

BIRCH TREE LOFTS ASSOCIATION  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BIRCH TREE LOFTS ASSOCIATION  
LOTS 1 THROUGH 9

THIS DECLARATION, made on the date hereinafter set forth by Arlyne Geschwender, hereinafter referred to as "Declarant":

WITNESSETH:

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

Lots 1 through 9, inclusive, in Birch Tree Lofts, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, being a replatting of the East 225 feet of the North 1/2 of Lot 6, in Piersons Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

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

WHEREAS, Declarant has incorporated the Birch Tree Lofts Homeowners Association, Inc., under the laws of the State of Nebraska as a non-profit corporation, the purpose of which shall be to exercise the functions of foresaid;

WHEREAS, Declarant will convey the said lots and dwellings thereon, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Lots and Dwellings thereon will be sold and conveyed subject to the following easements restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said units. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title of interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of Birch Tree Lofts Homeowners Association, Inc., a Nebraska non-profit corporation, its successors and assigns.

Section 2. "Association" shall mean and refer to the Birch Tree Lofts Homeowners Association, a Nebraska non-profit Association, its successors, and assigns.

Section 3. "Common Properties" shall mean and refer to those areas of land listed as follows: Lot Nine (9), in Birch Tree Lofts.

All Common Properties shall be devoted to the exclusive common use and enjoyment of the Owners of the Properties.

Section 4. "Declarant" shall mean and refer to Arlyne Geschwender, her successors and assigns.

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

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

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Section 7. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted Lot which is a part of The Properties, (but excluding those having such interest merely as security for the performance of an obligation.)

## ARTICLE II

### OBJECT

#### (PLAN OF OWNERSHIP)

Section 1. The purpose for which the non-profit Association is formed is to govern the aforementioned properties situated in the County of Douglas, State of Nebraska known as Birch Tree Lofts.

## ARTICLE III

### PROPERTY RIGHTS IN THE COMMON PROPERTY

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

(a) the right of the Association, through its Board of Directors, to pass and amend, from time to time, rules and regulations governing the use of certain parts or all of the Common Properties for the welfare and common good of all Owners within The Properties.

Section 2. Title to the Common Properties. The Declarant will convey a fee simple title to the Common Properties described as follows: Lot Nine (9), in Birch Tree Lofts, to the association, free and clear of all encumbrances and liens, except easements, restrictions, covenants, and conditions then of record.

## ARTICLE IV

### MEMBERSHIP, VOTING, MAJORITY OF OWNERS QUORUM

Section 1. Membership. Any person on becoming an owner of a lot and living unit shall automatically become a member of this Association and be subject to these By-Laws. Such membership shall terminate without any formal association action whenever such person ceases to own a living unit, but such termination shall not relieve or release any such former owner from any liability or obligation incurred under or in any way connected with the Association during the period of such ownership and membership in their Association, or impair any rights or remedies which the Board of Managers of the Association or others may have against such former owner and member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

Section 2. Voting. The Owners of each living unit shall be entitled to one vote.

Section 3. Quorum. A quorum shall be constituted by those members present and an affirmative vote of a majority of the members present shall be required to transact business.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

## ARTICLE V

### ADMINISTRATION

Section 1. Association Responsibilities. The owners will constitute Birch Tree Lofts at Omaha, Nebraska, hereinafter referred to as "Association," who will have the responsibility of administering the project through a Board of Managers or Managing Agent.

Section 2. Place of Meetings. Meetings of the Association shall be held at such place as the Board of Managers may determine.

Section 3. Annual Meeting. The first annual meeting of the Association at which time the members of the Board of Managers shall be elected, shall be during the month of March, 1980. Thereafter, the annual Meeting of the Association shall be held in March of each succeeding year.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the owners as directed by resolution of the Board of Managers or upon a petition signed by a majority of the owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No other business shall be transacted at a special meeting except as stated in the notice unless by consent of the Owners of a majority of the general common elements, either in person or by proxy. Any such meeting shall be held within thirty (30) days after receipt by the President of such resolution or petition.

Section 5. Notice of Meeting. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place it is to be held, to each owner of record, at least fifteen (15) but not more than thirty (30) days prior to such meeting. The mailing of a notice in the manner provided in this paragraph shall be considered notice served.

Section 6. Order of Business. The order of business at all meetings of the owners of units shall be as follows:

- (a) Call to order
- (b) Roll call and certifying proxies
- (c) Proof of notice of meetings or waiver of notice
- (d) Reading of minutes of preceeding meeting
- (e) Reports of directors and officers
- (f) Reports of committees
- (g) Report of Managing agent
- (h) Unfinished business
- (i) Election of Manager
- (j) General and new business
- (k) Adjournment

ARTICLE VI

BOARD OF MANAGERS

Section 1. Number and Qualifications. Until the first meeting of owners, the affairs of this Association shall be governed by a Board of Managers consisting of three persons selected by Arlyne Geschwender, the Declarant. At the first meeting of the owners, there shall be elected to the Board of Managers three owners of living units.

Section 2. Powers and Duties. The Board of Managers shall have the power and duties necessary for the administration for the operation and maintenance of a living unit.

Section 3. Other Powers and Duties. The Board of Managers shall be empowered and shall have the duties as follows:

- (a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration and supplements thereto.

ARTICLE VII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Each owner does hereby covenant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenants and agree to pay to the Association annual assessment or charges.

Said assessments shall be used for: the maintenance and repair of the Common properties and roadway easements. Providing snow removal, lawn, shrubbery and tree care, the care and maintenance of private streets over which the Association has an easement, open spaces and other common facilities; providing insurance coverages upon the Common Properties as herein set forth; and the maintenance and repair of the exterior of the units. The association will form its budget, furnish and pay for a basic amount of insurance per square feet unit.

