



BK 0947 PG 363



MISC 1990 23055

THIS PAGE INCLUDED FOR  
INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

AMENDED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR WEST FAIRACRES VILLAGE

THIS AMENDED DECLARATION of Covenants, Conditions, Restrictions and Easements for West Fairacres Village is made, on the date hereinafter set forth, by Bruce A. Buehler and Jean E. Buehler, husband and wife, Thomas F. Dolnicek and Julie Ford, husband and wife, Jean E. Andersen, a single person, Benjamin Graber and Cynthia D. Graber, husband and wife, Francis J. and Kelly S. Jelensperger, husband and wife, and West Fairacres Place Joint Venture, a Nebraska partnership, collectively owning 75% of the Lots set forth in the First Declaration as hereafter described, hereinafter collectively referred to as First Amending Declarant and West Fairacres Place Joint Venture, a Nebraska Partnership, hereinafter referred to as the Second Amending Declarant. When not individually referred to, First Amending Declarant and Second Amending Declarant shall hereinafter and collectively be referred to as Declarants. The authority of the First Amending Declarant and Second Amending Declarant to create and cause to be filed this Amended Declaration is explained below in the Preliminary Statement

PRELIMINARY STATEMENT

By Declaration of Covenants, Conditions, Restrictions and Easements, hereinafter referred to as the First Declaration, for Lots 1 through 24, inclusive, Outlot 1 and Outlot 2, West Fairacres Village, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, dated December 2, 1985 and recorded at Book 759, Pages 95 through 105, inclusive, of the Miscellaneous Records of the Register of Deeds of Douglas County, West Fairacres Village Partnership, a Nebraska Joint Venture, hereinafter referred to as First Original Declarant, subjected the above described Lots and Outlots to restrictions, covenants, conditions and easements. Pursuant to Article X, Section 2, the First Declaration may be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots covered by such First Declaration.

On September 7, 1988, the West Fairacres Village Replat was recorded at Book 1834, Page 103 of the Miscellaneous records of the Register of Deeds of Douglas County, Nebraska, by which Lots 8 through 22, inclusive and Outlot 1, West Fairacres Village as surveyed, platted and recorded in Douglas County, Nebraska were replatted into Lots 1 through 8, inclusive, and Outlot 1, West Fairacres Village Replat.

FURTHER, by Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as the Second Declaration, for Lots 1 through 8, inclusive, West Fairacres Village Replat and Lots 34 through 62, inclusive, West Fairacres 2nd Platting, both being subdivisions, as surveyed, platted and recorded in Douglas County, Nebraska, dated August 2, 1988 and recorded at Book 864,

*misc*  
23055  
RECEIVED  
DEC 12 4 06 PM '90  
OFFICE OF THE REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

BK 947 N \_\_\_\_\_ C/O \_\_\_\_\_ FEE 1350  
PG 363-389 N \_\_\_\_\_ DEL. *MM* MC *we*  
OF *Misc of* COMP. *MMN* F/B 59-  
42410  
42413

Pages 663 through 673, inclusive, of the Miscellaneous Records of the Register of Deeds of Douglas County, West Fairacres Place Joint Venture, a Nebraska Limited Partnership, hereinafter referred to as Second Declarant subjected the above described Lots to restrictions, covenants, conditions and easements. Within the Second Declaration, Second Declarant reserved in itself, the right to unilaterally amend the Second Declaration in any manner it should determine in its full and absolute discretion, for a period of 5 years from the date the Second Declaration was recorded.

W I T N E S S E T H

WHEREAS, Declarants have the authority to amend the prior Declarations, as described above, and to cause there to be created and filed one comprehensive declaration of covenants, conditions, restrictions and easements relative to the following real property:

Lots 1 through 7, inclusive, 23 and 24, Outlots 1 and 2, West Fairacres Village, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 through 8, inclusive, Outlot 1, West Fairacres Village Replat, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 34 through 62, inclusive, Outlots 3 and 4, West Fairacres Village 2nd Platting, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarants desire to create on the hereinabove described real property a residential community with private streets, improvements, parks, open spaces and other common facilities for the benefit of said community; and

WHEREAS, Declarants desire to provide for the preservation of the values and amenities in said community and for the maintenance of said private streets, improvements, parks, open spaces and other common facilities, and to this end, desires to subject the above-described real property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each owner thereof; and

WHEREAS, Declarants have deemed it desirable, for the efficient preservation of the values and amenities in said community, to create two (2) agencies to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, West Fairacres Village Homeowners Association, Inc., and the West Fairacres Village Patiohomes Association, Inc., have been incorporated under the laws of the State of Nebraska as nonprofit corporations, the purpose of which shall be to exercise the functions aforesaid.

