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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEST FAIRACRES VILLAGE A/K/A WEST FAIRACRES PLACE

GEORGE J. BUGLIOWSKI REGISTER OF DEEDS COUNTY OF ...

THIS DECLARATION made on the date hereinafter set forth by West Fairacres Place Joint Venture.

WITNESSETH:

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

That property described on the attached Exhibit "A", which is incorporated herein by this reference.

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

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

ARTICLE I. DEFINITIONS

A. "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.

B. "Properties" shall mean and refer to that certain real property hereinbefore described.

C. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties, excluding lots designated as "outlots".

D. "Declarant" shall mean and refer to West Fairacres Place Joint Venture, its successors and assigns.

E. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

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ARTICLE II.  
ARCHITECTURAL CONTROL

A. No dwelling, fence, other than perimeter fences constructed by Declarant, wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, gazebo, tree house, swimming pool, television or radio antenna, satellite dishes, flag pole, solar collecting panels or equipment, air conditioning equipment, wind-generating power equipment, tool sheds, or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without express written prior approval of the Declarant through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Declarant, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain hues will be acceptable. Earthtone and soft-tone hues are encouraged. Bright, gaudy, intense colors will be rejected. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Similar designs, forms, plans, styles or motifs will be considered repetitive if they are not separated by at least three adjacent lots regardless of orientation. Superficial, cosmetic or minor architectural detail differences in like designs will not constitute a basis for approval. The Architectural Control Committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required of the applicant at the discretion of the Architectural Control Committee. Submittals for the approval shall be made in duplicate and the comments and actions of the Architectural Control Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or drawings:

- 1) Site plan indicating specific improvement and indicating lot number, street address, final grading, erosion control plan, surface drainage and sidewalks.
- 2) Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.

3) An architectural review fee of Fifty (\$50.00) Dollars per improvement plan per lot will be charged. Said fee is subject to adjustment or waiver if so determined by the Architectural Control Committee. Additional review fees will be required for resubmissions for the same lot or alterations or additions to previously reviewed submittals. If construction has commenced on any lot without Architectural Control Committee approval, the review fee will be One Hundred (\$100.00) Dollars. The applicants name, address and telephone number shall appear on each set of plans submitted to the Architectural Control Committee. If applicant wishes that his plans be returned via the mail, he shall include with his submittal an additional Two (\$2.00) Dollars for postage and handling.

D. The approval or disapproval of the Architectural Control Committee as required in these Covenants, shall be in writing. Typically, approval or disapproval of the submittal shall be made within seventy-two (72) hours. However, failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents and the fee required above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall be deemed to constitute approval of the submittal, assuming they do not otherwise violate the specific provisions of these Covenants.

ARTICLE III.  
RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. The Lot shall be used only for single-family residential dwelling purposes and no Lot shall contain more than one (1) detached, single-family dwelling.

B. No building shall be created, altered, placed or permitted to remain on any Lot other than the one (1) detached single-family dwelling referred to above, and said dwelling shall conform to the following requirements:

<u>TYPE OF DWELLING</u>	<u>MINIMUM AREA</u>	<u>LOCATION OF AREA</u>
1) One-story house with attached garage.	1,800 sq. ft.	On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor).
2) One-story house with basement garage.	2,000 sq. ft.	On the main floor.
3) One and one-half and two story houses.	2,000 sq. ft.	Total area above the basement level, and 1,100 sq. ft. minimum area on the main floor.

<u>TYPE OF DWELLING</u>	<u>MINIMUM AREA</u>	<u>LOCATION OF AREA</u>
4) Split entry (bi-level house)	2,000 sq. ft.	On the main floor.
5) Tri-level (split level house)	2,200 sq. ft.	Total area above grade.

C. For the purposes of these restrictions, two-story height shall, when the basement is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred (100%) percent above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have an attached, enclosed, side-by-side, two (2) car garage minimum, which must contain an area of at least four hundred (400) square feet.