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Section 2. Maximum Annual Assessment. Until June 1, 1980, the maximum annual assessment shall be Three Hundred and no/100 (\$300.00) Dollars per unit; payable quarterly in four installments of \$75.00, subject to adjustment as hereafter set forth:

(a) If the sum of \$300.00 does not adequately take care of the needs as outlined in Section 1 of this Article the maximum annual assessment may be increased each year not more than ten percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1980, the maximum annual assessment may be increased above ten percent by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

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

Section 3. The Board of Directors shall adopt a budget for each calendar year, which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar (fiscal) year and provide funds for reserves as herein set forth. The budget shall be adopted in January of each year for the coming calendar year and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each Owner on or before December 31, preceeding the year for which the budget is made. Budgets may be amended during a current year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each Owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to Owner shall not apply to any budgeting for any period prior to January 1, 1980.

The Board of Directors shall fix the amount of annual assessment to be assessed against each Lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the Board to so notify each Owner in advance shall not, however, relieve any Owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion to require that all Owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be and become a lien as of the date of the annual assessment.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4. Effect of Non-Payment of Assessments: The Personal Obligation of The Owner, The Lien; Remedies of the Association. If any assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid within thirty (30) days after the due day shall bear interest from the due date at the rate of nine percent (9%) per annum. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, 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. No owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot. The Mortgagee of the subject property 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 rights of foreclosure to the mortgagee.

Section 5. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any living unit shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

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

Section 2. Review of Committee.

(a) Structures. No living unit may be remodeled, painted, or changed on the exterior in any manner. No outbuildings will be permitted. Construction of any flag poles, fences, walls, driveway extensions, patio, patio enclosures, house numbers, or any other such improvements, shall be constructed or maintained upon any Lot without having been submitted to and approved in writing by the Architectural Control Committee.

(b) Tree Removal. No tree removal will be permitted on any of the eight lots without a submission of request and written approval in writing from the Architectural Control Committee.

All living units will remain natural wood. The Architectural Control Committee shall exercise its best judgment to see that all improvements, landscaping and alterations on lands within the properties conform to and harmonize with existing surroundings and structures.

Section 4. Records. The Committee shall maintain written records of all applications submitted to it, the dates submitted, and of all action it takes in reference thereto and the dates such action is taken.

Section 5. Liability. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

ARTICLE IX

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon Lot and Common Properties for the benefit of each other Lot and Common Properties, and may be enforced by any Owner of a Lot or of the Common Properties:

(a) No Lot shall be used except for residential purposes.

(b) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

(c) No repair of automobiles will be permitted outside of garages on any Lot at any time.

(d) No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, vehicle undergoing repair, or in any manner left exposed on any Lot at any time.

(e) No line same is incorporated of the Living Unit remain outside of every street and maintenance equipment remain outside of screened from view. No garage door shall be from the garage Living Unit at exterior air courtyard.

(f) No animal bred or kept on maintained with or maintained for number of dogs to exceed two. The lot.

(g) No structure shall be erected a dog house shall

(h) No sign of advertising to remain on any no greater than Living Units which

(i) No use violate the state jurisdiction over

(j) No Owner any structure will in any activity part of the Committee

(k) The regulations as the Association.

Insurance of by the Association

Section 1. for the improvement against the perils coverage in amount destruction caused coverage shall maintain in effect Board of Directors the Common Properties insureds. The Association coverage and such

Section 2. physical damage obtain an appraisal of the improvement for the purpose pursuant to this

(e) No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the Living Unit and not exposed to view from the outside of the Living Unit. No garbage or trash can or container shall be permitted to remain outside of any Living Unit, unless completely screened from view from every street and from all other Lots in the addition. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Living Unit except when in actual use unless completely screened from view from every street and from all other Lots in the addition. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothes line shall be permitted outside of any Living Unit at any time except one umbrella-type clothes line per Lot. Any exterior air conditioning condenser unit shall be placed in the rear or side yard.

(f) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the Living Unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further that the total number of dogs and cats kept within the Living Unit or on the Lot shall not exceed two. They shall not be allowed to run loose outside except on the Owner's lot.

(g) No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, haltered, placed or permitted to remain on any Lot including a dog house shall be permitted.

(h) No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any Lot except that real estate for-sale or for-rent signs of a size no greater than 4.5 square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale.

(i) No use shall be made of the Common Properties which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Properties.

(j) No Owner, other than the Declarant, successors and assigns, shall place any structure whatsoever upon the Common Properties, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Properties to all members.

(k) The use of the Common Properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

#### ARTICLE X

##### INSURANCE

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

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

Section 2. Valuation and Coverage Amount. Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a casualty company or otherwise of the full replacement of the improvements on the Common Properties, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effected pursuant to this Article.

Section 3. Liability of Board. The Board of Directors shall not be liable to any party upon the amount of insurance coverage obtain the settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

ARTICLE XI

EASEMENTS

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

Section 1. Utility Easement. Declarant hereby grants to itself and to each of the Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, an easement, together with rights of egress, ingress, and other access thereto, for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines, or other facilities in, over, under, and upon the Common Properties, and each Lot, as confined to noninterference with any driveway, sidewalk or structural element of any approved or permitted Living Unit on any Lot. Each such Grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil excavated for any purposes hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so. The easement as to any of the Common Properties shall be determined and granted by the Association in the manner set forth in the By-Laws, as from time to time amended.

Section 2. Roadway Easement. Declarant hereby reserves and grants to itself, and to the Association, their successors and assigns, an easement for the construction, maintenance, repair and reconstruction, for purposes of building, constructing and otherwise maintaining any existing private roadway upon, over and under each Lot and the Common Properties, together with rights of access, ingress and egress thereto. In no event shall such easement interfere with the structural elements of any approved Living Unit upon the Properties. Declarant hereby reserves and grants for itself and each of the Association, each Owner, contract purchaser and lessee (while in possession of any Living Unit in the Properties) their families, guests, employees, agents and invitee, an easement for access, ingress, egress, use and enjoyment upon and over each such roadway as traffic to and from each Lot, the Common Properties and as to Declarant its successors, grantees and assigns, that real estate described on Exhibit "A" attached hereto and by this reference made a part thereof.

