



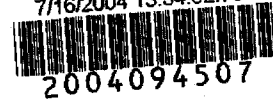
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Omaha NE 68130

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STATE OF NEBRASKA  
DOUGLAS COUNTY

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE HERITAGE CIRCLE  
CONDOMINIUM ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the HERITAGE CIRCLE CONDOMINIUM ASSOCIATION, INC. (as hereafter amended and supplemented, the "Declaration") is made and entered into as of the 16<sup>th</sup> day of July, 2004, by Wayne E. Brewster dba BREWSTER HOMES. ("Declarant").

RECITALS

1. Declarant desires to create on the Property (as defined below) a residential community of townhomes (the "Condominiums") together with Common Areas, open spaces, landscaping, entrances, drainage facilities, access easements, site lighting and signage, (hereinafter sometimes referred to collectively herein as the "Facilities") for the benefit of the Townhomes. The Property is described on the Plat shown as Exhibit A attached hereto and shown in more detail on the building plan, Exhibit B attached hereto.

2. The Townhomes represent part of a larger residential community known as The Colonies at Cedar Crest, which includes the Condominium shown on Exhibit B attached hereto.

3. Declarant desires to provide for the preservation of the values and amenities in the Townhomes and for the maintenance of the Facilities and Common Areas and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth in this declaration and as described in Exhibit C which by reference is incorporated into this declaration, each and all of which is, and are, for the benefit of the Property and each owner of a portion thereof.

4. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Townhomes, to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Townhomes and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant has caused or will cause to be incorporated under the laws of the State of Nebraska a nonprofit corporation to be known as the Heritage Circle Town Condominium Association, Inc. ("Condominium Association"), for the purpose of exercising the functions aforesaid. This Association will be governed by the Articles of Incorporation (Exhibit D) and the By-Laws (Exhibit E), copies of which are attached hereto.

DECLARATION

NOW THEREFORE, In order to establish the townhomes as property under a Condominium regime pursuant to the Nebraska Statutes, Section 76, the Declarant declares that the Property and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth.

ARTICLE ONE  
PROPERTY SUBJECT TO THIS DECLARATION

1.1 Property. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of any real property that adjoins this Property as defined in Section 2.1 herein, or is part of the other portions of The Colonies at Cedar Crest, as added to under the terms hereof from time to time. No more than a total of 24 condominium units may be included in this condominium regime if additional property is added under the terms hereof.

1.2 Additions to Property. The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Douglas County one or more supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of the Declaration to such additional property or properties (hereinafter sometimes referred to as a "Supplemental Declaration"). No more than a total of 24 condominium units may be included in this condominium regime if additional property is added under the terms hereof.

1.3 Access Easement Reserved. An easement and right of ingress, egress and regress over and across all private streets and roads within the Property, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

ARTICLE TWO  
PROPERTY DEFINED

2.1 Property defined. The property subject to this declaration is described as the west 125 feet of Lot 1, The Colonies at Cedar Crest Addition to the City of Ralston, as surveyed, platted and recorded in Douglas County, Nebraska, now known as lot 2, The Colonies at Cedar Crest replat 1, an addition to the City of Ralston, as surveyed, platted and recorded in Douglas County, Nebraska.

2.2 Dwelling Units comprising this property shall have street addresses of 7835, 7837 and 7839 Heritage Circle, Ralston, Nebraska 68127. The legal description of each Dwelling Unit will be "Unit 7835 (...etc) The Heritage Circle Condominium, lot 2, The Colonies at Cedar Crest replat 1, An addition to the City of Ralston, as surveyed, platted and recorded in Douglas Count, Nebraska."

ARTICLE THREE  
DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

3.1. "Assessment(s)" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Dwelling Units in the Property and shall include annual, special and Special Individual Assessments as described in Article Ten of this Declaration.

3.2. "Association" or "Townhome Association" shall mean and refer to the Heritage Circle Condominium Association, Inc., a Nebraska non-profit corporation.

3.3. "Board" shall mean and refer to the Board of Directors of the Association.

3.4. "Bylaws" shall mean and refer to the bylaws of the Association and all amendments thereto.

3.5. "Common Expenses" shall mean and refer to:

a. Expenses of administration, operation, utilities, insurance, maintenance, repair or replacement of the Common Areas, including payment of taxes and public assessments levied against the Common Areas.

b. Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.

c. Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Property, in accordance with the Bylaws or this Declaration.

d. Any valid charge against the Association or against the Common Areas as a whole.

e. Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation.

3.6. "Common Area(s)" shall mean and refer to those areas of land shown on any Recorded Plat of all or any part of the Property that are not designated as dwelling units; provided however, that only such areas of land on the Recorded Plats which are also shown on Exhibit B attached hereto shall be the Common Properties of the Townhome Association. The Common Properties are subject to special rights and limitations, if any, granted to or imposed on Owners of Dwelling Units herein. It is intended that the Common Properties shall be conveyed to the Association for the benefit of each of the Owners. The Association shall be responsible only for those Common Properties shown on Exhibit B attached hereto or otherwise designed or designated as for the use and benefit of only those Owners in the Townhome Property.

3.7. "Common Elements" shall mean all portions of the condominium other than the Units. The undivided interests in the common elements are vested in the unit owners.

3.8. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

3.9. "Declarant" shall mean and refer to Brewster Homes, its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Douglas County Registry. Declarant is the entity that has been granted the right, power, authority, duty or obligation to exercise the powers of the Declarant to ensure the development and maintenance of the Property as herein set forth.

3.10. "Dwelling Unit" shall mean any part of the Condominium property which is subject to exclusive ownership, irrespective of the number of Owners thereof (or the form of ownership) located within the Property. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated.

3.11. "Facilities" shall have the meaning assigned to it in the Recitals of this Declaration.

3.12. "FHA" shall mean and refer to the Federal Housing Authority of the United States Department of Housing and Urban Development.

3.13. "Improved Lot" shall mean and refer to any Lot on which the improvements constructed thereon are sufficiently complete to be occupied as a Dwelling Unit or as multiple Dwelling Units.

3.14. "Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Areas or any valid charge against the Limited Common Areas as a whole. Such expenses shall be assessed against those Dwelling Units having the exclusive or special rights in the use or enjoyment of the Limited Common Areas.

3.15. "Limited Common Area(s)" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements described or referred to in any declaration applicable to the Property or Recorded Plat of the Property as intended for the use only of the Owners of particular Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units so designated or shown in such declaration or Recorded Plat.

3.16. "Lot" shall mean and refer to any numbered parcel of land within the Subdivision known as the Colonies at Cedar Crest which is intended for use as a site for a Dwelling Unit or multiple Dwelling Units, as shown upon any Recorded Plat on any part of the Property and labeled thereon as a "Lot".

3.17. "Member" shall mean a member of the Association and shall refer to an Owner in the Property.

3.18. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling Unit situated upon the Property. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Member" and "Owner" are meant to describe all of the owners of Dwelling Units interchangeably as semantics dictate throughout this Declaration.)

3.19. "Property" shall mean and refer to all the real property defined in Section 1.1 and Section 2.1 hereof and more particularly described in Exhibit B, as well as any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of Article One of this Declaration.

3.20. "Recorded Instrument" shall mean and refer to any document relating to the Property, or any portion thereof, recorded in the Douglas County Registry and executed by the Declarant (during Class II membership, and by the Association otherwise) to show its consent thereto (and by any other Owner(s) of property described therein and affected thereby if different). In any case in which the designation or description of the same property described in two different Recorded Instruments is different (for example, property is designated as a Lot in one instrument and a street in another, or legal boundaries of areas are described differently in different Recorded Instruments), the designation and description on the later-recorded of the Recorded Instruments shall control.