D. All buildings shall be located at least twenty-five (25) feet from the front lot line, at least five (5) feet from the side lot lines and at least twenty-five (25) feet from the rear lot line. On corner lots, either street side may be designated by the owner as the front, and either non-street side as the rear, for purposes of determining compliance herewith, but buildings must be at least seventeen and one-half (17.5) feet from the other street side lot line. For purposes of this restriction, eaves, open slab-on-grade patios and steps shall not be considered part of the building.

E. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone even if a portion of those exposed foundations may be perpendicular, or nearly so, to the affronting street. Exposed portions of the foundation on the side of each dwelling facing the street, when said dwelling is located on a corner lot, are to be similarly covered with clay-fired brick or stone. Exposed portions of the foundation on the sides or rear not facing a street of a dwelling located on a corner lot and the exposed portion of the foundation on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted.

F. All fireplace flues, chimneys or chases shall be faced with clay-fired brick or stone. No imitation brick or imitation, simulated or non-natural stone building products shall be used.

G. The parts of all pre-fabricated metal furnace flues that protrude from the roof of a dwelling must be painted and no furnace flue may protrude more than five (5') feet from the roof of the dwelling, as

measured from the top cap of the flue to the point from which the flue emerges from the roof. In the event that a dwelling is constructed without a fireplace, the furnace flue must then be faced with clay-fired brick or stone above roof level. All furnace flues must be located on the rear side of the roof ridge.

H. No fences may be built forward of the rear-most wall of the house and, under no circumstances, closer to any adjoining street than the property line. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Architectural Control Committee referred to above. Wire or chain-link fences, temporary or permanent barbed wire, electrified, and/or snow fences shall not be permitted.

I. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on said lot or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said lots. No full or partial subterranean dwellings or log houses shall be constructed or erected on any lot. No dwelling shall be moved from outside of the Properties onto any of said lots.

J. No primary flat or mansard roof shall be permitted on any dwelling or any portion thereof. All dwellings shall be roofed with wood shakes or wood shingles, simulated wood product shingles approved by the Committee, clay or slate.

K. The Declarant has created a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with accepted engineering principles. No building shall be placed, nor any lot graded to interfere with such water drainage plan nor cause damage to the building or neighboring buildings or lots. All owners shall provide an erosion control plan acceptable to Declarant prior to any construction. Said plan shall control drainage run-off and sedimentation.

L. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any lot. No animals, livestock, 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 dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are kept confined to the lot of their owner and are not permitted to run loose outside the lot of the owner.

M. No incinerator or tashburner shall be permitted on any lot. No garbage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage is required. No clothesline shall be permitted outside of any dwelling at any time. Any exterior air conditioning condensing units or heat pump units shall be placed in the rear yard of the dwelling and in no case closer than twelve (12) feet to the neighboring property line. Detached accessory buildings are not permitted.

N. No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored or maintained outside of the garage. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean parking the vehicle or trailer on the driveway, or any other part of the lot, outside of the garage, for seven (7) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailer, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles must be done in the garage. The dedicated street right-of-way located between the pavement and the lot line of any residential lot shall not be used for the parking of any vehicle, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

O. All lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on lots when construction is started on the main residential structure intended for such lot. In addition, vacant lots where capital improvements have not yet been installed shall not be used for dumping of earth or any other waste materials and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant lots where capital improvements have not yet been installed shall be allowed to reach more than a maximum height of twelve (12) inches.

P. Except for the purpose of controlling erosion on vacant lots, no field crops shall be grown upon any lot any any time.

Q. 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, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

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

S. Vegetable gardens and rock gardens shall be permitted only if maintained in the designated rear yard of any lot, behind the dwelling on said lot. Further, vegetable gardens and rock gardens must be approved by the Architectural Control Committee.

T. No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Architectural Control Committee.

U. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any lot in the promotion or sale of any lot, dwelling or property. No advertising signs or posters of any kind shall be erected or placed on any of said lots, except the residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to any sign erected by the Declarant, or its agents, in the development of West Fairaces Village.

