



MISC 2004123317

misc #135.00
150
FFB 135.00 FB J 3053E
RKP C/O COMB
DEL SCAN FV



SEP 16 2004 15:16 P 12

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
9/16/2004 15:16:40.83



2004123317

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF A PART OF PINE CREEK, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by NORTH IDA STREET INVESTMENTS, LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant", and by BRETT CLURE ("Clure"), a single person, TRAVIS FLODINE ("Flodine"), a single person, THOMAS E. TINGELHOFF and MARY TINGELHOFF (the "Tingelhoff's"), husband and wife, and H & R CONSTRUCTION COMPANY ("H & R"), a Nebraska corporation (Clure, Floding, the Tingelhoff's and H & R are collectively referred to herein as the "Additional Owners").

PRELIMINARY STATEMENT

The Declarant and the Additional Owners are collectively the owners of certain real property located within Douglas County, Nebraska and described as follows:

Lots 527 through 676, inclusive in Pine Creek, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

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

The Declarant and Additional Owners desires to provide for the preservation of the values and amenities of Pine Creek, for the maintenance of the character and residential integrity of Pine Creek, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Pine Creek.

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

**ARTICLE I.
RESTRICTIONS AND COVENANTS**

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

Return to:
James D. Buser
Pausig Hogan Ernst & Bachman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, pool house, flag pole, or other external improvement, including landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

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

(b) Declarant shall review such plans in light of the conditions and restrictions in Article I of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Pine Creek subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the architecture of the residential structures constructed shall be consistent with the architecture found in the Stone Creek subdivision in Douglas County, Nebraska. Atypical improvements and home designs such as dome houses, A-frame houses and log cabins will not be approved unless the Declarant determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality residential community, Declarant may refuse approval of the proposed Improvement.

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

(d) No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height.

4. Except as otherwise specifically approved by Declarant, the exposed front and street side foundation walls, and subject to the sole determination of the Declarant such other exposed foundation walls, of all residential structures must be constructed of or faced with brick or simulated brick. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete block, brick or stone. The roof of all Improvements shall be covered with weathered wood asphalt shingles, or other shingle colors and materials approved in writing by Declarant. Hardboard, pressed wood, bonded wood, and like type shingles will not be approved by Declarant for coverage of any roof.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. The foregoing restriction in this Article I, Section 5 shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, or its agents and assigns, during the development and sale of Lots.

6. No exterior television or radio antenna or satellite receiving dish of any type shall be permitted on any Lot, provided, however, an antenna or dish that is designed to receive over-the-air programming signals that does not exceed one meter in diameter and that is attached directly to the residence, may be permitted if the location and size of the proposed antenna or dish is approved by Declarant.

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

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Article I, Section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

9. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted outside, 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 planted and maintained in rear yards.

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

11. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by Declarant. No fence may be installed without the prior approval of the Declarant. In all events, installed fences must comply with applicable set back requirements imposed by the City of Omaha. All fences erected on Lots must be constructed of wood, wrought iron, PVC, or other type of material approved by Declarant. No chain link fences shall be allowed. No fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant.

12. Tennis courts shall be allowed on residential lots only with the approval of the Declarant, provided, however, such tennis courts may not be lighted. The location of basketball backboards shall be subject to the approval of Declarant.

13. No swimming pool may extend more than one foot above ground level.

14. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. Grading plans must be submitted to and approved by Declarant prior to commencement of Improvements to any Lot. Declarant shall review the grading plans in light of commercially recognized development and engineering standards.

15. Commencing with completion of construction of any Improvement on a Lot, a public sidewalk constructed of concrete four (4) feet wide by four (4) inches thick shall be installed and maintained in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed a minimum of four (4) feet and a maximum of seventeen and one-half (17.5) feet from the street curb line, in conformance with the master sidewalk plan. The sidewalk alignment shall be approved by Declarant prior to construction. After approval of the sidewalk alignment, the sidewalk shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

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

17. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed adjacent to the rear of the building, concealed from public view. No dog runs or kennels may be constructed or installed on any Lot. No livestock or agricultural-type animals shall be allowed in Pine Creek subdivision, including pot-bellied pigs.