3.21. "Recorded Plat" shall mean and refer to any map of the Property, or any portion thereof, recorded in the Douglas County Registry and executed by the Declarant.

3.22. "Special Individual Assessments" shall have the meaning assigned to it in Section 10.5 of this Declaration.

3.23. "Supplemental Declaration" shall have the meaning assigned to it in Section 1.2 of this Declaration.

3.24. "Townhome(s)" shall have the meaning assigned to it in the Recitals of this Declaration.

3.25. "Townhome Lot" shall refer to the Lots intended or shown on any Recorded Plat for the construction of single-family attached Dwelling Units that are a part of Lot 1 of the Colonies at Cedar Crest and shall be exclusively restricted to use as Townhome Lots or Common Area only.

3.26. "VA" shall mean and refer to the United States Department of Veterans Affairs.

**ARTICLE FOUR  
DURATION; NOTICES; ENFORCEMENT**

**4.1 Duration.** The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by Declarant, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for the term of the Declaration, as amended and executed from time to time. This Declaration may be amended in accordance with the provisions of Article 7 and Article 13 hereof. Amendments made in conformity with these Articles may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof.

**4.2 Termination.** The termination of this Declaration shall require both the assent of Declarant, as long as Declarant owns any portion of the Property, and the assent of at least two thirds (66.7%) of the votes in the Association, taken at a meeting duly called and held for this purpose.

**4.3 Notices.** Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**4.4 Enforcement.**

a. The Association, Declarant, and/or any Owner may enforce these covenants and restrictions. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

b. The Association or the Declarant may impose fines or suspend privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant or the Association. In such circumstances, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if an Owner should be fined or if privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be Assessments secured by liens as more particularly described in Article Ten hereof. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The proceedings imposing fines shall be conducted in accordance with the provisions of the Nebraska Statutes as they may be amended from time to time.

**ARTICLE FIVE  
DESIGN REVIEW**

**5.1 Association Control.** The Property shall be subject to the design review provisions contained in the covenants and shall be subject to the authority of the Association contained herein.

ARTICLE SIX  
RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION,  
DECLARANT AND OWNERS

6.1 Permissible Uses. No Dwelling Unit shall be used except for residential purposes (with the exception of ) any sales center, office, building or model home constructed or used by the Declarant, his agent or any builder who has received the prior written permission of Declarant.

6.2 Division of Lots; No Time Sharing.

a. No dwelling unit shall be further subdivided into multiple Dwelling Units.

b. No ownership interest may be subdivided to permit time sharing or other devices to affect interval ownership. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

6.3 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the streets or roads and over any Lot shown on any Recorded Plat of the Property, within ten (10) feet of each front property line, within ten (10) feet along the rear property line of each Lot and over such other areas as are so identified on any recorded plats of the Property, provided that existing Dwelling Units shall not be disturbed. In addition, the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance.

6.4 Release of easements. The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property, but it may do so only until two years after Class II membership has last terminated.

6.5 Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist.

6.6 Rear Yard Access Easements. Declarant hereby reserves and declares a perpetual appurtenant ten (10) foot wide access easement across the rear of each Lot and adjoining and parallel with the rear property line of such Lot for the benefit of the adjoining Lots for the purpose of accessing the rear yards of each Lot, to the extent the same is required by any Lot Owner to reach the rear yard of his own Lot. This easement shall create no right of access in or to the general public or to any person who is not the Owner or agent of the Owner of a townhome Lot in the Property, and this easement shall only be exercised by an Owner for accessing his own Lot by foot. No Owner of any Lot shall erect any barrier which would impair or prevent the use of this easement. Simple privacy fencing not attached to the dwelling unit and no greater than 6 feet high and ten feet long may be erected subject to the general easements described in this declaration.

ARTICLE SEVEN  
ADDITIONAL RIGHTS RESERVED TO DECLARANT

7.1 Withdrawal of Property.

The Declarant shall not have the right to withdraw any of the Property from the terms of this Declaration without the consent of at least two-thirds of the Lot Owners other than the Declarant.

7.2 Right to Transfer or Assign Declarant Rights. Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner to transfer or assign declarant rights as described in this and subsequent sections.

7.3. Declarant's Right to Unilaterally amend; Control of Board.

a. Reservation of Development Rights.

Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to add real estate to the Property, (ii) to create Units, Common Elements or limited Common Elements, (iii) to subdivide Lots, (iv) to realign or change the boundaries of any Common Elements, (v) to withdraw real estate from the Property or from the Common Elements, and (vi) to amend this Declaration in order to ensure development of the Property in accordance with Declarant's development plan for the Property or the Community, or for the exercise of any development right or Special Declarant Right (collectively, "Development Rights").

b. Reservation of Special Declarant Rights. Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to exercise Special Declarant Rights as reserved elsewhere in this Declaration, (ii) to complete improvements indicated on plats and plans recorded before, with or pursuant to this Declaration, (iii) to exercise any Development Right, (iv) to maintain sales offices, management offices, signs advertising the Property, and models, (v) to use easements through the Common Elements for making improvements within the Property or within real estate which may be added to the Property, (vi) to make the Property part of a larger planned community or group of planned communities, (vii) to make the Property part of a Master Association, and (viii) to appoint or remove any Director or officer of the Association or of any Master Association during any period when Class II membership exists (collectively, "Special Declarant Rights").

ARTICLE EIGHT  
MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION  
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

8.1 Membership. Every person or entity who is a record Owner of a fee simple interest in any Dwelling Unit in the Property is subject by this and any other declarations made in connection herewith to all rights, responsibilities and assessments of the Association and shall be a Member of the Association, provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

8.2 Voting Classes. The Association shall have two (2) classes of voting memberships:

a. Class I. The Class I Members shall be all Owners of Dwelling Units within the Property, other than the Declarant as long as Class II membership exists. Any Class I Member in the Property shall be entitled to one (1) vote for each Dwelling Unit which it owns. In the case of multiple ownership of any Dwelling Unit, however, those multiple Owners shall be treated collectively as one Owner.

b. Class II. The Class II Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot or Dwelling Unit owned by it within the Property. The Class II membership shall cease and be converted to Class I membership on the happening of the first to occur of the following events:

- i. Declarant has sold and closed the sale of seventy-five percent (75%) of all Dwelling Units within the Property, or
- ii. December 31, 2006.



c. If the Class II membership has been terminated or has expired and subsequently additional properties owned by the Declarant thereafter become subject to this Declaration pursuant to Section 1.1, the Class II membership shall immediately be reinstated as of the date such additional properties become subject to this Declaration and shall not terminate until Declarant has sold and closed the sale of seventy-five percent (75%) of all Dwelling Units within the entirety of the property then comprising the Property.

### 8.3 Voting; Proxies.

a. In the event only one of the multiple Owners of a Dwelling Unit is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Dwelling Unit. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Dwelling Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Dwelling Unit.

b. Votes allocated to a Dwelling Unit may be cast pursuant to a proxy duly executed by an Owner. If a Dwelling Unit is owned by more than one person, each Owner of the Dwelling Unit may vote or register protest to the casting of votes by the other Owners of the Dwelling Unit through a duly executed proxy.

c. No votes allocated to a Dwelling Unit owned by the Association may be cast.

