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Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 7/13/2012 12:00:52.79



2012068270

RETURN TO:

Nathan R. Watson  
 MCGILL, GOTSCHNER, WORKMAN & LEPP, P.C., L.L.O.  
 11404 W. Dodge Rd., Suite 500  
 Omaha, NE 68154-2584

Space Above Reserved for Recording Information

AMENDED AND RESTATED DECLARATION  
 OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
 OF TORREY PINES REPLAT 5, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS AMENDED AND RESTATED DECLARATION ("Restatement") is made to the Declaration of Covenants, Conditions, Restrictions and Easements filed on July 1, 1999 in the office of the Register of Deeds of Douglas County, Nebraska at Book 1299 Pages 185-198 (the "Declaration"), by the owners of not less than seventy-five percent (75%) of the lots covered by the Declaration (collectively, the "Requisite Number of Owners").

PRELIMINARY STATEMENT

A. The Requisite Number of Owners are the owners of not less than seventy-five percent (75%) of certain real property located within Douglas County, Nebraska and described as follows:

Lots 1 through 12, inclusive, in Torrey Pines Replat 5, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each a "Lot".

B. The owners of the Lots covered by the Declaration are collectively the successor holder of the Declarant's right of amendment to the Declaration due to the operation of Article VI, section 2 of the Declaration. Pursuant to the referenced section of the Declaration, the Requisite Number of Owners may amend the Declaration by the signing of this Restatement.

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C. By this Restatement, the Requisite Number of Owners desire to amend and restate the Declaration, on the terms of the Restatement, to continue to provide for the preservation of the values, amenities and the maintenance of the character and residential integrity of Torrey Pines Replat 5, a Subdivision in Douglas County, Nebraska ("Torrey Pine"), and for the possible acquisition, construction and maintenance of Common Facilities (defined below) for the use and enjoyment of the residents of Torrey Pine. "Common Facilities" shall mean any and all facilities, acquired, constructed, improved, maintained, operated, repaired or replaced by Torrey Pine for the general use, benefit and enjoyment of the residents of Torrey Pine.

NOW, THEREFORE, pursuant to the authority granted to the owners of the Lots in Article IV, section 2 of the Declaration, the Requisite Number of Owners hereby amend and restate the Declaration, hereby declaring in this Restatement that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots are, and each Lot is and shall be, subject to all and each of the following conditions and other terms:

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes.
2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, pool house, flag pole, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (any and/or all referred to as an "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for any Improvement that has been approved by Torrey Pine as follows:
  - A. A Lot owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and/or plot plans to Torrey Pine's board of directors ("Board of Directors"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, the Lot owner shall notify the Board of Directors of the owner's current mailing address, phone number and email.
  - B. The Board of Directors shall review such plans in light of the conditions and restrictions of Article I of this Restatement and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Torrey Pine intends that the Lots shall be developed and remain as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Board of Directors in a reasonable manner to promote conformity and harmony of the external design of the Improvements constructed within Torrey Pine and to protect the value, character and residential quality of all Lots in a manner consistent with this Restatement. If the Board of Directors determines that a proposed Improvement does not conform with the surrounding improvements or topography or will not protect and enhance the integrity and character of all the Lots and

neighboring Lots as a quality residential community, the Board of Directors may refuse approval of a proposed Improvement.

- C. Written notice of any approval or disapproval of a proposed Improvement shall be mailed or emailed to the owner at the address specified by the owner. Such notice shall be sent within thirty (30) days after the date of submission of the plans. If notice of approval is not forwarded within such period, the proposed Improvement shall be deemed disapproved by the Board of Directors.
  - D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Torrey Pine, or to control, direct or influence the acts of Torrey Pine with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon the Board of Directors by virtue of the authority granted to Torrey Pine in this section, or as a result of any act or failure to act by the Board of Directors with respect to any proposed Improvement.
- 3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. Residences on all Lots shall have a minimum front set back of twenty-five (25) feet.
  - 4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick or other material approved by the Board of Directors. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete or other approved material. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, wood or other material approved by Declarant. Unless other materials are specifically approved by the Board of Directors, the roof of all Improvements shall be covered with asphalt shingles or other approved material shingles.
  - 5. No exterior advertising sign, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale". No premises shall be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof.
  - 6. No exterior television or radio antenna or disc greater than 18" x 24" in size shall be permitted on any Lot.
  - 7. No exterior repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood or a reasonable owner's sensitivities be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible. Torrey Pine will have the right to remove, or have removed, such items at the cost of the Lot owner.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any exterior part of a Lot (other than in an enclosed structure) for more than twenty (20) consecutive days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No contractor's(s') equipment, tractors, trucks over 10,000 gross vehicle weight or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of remodeling of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off-street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.
9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. Garden, lawn or maintenance equipment of any kind shall be stored inside or will be permitted to remain outside of any dwelling or suitable storage facility when in the rear yard. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. Clothes lines shall be permitted outside of any dwelling in the rear yards. Produce or vegetable gardens may only be maintained in rear yards.
10. No fence or mass planted hedges or shrubs or other structures which effectively act as a boundary fence shall be permitted on any Lot unless approved in writing by Declarant. Privacy fences may be constructed out of wood or finished suitable materials. Electronic invisible fencing for dogs is permitted.
11. No permanent swimming pools are allowed. As a limited exception to the immediately foregoing restriction, small children's wading pools are allowed, though they cannot be left on grassy areas more than five (5) days and must be kept in the rear yard and remains at all times the sole responsibility of the Lot owner.
12. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot. Proper licensing for permits is the responsibility of the Lot owner.
13. The public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Lot provided, however, this provision shall vary to the extent necessary to comply with any alternative requirements of the City of Omaha, Nebraska.
14. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

15. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, including but not limited to dog runs or kennels of any kind. No livestock or agricultural-type animals shall be allowed, including but not limited to pot-bellied pigs.
16. Any exterior air conditioning condenser unit shall be placed in a Lot's rear yard or side yards. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot, so as to constitute an actual or potential public nuisance, create a hazard of undesirable proliferation, or detract from a neat and trim appearance.
17. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently without the prior written approval of the Board of Directors, which such consent may be reasonably withheld. Notwithstanding the foregoing, no structure or improvement of any kind shall be moved from outside Torrey Pine to any Lot without the written consent of the Board of Directors, which such consent is within the sole and absolute discretion of the Board of Directors.
18. An owner may erect a swing set, playground equipment, or other similar structures in the rear yard on a Lot only after securing the prior written approval of the Board of Directors, which such consent may be reasonably withheld.
19. Except for connection and access facilities, all utility service lines from each Lot line to a dwelling or other improvement shall be underground.
20. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, as amended from time to time, shall be permitted in Torrey Pine.
21. The exterior trim and siding on each residence constructed on a Lot must be maintained in good and proper condition. All costs to repair, replace and maintain (including painting) will be the cost and expense of the Lot owner.
22. In the event a structure or dwelling is destroyed or impaired, its replacement, restoration, or repair shall be of like quality and kind with regard to the existing neighborhood scheme.
23. The Board of Directors has the right to require on any Lot or otherwise within Torrey Pine the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

## ARTICLE II. TOWNHOME ASSOCIATION

1. The Association. Torrey Pine shall be governed by a Nebraska not-for-profit corporation known as Torrey Pine Townhomes Association, Inc. (the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare

and enjoyment of the residents of the Lots (individually, a "Member"; collectively, "Members"), including:

- A. The upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members, which may include but is not limited to signs. These referenced signs may be situated on private property subject to an easement in favor of the Association, the location of any of such signs is the sole and absolute discretion of the Board of Directors.
  - B. The performance of Exterior Maintenance Services (defined below).
  - C. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members.
  - D. The exercise, promotion, enhancement and protection of the privileges and interests of the Members of the Association; and the protection and maintenance of Torrey Pine's residential character.
2. Membership and Voting. Torrey Pine consists of twelve (12) separate Lots. The owner of each Lot shall be a Member of the Association. The term "owner" means and refers to the record owner; whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (including but not limited to a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract of similar instrument shall be considered to be the owner of the Lot for purposes of this Restatement. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The owner of each Lot, whether one or more entities, shall be entitled to one (1) vote for each Lot owner on each matter properly coming before the Members of the Association, to be cast as it decides, with the right to vote contingent upon the owner's Association dues being current at the time of any vote.

3. Purposes and Responsibilities. The Association shall have any and all of the powers conferred upon not-for-profit corporations by the Nebraska Nonprofit Corporation Act, as amended from time to time, including but not limited to any and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by any officers or other representatives, shall include but shall not be limited to the following:
- A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.
  - B. The doing and taking of such actions as may be necessary or appropriate to perform or secure performance of the Exterior Maintenance Services.
  - C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Restatement.
  - D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association, including but not limited to payment for purchase of insurance covering any Common Facilities against property damage and legal liability and errors/omission liability insurance coverage for the Association, the Board of Directors, and/or the Members.

- E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Restatement and the bylaws for the Association as the same may be amended from time to time.
- F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- H. The employment of professionals and consultants to advise and assist the Board of Directors, and any officers or representatives, in performance of their duties and responsibilities for the Association.
- I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.
- J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

### ARTICLE III. EXTERIOR MAINTENANCE SERVICES

1. The Association may, by a majority vote of the Board of Directors, contract for services it deems appropriate, whether or not such services are supposed to be performed by a Lot owner or its designee (collectively, "Exterior Maintenance Services"). In any case, ultimate payment for these Exterior Maintenance Services is the responsibility of each Lot owner as it interests may appear (whether individual or pro rata), unless the Board of Directors otherwise directs provision from the common funds of the Association. The Exterior Maintenance Services are as follows:
  - A. Each Lot owner is responsible for replacement or removal of all dead trees, shrubs and bushes or other exterior landscaping improvements on its Lot.
  - B. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces, except the two Torrey Pine markers. The duty to repair, replace or maintain exterior concrete surfaces, other than the referenced markers, is the duty of each Lot owner.
  - C. Each Lot owner, for its Lot, shall be responsible for the operation and maintenance of underground watering systems, and also be responsible for draining and winterizing the underground watering system. The Association may arrange for some of this service to Members. Repairs, improvements, replacements and additional services to the same will be the responsibility of each Lot owner.
  - D. The Association shall contract for the removal of snow from drives, front walks and stoops of Lots only.
  - E. Each Lot owner shall be responsible for the removal of trash no less often than weekly.
  - F. The Association shall contract for the maintenance of exterior lawn services for the Lots.
  - G. The Association shall contract for the cleaning of exterior windows, of buildings on the Lots, at the discretion of the Board of Directors.
  - H. The Association can be of assistance to contract for exterior painting services of buildings on the Lots, with each Lot owner being responsible for the expenses.