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

ARTICLE XII

GENERAL PROVISIONS

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

Section 2. Amendments. The covenants and restrictions of this Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by and instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Notices. Any notice required to be sent to any Member, Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been

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properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing; provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Association, in writing of its interest in a Lot prior to the responsibility arising in the Association to notify said contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 3rd day of June, 1982.

*Arlyne Geschwender*

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) ss

On this 3 day of June, 1982, before me, a Notary Public duly commissioned and qualified in and for said County, personally came ARLYNE GESCHWENDER who is personally known to me to be the identical person whose name affixed to the above instrument, and has acknowledged said instrument to be her voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.

GENERAL NOTARY - State of Nebraska  
ROSENA SCHLAK  
My Comm. Exp. Sept. 8, 1985

*Rosena Schlak*  
Notary Public

My Commission expires on the 6 day of September 1985.

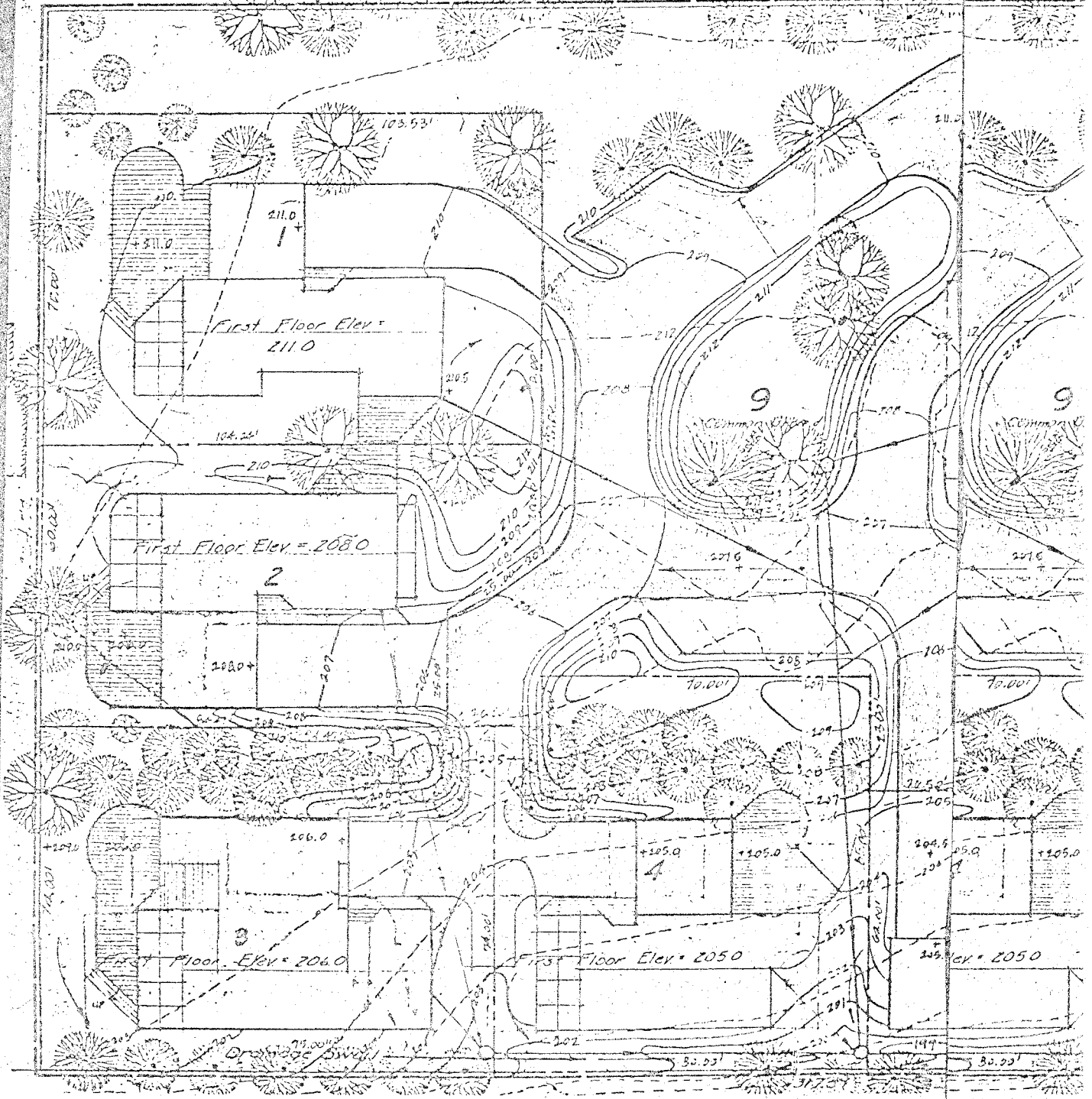


Exhibit A

BOOK 672 PAGE 512

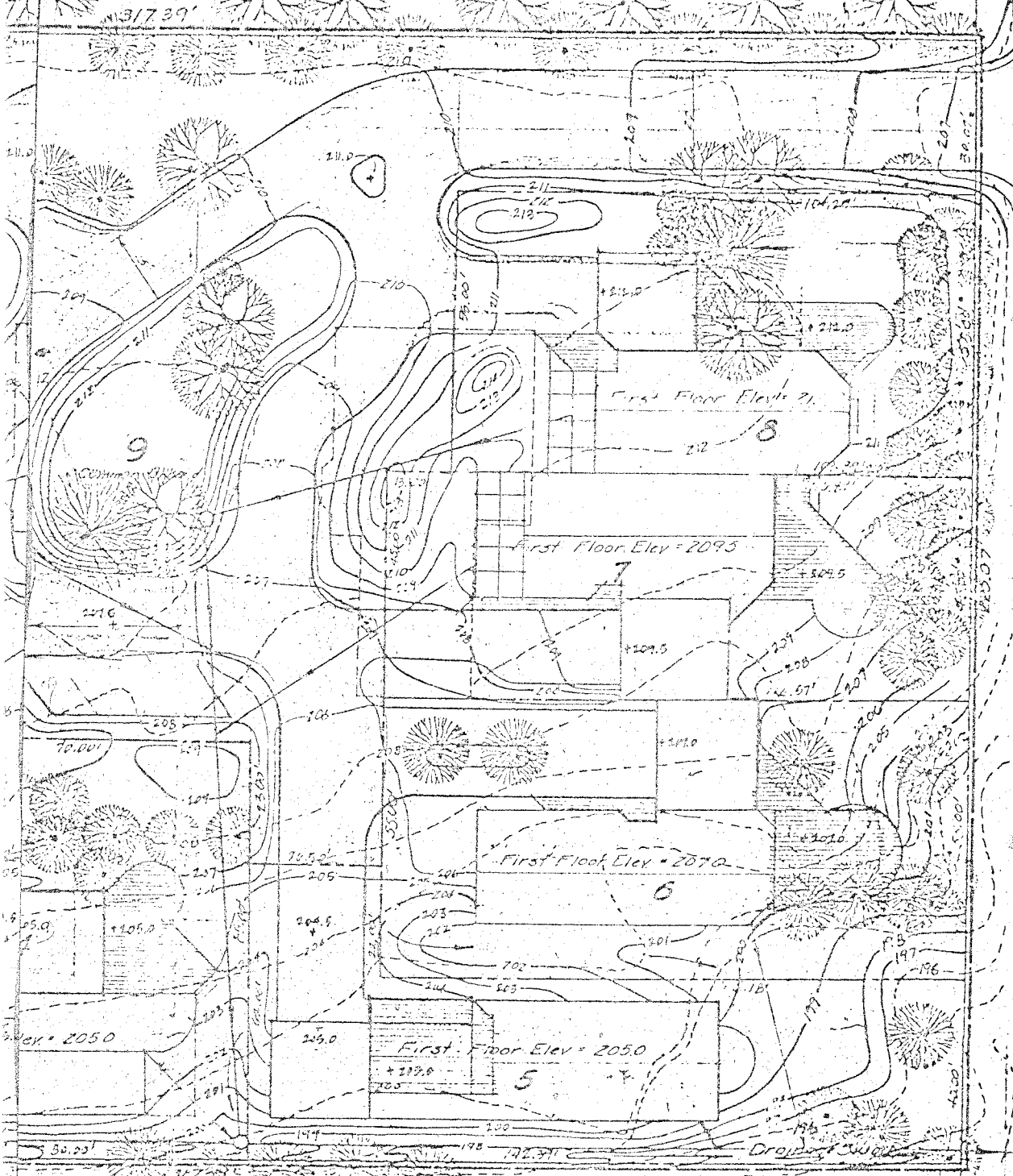
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BOOK 672 PAGE 513



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Book 672  
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AMENDED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Arlyne E. Geschwender, Kent J. Geschwender and Julie Geschwender, husband and wife, and David L. Schrader and Patricia H. Schrader, husband and wife, and Patricia M. Ferry and Barry Larson Co., Inc., a Nebraska corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant represents the ownership of all of the following described real property: Lots 1 through 9, inclusive, in Birch Tree Lofts, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, being a replatting of the East 225 feet of the North 1/2 of Lot 6, in Piersons Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to Birch Tree Lofts Property Owners Association, Inc., its successors and assigns.

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

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

Section 4. "Common Area" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows; Lot Nine (9), in Birch Tree Lofts, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska, subject to a perpetual vehicular and pedestrian easement hereby reserved by the above described Common Areas; and the Declarant hereby reserves the right to hereafter grant one or

several easements over said property in favor of any future owners, occupants and users of the road on said property.

Section 5. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot, shown upon any recorded subdivision map or plat of the properties, upon which a living unit is, or is proposed to be built, with the exception of the Common Area.

Section 6. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specifications for construction of said dwelling. All other lots, exclusive of the Common Area, which shall be vacant, or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots."

Section 7. "Developer" shall mean and refer to Arlyne Geschwender, Trustee, her successors and assigns, if such successors and/or assigns should acquire more than one undeveloped lot from her for the purpose of development.