8.4 Rights and Responsibilities of the Association. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all improvements thereon and all furnishings, equipment and other personal property relating thereto as well as certain Limited Common Areas as provided in this Declaration. The Association's duties with respect to such Common Areas include, but are not limited to, the following:

a. maintenance of the Common Areas, including irrigation maintenance, snow removal, lawn mowing, and landscaping;

b. management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Areas or located upon the Common Areas so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;

c. maintenance of adequate public liability insurance insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of eighty percent (80%) after application of any deductibles, for the benefit of the Association with respect to the Property, all of the foregoing insurance policies being maintained and insurance proceeds being used in compliance with the provisions of Nebraska General Statutes Section 76-871 as amended from time to time;

e. payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Areas;

f. maintenance of private streets and recreational and other facilities located on the Common Areas;

g. payment of assessments for public and private capital improvements made to or for the benefit of the Common Areas;

h. maintenance and repair of the yards and exteriors of the Townhomes, and insurance upon the same as more specifically set forth herein.

i. The Association may in its discretion also provide other services as and to the extent the Association deems appropriate.

8.6 Third-Party Services The Association may, acting through its Board, contract with other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Association and its Members.

8.7 Ownership by the Association. The Association may acquire, hold, exchange and dispose of (subject to any applicable FHA requirements) real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in this Declaration, the Association's Articles of Incorporation or the Bylaws.

8.8 Rules and Regulations. The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing use and operation of the Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property.

8.9 Non-Performance by Owner. The Association may perform any duty required of an Owner hereunder or under the Bylaws and assess the costs thereof against the Owner's Dwelling Unit(s), as a Special Individual Assessment in accordance with the provisions of Sections 10.5 hereof. Expenses of the Association in performing these tasks shall be a Common Expense.

## ARTICLE NINE PROPERTY RIGHTS IN THE COMMON AREAS

9.1 Members' Easements of Enjoyment. Subject to the provisions of Section 9.3, every Member shall have a right and easement of enjoyment in and to all of the Common Areas and the Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit in the Property.

9.2 Delegation of Use. Any Owner may delegate its rights of enjoyment of the Common Areas and the Facilities to the members of its family, its tenants, contract purchasers who reside on the property, or its guests.

9.3 Owners' Personal Property. The Association or the Declarant shall not be liable in any manner for the safekeeping, condition or loss of any vehicle or other personal property belonging to or used by an Owner or his family, guests or invitees, located on or used in the Common Areas or the Limited Common Areas.

9.4 Private Roads. In the future development of the Property, the Declarant may construct certain private streets or roads within the Property connecting parcels of the Property to public rights of way. The Owners of those Lots bordering such private roads shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads, and there shall be no public rights of any kind therein, unless approved by the Members in accordance with the provisions of this Section. Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads.

ARTICLE TEN  
COVENANT FOR PAYMENT OF ASSESSMENTS

10.1 Creation of the Lien and Personal Obligation for Assessments. Each Member who is the owner of any Dwelling Unit, by acceptance of a deed therefor, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay as limited below, to the Association:

- a. annual assessments or charges as herein or in the Bylaws provided,
- b. special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- c. Special Individual Assessments, as defined and described in Section 10.5.
- d. The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Units against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

10.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Property and other Members, and in particular for:

- a. improvement, maintenance, and replacement of any of the Association's Common Areas;
- b. payment of the Common Expenses, which includes property insurance covering each dwelling unit and the building in which it is located and as described in Section 11.4;
- c. maintenance of the exteriors of the Dwelling Units and related improvements on Improved Lots in the Property, including siding, thresholds, the exterior of window and doors frames, paint, gutters, roofs, foundations, walkways, lawns and landscaping, but not including repair or replacement of any window glass or maintenance of any improvement added to a Dwelling Unit after completion of initial construction thereof by the Owner or occupant of such Dwelling Unit;
- d. establishment of capital replacement reserves; and
- e. acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Areas, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Areas, the procurement and maintenance of liability insurance related to those Common Areas, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

10.3 Assessments of Uniform Rates and Allocation of common elements and expenses. Annual and special assessments shall be fixed at uniform rates for every similar Dwelling Unit receiving similar services within the Property. Assessments partially paid to the Association shall not in any way diminish or offset any remaining assessments due and owing under the terms of the Declaration to the Association unless otherwise specifically provided.

Each member shall be allocated a fractional percentage of the common expenses of the association in proportion to the percentage of units included in the association.

- a. The formula to calculate this allocation will be the result of the fractional interest derived by dividing the unit by the total number of units in the Association. For example; if there are three units, each unit would be allocated 33.33% (1/3) of the assessment.
- b. If additional units are added or withdrawn from the association the formula will not change. For example; if two additional units are added, the total number of units to be used as the divisor will be five. This would result in the fractional interest to be reduced to 20.0% (1/5) of the total assessment.

10.4 Special Assessments for Capital Improvements.

a. In addition to the regular annual Assessments, the Association may levy in any assessment year, a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement located upon the Association's Common Areas, or Limited Common Areas (in the discretion of the Association), including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meetings.

b. In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives an immediate threat to persons or to property, without the consent of the Members. The amount of such Assessment, however, may not exceed \$300.00 per Lot or Dwelling Unit per year.

10.5 Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Dwelling Unit rather than on all Lots, Dwelling Units or types of Lots or Dwelling Units in the Property, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained herein or in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws.

10.6 Application of Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses (including expenses for special Assessments described in Section 10.4 hereof), the funding of a reasonable operating expense surplus, and any prepayment of reserves, shall be paid to the existing Owners in proportion to their Commons Expense liabilities or credited to them to reduce their future Common Expense Assessments, the election of which application of the funds shall be made by the Board.

10.7 Date of Commencement of Annual Assessment: Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in monthly, quarterly, semiannual, or annual installments. The payment of the regular annual Assessment by Owners shall commence as to each Lot or Dwelling Unit, on the first day of the month following the conveyance of that property by the Declarant. The

first regular annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment at least fifteen (15) days in advance of each regular annual Assessment period. Written notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific Assessment has been paid. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance. The first Assessments levied against any additions to the Property not now subject to Assessment, at a time other than the beginning of any Assessment period, shall be an amount which bears the same relationship to the regular annual Assessment as the remaining number of months in that year bear to twelve. The due date of any special Assessment under Section 10.4 or any other Assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such Assessment.

#### 10.8 Duties of the Board of Directors.

a. The Board of Directors of the Association shall fix the amount of the Assessment or Assessments against each Member, for each Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Unless otherwise provided by the Board of Directors of the Association, the annual Assessment Period shall be deemed the calendar year commencing January 1<sup>st</sup> and ending December 31<sup>st</sup> of any year. The Board of Directors of the Association shall have the right to change the Annual Assessment Period to a fiscal year other than a calendar year by vote of the Board of Directors.

b. Within thirty (30) days after adoption of any proposed budget for the Townhomes, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than fourteen (14) nor more than thirty (30) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified at the meeting unless at that meeting a majority of the Owners in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

10.9 Judgments against Association. Assessments to pay a judgment against the Association may be made only against the Dwelling Units at the time the judgment was entered, in proportion to their Common Expense liabilities. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

#### 10.10 Effect of Non-Payment of an Owner's Assessment; Personal Obligation of the Owner; Lien; Remedies of Association.

a. If the Assessments of an Owner are not paid within thirty (30) days following the date due (being the dates referred to in Section 10.7), then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the or Dwelling Unit(s), as appropriate, from and after the time of the filing of a claim of lien with the Clerk of Superior Court of Douglas County, which lien shall bind such Dwelling Unit(s), as appropriate, in the hands of the then-Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Dwelling Unit, as appropriate) unless expressly waived by the Board.

b. If the Assessment(s) is not paid within thirty (30) days after the due date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Dwelling Unit(s), as appropriate, in like manner as a mortgage on real estate under power of sale under the Nebraska General Statutes, and there shall be added to the amount of such Assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Association pursuant to authority of the Board. A claim of lien shall specify the name and address of the Association, the name of the record owner of the Dwelling Unit at the time the claim of lien is filed, a description of the Dwelling Unit, and the amount of the lien claimed. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the due date, which late fees shall be in addition to the other changes described herein.