NOW, THEREFORE, Declarants hereby declare that all of the above-described property 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 real property. The easements, covenants, restrictions and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the above-described property, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the West Fairacres Village Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns. Membership to the Homeowners Association shall consist exclusively of Class #1 Owners, as that term is hereinafter defined.

Section 2. "Patihomes Association" shall mean and refer to the West Fairacres Village Patihomes Association, Inc., a Nebraska nonprofit corporation, its successors and assigns. Membership to the Patihomes Association shall consist exclusively of Class #2 Owners, as that term is hereinafter defined.

Section 3. "Common Properties" shall mean and refer to Outlot 1 of West Fairacres Village Replat, Outlots 1 and 2 of West Fairacres Village, and Outlots 3 and 4 of West Fairacres Village (2nd Platting), as surveyed, platted and recorded in Douglas County, Nebraska. The Common Properties shall be devoted to the exclusive common use and enjoyment of the Owners of the Properties, as those terms are hereinafter defined.

Section 4. "Living Unit" shall mean and refer to any building situtation upon The Properties, as hereinafter defined, designated and intended for the use and occupancy as a residence by a single family.

Section 5.

(A) "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon any recorded map or plat of The Properties, as hereinafter defined, upon which a Living Unit shall be built or is proposed to be built, with the exception of the "Common Properties", as heretofore defined. The Lots subject to this Declaration are Lots 1 through 7, inclusive, 23 and 24, West Fairacres Village, Lots 1 through 8, inclusive, West Fairacres Village Replat and Lots 34 through 62, inclusive, West Fairacres Village 2nd Platting, each a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

(B) "Undeveloped Lot" shall mean any Lot on which there has been built no Living Unit. Further, Lots on which Living Units

have been built shall be considered Undeveloped Lots until such time as the Living Unit is first occupied by an Owner, or any other(s) authorized by the Owner to occupy said Living Unit.

(C) "Developed Lot" shall mean any Lot on which there has been a Living Unit that was once occupied by an Owner, or any other(s) authorized by the Owner to occupy the Living Unit.

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

Section 7.

(A) "Class #1 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, as those terms are herein defined, including contract sellers, but notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagees unless and until such mortgagee has acquired fee simple title pursuant to foreclosure or any proceeding in lieu of foreclosure. Further, Class #1 Owner shall not mean those having an interest in all or any part, parcel or portion of a platted Lot as security for the performance of an obligation.

(B) "Class #2 Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to all or part, parcel or portion of Lots 1 through 7, inclusive, 23 and 24, West Fairacres Village (not to be confused with Lots 1 through 8, inclusive, West Fairacres Village Replat), including contract sellers, but notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagees unless and until such mortgagee has acquired fee simple title pursuant to foreclosure or any proceeding in lieu of foreclosure. Further, Class #2 Owner shall not mean those having an interest in all or any part, parcel, or portion of a platted Lot as security for the performance of an obligation. It is the intention of Declarants that Class #1 Owner and Class #2 Owner, as defined herein, shall not be interpreted as being mutually exclusive terms, i.e., it is intended that Class #2 Owners shall also be Class #1 Owners.

Section 8. "The Properties" shall mean and refer to all such properties as are subject to this Declaration, which shall consist of Lots 1 through 7, inclusive, 23 and 24, Outlots 1 and 2, West Fairacres Village, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 through 8, inclusive, Outlot 1, West Fairacres Village Replat, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 34 through 62, inclusive, Outlots 3 and 4, West Fairacres Village 2nd Platting, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

## ARTICLE II.

PROPERTY RIGHTS IN THE COMMON PROPERTY.