ARTICLE II  
PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right to the Association to charge reasonable admission and other fees for use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Developer, 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 B member shall be the Developer and shall be entitled to two (2) 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 total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership, or
- (b) on January 1, 1994.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments as are levied from time to time by the Association; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, delinquent charges and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, delinquent charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, exterior

maintenance, insurance and such other purposes as are necessary to carry out the purposes of the Association, as more fully set out herein.

Section 3. Annual Assessment.

(a) The annual assessment for the year 1985 for each improved lot, shall be \$960.00, not including the cost of fire and extended coverage insurance, as provided for in Article V, Section 2, Paragraph (b). Said annual assessment may be paid at the rate of \$80.00 per month, commencing January 1, 1985.

(b) From and after January 1, 1986, the annual assessment may be increased by not more than the greater of either (1) ten (10%) percent, or (2) the percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding October over the prior year's October, without a vote of the membership.

(c) From and after January 1, 1986, the annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of the members who are voting by person or proxy at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and for the cost of exterior maintenance, as set out in Article V herein, provided that any such assessment shall have the assent of a two-thirds (2/3) majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 4 shall be sent to all members not less than 10 days nor more than 20 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved lots shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be

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attributable to upkeep, maintenance and security upon improved lots as opposed to unimproved lots, the regular assessment for each unimproved lot will be equal to the equivalent of 10% of the regular assessment due for each improved lot. Said assessment may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on January 1, 1985. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates 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 assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid when due shall be deemed delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall include a delinquency charge of \$5.00 for each 30 day period for which the assessment remains unpaid. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any court in Douglas County, Nebraska, having jurisdiction of suits for the enforcement of such liens. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any such proceeding in lieu thereof, shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

##### MAINTENANCE AND INSURANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot and improvements thereon which is subject to assessment hereunder, such as but not limited to the following: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass,

walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

Section 2. Insurance.