10.11 Subordination of the Lien on an Owner's Property to Mortgages or Deeds of the Trust. The lien on an Owner's property of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Dwelling Unit(s), subject to Assessment. The subordination shall not relieve any Dwelling Unit(s), from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Dwelling Unit shall not affect any lien for Assessments. However, the sale or transfer of a Dwelling Unit that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectable as a Common Expense from all Owners. No such sale or transfer shall relieve a Dwelling Unit from liability for any assessments thereafter becoming due, or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

10.12 Declarant's Obligations for Assessments. As long as and whenever the Declarant owns Dwelling Units the Declarant's obligation for Assessments on unsold Units subject to this Declaration will be calculated as if the Declarant owned a Unit as a member.

10.13 Maximum Annual Assessment. Starting on the first of the month immediately following the month of conveyance of the first Dwelling Unit from the Declarant, the maximum annual Assessment, including the assessment for Homeowners insurance, shall be \$1800.00 per Dwelling Unit. For each year after January 1 of the year immediately following the conveyance of the first Dwelling Unit from the Declarant, the annual Assessment each year shall be increased no more than ten percent (10%) of the previous years' Assessment, unless two-thirds or more of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than ten percent (10%) more than the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described here or determined by the duly called meeting as described above. The limitation in the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to a) a merger or consolidation in which the Association is authorized by law to participate, b) as an incident to any additions to the Property or submission of additional property pursuant to Section 1.1 of this Declaration, or c) a special emergency Assessment pursuant to Section 10.4(b) hereof.

10.14. Attorneys' Fees. In any action brought by the Association to enforce any provisions of the Articles of Incorporation, this Declaration, the Bylaws, or the duly-adopted rules and regulations of the Association, the court may award reasonable attorneys' fees to the prevailing party.

ARTICLE ELEVEN  
EXTERIOR MAINTENANCE AND INSURANCE

11.1 Exterior Maintenance. The Association shall provide routine maintenance and repair services for the exterior of each Dwelling Unit in the Property as Common Expenses. Such services shall include maintenance and repair of all exterior surfaces including roofs, siding, trim, gutters and downspouts, porches, stoops, patios, railings, light fixtures, driveways, walkways and the exterior surfaces of exterior doors, provided the same were originally provided by the original builder of the Dwelling Unit, as well as ordinary lawn and landscaping care. It shall be the duty of the Owner and not the Association to maintain the following: glass surfaces, light bulbs, window and door screens, weather-stripping, and any exterior improvement, including trees, plants, flowers or other landscaping, not originally provided by the original builder of the Dwelling Unit or by the Association. The Board of the Association shall provide the aforesaid maintenance as it determines in its sole discretion in order to uphold the aesthetic quality and property values of the Property, but in any event, upon a regular written schedule. A blanket easement over each Lot and the exterior of each Dwelling Unit in the Property is hereby reserved for the Association to perform such maintenance at all reasonable times.

11.2 Costs of Maintenance. No maintenance performed by an Owner shall have the effect of reducing his liability for payment of Assessments to the Association. Should a need for maintenance be caused by the negligent or intentional acts of an Owner, his family members, guests, tenants, invitees, contractors, employees or agents, the costs of the same shall be a Special Individual Assessment payable by that Owner and enforceable as set forth in Article Ten hereof.

11.3 Association's Duty to Rebuild Townhome Units. After the completion of a Dwelling Unit on a Lot by its initial builder and conveyance of the same to the initial Owner, if such unit suffers casualty damage by fire or other means, the Association shall, with the concurrence of the first mortgagee of the unit, if any, contract to rebuild or repair such damage in accordance with the unit's original plans and specifications upon receipt of the insurance proceeds covering the loss. **In the event the insurance proceeds are insufficient to pay all the costs to repair or rebuild, the Board reserves the right to use monies in the capital replacement reserves to meet the deficiency. If the damages require additional proceeds, the Board shall levy a Special Assessment upon all Members as required to cover any deficiency.**

11.4 Association to Maintain Insurance on Townhome Units. The Association shall maintain property insurance covering each Dwelling Unit and the building in which it is located once each such unit has been conveyed by its builder to the initial Owner who intends to use it as a residence and thereafter, **and the expense of such insurance shall be an Expense that is included in the common expenses as defined in Section 10.2 of this Declaration.** The insurance shall name the Board of the Association as Trustee for the Lot Owners, for the benefit of the Owners and their respective mortgagees, as their respective interests may appear. The insurance shall cover not less than 100%, subject to deductibles, of the replacement cost of each Dwelling Unit and building, **but not including the cost of the land, driveway, foundation, excavations and other such commonly excluded items.** The insurance shall afford coverage against all risks of direct physical loss, including fire and other hazards covered by the standard extended coverage endorsement, as well as such other risks as may be advisable in the Board's discretion. The insurance shall include the following provisions:

- a. That each Owner is an insured person under the policy to the extent of his insurable interest;
- b. That the insurer waives its right of subrogation against the Owner or member of his household;
- c. That no act or omission by the Owner, unless acting within the scope of his actual authority on behalf of the Association, will preclude recovery under the policy;
- d. That the policy may not be canceled or significantly modified without at least thirty (30) days prior written notice to all insured, including any mortgagees; and

e. That the policy shall be considered the primary policy should there be other insurance in the name of the Lot Owner covering the same loss.

f. Any loss covered by the insurance shall be adjusted with the Association, but the proceeds for any loss are payable as directed by the Association and not to any mortgagee. Proceeds shall be held in trust for the benefit of Owners and lien holders as their interests may appear. Proceeds shall be disbursed first for restoration and repair of the damaged property, and Owners and lien holders shall not be entitled to any portion of the proceeds unless there is a surplus after complete restoration and repair, or the entire Association is terminated.

11.5 Insurance to be maintained by Lot Owner. Each Lot Owner shall, at the time of acquiring possession to his Dwelling Unit, and during all times of his ownership or use, shall maintain the following insurance:

a. Property insurance covering all of his personal property on the Dwelling Unit. The insurer under such policy shall waive any right of subrogation against the Association and all other Unit Owners for negligence resulting in a loss to such personal property; and

b. Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of such Owner's Dwelling Unit, including a waiver of subrogation provision as to any rights the insurer may have against the Association or other Owners for any loss.



ARTICLE TWELVE  
PARTY WALLS, RIGHT TO CONTRIBUTION, ARBITRATION

12.1 General Rules of Law Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof.

12.2 Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in equal shares, to the extent such maintenance is not the responsibility of the Association under Article 11 of this declaration.

12.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if any other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in his proportionate share, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

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

12.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

12.6 Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repairs, maintenance, or reconstruction of a party wall. Such repairs, maintenance, or reconstruction shall be done expeditiously and in a professional manner, and, upon completion of the work, the Owner shall restore the adjoining Units to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

12.7 Certification With Respect to Contribution. If any Owner desires to sell his Dwelling Unit he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification within fifteen (15) days of such request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor, which shall be binding on the adjoining Owner claiming the right.

12.8 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. All arbitrators chosen shall be either architects, engineers, general contractors or attorneys licensed as such in Nebraska.

ARTICLE THIRTEEN  
AMENDMENT TO DECLARATION

13.1 **Owner/Member Initiated.** Declarant reserves the rights to; a) complete improvements indicated on plats and plans filed with this declaration, b) display signs advertising the condominium and to utilize models, c) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium. d) make the condominium part of a larger condominium, e) appoint or remove any officer of the association or any executive board member during any period of declarant control.