Section 1. Owners' Easements of Enjoyment. Every Owner and/or Member of the Homeowners 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, subject to the following provisions:

- A. The right of the Homeowners Association to suspend the voting rights and rights to the use of the Common Properties by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- B. The right of the Homeowners Association to dedicate or transfer all or any part of the Common Properties, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, nonprofit corporation (to use for purposes similar to those for which the Association was formed), authority or utility for such purposes and subject to such conditions as may be agreed to by the Homeowners Association and by persons holding mortgages on any portion of the Common Properties.
- C. The right of the Homeowners Association to limit the number of guests of Owners on recreational facilities located on the Common Properties.
- D. The right of the Homeowners Association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties and facilities, which mortgage shall be subordinate to the rights of the Owners hereunder.
- E. The right of the Homeowners Association to charge reasonable admission and other fees for the use of the recreational facilities on the Common Properties by Members and by guests of Members.
- F. The right of the Homeowners 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. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Homeowners Association, his right of enjoyment of the Common Properties and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests or contract purchasers who reside in his Living Unit.

## ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATIONS

Section 1. Membership. Every Class #1 Owner shall be a member of the Homeowners Association. Every Class #2 Owner shall be a member of the Patiohomes Association. Membership in the Homeowners Association and the Patiohomes Association shall be appurtenant to and may not be separated from ownership of any Lot within the Properties.

Section 2. Classes of Voting Membership. Both of the Associations shall have such classes of membership as are provided for in their By-Laws, as from time to time amended.

## ARTICLE IV.

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Class #1 Owner and each Class #2 Owner, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the following to the Association(s) of which said Owner is a member: (a) interim assessments or charges; (b) annual assessments or charges; and (c) special assessments; all of such assessments or charges to be established and collected as provided in the By-Laws of the respective Associations, as from time to time amended. The interim, annual and special assessments or charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon said Lot against which such assessment is made. All subsequent purchasers shall take title to the Lot subject to said lien and shall be bound to inquire to the respective Associations as to the amount of any unpaid assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessment.

(A) The assessments levied by the Homeowners Association shall be used exclusively for the purpose of maintaining The Common Properties and promoting the health, safety, welfare and recreation of the residents of The Properties, and in particular, interim and annual assessments levied by the Homeowners Association shall be used for: (a) the maintenance and repair of the Common Properties; (b) the maintenance and repair of parking areas; (c) the care, maintenance and repair of the roadway easements, as hereinafter defined, and private streets over which the Association has an easement; (d) snow removal from the private streets; (e) the care and maintenance of the private sanitary and storm sewer systems excluding, however, lines connecting Living Units to the sanitary and storm sewer systems; (f) providing insurance coverage upon the

Common Properties, as hereinafter set forth; and (g) maintenance of electronic street gates; (h) maintenance and repair of swimming pool located on Common Property; (i) maintenance and repair of street lights and (j) any other expenses deemed to be common by the Homeowners Association. The Homeowners Association shall be permitted to create a two-tier assessment structure whereby Undeveloped Lots and Developed Lots are subjected to different levels of non-special assessments, provided, however, that in no event shall the Homeowners Association cause a non-special assessment to be levied against an Undeveloped Lot in any amount that exceeds 70% of the non-special assessments levied against Developed Lots. For purposes of the exception to the aforementioned 70% limitation on non-special assessments levied against Undeveloped Lots, a special assessment is contemplated to be an assessment necessitated by extraordinary expenditures and special assessments shall be assessed on all Lots equally. Extraordinary expenditures would include, but not be limited to, such items as street replacement, sewer replacement, uninsured or underinsured liability judgments or litigation against the Homeowners Association, etc. The determination of what is and what is not an extraordinary expenditure necessitating a special assessment shall be made by the Board of Directors of the Homeowners Association. Notwithstanding anything herein appearing to the contrary, the maximum non-special assessment which may be assessed against or with respect to two (2) contiguous Developed Lots which are improved and occupied by a single Living Unit shall not, in the aggregate, exceed 150% of the non-special assessment which might be assessed against a single occupied Developed Lot.

(B) The assessments levied by the Patiohomes Association shall be used exclusively for the purpose of maintaining the Lots and Living Units located on Lots 1 through 7, and 23 and 24, West Fairacres Village, a Subdivision, as surveyed, platted and recorded in Douglas County Nebraska. Said maintenance of Lots and dwellings by the Patiohomes Association shall include (a) the care and maintenance of lawns and yards on the Lots named in this Subsection, excluding however, any enclosed or fenced-in areas thereon; b) painting and otherwise maintaining the exterior building surfaces of Living Units on Lots named in this Subsection; c) snow removal from and salting of driveways and sidewalks on Lots named in this Subsection; d) insurance on real property and any other expenses deemed by the Patiohomes Association to be common to the Lots named in this Subsection.