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

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

20. No temporary structure of any character, and no carport, trailer, modular home, open basement, storage or tool shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. An owner may erect a swing set, playground equipment, pool house or other non prohibited structure on a Lot only after securing the prior written approval of Declarant. No structure or dwelling shall be moved from outside Pine Creek to any Lot without the written approval of Declarant.

21. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

22. Declarant hereby reserves the right to require Owners to install siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

23. All Lots must be fully sodded concurrently with or immediately following completion of construction of the residential structure on the Lot, as weather permits.

ARTICLE II.
BOUNDARY IMPROVEMENTS

[Intentionally Omitted]

ARTICLE III.
HOMEOWNERS' ASSOCIATION

1. The Association. State Street Investments, LLC ("State Street") has caused the incorporation of PINE CREEK HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association") for the benefit of the residents of Pine Creek. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Pine Creek, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas (including landscaping); and signs and entrances for Pine Creek. Common Facilities may be situated on property owned or leased by the Association within the Pine Creek subdivision, on private property subject to an easement in favor of the Association, on public property, or on property dedicated to a Sanitary and Improvement District.

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

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Pine Creek; and the protection and maintenance of the residential character of Pine Creek.

2. Membership and Voting. Pine Creek has one hundred fifty (150) separate residential lots in Phase II and four hundred seventy (470) separate residential lots in Phase I (for purposes of Article III of this Declaration, the term "Lots" shall mean all of the residential lots which are included in the Association including the Lots as defined by the Declaration). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

Declarant anticipates that additional phases of Pine Creek may be developed by Declarant, State Street or other developers. From time to time, without the consent or approval of an Owner or Member, the Association may, with Declarant's approval, be expanded by Declarant or State Street to include additional residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Pine Creek Subdivision. Such expansion(s) may be effected from time to time by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration"), provided that if the Subsequent Phase Declaration is recorded by a person or entity other than Declarant, the inclusion of additional residential lots in the

Association must be approved by Declarant. Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article III, and the owners of the additional residential lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

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

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

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, within or near Pine Creek.

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

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

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

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

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

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

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

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

4. Mandatory Duties of the Association. The Association shall:

(a) Maintain and repair the Boundary Improvements, and the signs which have or may be installed by Declarant or State Street at the residential entrances along State Street, Ida Street and 156th Street, all in good repair and neat condition; and

(b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along the mixed-use lots, so that such are in good repair and neat condition.

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

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

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) Sixty and no/100 Dollars (\$60.00) per Lot.

(b) In each calendar year beginning on January 1, 2005, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

11. Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Except for assessments as provided in Article III, Section 4, Subparagraph (c), assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

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

ARTICLE IV. EASEMENTS AND CHARGES

1. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which Qwest telephone company files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date"), then the telephone company may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority.

Should such charge be implemented by the telephone company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) the telephone company sends each owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

2. Other easements are provided for in the final plat of Pine Creek which is filed in the Register of Deeds of Douglas County, Nebraska (Document No. 2003241734).

ARTICLE V. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations,

restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by NORTH IDA STREET INVESTMENTS, LLC., a Nebraska limited liability company, or any person, firm, corporation, partnership, or entity designated in writing by NORTH IDA STREET INVESTMENTS, LLC, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the Lots covered by this Declaration.

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

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

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 27th day of August, 2004.

DECLARANT

NORTH IDA STREET INVESTMENTS, LLC, a Nebraska limited liability company

By: JC PROPERTIES, LLC, Member

By: 

Robert P. Horgan, Manager

By: PAVY LAND, LLC, Member

By: 

John C. Allen, President

ADDITIONAL OWNERS

By: Brett Clure
Brett Clure, owner of Lot 542

By: Travis Flodine
Travis Flodine, owner of Lot 542

By: Thomas E. Tingelhoff
Thomas E. Tingelhoff, owner of Lot 560

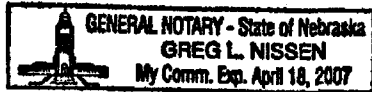
By: Mary Tingelhoff
Mary Tingelhoff, owner of Lot 580