ARTICLE FOURTEEN  
VA AND FHA APPROVAL

In the event that any Owner hereafter finances its Dwelling Unit through a loan guaranteed or insured by the VA or the FHA or Dwelling Units within the Property are approved by the VA or the FHA as being eligible for such loans, then, until all Class II Membership ceases to exist and be converted to Class I Membership as provided in Article Eight hereof, the approval of either the VA or the FHA shall be obtained prior to: (i) the annexation of additional property to the Property subject to this Declaration, (ii) dedication of additional Common Areas other than the Common Areas or Common Properties designated on existing plats of the Property, and (iii) amendment of this Declaration.

ARTICLE FIFTEEN  
SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of Nebraska without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed by authority duly granted as of the date written.

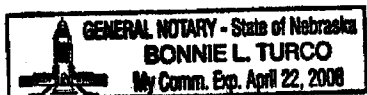
Date 7/16/2004

By: Wayne E. Brewster  
Wayne E. Brewster  
Dba Brewster Homes

State of Nebraska )  
                          ) ss.  
County of Douglas )

On this 16 day of July, 2004 Wayne E. Brewster, dba Brewster Homes, personally appeared before me, whose identity was proved on the basis of satisfactory evidence to be the person whose name is subscribed on this Declaration.

Bonnie L. Turco  
Notary Public



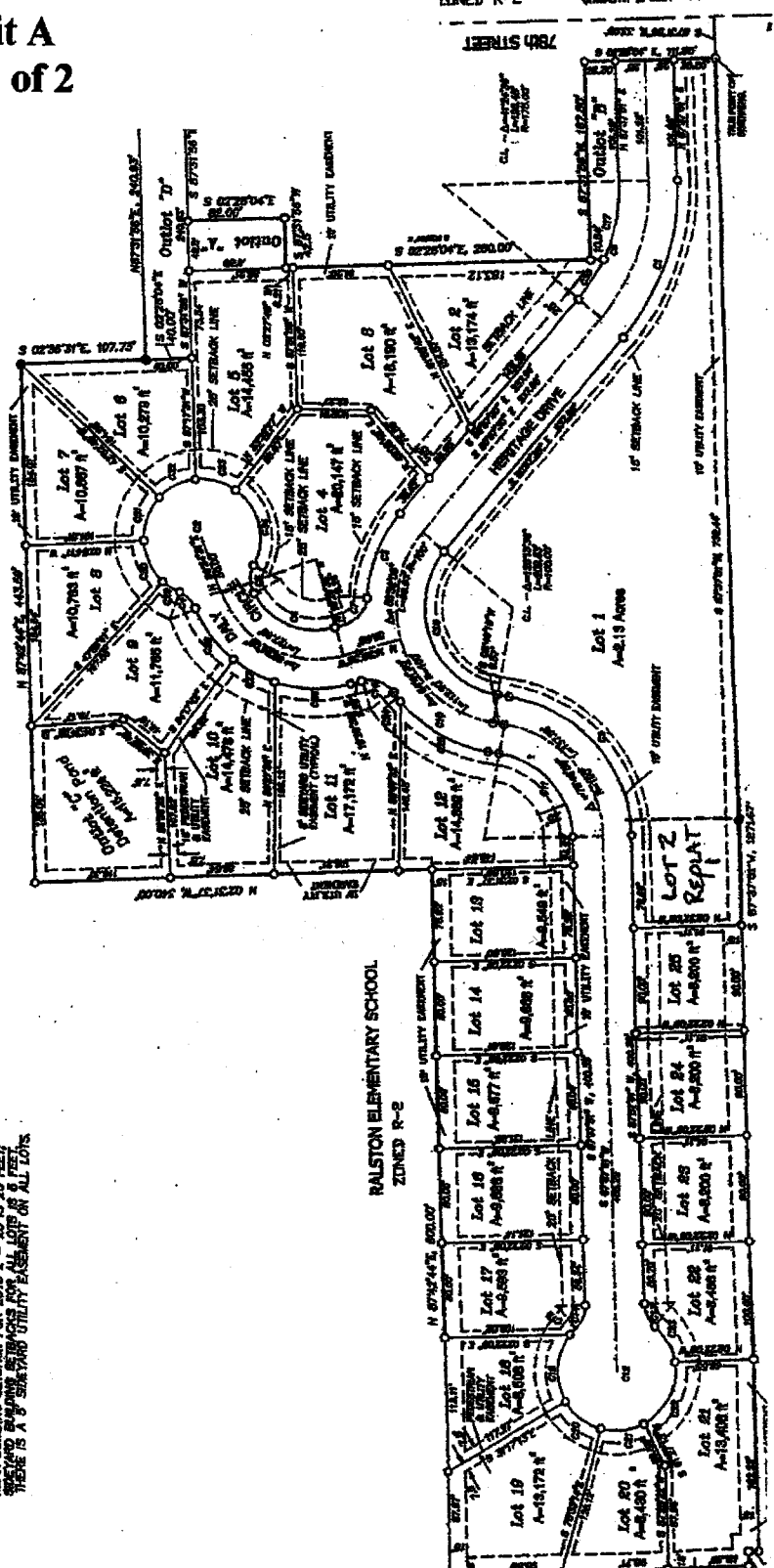
# The Heritage Circle Condominium Association

## Exhibit A Page 1 of 2

A TRACT OF LAND LOCATED IN THE EAST ONE HALF OF THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA

- NOTES:
- - SET 1/2" REAR W/CAP STAMPED L.S. NO. 607
  - - FOUND 1" REBAR
- REARINGS BASED ON RECORD SURVEY WHICH STATES THAT THE EAST LINE OF THE SOUTHWEST QUARTER BEARS S 02°28'04"E.
- LOT 1 IS ZONED R-1 WITH A PLUD. OVERLAY.  
REAR BUILDING SETBACK FOR LOT 1 IS 10 FEET.  
REAR BUILDING SETBACK FOR LOTS 2 - 28 IS 20 FEET.  
REAR BUILDING SETBACK FOR ALL LOTS IS 5 FEET.  
THERE IS A 5' SIDEYARD UTILITY EASEMENT ON ALL LOTS.