2. There is hereby reserved and granted to Torrey Pine, and its Association's respective officers, directors, employees, agents and contractors, a perpetual and nonexclusive easement for access to, from, on and along all Lots for the purpose of performing all Exterior Maintenance Services.

ARTICLE IV.  
DUES AND ASSESSMENTS.

1. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (individually, "Dues" or "Assessments"; collectively, "Dues and Assessments") under the following provisions of this Restatement. Except as otherwise specifically provided, the Dues and Assessments shall be fixed by the Board of Directors and shall be payable at the times and in the manner prescribed by the Board of Directors.
2. Liens and Personal Obligations for Dues and Assessments. The Assessments and Dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the owner of each Lot at the time when the Dues and Assessments first become due and payable. The Dues and Assessments, together with interest and along with costs and reasonable attorneys' fees, shall be charged on a continuing lien upon the Lot which is delinquent in paying its Dues and Assessments. The personal obligation for delinquent Dues and Assessments shall not pass to the successor in title to the Lot owner at the time the Dues and Assessments become delinquent unless such Dues and Assessments are expressly assumed by the successor, but all successors shall take title subject to the lien for such Dues and Assessments, and shall be bound to inquire of the Association as to the amount of any unpaid Assessments and Dues.
3. Purpose of Dues. The Dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Article II, and to perform the Purposes and Responsibilities of the Association described in Paragraph 3 of Article II and to perform the Exterior Maintenance Services described in Paragraph 1 of Article III.
4. Annual Dues. The amount of the annual Dues and whether installment payments other than annual will be accepted shall be amended from time to time by the Board of Directors.
5. Excess Dues and Assessments. With approval of seventy-five percent (75%) of the Members of the Association, the Board of Directors may establish Assessments in excess of the maximums established in this Restatement.
6. Monthly Assessments. The Board of Directors shall fix the amount of the monthly or other periodic Assessments against each Lot. The Assessments shall be paid pro rata by the owner of each Lot. The Assessments may be collected on a monthly or other periodic basis by the Association that the Board of Directors may determine. Written notice of the Assessment shall be sent to every Lot owner. The dates on which payments are due shall be the first (1st) of each month and delinquent the tenth (10th) of each month, unless the Board of Directors otherwise determines and gives written notice of the same. The Association shall, upon demand, and for a reasonable charge, furnish



a statement signed by a representative of the Association setting forth whether the Dues and Assessments on a specified Lot are current through the date of such statement.

7. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of Dues or Assessment which is not paid when due shall be delinquent. Delinquent Dues and Assessments shall bear a penalty from thirty (30) days past the due date at the rate of fifteen dollars (\$15) per month. The Association may bring an action at law against the owner personally obligated to pay the same, foreclose a lien against the owner's Lot and/or pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of any action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to any such action. No Lot owner may waive or otherwise escape liability for the charge and lien provided for herein by non-use of the Common Facilities or abandonment of its Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, cost and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.
8. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the Dues and Assessment lien.

#### ARTICLE V. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of, and granted to, public utility companies, including but not limited to Omaha Public Power District, Metropolitan Utilities District, or any company which has been granted a franchise to provide a cable system within the Lots and their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and side boundary lines of the Lots; and/or an eight (8) foot wide strip of land abutting the rear boundary lines of all Lots.
2. The perpetual easement reserved for the Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Other easements are provided in the final plat of Torrey Pine which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2082, Page 396), and the ratification of plate filed with the Register of Deeds of Douglas County, Nebraska (Book 1177, Page 266).

ARTICLE VI.  
GENERAL PROVISIONS

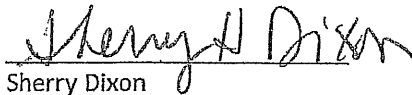
1. Except for the authority and powers specifically granted to Torrey Pine and its Association's Board of Directors, any owner of a Lot shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now to hereinafter imposed by the provisions of this Restatement either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by Torrey Pine and its Association's Board of Directors, or any owner of a Lot, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. The covenants and restrictions of this Restatement shall run with and bind the land in perpetuity. This Restatement may be amended by the owners of not less than seventy-five (75%) of the Lots covered by this Restatement.
3. Invalidation of any covenant by judgment or court order of a court of competent jurisdiction shall in no way affect any of the other provisions hereof, and the invalidated provision shall retain so much force as the court may allow, which all of the remainder of this Restatement shall remain in full force and effect.