Section 3. Proof of Payment. The Associations shall, upon demand and upon payment of a reasonable charge, furnish a certificate signed by an officer of the respective Association setting forth the amount of the unpaid assessments, if any, with respect to a subject Lot, the amount of the current periodic assessment and the date that such assessment becomes due and/or delinquent, any penalty due, and any credit for advance payments or for prepaid items, which statement shall be conclusive upon the Association which issued it in favor of all persons who rely thereon in good faith.



Section 4. Effect of Nonpayment of Assessment; Personal Obligation of the Owner; Liens; Remedies of the Associations. If any assessment chargeable to a Lot, or any installment thereof, is not paid on the date when due, then such assessment, together with interest thereon and costs of collection thereof as hereinafter provided, shall thereupon become a lien on such Lot superior to all other liens and encumbrances, except liens for taxes, special assessments and first mortgages. Any delinquent assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of interest at which individuals may contract in the State of Nebraska as determined from time to time. In the event the unpaid assessment is an installment of an annual assessment, the Association which levied such assessment 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 which levied the assessment 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 cost or preparing and filing the complaint in such action, and in the event judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorneys' fee, together with the cost 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 Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association which levied the assessment shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgages.

Section 5. Transfer of Lots by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien. Provided, however, the sale or transfer of any Lot pursuant to judicial foreclosure of a first mortgage or deed of trust shall extinguish the lien of such assessment as to payments which become 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.

##### COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon The Properties for the benefit of each Lot and the Common Properties which comprise The Properties, and may be enforced by any Owner of a Lot that is subject to this Declaration or the Patio-homes Association.

- A. No Lot shall be used except for single family residential purposes.

- B. No noxious or offensive activity shall be carried on upon The Properties, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Further home occupations, as defined in the zoning code of the Municipal Code of the City of Omaha, shall not be permitted to take place within any of the Living Units.
- C. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected upon any Lot or used at any time as a residence, either temporarily or permanently.
- D. There has been 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 Common Properties, any Lot or any Living Unit situated on any Lot.
- E. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on The Properties. No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept on The Properties, except that dogs, cats or other household pets maintained within the Living Unit may be kept, provided that they are not kept, bred or maintained for any commercial purpose that the total number of dogs and cats kept within a Living Unit on any Lot shall not exceed two (2) and that they are kept confined within the Living Unit or any fenced in or enclosed area attached to the Living Unit of their owner and are not permitted to run loose outside the Living Unit of the Owner. No animals may be sheltered or tethered outside the Living Units of their Owners overnight.
- F. Any Owner of either an Undeveloped Lot or a Developed Lot shall cause its Lot to be regularly mowed and shall not permit vegetation and plant-life, exclusive of vegetation and plant-life approved by the Architectural Committee, to exceed levels of growth as established by the Homeowners Association. No unused building material, junk or rubbish shall be left exposed on the Properties except during actual building construction. During actual building construction, the Owner of a Lot on which actual construction is taking place shall cause the Lot and building materials to be kept in good order. Good order contemplates, but shall not be expressly limited to, the daily placement of debris and scrap building materials into an appropriate trash container, the regular removal and replacement of trash containers which have been filled to capacity and the removal of mud and other debris from Common Properties. In the event that during actual con-

struction the Owner of a Lot on which actual construction is taking place fails to maintain its Lot in good order, the Board of Directors of the Homeowners Association shall be permitted to cause the Lot to be brought into good order and to assess the Lot Owner for the cost of thereof.