PLUM RIDGE SUBDIVISION  
ZONED R-1

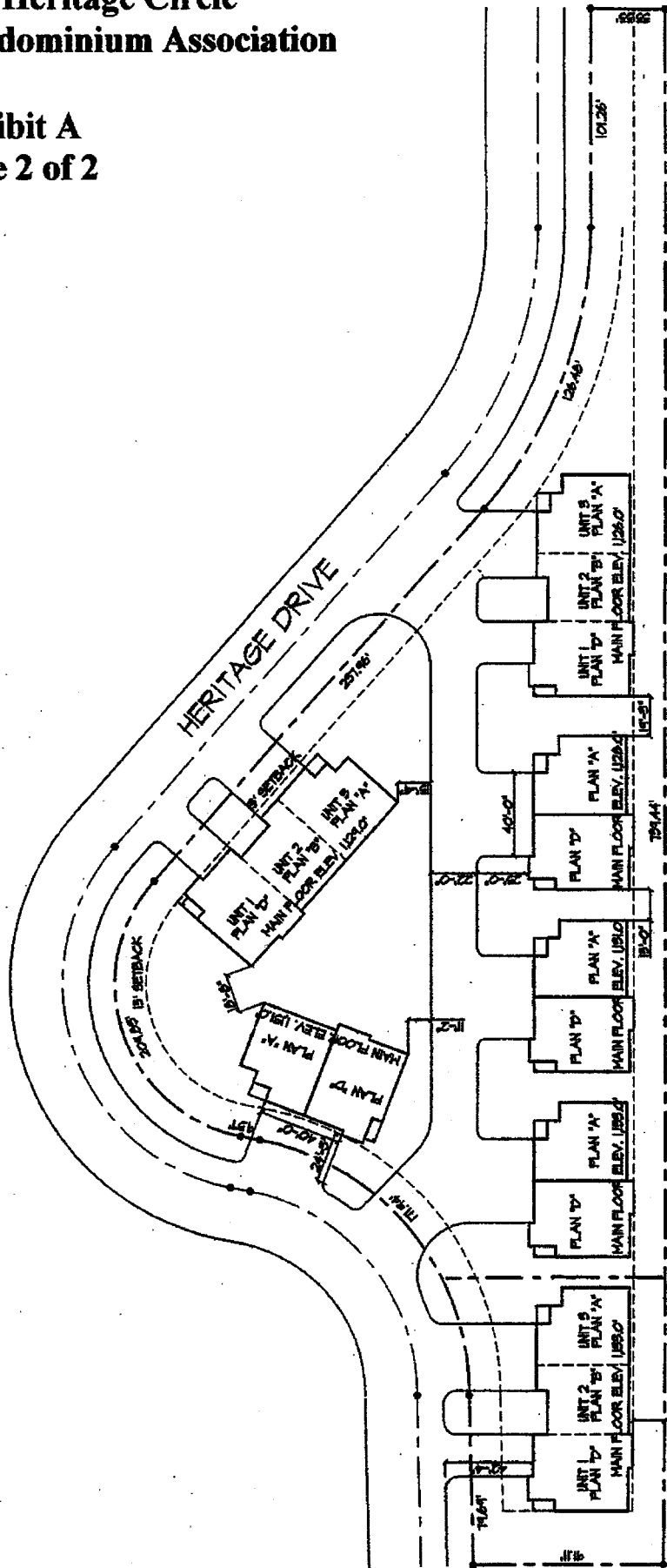


RALSTON ELEMENTARY SCHOOL  
ZONED R-2

ZONED R-2

# The Heritage Circle Condominium Association

Exhibit A  
Page 2 of 2



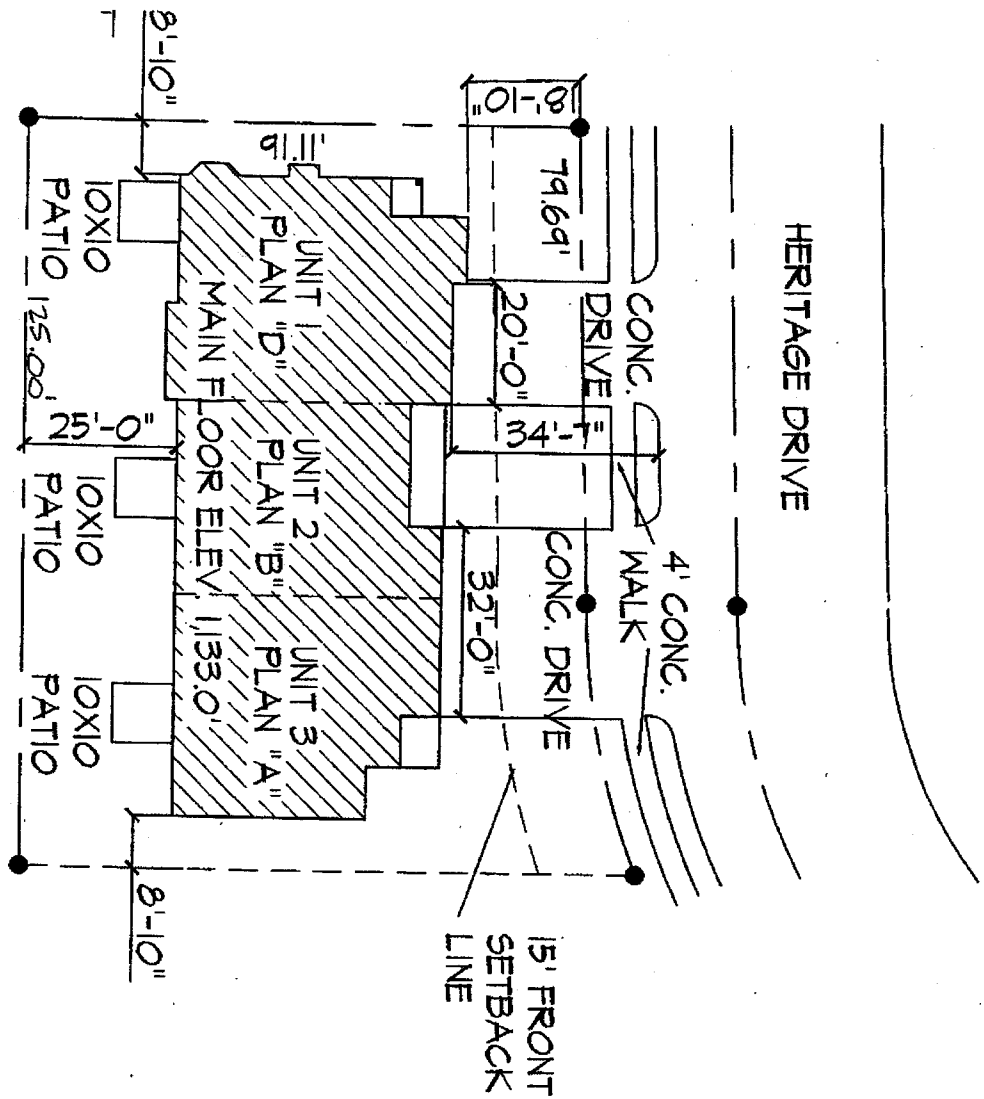
LOT #1  
CEDAR CREST  
DOUGLAS COUNTY, NEBRASKA

PRELIMINARY SITE PLAN  
SCALE: 1" = 50'-0"

125'