H & R CONSTRUCTION COMPANY
a Nebraska corporation, owner of Lot 609

By: Herbert J. Johansen Pres.
Herbert J. Johansen, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 27th day of August, 2004, by Robert P. Horgan, Manager of JC PROPERTIES, LLC, a Nebraska limited liability company, Member of NORTH IDA STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

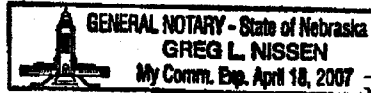
The foregoing instrument was acknowledged before me this 31st day of August, 2004, by John C. Allen, President of PAVY LAND, LLC, a Nebraska limited liability company, Member of NORTH IDA STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



Donna M. Nissen
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

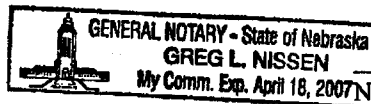
The foregoing instrument was acknowledged before me this 15th day of September, 2004, by Brett Clure, a Single Person.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

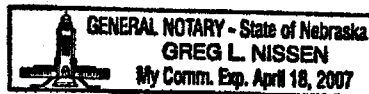
The foregoing instrument was acknowledged before me this 15th day of September, 2004, by Travis Flodine, a Single Person.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

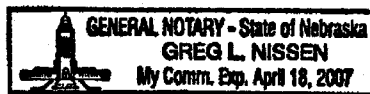
The foregoing instrument was acknowledged before me this 2nd day of September, 2004, by Thomas E. Tingelhoff and Mary Tingelhoff, husband and wife.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15th day of September, 2004, by Herbert J. Johansen, President of H & R Construction Company, a Nebraska corporation, on behalf of the company.



[Signature]
Notary Public

CONSENT

The undersigned State Street Investments, LLC, a Nebraska limited liability company, hereby consents to the foregoing Declaration as an "Additional Phase Declaration", and the addition of the Lots to the Pine Creek Homeowners Association.

STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company

By: JC PROPERTIES, LLC, Member

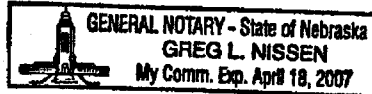
By: [Signature]
Robert P. Horgan, Manager

By: PAVY LAND, LLC, Member

By: [Signature]
John C. Allen, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

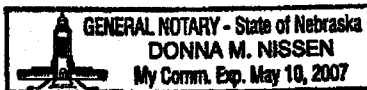
The foregoing instrument was acknowledged before me this 27th day of August, 2004, by Robert P. Horgan, Manager of JC PROPERTIES, LLC, a Nebraska limited liability company, Member of STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 31st day of August, 2004, by John C. Allen, President of PAVY LAND, LLC, a Nebraska limited liability company, Member of STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

00203036



MISC 2005104676



AUG 24 2005 13:26 P 15

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
8/24/2005 13:26:47.86



2005104676

THIS PAGE INCLUDED FOR INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

Misc
 FEE 105⁰⁰ FB 05-30533-Rep 3
0J-30530
¹⁵
₈₀
 BKP _____ C/O _____ COMP SB per P
 DEL _____ SCAN _____ FV _____

4 NLTA

Courtesy

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF PINE CREEK, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION made on the date hereinafter set forth is made by Pinnacle Homes, Inc., a Nebraska Corporation, herein after referred to as the "Declarant."

PRELIMINARY STATEMENT

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

Lots 617 through 676 except ~~outlots~~ 650 and 651 nka ~~and~~ Lots 1 and 2 Replat 3, Pine Creek, a subdivision in Douglas County, Nebraska.

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

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

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

**ARTICLE 1.
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or

its successors or assigns, for use in connection with a Common Facility, or as a church, school, park or for other non-profit use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. No fence or mass planted hedges or shrubs or other structures which effectively act as a boundary fence shall be permitted on any Lot unless approved in writing by Declarant. A privacy fence, not on perimeter of lot, may be constructed out of wood, subject to the approval in writing by Declarant. Electronic invisible fencing for dogs is permitted. Cyclone vinyl coated (black) four (4) feet high fencing with minimum four (4) feet wide gates are only permitted fencing allowed above ground.