(a) The Association shall keep in full force and effect Fire and Extended Coverage Insurance on all property owned by the Association as well as general Public Liability and Property Damage Insurance covering the Association Property and Directors' Insurance in such amounts as shall be deemed advisable by the Board of Directors.

(b) The Association shall purchase and keep in full force and effect Fire and Extended Coverage Insurance on all improvements constructed on any lot to the extent said improvements may be substantially repaired or reconstructed to the same condition and extent as when said improvement was originally constructed. In the event Owner is desirous of effecting such insurance coverage to include additions and improvements not originally constructed, then said insurance shall be purchased and paid for by said Owner and shall not be considered the responsibility of the Association. The cost for such insurance shall be paid by each Owner in accordance with the premium chargeable to his or her unit as set out in the master policy. Said premium shall be paid annually by each Owner within ten (10) days from date of receipt of a statement of such cost from the Association. This assessment for insurance is in addition to the annual assessment provided for above in Article IV, Section 3.

(c) Each member of the Association shall be responsible to procure and maintain such insurance as they deem necessary to protect the contents of their unit and liability for negligent acts outside of the Common Areas that are controlling them.

Section 3. Willful or Negligent Acts. In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which each lot is subject.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or its designated architectural committee. In the event said Board of

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Directors or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 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.

Section 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.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

RESPONSIBILITY TO REBUILD

If a structure on any of the properties is damaged or destroyed in whole or in any part thereof, the Owner or Owners of such structure must initiate within a reasonable time and pursue to full restoration any such damage or destruction. The rebuilding or restoration of a party wall is subject to Article VII.

ARTICLE IX  
STAGED DEVELOPMENTS

Additional land contiguous to the property described above may be annexed by the Developer, without the consent of the members within five (5) years from the date of this instrument.

ARTICLE X  
GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Association.

Section 2. Buildings or Uses Other Than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within the Properties. Provided, however, the prohibition shall not apply:

(a) to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the properties, or

(b) to any portion of a building used by Declarant, its licensees or assigns, for a manager's office or sales office, or by the Association, for its offices, or if written permission for such placement, erection or use under (a) above is first obtained from the Committee. Permission of the Committee is not required for exception of (b) above.

Section 3. Fences, Etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the properties, except such fences or enclosures as may be authorized by the Declarant or its designated Architectural Committee. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any building site, parking area, street or common area in the properties. Automobiles shall be parked only in designated parking areas as published by the Committee in its Rules and Regulations. No external television or radio antenna shall hereafter be erected on or about any of the building sites or property within the properties. No clothes lines or clothes hangers may be constructed or used unless completely concealed with enclosed patio areas.

Section 4. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on the properties, nor shall any trash,

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ashes or other refuse be thrown, placed, dumped upon any vacant building site, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

Section 6. Billboards Prohibited. The construction, placing or maintenance of billboards, advertising boards or structures, or "for sale" signs on a lot or improvements thereon is expressly prohibited except that "for sale" sign may be erected by Developer or Owner consisting of not more than six (6) square feet.

Section 7. Outbuildings Prohibited. No outbuildings or other attached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Declarant or its designated architectural committee.

Section 8. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict Developer or her assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the properties to be used during the period of the construction and sale of the properties. Developer or her assigns may also erect and maintain model homes for sales purposes and rental and lease purposes, and may operate such office or offices therein for so long as they deem necessary for the purposes of selling, renting or leasing the properties.

Section 9. All garage doors should remain closed except when cars are entering or exiting from the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view. Private barbeque grills will be subject to regulation and restriction and/or exclusion by the Developer or her designated architectural committee. Automobile parking will be subject to regulation and restriction by the Association.

Section 10. Tree Removal. No tree removal will be permitted on any lot without written approval of the Board of Directors of this Association or its designated architectural committee.

Section 11. Retention of Natural Appearance. All units shall be sided with 4" reveal cedar lap siding and shall not be painted but will be treated with a natural wood preservative.

Section 12. Conformance. The Board of Directors or its designated architectural committee shall exercise its best judgment to see that all improvements, landscaping and grading of the lots shall conform and harmonize with the surroundings and other structures built in the area covered by these covenants.

ARTICLE XI  
EASEMENTS

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

Section 1. Utility Easement. Developer hereby grants to herself and to each of the Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, for purposes of constructing, installing, maintaining, operating, renewing or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines or other facilities in, over, under and upon the Common Properties, and each Lot, as confined to noninterference with any driveway, sidewalk or structural element of any approved or permitted living unit on any lot. Each such grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil excavated for any purposes hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so. The easement as to any of the Common Properties shall be determined and granted by the Association in the manner set forth in the By-Laws, as from time to time may be amended.

Section 2. Roadway Easement. Developer hereby reserves and grants to herself, and to the Association; their successors and assigns, an easement for the construction, maintenance, repair and reconstruction, for purposes of building, constructing and otherwise maintaining any existing private roadway upon, over and under each Lot and the Common Properties, together with rights of access, ingress and egress thereto. In no event shall such easement interfere with the structural elements of any approved living unit upon the properties. Developer hereby reserves and grants for herself and each of the Association, each Owner, contract purchaser and lessee (while in possession of any Living Unit in the Properties), their families, guests, employees, agents and invitees, an easement for access, ingress, egress, use and enjoyment upon and over each such roadway as traffic to and from each lot, the Common Properties and as to Declarant, its successors, grantees and assigns, that real estate described on Exhibit "B" attached hereto and by this reference made a part hereof.