[signature pages follow]

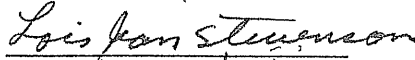
IN WITNESS WHEREOF, The Requisite Number of Owners have caused these presents to be  
executed this 30 day of June, 2012



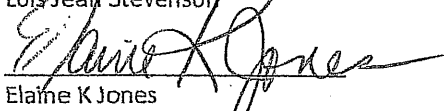
Reba I Harris



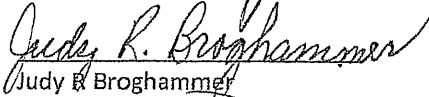
Sherry Dixon



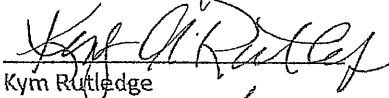
Lois Jean Stevenson



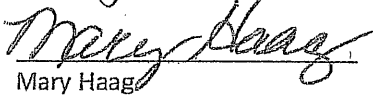
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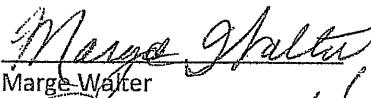
Judy R Broghammer



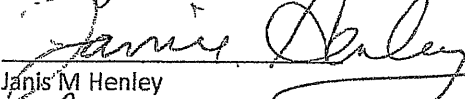
Kym Rutledge



Mary Haag



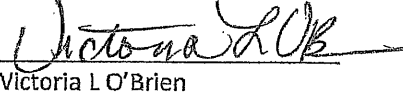
Marge Walter



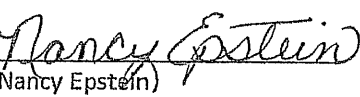
Janis M Henley



Diane Ahern



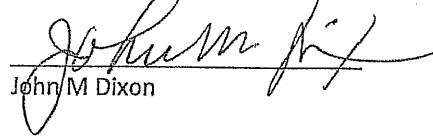
Victoria L O'Brien



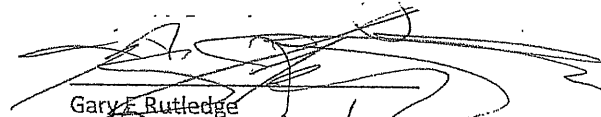
Nancy Epstein



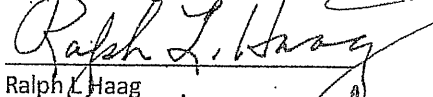
Wm. Harris



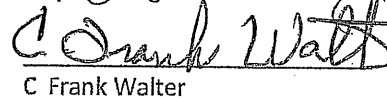
John M Dixon




Gary F Rutledge



Ralph L Haag



C Frank Walter



Edward A Ahern

# Acknowledgement

State of Nebraska

S.S.

County of Douglas

The foregoing instrument was acknowledged before me this

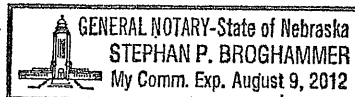
30 day of June, 2012  
(month)

by \_\_\_\_\_  
(printed name of person acknowledged)

Reba I. Harris, Sherry Dixon, Lois Jean Stevenson,  
Elaine K. Jones, Judy R. Broghammer, Kym Rutledge,  
Mary Haag, Marge Walter, Janis M. Henley, Diane Ahern,  
Victoria L. O'Brien, Nancy Epstein, Wm. Harris, John M. Dixon,  
Gary E. Rutledge, Ralph L. Haag, C. Frank Walter, Edward A. Ahren

Stephan P. Broghammer  
Notary Public

† Affix Official Notary seal here †



# Torrey Pine Townhomes Association, Inc.

## Purchaser's Acknowledgment Receipt of By-Laws and Covenants

I hereby acknowledge the By-Laws and Covenants for the Torrey Pine Townhomes Association, Inc. constitute a contract between the association and myself (purchaser). By signing this statement, I acknowledge I have received a copy of and have read and understand the association's contract with me (purchaser).

10/11/10  
Date

Waldy Kading  
Purchaser

15006 Spaulding  
Address  
68116

JUN 3 2013

N.P. DODGE INS.

Torrey Pine Townhomes Association, Inc.

## Purchaser's Acknowledgment Receipt of By-Laws and Covenants

I hereby acknowledge the By-Laws and Covenants for the Torrey Pine Townhomes Association, Inc. constitute a contract between the association and myself (purchaser). By signing this statement, I acknowledge I have received a copy of and have read and understand the association's contract with me (purchaser).

5-31-13  
Date

M. Sebastian  
Purchaser

15018 Spaulding  
Address Omaha NE 68116



MISC 2012068271




JUL 13 2012 12:01 P 11

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*misc*

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Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 7/13/2012 12:01:41.58  
  
 2012068271

RETURN TO: *Space Above Reserved for Recording Information*  
 Nathan R. Watson  
 MCGILL, GOTSCHNER, WORKMAN & LEPP, P.C., L.L.O.  
 11404 W. Dodge Rd., Suite 500  
 Omaha, NE 68154-2584

# AMENDED AND RESTATED BYLAWS OF TORREY PINE TOWNHOMES ASSOCIATION, INC.

## PRELIMINARY STATEMENT

These Amended and Restated Bylaws do amend and restate those Bylaws of Torrey Pine Townhomes Association, Inc. filed on March 22, 2011 in the office of the Register of Deeds of Douglas County, Nebraska at Book 1374 Pages 35-43 ("Initial Bylaws"). These Amended and Restated Bylaws are approved pursuant to the requirements to amend the Initial Bylaws as set forth in Article XIII of the Initial Bylaws.