V. All driveways shall be constructed of concrete or brick. Asphaltic concrete is not allowed.

W. None of said lots shall be subdivided, split or in any manner combined with any other lot or portion of any other lot, unless the resulting parcel shall contain at least as much area as the smallest of the lots used in assembling the resulting parcel.

X. The front, side and rear yards of all lots shall be sodded, and two (2) trees, each not less than two (2) caliper inches in diameter shall be planted in the front yard of each residence. All yards shall be sodded and the trees planted within one (1) year from the date the foundation for the residence on the lot was completed.

ARTICLE IV.  
EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, the City or County franchised cable television firm and to the Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message services and cable television under an eight (8) foot strip of land adjoining the rear boundary lines and a five (5) foot strip of land adjoining the side boundary lines of said lots and license being granted for the use and benefit of all present and future owners of said lots; provided, however, that said lot line easement is granted upon the specific condition that if any said utility companies fail to construct wires or conduits along any of the said lot lines within thirty-six (36)



months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within sixty (60) days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementway, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

B. All telephone, cable television and electric power service lines from property line to dwelling shall be underground.

ARTICLE V.  
HOMEOWNER'S ASSOCIATION

A. The following definitions shall apply for the purposes of this Article:

- 1) "Association shall mean and refer to West Fairacres Place Homeowner's Association, its successors and assigns, a Nebraska Non-Profit Corporation.
- 2) "Improved Lot" shall mean and refer to any lot of the Properties on which a dwelling has been erected and the construction thereof is substantially complete.

All other definitions contained in Article I will likewise be applicable to this Article.

B. Every owner shall be a member of the West Fairacres Place Homeowner's Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

C. The Declarant, for each lot owned within the Properties as defined herein, 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 covenant and agreed to pay to the Association regular annual maintenance assessments for charges for the purposes hereinafter set forth, which assessments, together with interest, costs and reasonable attorney's fees shall be and constitute until paid a continuing charge against and a lien upon such lot or property against which each such assessment is made.

D. The assessments levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to maintain the West Fairacres Place Subdivision (West Fairacres Village Replat and West Fairacres Village 2nd Platting) outlots, swimming pool, electronic gates, sprinkler system, landscaping and the road and sewer system within the outlots.

E. Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonable itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual

assessments from each lot on the Properties, which shall be sufficient to fund the budget for the fiscal year. Assessments shall commence on the first day of the first month when a house is built on any lot and occupied as a residence.

F. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may foreclose the lien against the property in the same manner as provided by law for the foreclosure of mortgages.

G. 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 a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or its owner from liability for any assessments thereafter becoming due or from the lien thereof.

H. All Properties dedicated to and accepted by a local public authority and all Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

I. The Homeowner's Association shall be a non-profit corporation formed by the Declarant and its Articles of Incorporation and Bylaws, to the extent not inconsistent with this Declaration are hereby incorporated herein by this reference. In the event of any conflict between the Articles and/or Bylaws of the Corporation and this Declaration, then this Declaration shall control.

#### ARTICLE VI.

##### GENERAL PROVISIONS

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

B. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. 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 an instrument signed by the owners of not less than seventy-five (75%) percent of the lots covered by this Declaration.

C. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 2nd day of August, 1988.

DECLARANT:

WEST FAIRACRES PLACE JOINT VENTURE

By

[Handwritten Signature]

STATE OF NEBRASKA)  
                                  ) ss.  
COUNTY OF DOUGLAS)

On this 2nd day of August, 1988 before me the undersigned, a Notary Public in and for said County and State personally came Michael J. Hall of West Fairacres Place Joint Venture and acknowledged his execution thereof to be his voluntary act and deed and the voluntary act and deed of said Joint Venture.

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

Karen K. Kula  
Notary Public

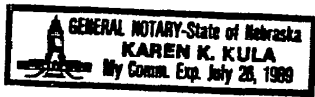


EXHIBIT "A"

Lots 1 through 8, inclusive, West Fairacres Village Replat (a cluster subdivision) and Lots 34 through 62, inclusive, West Fairacres Village 2nd Platting (a cluster subdivision), both being subdivisions in the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.