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

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ARTICLE XII  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and be enforceable by the Association, or the Owner of any land subject and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

Section 4. Amendments. The covenants and restrictions of this Declaration may be amended by the Developer, or any person, firm, corporation, partnership or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by any instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment, and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

IN WITNESS WHEREOF, the undersigned Declarants herein have set their hands this 16 day of Feb., 1984.

Arlyne E. Geschwender  
Arlyne E. Geschwender

Kent J. Geschwender  
Kent J. Geschwender

Julie Geschwender  
Julie Geschwender

David L. Schrader  
David L. Schrader

Patricia H. Schrader  
Patricia H. Schrader

Patricia M. Perry  
Patricia M. Perry

BARRY LARSON CO.  
Barry Larson

ARTICLE XII  
GENERAL PROVISIONS

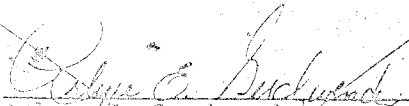
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IN WITNESS WHEREOF, the undersigned Declarants herein have set their hands this 16 day of Feb, 1984.

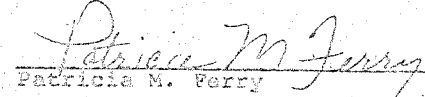
  
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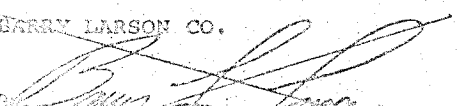
  
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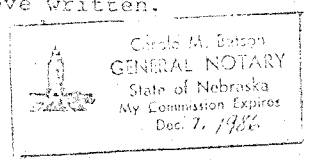
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STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN, that on this 16 day of Feb, 1985,  
before me, a Notary Public in and for said county and state,  
personally appeared the above named Arlyne E. Geschwender, to me  
known to be the identical person described in and who executed the  
foregoing instrument, and she acknowledged the execution thereof to  
be her voluntary act and deed.

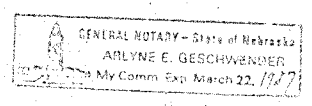
WITNESS my hand and Notarial Seal the day and year last  
above written.



Charles M. Botton  
Notary Public

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

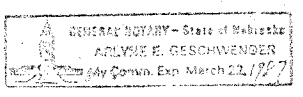
BE IT KNOWN that on this 16 day of Feb, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named Kent J. Geschwender and Julie Geschwender, husband and wife,  
to me known to be the identical persons whose names are affixed to  
the foregoing instrument, and they acknowledged the execution  
thereof to be their voluntary act and deed.



Arlyne E. Geschwender  
Notary Public

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN that on this 16 day of Feb, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named David L. Schrader and Patricia H. Schrader, husband and wife,  
to me known to be the identical persons whose names are affixed to  
the foregoing instrument, and they acknowledged the execution  
thereof to be their voluntary act and deed.



Arlyne E. Geschwender  
Notary Public

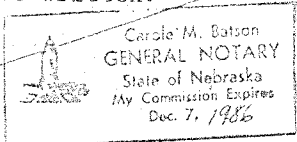
STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN that on this \_\_\_ day of \_\_\_\_\_, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named Patricia M. Ferry, single, to me known to be the identical  
person whose name is affixed to the foregoing instrument, and she  
acknowledged the execution thereof to be her voluntary act and  
deed.

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN that on this 16 day of Febr, 1985,  
before me, a Notary Public in and for said county and state,  
personally appeared the above named Arlyne E. Geschwender, to me  
known to be the identical person described in and who executed the  
foregoing instrument, and she acknowledged the execution thereof to  
be her voluntary act and deed.

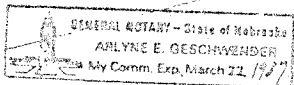
WITNESS my hand and Notarial Seal the day and year last  
above written.



Carole M. Batson  
Notary Public

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

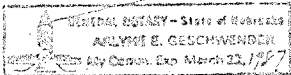
BE IT KNOWN that on this 16 day of Febr, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named Kent J. Geschwender and Julie Geschwender, husband and wife,  
to me known to be the identical persons whose names are affixed to  
the foregoing instrument, and they acknowledged the execution  
thereof to be their voluntary act and deed.



Arlyne E. Geschwender  
Notary Public

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN that on this 16 day of Febr, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named David L. Schrader and Patricia H. Schrader, husband and wife,  
to me known to be the identical persons whose names are affixed to  
the foregoing instrument, and they acknowledged the execution  
thereof to be their voluntary act and deed.



Arlyne E. Geschwender  
Notary Public

STATE OF NEBRASKA)  
: ss.  
COUNTY OF DOUGLAS)

BE IT KNOWN that on this 28 day of Feb, 1985,  
before me, a Notary Public duly commissioned, qualified and acting  
in and for said County and State, personally appeared the above  
named Patricia M. Ferry, single, to me known to be the identical  
person whose name is affixed to the foregoing instrument, and she  
acknowledged the execution thereof to be her voluntary act and  
deed.



Patricia M. Ferry  
Notary Public

MC B  
Copied



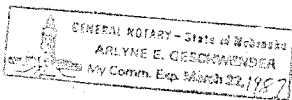
STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

ss.

BE IT KNOWN, that on this 16 day of Feb, 1985, before me, a Notary Public in and for said county and state, personally appeared BARRY L. LARSON, President of BARRY LARSON CO., a Nebraska Corporation, to me known to be the identical person described in and who executed the foregoing instrument, and he acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal the day and year last above written.



Arlyne E. Geschwender  
Notary Public

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SHERIFF OF DOUGLAS  
COUNTY NEBRASKA

*65-198-2000*



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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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AMENDED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BIRCH TREE LOFTS PROPERTY OWNERS ASSOCIATION

This declaration, made on the date hereinafter set forth by Robert and Sonya Baker, Charles A. and Linda L. Dobry, Kent J. and Julie Geschwender, Max and Janeen Kennedy, Patricia Morrissey, Rosemary E. Stahl, Scott W. Schurmur, and Dorothy Taylor, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant represents the ownership of all of the following described real property: Lots 1 through 9, inclusive, in Birch Tree Lofts, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, being a replatting of the East 225 feet of the North 1/2 of Lot 6, in Piersons Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title of interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Birch Tree Lofts Property Owners Association, Inc., its successors and assigns.