The Heritage Circle  
Condominium Association

Exhibit B  
Page 1 of 2



Lot 2, The Colonies at Cedar Crest Replat I

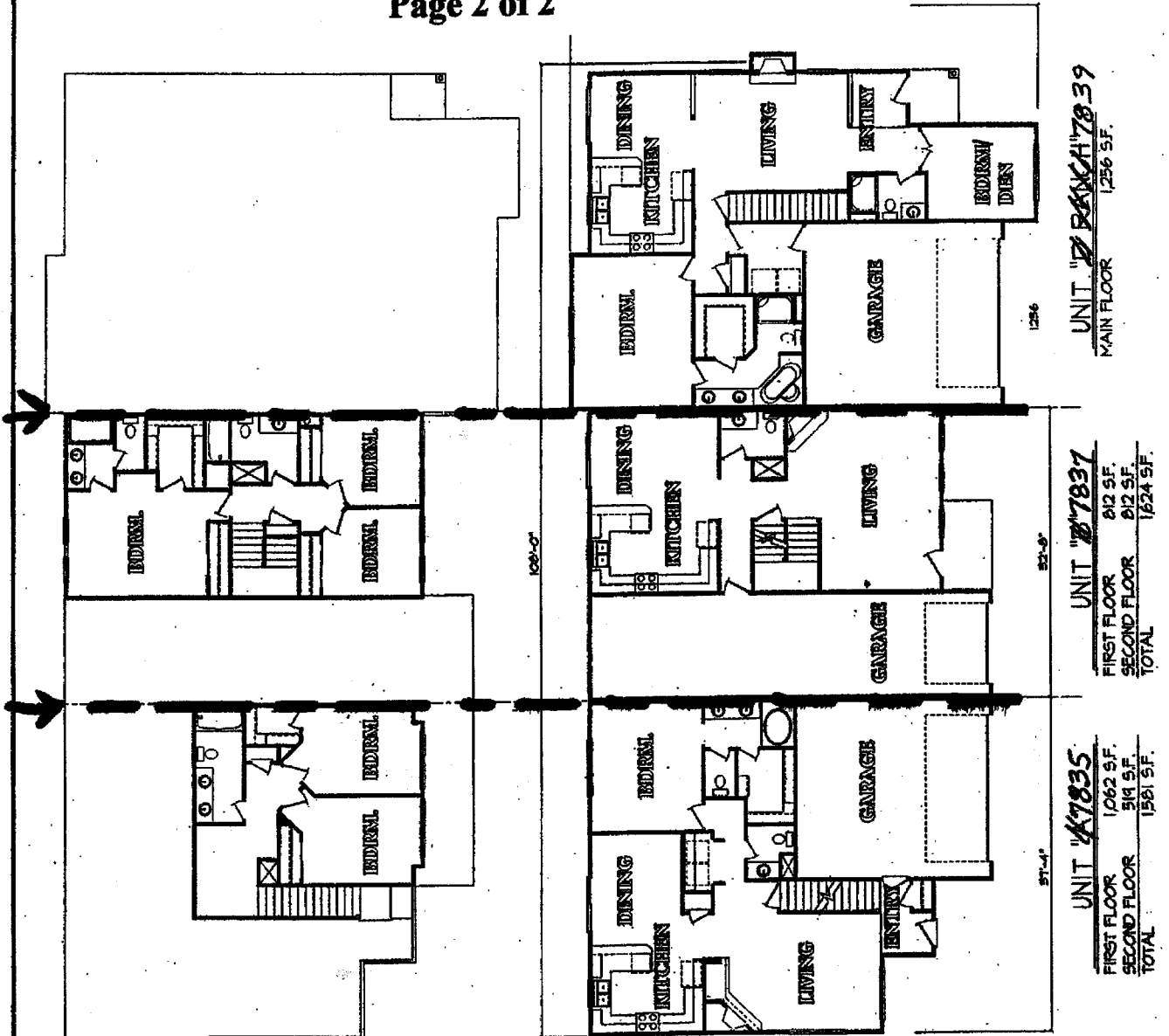
BREWSTER HOMES

The Heritage Circle  
Condominium Association

Exhibit B  
Page 2 of 2

TRI-PLEX

PARTY WALLS



**Exhibit C**

**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF THE TOWN  
HOMES AT THE COLONIES AT CEDAR CREST, A  
SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA**

**PRELIMINARY STATEMENT**

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

Lot 1 in The Colonies at Cedar Crest, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Dwelling units to be built on this lot will be single family attached homes. Such homes are herein referred to collectively as the "Dwelling Units" and individually as each "Unit".

The Declarant desires to provide for the preservation of the values and amenities of The Town Homes at the Colonies at Cedar Crest, for the maintenance of the character and residential integrity of The Colonies at Cedar Crest, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of The Colonies at Cedar Crest.

**NOW, THEREFORE**, the Declarant hereby declares that each and all of the Units 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 Units, and the enjoyment of the residents of the Units. These restrictions, covenants, conditions and easements shall run with such Units and shall be binding upon all parties having or acquiring any right, title or interest in each Unit, or any part be subject to all and each of the following conditions and other terms:

**ARTICLE I**

1           Lot 1 or parts thereof as may hereafter be conveyed or dedicated by Declarant, its successors or assigns, shall be used for the construction of multi family attached residences. Each dwelling unit (hereafter referred to as a Unit) shall have an assessed value of at least \$150,000. The minimum square footage for each lot shall be 1200 square feet.

In complying with the requirements of this paragraph, upon completion of construction of a home on a Lot, each Owner of such Lot subject to these restrictions hereby waives his or her right to protest a valuation by the Douglas County Assessor of the Lot and improvements thereon in the above minimum amount. No Owner shall apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying Lot.

Each Owner shall maintain HOA-6 insurance to cover their personal property. The Master Association will carry hazard insurance on the structures for one hundred percent (100%) percent of the full value of the structures on the Lot, but not including the cost of the land, driveway, foundation, excavations and other such commonly excluded items, and, in the event of casualty, apply such insurance proceeds to the reconstruction of such improvements. No Owner shall transfer their Unit to any entity exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes. All real estate taxes and assessments levied on a Unit shall be paid before the same become delinquent.

2.       No residence, building, fence (other than fences constructed by the Declarant), wall, pathway, driveway,

patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or "discs", solar heating or cooling device, 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, excavation or tree removal for any improvement be commenced, except for Improvements which have been approved by Declarant.

3. All Improvements on the Lots shall comply with all set back and side yard requirements of the Zoning Code of the Municipal Code of the City of Ralston, Nebraska.
4. The exposed front foundation walls and any foundation walls facing a street of all structures must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All corner lots with exposed foundation walls facing any side street shall be clay-fired brick or stone 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. All foundations shall be constructed of concrete or concrete blocks. A fireplace chimney or the enclosure of the fireplace flue, which is located on the front side of a residence, shall be constructed of, or finished with, clay-fired brick or stone. All other fireplace chimneys may be covered with wood or vinyl or other material approved in writing by Declarant. The roof of the Improvements shall be covered with asphalt shake shingles.
5. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising signs, billboards, unsightly objects or nuisances shall be erected, place or permitted to remain on any Lot, except for a sign identifying a home as "For Sale". No business activities shall be conducted on the premises, which may endanger the health or unreasonably disturb the owner or owners of any Unit 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 Units.
6. No obnoxious or offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. 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 Units.
7. Exterior television or radio antenna of any sort shall not be permitted on any Lot, except a satellite receiving dish not exceeding twenty-four (24) inches in diameter and attached directly to the residence may be permitted provided that the location and size of the of the proposed satellite receiving dish be first approved by the Declarant, or its assigns. No tree houses, tool sheds, doll houses, pool houses or similar structures shall be permitted on any Lot.
8. No repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles 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.
9. 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 thirty (30) 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 semi tractors/trailers shall be stored, parked, kept or maintained in any yard, driveways, or streets. However, this Section 9 shall not apply to trucks, tractors or commercial vehicles, which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of



the City of Ralston, Nebraska.

10. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container of 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 rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.
11. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No chain link fencing shall be allowed, unless installed by Declarant. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of wood, wrought iron, brick or plastic vinyl coated (PVC) material. No fences or walls shall exceed a height of six (6) feet. Any fences, hedges or mass planted shrubs installed by or at the direction of the Declarant shall not be subject to the provisions of this paragraph, but shall be maintained by the owner of the Lot on which such fence sits and, in the event repair or replacement is necessary, such owner shall repair or replace with like materials of similar quality.
12. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot. The sidewalk shall be placed four (4) 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 Ralston.
13. Driveway approach 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 a driveway approach will be permitted.
14. No stable or other shelter for any animal, livestock, fowl, or poultry shall be erected, altered, placed or permitted to remain on any Lot. No animals, livestock, agricultural-type animals, fowl, or poultry of any kind, including pot-bellied pigs, shall be raised, bred or kept on a Lot, except that dogs, cats, or other household pets maintained within the residential structure may be kept provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Unit of their owner and are not permitted to run loose outside the Unit of the owner.
15. No structure of a temporary character, carport, trailer, tent, outbuilding or shack shall be erected upon or used on any Lot any time, either temporarily or permanently. No structure or dwelling shall be moved from outside The Colonies at Cedar Crest to any Lot or modular home constructed without the written approval of Declarant.
16. All utility service lines from each Lot line to a dwelling Unit or other Improvement shall be underground.
17. Each Unit shall be constructed, at a minimum, with an air conditioner and natural gas furnace.
18. Declarant does hereby reserve unto itself the right to require the installation of fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion. Any fence installed by or at the direction of the Declarant shall be maintained by the Owner of the Lot on which such fence is located, including the repair and replacement of such fence with material of substantially similar quality and color.

