) days thereafter. In the event of any material revisions made by the Board of Directors to the proposed actions subsequent to the giving of notice to the Owners as a result of Owner comment or otherwise, the proposed actions, as revised, shall become effective ten (10) days after the Board of Directors votes to adopt same and gives notice to the Owners of such revisions, in the manner provided above.

Section 9. Variances. Recognizing that this Declaration has not nor cannot address all conceivable situations which may arise, and further, recognizing the need for flexibility in administration of this Declaration so as not to create unnecessary hardship, the Board of Directors may, in its sole discretion, and on behalf of all of the Owners of the Properties subject to this Declaration, grant variances from any of the terms and conditions contained within this Declaration and rules and/or regulations. Any variances so granted shall be binding upon the Association and the Owners.

In granting variances hereunder, the following shall be applicable:

- (a) Any variance granted hereunder shall run with the Lot or Common Properties for which granted;
- (b) If a variance is denied, another application for the same or similar variance for the same property may not be made for a period of one year;
- (c) A variance shall not be granted unless at least seventy-five percent (75%) of the members of the Board of Directors find that all of the following conditions exists:
  - (i) Owing to unusual circumstances, literal enforcement of this Declaration will result in unnecessary hardship;