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

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

Section 4. "Common Area" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: Lot Nine (9), in Birch Tree Lofts, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska, subject to a perpetual vehicular and pedestrian easement hereby reserved by the above described Common Areas; and the Declarant hereby reserves the right to hereafter grant one or several easements over said property in favor of any future owners, occupants and users of the road on said property.

Section 5. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot, shown upon any recorded subdivision map or plat of the properties, upon which a living unit is built, with the exception of the Common Area.

Section 6. "BOARD OF DIRECTORS". The Board of Directors shall consist of the duly elected President, Vice President, Secretary and Treasurer of the Association.

ARTICLE II  
PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and the right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to

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Julie Geschwender  
711 N. 89th Plaza  
Omaha, NE 68114

by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds of the voting members, has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Every owner of a lot which is subject to assessment shall be a member of the Association. There shall be one vote per lot. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments as are levied from time to time by the Association; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, delinquent charges and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, delinquent charges (5% of the amount due for each six month period of delinquency) and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, snow removal, lawn maintenance, pine tree spraying, insurance and such other purposes as are necessary to carry out the purposes of the Association, as more fully set out herein.

Section 3. Annual Assessment.

(a) The annual assessment shall be \$1200.00 payable in two installments of \$600.00 payable January 1 (delinquent after 30 days) and July 1 (delinquent after 30 days).

(b) The annual assessment shall be established by the members at a meeting prior to December 1 of the year prior to the year that the assessment becomes effective. A majority of members must approve in person or by proxy any increase in the annual assessment. The members will be notified in writing of the amount of the annual assessment for the following year.

Section 4. Special Assessment for Capital Improvements and/or Maintenance. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and for the cost of maintenance, as set out in Article V herein, provided that any such assessment shall have the assent of a two-thirds majority of the votes of members.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 4 shall be sent to all members not less than 10 days nor more than 20 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast a majority of eligible votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all lots, shall be uniform in amount.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid when due shall be deemed delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall include a delinquency charge of 5% of the delinquent charge for each 6 month period, or any part thereof, of delinquency for which the assessment remains unpaid. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any court in Douglas County, Nebraska, having jurisdiction of suits for the enforcement of such liens. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any such proceeding in lieu thereof, shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

#### MAINTENANCE AND INSURANCE

Section 1. Maintenance. The Association shall maintain the Common Area. This includes the center island lighting and landscaping, street maintenance, snow removal from the Common Area and Owners Birch Tree Lofts properties, grass cutting on Common Area and Owners Birch Tree Lofts properties, the perimeter fencing of the common area, the entrance signage, and spraying of the pine trees on the Common Area and the Owners' Birch Tree Lofts properties.

#### Section 2. Insurance.

(a) The Association shall keep in full force and effect Fire and Extended Coverage Insurance on all property owned by the Association as well as general Public Liability and Property Damage Insurance covering the Association Property and Directors' Insurance in such amounts as shall be deemed advisable by the Board of Directors.

(b) Each member of the Association shall be responsible to procure and maintain such insurance as they deem necessary (1) for Fire and Extended Coverage Insurance on all improvements constructed on any lot to the extent said improvements may be substantially repaired or reconstructed to the same condition and extent as when said improvement was originally constructed and (2) to protect the contents of their unit and liability for negligent acts outside of the Common Areas that are controlling them.

Section 3. Willful or Negligent acts. In the event that the need for maintenance or repair of a lot or the improvements thereon or the Common Area or the improvements thereon is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the lot needing such maintenance or repair, the cost of such maintenance shall be added to and become part of the assessment to which such lot is subject if the damage is not repaired in a timely manner by the Owner and must be subsequently repaired by the Association in order to maintain the ambience of the area.

#### ARTICLE VI

#### ARCHITECTURAL CONTROL

No building, fence wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and the location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or its designated architectural committee. In the event said Board of Directors or its designated committee fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it the President of the Association may be requested to act on the proposal. If the President chooses not to act within 15 days, approval will not be required, and this Article will be deemed to have been fully complied with.

ARTICLE VII  
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 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.

Section 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.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII  
RESPONSIBILITY TO REBUILD

If a structure on any of the properties is damaged or destroyed in whole or in any part thereof, the Owner or Owners of such structure must initiate rebuilding or restoration within a reasonable time and pursue to full restoration any such damage or destruction. The rebuilding or restoration of a party wall is subject to Article VII.

ARTICLE IX  
GOVERNANCE

Section 1. Officers of the Association. The officers of the Association shall be the President, Vice President, Secretary and Treasurer.

Section 2. Election of the officers of the Association. Election of the officers shall take place regularly during the month of October in the odd numbered years. There shall be no limit on the number of terms that an officer may serve.

Section 3. Special Election. A special election may be held at the request of the Board of Directors to fulfill the term of any officer who cannot or will not finish his/her term. A special election may be held at the request of three or more of the members Association who are dissatisfied with the performance of one or more of the officers of the Association.

Section 4. Authority and Responsibility of the Officers of the Association.

(a) The President shall call and preside at Association meetings and act as the agent for the Association for duly authorized business.

(b) The Vice President shall consult with the President and perform the President's duties when the President is unable to act.

(c) The Secretary shall record the minutes of the meetings, send required notices to members and maintain the Association's correspondence,

(d) The Treasurer shall collect the Association assessments, pay the Association's obligations, maintain the financial records of the Association, file the Associations tax returns, and attend to any other financial matters that may arise.

Section 5. Meetings of the Association. The Association shall meet at least semiannually. The

meetings shall be called by the President and written notices (specifying the time, date, location and agenda) shall be delivered to all Association members (by hand or US mail) between ten and twenty days prior to the meeting.