## ARTICLE I NAME AND LOCATION

The name of the corporation is Torrey Pine Townhomes Association, Inc., a Nebraska not-for-profit corporation. The principal office of the corporation shall be the residence of the current president of the corporation. The property locations with which the corporation is concerned are those lots with addresses commonly known as 15006 through and including 15218 Spaulding Street, located in Omaha, Nebraska 68116.

*✓1102*

## ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to Torrey Pine Townhomes Association Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described above and in the currently operative Declaration of Covenants, Conditions, and Restrictions, as recorded with the Register of Deeds of Douglas County, Nebraska, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to each of those plots of land shown on the recorded subdivision map of Torrey Pines Replat 5, a Subdivision of Douglas County, Nebraska ("Torrey Pine"), said Subdivision described as follows:

Lots 1 through 12, inclusive, in Torrey Pines Replat 5, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities holding fee simple title to any Lot which is a part of the Properties, but excluding in all cases those having any such interest merely as security for the performance of any obligation. If a Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) shall be considered the Owner.

Section 5. "Declaration" shall mean and refer to the currently operative Declaration of Covenants, Conditions, and Restrictions, as recorded with the Register of Deeds of Douglas County, Nebraska.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Each Lot Owner is a member ("Member") of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment.

Section 2. Members shall be entitled to one (1) vote for each Lot owned, **when dues are current**. 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 (1) vote be cast with respect to any Lot.



## ARTICLE IV MEETING OF MEMBERS

Section 1. Annual Meetings. Annual meetings of the Members shall be held once a year for the purpose of voting for members of the Board of Directors (defined below) and discussion and/or determination of any issues deemed advisable by the Members assembled.

Section 2. Special Meetings. Special meetings of the Members may be called at anytime by the President (defined below) or by a quorum (defined below) of Members.

Section 3. Notice of Meetings. Notice of each annual meeting of the Members shall be given by the Secretary (defined below). Notice of any special meeting shall be by the Members calling the special meeting. In either case, notice shall occur by mailing, phone call, and/or emailing to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice at least ten (10) days in advance. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. A quorum at a meeting of Members consists of a majority of the total number of Lots. By a vote of a majority of the voting power of the Members present in person or by proxy, a measure (other than an amendment to these Bylaws, as set forth below) shall pass. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented except as otherwise provided in the currently operative Articles of Incorporation, Declarations, or Bylaws.

Section 5. Proxies. At any meeting of Members, a Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member or his/her Lot.

## ARTICLE V BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by the Board of Directors, each of whom must also be Members of the Association in good standing.

Section 2: Term of Office. The Members shall elect Members to the Board of Directors annually, who shall each serve a recommended maximum of three (3) one-year terms, staggered so that one (1) seat is up for election at each annual meeting.

Section 3. Removal. Any director may be removed from the Board of Directors, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his or her successor shall be selected by the

remaining members of the Board of Directors and shall serve for the unexpired term of his or her predecessor.

Section 4. Compensation. No director shall receive compensation for any service he or she may render to the Association. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Meetings. Meetings of the Board of Directors shall be held when called by the President or by any two directors, after not less than two (2) days notice to each director of the date, time and place of such meeting, or when all three (3) can spontaneously meet on shorter notice.

Section 2. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business by the Board of Directors. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum present shall be regarded as the act of the Board of Directors.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power to:

- (a) Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association.
- (b) Exercise for the Association all powers, duties and authority vested in the membership by other provisions of the currently operative Bylaws, Articles of Incorporation, and/or Declaration of Covenants.
- (c) Declare the office of a member of the Board of Directors to be vacant in the event such director shall be absent from three (3) consecutive scheduled meetings of the Board of Directors, and appoint a successor thereto;
- (d) Employ a manager, an independent contractor, or such other employees or otherwise for the Association as they deem necessary, and to set their compensation and prescribe their duties.
- (e) Such other powers as may be vested in the Board of Directors by the laws of the State of Nebraska, Douglas County, and/or other applicable law.

Section 2. Duties. It shall be the duty and right for the Board of Directors to:

- (a) Cause to be kept a record of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting or at any special meeting when such a statement is requested in writing by two (2) of the Members who are entitled to vote;
- (b) Supervise all officers, agents and independent contractor and employees of this Association, and to see that their duties are properly performed;
- (c) As more fully provided in the currently operative Declaration, to:
  - (1) Fix the amount and due dates of dues and assessments against each Lot at least thirty (30) days in advance of each period; and
  - (2) File and foreclose a lien against any property for which dues and/or assessments are not paid within **thirty (30) days after the due date** or to bring an action at law against the Owners personally obligated to pay the same.
- (d) Issue, or cause an appropriate officer to issue, upon demand by any person, a statement setting forth whether or not any dues and/or assessments have been paid. A reasonable charge may be required by the Board of Directors for the issuance of these statements. If a statement states dues and/or assessments have been paid, such statement shall be conclusive evidence of such payment;
- (e) Cause the Associations and any of its representatives, officers, members of the Board of Directors, and/or Members to be insured as may be deemed appropriate,
- (f) Cause the Lots to be maintained in accordance with the currently operative Declaration; and
- (g) Enforce all covenants, conditions and restrictions affecting any Lot or Owner as set forth in the currently operative Declaration.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President, Vice-President and Secretary/Treasurer and such other officers as the Board may, from time to time by resolution, create. The officers constitute the Board of Directors.



Section 2. Election of Officers.