**ARTICLE II**  
**HOMEOWNERS ASSOCIATION**

Declarant will incorporate **THE HERITAGE DRIVE CONDOMINIUM ASSOCIATION**, a Nebraska not for profit corporation, to provide for the maintenance and care of all areas as described more completely in the Declaration for the common benefit of all of the residents of The Town Homes at the Colonies at Cedar Crest.

**ARTICLE III**  
**EASEMENTS**

1. Easements will be determined by the master plan for the Colonies at Cedar Crest and by the provisions for easement in the Declaration of the Heritage Circle Condominium Association.

**Exhibit D**

ARTICLE OF INCORPORATION OF THE HERITAGE DRIVE HOME OWNERS  
ASSOCIATION

In compliance with the requirements of the Nebraska Nonprofit Corporation Act, the undersigned, all of whom are full age, have this day-voluntarily associated themselves together for the purpose of forming a corporation not for profit and to hereby certify:

1. ARTICLE I

***Name***

The name of the corporation is The Heritage Drive Home Owners Association, hereafter called the "Association."

2. ARTICLE II

***Mutual Benefit Corporation***

The Association is a mutual benefit corporation.

3. ARTICLE III

***Principal Office***

The principal office of the Association is located at 6235 South 90<sup>th</sup> Street, Omaha, Nebraska 68127

4. ARTICLE IV

***Registered Agent and Office***

Denny Bray, is hereby appointed the initial registered agent of this Association and the registered office of the Association is located at 6235 South 90<sup>th</sup> Street, Omaha, NE 68127.

5. ARTICLE V

***Purpose and Powers of the Association***

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purpose for which it is formed are to provide for maintenance, preservation and architectural control of the residence Lots within that certain tract of property described as;

Lot 1 of the Colonies at Cedar Crest, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

And to promote the health, safety and welfare of the residents within the above-described property, of the homes situated on the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

a. exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set fourth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration," applicable to the property and recorded or to be recorded in the Office of the Register of Deeds of Douglas County, Nebraska and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length:

b. fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

c. acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

d. borrow money, and with the assent of two-thirds (2/3) of the members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

e. participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the members of the Association;

f. have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Nebraska by law may now or hereafter have or exercise.

## 6. ARTICLE VI

### **Membership**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or dwelling unit which is subject by covenants or record to assessment by the Association, including contract sellers, shall be a member of the Association. The forgoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

## 7. ARTICLE VII

## **Voting Rights**

The Association shall have two classes of voting membership:

Class A. Class I members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class II member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class I membership equal that total votes outstanding in the Class II membership; or
- (b) December 31, 2006.

## 8. ARTICLE VIII

### **Board of Directors**

The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association or be Owners. The number of directors may be changes by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Wayne Brewster	6235 South 90 <sup>th</sup> Street, Omaha, NE 68127
Mark Brewster	6235 South 90 <sup>th</sup> Street, Omaha, NE 68127
Denny Bray	6235 South 90 <sup>th</sup> Street, Omaha, NE 68127

At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one director for a term of three years.

## 9. ARTICLE IX

### **Dissolution**

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such

similar purposes.

10. ARTICLE X

**Duration**

The corporation shall exist perpetually.

11. ARTICLE XI

**Amendments**

These Articles may be amended at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Nebraska, we, the undersigned, constituting the incorporators of this Association, have executed these articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_ 200\_.

**INCORPORATOR AND DIRECTOR:**

---

Wayne Brewster  
6235 South 90th St  
Omaha, Nebraska 68127

**DIRECTOR:**

---

Mark Brewster  
6235 South 90<sup>th</sup> St  
Omaha, Nebraska 68127

**DIRECTOR:**

---

Denny Bray  
6235 South 90<sup>th</sup> St  
Omaha, Nebraska 68127

# EXHIBIT E

## BY-LAWS OF THE HERITAGE CIRCLE CONDOMINIUM ASSOCIATION

### ARTICLE I

**NAME AND LOCATION:** The name of the corporation is The Heritage Circle Condominium Association, Inc. hereinafter referred to as the "Association." The principal office of the corporation shall be located at 6235 South 90<sup>th</sup> Street, Omaha, Nebraska 68127, but meetings of members and directors may be held at such places within the State of Nebraska, as may be designated by the Board of Directors.

### ARTICLE II

#### Definitions

Section 1. "Association" shall mean and refer to The Heritage Circle Condominium Association, Inc. its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property defined and described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to any dwelling unit comprising a part of any building shown upon any recorded subdivision map of the Properties.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Declarant" shall mean and refer to Brewster Homes, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds in Douglas County, Nebraska.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### ARTICLE III

#### Meeting of Members

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 o'clock, p.m. If the day for the annual meeting of members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote of fifty (50%) percent of all of the votes of the Class I membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 14 days but not more than 30 days before such meeting to each member entitled to vote thereat, 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. 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. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-third (1/3) of the votes of the entire membership shall constitute a quorum for any action except as otherwise provided in the Article of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat 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.

Section 5. Proxies. At all meetings of members, each 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 of his/her Dwelling Unit.

#### **ARTICLE IV**

##### **Board of Directors: Selection: Term of Office**

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be members of the Association or Owners.

Section 2. Term of Office. At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one director for a term of three years.

Section 3. Removal. Any director may be removed from the Board, 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 remaining members of the Board 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.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### **ARTICLE V**

##### **Nomination and Election of Directors**



**Section 1. Nomination.** Nomination for election to the Board of Directors may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

**Section 2. Election.** Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VI**

### **Meetings of Directors**

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such date, place and hour as may be fixed from time to time by resolution of the Board.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## **ARTICLE VII**

### **Powers and Duties of the Board of Directors**

**Section 1. Powers.** The Board of Directors shall have 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. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- b. exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- c. declare the office of a member of the Board of Directors to be vacant in the event such members shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- d. employ a management company, manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

- a. cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by fifty (50%) percent of the Class A members who are entitled to vote;
- b. supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- c. as more fully provided in the Declaration, to:
  1. fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
  2. send written notice of each assessment, to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  3. foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- d. issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- e. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- f. as more fully provided in the Declaration, to:
  1. cause the exterior of any dwelling unit to be maintained;
  2. and to provide lawn service, including mowing, fertilizing and trimming; and
  3. to provide such other services or maintenance as may be deemed appropriate by the Board or by a two-thirds (2/3) vote of the Association.

**ARTICLE VIII**  
**Officers and Their Duties**

**Section 1. Enumeration of Offices.** The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

**Section 3. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he/she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may select 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 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. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of 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. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Sections 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 and resolutions of the Board are carried out.

**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 of him or her by the Board.

**Secretary**

c. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required b the Board.

**Treasurer**

d. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; 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 of each to the members.

**ARTICLE IX**  
**Committees**

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In

addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**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 Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

**ARTICLE XI**  
**Assessments**

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien on the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum rate of interest allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Dwelling Unit.

**ARTICLE XII**  
**Amendments**

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**ARTICLE XIV**  
**Miscellaneous**

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.