**Section 6. Architectural Committee.** The Board of Directors shall appoint three to five members of the Association to serve on the Architectural Committee.

(a) The committee shall consider and approve or disapprove all applications from members for additions, subtractions or modifications of their properties which would change the appearance and ambience of Birch Tree Lofts (such as fencing, landscaping, tree or shrub removal, house painting, roofing, recreational equipment, etc.)

(b) Decisions of the Architectural Committee may be appealed to the Board of Directors and subsequently to the Association membership.

## ARTICLE X GENERAL RESTRICTIONS

**Section 1. Awnings.** No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Association.

**Section 2. Buildings or Uses Other Than for Residential Purposes.** No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within the Properties. Provided, however, the prohibition shall not apply to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the properties.

**Section 3. Fences, Etc.** No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the properties, except such fences or enclosures as may be authorized by the Declarant or its designated Architectural Committee. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any building site, parking area, street or common area in the properties. Automobiles shall be parked only in designated parking areas as published by the committee in its Rules and Regulations. No external television, satellite dish or radio antenna shall be erected on or about any of the building sites or property within the properties. No clothes lines or clothes hangers may be constructed or used unless completely concealed from view.

**Section 4. Livestock and Poultry Prohibited.** No animals, livestock or poultry of any kind shall be raised or kept on any building site in the properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.

**Section 5. Noxious Activity.** No noxious or offensive activity shall be carried on the properties, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

**Section 6. Billboards Prohibited.** The construction, placing or maintenance of billboards, advertising boards or structures, or "for sale" signs on a lot or improvements thereon is expressly prohibited except that "for sale" sign may be erected by Owner consisting of not more than six (6) square feet.

**Section 7. Outbuildings Prohibited.** No outbuildings or other attached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Declarant or its designated architectural committee.

**Section 8. Temporary Structure.** No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

**Section 9.** All garage doors should remain closed except when cars or inhabitants are entering or exiting from the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view, except on the day for garbage pickup. Private barbecue grills will be subject to regulation and restriction and/or exclusion by the Association or its designated architectural committee. Automobile parking will be subject to regulation and restriction by the Association.

**Section 10. Tree Removal.** No tree removal will be permitted on any lot without written approval of the Board of Directors of this Association or its designated architectural committee.

**Section 11. Retention of Natural Appearance.** All units shall be sided with clear cedar lap siding and will be treated with a natural wood preservative or painted to simulate the natural appearance of cedar siding and to perfectly match the finish of the other units in the Association

**Section 12. Conformance.** The Board of Directors or its designated architectural committee shall exercise its best judgment to see that all improvements, landscaping and grading of the lots shall conform and harmonize with the surroundings and other structures built in the area covered by these covenants. The exterior of the dwelling units must have siding color, trim and accent color, roofing material and color, and driveway finish identical to all other units in the Association.

**Section 13. Rental of Living Units.** The Owner may rent part or all of his/her home. The renters will not be members of the Association but will be bound by these covenants and any other Association rules and regulations.

#### ARTICLE XI EASEMENTS

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

**Section 1. Utility easement.** The Association hereby grants to itself and to each of the Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, Cox Cable, and their respective assigns and successors, for purposes of constructing, installing, maintaining, operating, renewing or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines or other facilities in, over, under and upon the Common Properties, and each Lot, as confined to noninterference with any driveway, sidewalk or structural element of any approved or permitted living unit on any lot. Each such grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil excavated for any purpose hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so. The easement as to any of the Common Properties shall be determined and granted by the Association in the manner set forth in the By-Laws, as from time to time may be amended.

**Section 2. Roadway Easement.** The Association hereby reserves and grants to itself its successors and assigns, an easement for the maintenance, repair and reconstruction and otherwise maintaining any existing private roadway upon, and over each Lot and the Common Properties, together with rights of access, ingress and egress thereto. In no event shall such easement interfere with the structural elements of any approved living unit upon the properties. The Association hereby reserves and grants for itself, each Owner, contract purchaser and lessee (while in possession of any Living Unit in the Properties), their families, guests, employees, agents and invitees, an easement for access, ingress, egress, use and enjoyment upon and over each such roadway as traffic to and from each lot, the Common Areas and as to Declarant, its successors, grantees and assigns, that real estate described in Exhibit "B" attached hereto and by this reference made a part thereof.

**Section 3.** All telephone, electric power, cable television and other service lines from property line to dwellings shall be underground.

#### ARTICLE XII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and be enforceable by the Association, or the Owner of any land subject and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

Section 4. Amendments. This Declaration may be amended by any instrument signed by the Owners of not less than two-thirds of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least twenty days but not more than forty days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment, and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

IN WITNESS WHEREOF, the undersigned Declarants herein have set their hands.

Notary Seal

State of *Nebraska*  
County of *Douglas*

The foregoing instrument was acknowledged before me this 28 day of March, 1998 by

Rosemary E. Stone Charles Deby Robert L. Baker  
Wanda Townsend Linda L. Deby Sonya Baker  
Janeen Kennedy Patricia R. Morrissey Noreen M. Taylor  
Dustin Deby

Witness my hand and official seal this 28 day of March, 1998, at county and state aforesaid.



Kent J. Geschwender  
Notary Public  
My Commission Expires 4-1-2000

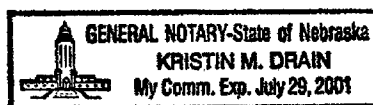
Notary Seal

State of *Nebraska*  
County of *Douglas*

The foregoing instrument was acknowledged before me this 25 day of March, 1998 by

Kristin M. Drain  
Julie Alexander

Witness my hand and official seal this 25 day of March, 1998, at county and state aforesaid.



Kristin M. Drain  
Notary Public  
My Commission Expires \_\_\_\_\_



STANDARD TELETYPE UNIT  
MIDLAND DISTRICT  
TO THE DIRECTOR GENERAL