The Members shall annually elect the Board of Directors.

Section 3. Term. The positions of the officers of this Association shall be selected annually by the Board of Directors. Each officer shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve. A maximum of three (3) one-year terms is recommended.

Section 4. Special Appointment. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time giving written or email notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such a vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. No person shall simultaneously hold more than one of any of the offices except in the case of special officer created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The President shall preside at all meetings of the Board of Directors; shall see that orders, services, and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, contracts, and other written instruments, and call special meetings of the members.

Vice President

- (b) The Vice President shall act in the place and stead of the President in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him/her by the Board.

Secretary/Treasurer

- (c) The Secretary/Treasurer shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members, except as otherwise expressly provided; keep appropriate current records showing the Members of the Association together with their address, and shall perform such other duties as required by the Board of Directors. The Secretary/Treasurer shall also receive a monthly report from the bookkeeper of bank accounts of the

Association and shall approve payment of funds as directed by resolution of the Board of Directors; keep proper books of account; cause an annual audit of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy to each of the Members.

#### ARTICLE IX COMMITTEES

The Board of Directors can appoint committees as deemed appropriate in carrying out its purpose and powers.

#### ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The currently operative Declaration, Articles of Incorporation and Bylaws of the Association shall be available for inspection by any Member of the principal office of the Association, where copies may be obtained at the reasonable cost of reproduction.

#### ARTICLE XI DUES AND ASSESSMENTS

As more fully provided in the currently operative Declarations, each Member is obligated to pay its dues and assessments, and to do so in those amounts and at those times set forth by the Board of Directors in writing. All dues are payable on the first (1st) day of each month, unless otherwise set in writing by the Board of Directors. Any dues and/or assessments which are not paid when due shall be delinquent. If any dues and/or assessments are not paid within thirty (30) days after the due date, it or they shall bear a penalty of \$15 a month and the association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the property and/or pursue any other remedies at law or in equity. Interest, penalties, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such dues and/or assessments and be recoverable by the Association as part of the recovery. The liability established by this paragraph shall be personal against the Owner and in rem against the Owner's Lot. No Owner may waive or otherwise escape liability for the dues and assessments provided for herein by performing his/her own Lot maintenance to be provided by the Association, by transferring or conveying the Lot or by any other action or contrivance.

## ARTICLE XII AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of the voting power, whether in person or by proxy, of the total number of Lots.

Section 2. In the case of any conflict between the currently operative Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the currently operative Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIII INDEMNIFICATION

Section 1. In civil or administration proceedings, the Association may indemnify a former or present director or officer of the Association, provided that the director or officer, or former director or officer, conducted him/herself in good faith and reasonably believed, in matters concerning his/her conduct while acting in an official capacity of the Association, that his/her conduct was in the best interest of the Association; and, in all other cases, that his or her conduct was not opposed to its best interests.

In criminal proceedings, in addition to the foregoing criteria, the director or officer had no reasonable cause to believe that his/her conduct was unlawful.

The Association may not indemnify a director or officer, or former director or officer, in (a) connection with a proceeding by or in the right of the Association in which the director or officer was adjudged liable to the Association; and/or (2) in connection with any proceeding charging improper personal benefit to the director or officer, whether or not involving action in his/her official capacity, in which the director or officer was adjudged liable on the basis that personal benefit was improperly received by the director or officer.

Section 2. The Association shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director or officer was a party because he or she was a director or officer of the Association against reasonable expenses actually incurred by the director or officer in connection with that proceeding.

Section 3. The determination of entitlement of a director or officer, or former director or officer, to indemnification shall be made in accordance with Nebraska law.

Section 4. Any employees, agents, or otherwise of the Association who are not also a member of the Board of Directors are entitled to mandatory indemnification in the manner provided in Section 2 about to the same extent as a director or officer of the Association.

**Section 5.** The Board of Directors shall be empowered to procure and maintain liability, and/or errors and omissions insurance for the corporation and any director, officer, agent, or other person to the full extent authorized, empowered, or directed by applicable law.

## ARTICLE IV

### MISCELLANEOUS

The fiscal year of the Association shall include and begin on the first (1st) day of January and include and end on the thirty-first (31st) day of December next proceeding.

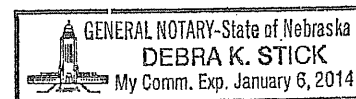
IN WITNESS WHEREOF, the President of the Association has hereunto set her hand, attested by the current Secretary of the Association, that the foregoing Amended and Restated Bylaws were duly enacted by a sufficient number of the Members of the Association and are now effective, this 9<sup>th</sup> day of July, 2012.

Elaine K Jones, President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 29 day of July, 2012, by the President of Torrey Pines Townhomes Association, Inc., Elaine K. Jones.

Debra K. Stick  
Notary Public



ATTEST:

*Margaret A. Walter*  
Margaret A. Walter, Secretary

IN WITNESS WHEREOF, The Requisite Number of Owners have caused these presents to be  
executed this 30 day of June, 2012

Reba I Harris

Reba I Harris

Sherry H Dixon

Sherry Dixon

Lois Jean Stevenson

Lois Jean Stevenson

Elaine K Jones

Elaine K Jones

Judy R. Broghammer

Judy R Broghammer

Kym Rutledge

Kym Rutledge

Mary Haag

Mary Haag

Marge Walter

Marge Walter

Janis M Henley

Janis M Henley

Diane Ahern

Diane Ahern

Victoria L O'Brien

Victoria L O'Brien

Nancy Epstein

Nancy Epstein

Wm. F Harris

Wm. Harris

John M Dixon

John M Dixon

Gary F Rutledge

Gary F Rutledge

Ralph L Haag

Ralph L Haag

C Frank Walter

C Frank Walter

Edward A Ahern

Edward A Ahern



Acknowledgement

State of Nebraska

S.S.