12. No swimming pools are allowed.

13. Construction of any Improvement shall be completed within eighteen (18) months from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

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

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

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. No dog runs or kennels or any kind shall be allowed in Pine Creek Subdivision. No livestock or agricultural-type animals shall be allowed in Pine Creek Subdivision, including pot-bellied pigs.

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

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

19. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside Pine Creek to any Lot without the written approval of Declarant.

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

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

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

23. The exterior trim and siding or each residence constructed on a Lot must be maintained in good and proper condition.

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

ARTICLE II
HOMEOWNERS' ASSOCIATION

1. The Association. Declarant shall cause the incorporation of Pine Creek Town Homes Association, Inc., a Nebraska not for profit corporation (herein after referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

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

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

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

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

2. Membership and Voting. Pine Creek is being initially divided into Sixty (60) separate town home lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. The Association shall include further phases of Pine Creek as may be developed by the Declarant. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee).

The purchaser of a Lot under a land contract of similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

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

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

In addition, the Amendment to Declaration may declare that all or any part of the additional residential lots which shall become subject to this Declaration shall be Boundary Lot as that term is defined in Article II herein and such additional Boundary Lot shall be subject to all restrictions and obligations on Boundary Lot set forth herein.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration and the Owners of the additional residential lots shall be Members of Pine Creek Town Home Villas Inc. Homeowners Association.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III
EXTERIOR MAINTENANCE SERVICES

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

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

landscaping improvements installed by or at the direction of an Owner of a Lot shall remain the responsibility of the Owner.

B. The Association shall have not duty to repair, replace or maintain any exterior concrete surfaces.

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

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

E. Removal of trash no less often than weekly.

F. Annual exterior window washing.

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

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

ARTICLE IV
DUES AND ASSESSMENTS

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

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

3. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments

first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

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

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

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

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

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

9. Effect of Nonpayment of Assessment-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent.

Delinquent dues and assessment shall bear interest from the due date at the rate of Fifteen percent (15%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorney's fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area of abandonment of his Lot. The mortgage of any Lot shall have the right to cure any delinquency of an Ower by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

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

ARTICLE V EASEMENTS.

1. In addition to the easement provided in Article IV, Paragraph 3 herein, a perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No.473 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; and eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior Lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement if further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities and to extend thereon pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all

present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of the date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easement ways. No permanent buildings, tree, retaining walls or loose rock walls shall be placed in the easement ways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. A perpetual easement if further reserved in favor of the Declarant and the Association, its successors and assigns, to create, install, repair, reconstruct, paint, maintain, and renew a landscape buffer and related accessories located on, over and upon the West eight (8) feet of Lots 619, 618, 617; the North eight (8) feet of Lots 617, 658, 657, 652, 649, Pine Creek, and the eight (8) feet by eight (8) feet SW corner of Lot 625, and the eight (8) feet by eight (8) feet SE corner of Lot 624, Pine Creek and Lot 1, Pine Creek Replat Three, Douglas County, Nebraska.

ARTICLE VI GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law of in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of (10) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the owner of not less then seventy-five percent (75%) of the Lots covered by this Declaration.
3. By written consent of the Declarant for a period of ten (10) years from the date hereof, any or all of the covenants, conditions, restrictions and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver modification or amendment will have on Pine Creek and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall

be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification or amendment.

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

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 9th day of Aug., 2005.

Pinnacle Homes, Inc.
a Nebraska Corporation "Declarant"

By: President of Pinnacle Homes, Inc.

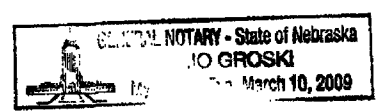
By: Joe Duysen Pres
Joe Duysen, President

By: Vice President of Pinnacle Homes, Inc.

By: Richard Morgan
Richard Morgan, Vice President

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 9th day of Aug., 2005, by Joe Duysen President of Pinnacle Homes, Inc., a Nebraska Corporation and as his voluntary act and deed of the company.



Joe Grocki
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 9th day of August, 2005, by Richard Morgan, Vice President of Pinnacle Homes, Inc., a Nebraska Corporation and as his voluntary act and deed of the company.



Jo Groski
Notary Public