County of Douglas

The foregoing instrument was acknowledged before me this

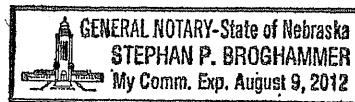
30 day of June, 2012  
(month)

by \_\_\_\_\_  
(printed name of person acknowledged)

Reba I. Harris, Sherry Dixon, Lois Jean Stevenson,  
Elaine K. Jones, Judy R. Broghammer, Kym Rutledge,  
Mary Haag, Marge Walter, Janis M. Henley, Diane Ahern,  
Victoria L. O'Brien, Nancy Epstein, Wm. Harris, John M. Dixon,  
Gary E. Rutledge, Ralph L. Haag, C. Frank Walter, Edward A. Ahren

Stephan P. Broghammer  
Notary Public

† Affix Official Notary seal here †



# Torrey Pine Townhomes Association, Inc.

## Purchaser's Acknowledgment Receipt of By-Laws and Covenants

I hereby acknowledge the By-Laws and Covenants for the Torrey Pine Townhomes Association, Inc. constitute a contract between the association and myself (purchaser). By signing this statement, I acknowledge I have received a copy of and have read and understand the association's contract with me (purchaser).

10/1/10  
Date

Waldy Kading  
Purchaser

15006 Spaulding  
Address  
68116

N.P. DODGE INS.

## Purchaser's Acknowledgment Receipt of By-Laws and Covenants

5-31-13  
Date

Mick Sebastian  
Purchaser

15018 Spaulding  
Address  
Omaha NE 68116

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF TORREY PINES, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION made on the date hereinafter set forth is made BENNINGTON COMPANY, a Nebraska corporation, hereinafter referred to as the "Declarant."

PRELIMINARY STATEMENT

Declarant has replatted Lots 8 through 13, Torrey Pines Replat 1, into Lots 1 through 12, Torrey Pines Replat 5.

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots 1 through 12, inclusive, in Torrey Pines Replat 5, a subdivision  
as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of Torrey Pines, for the maintenance of the character and residential integrity of Torrey Pines, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Torrey Pines. As used herein, the term "Common Facilities" shall mean all recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Torrey Pines, as well as any and all other facilities, acquired, constructed, improved, maintained, operated, repaired or replaced by the Townhome Association for the general use, benefit and enjoyment of the members of the Townhome Association.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

**Brown & Wolff**  
One Bennington Place  
1925 N. 120th Street  
Omaha, NE 68154-1391

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, or for other non-profit use.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, pool house, antenna satellite receiving station or "discs", flag pole, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

A. An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

B. Declarant shall review such plans in light of the conditions and restrictions of Article I of this Declaration and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within Torrey Pines Subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. If Declarant determines that the proposed Improvement does not conform with the surrounding improvements or topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of a proposed Improvement.

C. Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted

to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

E. At such time as there shall be a completed single family residence constructed and occupied on Ninety percent (90%) of all Lots as may be developed by Declarant or ten (10) years, whichever shall occur first, all discretions of Declarant under this Article I, Paragraph 2 shall transfer to the Townhome Association and shall be administered pursuant to the provisions of Article II herein.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. Residences on all Lots shall have a minimum front set back of twenty-five (25) feet.

4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete or other approved material. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, wood or other material approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with asphalt shingles or other approved material shingles.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale". No premises shall be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

6. No exterior television or radio antenna or disc greater than 18" x 24" in size shall be permitted on any Lot.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis

by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards. All Lots shall be fully sodded at the time of completion of the Improvements.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. No fence or mass planted hedges or shrubs or other structures which effectively act as a boundary fence shall be permitted on any Lot unless approved in writing by Declarant. A privacy fence may be constructed out of wood, subject to the approval in writing by Declarant. Electronic invisible fencing for dogs is permitted.

12. No swimming pools are allowed.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha, Nebraska.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot; provided always that the construction plans,

specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. No dog runs or kennels of any kind shall be allowed in Torrey Pines Subdivision. No livestock or agricultural-type animals shall be allowed in Torrey Pines Subdivision, including pot-bellied pigs.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

19. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. An owner may erect a swing set, playground equipment, pool house or other non-prohibited structure on a Lot only after securing the prior written approval of Declarant. No structure or dwelling shall be moved from outside Torrey Pines to any Lot without the written approval of Declarant.

20. Except for connection and access facilities, all utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

21. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, 1943, shall be permitted in Torrey Pines Subdivision.

22. Subject to the Association's Exterior Maintenance Service Obligations described in Article III, Paragraph 1 of this Declaration, each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along the ten (10) foot public sidewalk easement area on their Lot. Should any of such trees, bushes or shrubs be removed, die or deteriorate into poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur within thirty (30) days following written notice from either the Declarant or the Association, then either Declarant or the Association may cause such replacement to occur and charge the Owner of the Lot for such replacement.

23. The exterior trim and siding on each residence constructed on a Lot must be maintained in good and proper condition and must be fully painted no less frequently than the earlier of (i) sixty (60) months following completion of initial construction and thereafter no less frequently than sixty (60) months following the previous painting; or (ii) within ninety (90) days



following notification from the Association to the Owner that the exterior paint on the Owner's residence has deteriorated to less than a good and proper condition.

24. Any landscape beds that are to be maintained by the Association shall be covered with river rock.

25. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

## ARTICLE II. TOWNHOME ASSOCIATION

1. The Association. Declarant shall cause the incorporation of Torrey Pines Townhome Association, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Torrey Pines. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

B. The performance of Exterior Maintenance Services as described in Article III of this Declaration.

C. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

D. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Torrey Pines; and the protection and maintenance of the residential character of Torrey Pines.

2. Membership and Voting. Torrey Pines Replat 5 is being divided into twelve (12) separate town home lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to

the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The owner of each Lot, whether one or more entities, shall be entitled to one (1) vote for each Lot owned on each matter properly coming before the Members of the Association.

3. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be affected from time to time by the Declarant by recordation with the Register of Deed of Douglas County, Nebraska, of an Amendment to Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall become subject to this Declaration.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of Torrey Pines Townhome Association with all rights, privileges and obligations accorded or accruing to Members of the Associations.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The doing and taking of such actions as may be necessary or appropriate to perform or secure performance of the Exterior Maintenance Services.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and

casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

### ARTICLE III. EXTERIOR MAINTENANCE SERVICES.

1. The Association shall provide exterior maintenance services upon each Lot upon which shall be erected a single family residence commencing at the time of occupancy or six months after completion of construction which ever shall occur first in the manner specified as follows (herein the "Exterior Maintenance Services").

A. The Owner is responsible for replacement of all dead trees, shrubs and bushes or other exterior landscaping improvements and upon failure to do so and after notice as provided in Article I Paragraph 22 hereof, each owner shall allow the Association to replace such dead trees, shrubs and bushes or exterior landscaping improvements at the expense of the Owner of record at the time of replacement and the owner shall reimburse the Association on demand. All trees, shrubs, bushes or exterior landscaping improvements installed by or at the direction of an Owner of a Lot shall remain the responsibility of the Owner.

B. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.

C. Operation and maintenance of underground watering system, provided, however that the Owner of each Lot shall be responsible for draining and winterizing the underground watering system not later than November 1 of each year.

D. Removal of snow from drives, front walks and stoops only, as determined by guidelines set forth by the Board of Directors.

E. Removal of trash no less often than weekly.

2. The Association shall provide "exterior painting services" for each single family residence record upon Lot at such times and in such manner as shall be determined by the Board of Directors of the Association from time to time.

3. There is hereby reserved and granted to the Declarant and the Association, and their respective officers, directors, employees, agents and contractors, a perpetual and nonexclusive easement for access to, from, on and along all Lots for the purpose of performing all Exterior Maintenance Services.

#### ARTICLE IV. DUES AND ASSESSMENTS.

1. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board of Directors of the Association.

2. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues and assessments in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens.

3. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and

assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

4. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Paragraph 1 of Article II, and to perform the Powers and Responsibilities of the Association described in Paragraph 4 of Article II and to perform the Exterior Maintenance Services described in Paragraph 1 of Article III.

5. Annual Dues. The amount of the annual dues for the Association shall be established from time to time by the Board of Directors of the Association.

6. Exterior Painting Services. The cost for exterior painting services may be assessed by the Board of Directors against each Lot either at the time of incurring the exterior painting services or by establishing monthly dues for each Lot for the purpose of creating a fund to pay for the exterior painting services, as required by the Board of Directors.

7. Excess Dues and Assessments. With the approval of seventy-five percent of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

8. Monthly Assessments. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the Improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates on which payments are due shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

9. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues and assessment shall bear interest from the due date at the rate of Fifteen percent (15%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and

lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an 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 right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

10. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

## ARTICLE V. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U.S. West Company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 384 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all Lots.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of the date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Other easements are provided for in the final plat of Torrey Pines which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2082, Page 396), and the ratification of plat filed with the Register of Deeds of Douglas County, Nebraska (Book 1177, Page 266).

ARTICLE VI.  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the owner of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. By written consent of the Declarant for a period of Five (5) years from the date hereof, any or all of the covenants, conditions, restrictions and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver modification or amendment will have on Torrey Pines and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification or amendment.

4. Declarant, or its successors or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

5. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.



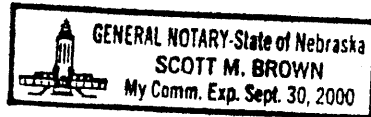
18<sup>th</sup> IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this  
day of June, 1999

BENNINGTON COMPANY, a Nebraska  
corporation, "Declarant"

By: Barbara Udes Shaw  
Barbara Udes Shaw, President

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 1999, by  
Barbara Udes Shaw, President of Bennington Company, a Nebraska corporation, as her voluntary  
act and deed and the voluntary act and deed of the company



[Signature]  
Notary Public