- G. No incinerator or trash burner shall be permitted on The Properties. No garbage or trash can or container shall be permitted to remain outside of any Living Unit, except after 8:00 P.M. the evening before the scheduled garbage pick-up, and provided that said garbage or trash can or container shall be placed back inside the Living Unit by 8:00 p.m. the day of the garbage pick-up. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothesline shall be permitted outside any Living Unit at any time.
- H. No boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, snowmobile or other self-propelled vehicle shall be stored outside of the garages of the Living Units at any time. For purposes of the preceding provision, "stored outside of the garage" shall mean, parking the vehicle or trailer over night on the driveway, or any other part of the Lot upon which the Living Unit is situated, outside of the garage, for three (3) or more consecutive days. All repair work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers or any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles must be done in the garage.
- I. No exterior lighting shall be installed on any Lot without the express written approval of the Homeowners Association.
- J. 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" signs of a size no greater than six (6) square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale.
- K. No fence may be erected in the front yard of a Living Unit.
- L. No television or radio antenna including, but not limited to, satellite dish type antennas, shall be built, erected, placed or otherwise maintained or permitted to remain on any Lot without the express written approval of the Homeowners Association.
- M. No use shall be made of The Properties which will in any manner violate the statutes, rules or regulations of any

governmental authority having jurisdiction over The Properties.

- N. No Owner 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 the Owners.
- O. No Living Unit shall be rented or leased for transient or hotel purposes which, for the purpose of this Declaration, shall mean for any period of time less than thirty (30) days. Subject to the foregoing restriction, each Owner shall have the absolute right to lease his Living Unit, provided that the Lease therefore is in writing and is in all respects subject to the covenants, conditions, restrictions and limitations provided in this Declaration and in the By-Laws of the Homeowners Association and Patihomes Association, if applicable.
- P. The use of the Properties shall be subject to such additional rules and regulations as may be adopted from time to time by the Homeowners Association.

#### ARTICLE VI.

##### ARCHITECTURAL CONTROL

A. The Board of Directors of the Homeowners Association shall serve as the Architectural Control Committee. The Architectural Control Committee shall have the powers and be subject to the procedural requirements set forth below, provided, however that all items presently situated on Developed Lots and which would otherwise be subject to the approval of the Architectural Control Committee shall be deemed constructively approved thereby.

B. No dwelling, fence, other than perimeter fences, wall, pathway, driveway, patio cover or enclosure, deck, rock garden, gazebo, tree house, swimming pool, tennis court, 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 Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

C. The Homeowners Association, 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 proce-

ture. 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.

D. 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 clearing indicating clues 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 Living Unit 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 of 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.

E. 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 VII

RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. All Lots 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.
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, stoopes, 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 will 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. The sidelot restrictions imposed herein shall not apply to the common boundary line of two (2) Lots which is improved with a single Living Unit.

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 and 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 must 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. 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 the 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 or the Properties onto any of said lots.

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

J. 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.

K. 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.

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

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

N. 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 VIII

##### INSURANCE

Section 1. Public Liability. The Homeowners Association shall obtain and maintain in effect public liability insurance in such amounts as determined by the Board, but in no event less than \$500,000.00/\$1,000,000.00 covering the Common Properties with the Homeowners Association, Patihomes Association, their respective Boards of Directors, employees and agents as insureds.

Section 2. Additional Insurance. Each of the Associations shall also obtain and maintain workmen's compensation insurance coverage for its employees, if any, and such other types and kinds of insurance coverage as are deemed necessary or advisable by the Boards of Directors of the respective Associations.



Section 3. Payment for Insurance. The cost of the public liability insurance coverage and workmen's compensation insurance, if any, shall be deemed a common expense and shall be included as a part of the interim and annual assessments as hereinabove provided in Article IV. The cost of any other insurance, obtained pursuant to Section 2 above, shall be paid in such manner and at such times as is determined by the Boards of Directors of the respective Associations.

Section 4. Liability of Board. The Boards of Directors of the Associations shall not be liable to any party upon the amount of insurance coverage obtained, the settlement of an insurance claim, nor, the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

## ARTICLE IX

### EASEMENTS

The Properties are, and shall perpetually be, unless any are 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 service and roadway easements.

Section 1. Utility Easement. Declarants hereby reserve unto itself and grants to the Homeowners Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, City of Omaha, Nebraska, and any company which has been granted a franchise to provide a cable television system, their successors and assigns, a perpetual easement, together with rights of egress, ingress and other access thereto, for purposes of constructing, installing, maintaining, operating, renewing or repairing their respective private sewer, telephone, water, electric, public sewer or other utility conduits, lines or other facilities in and under the Common Properties, and each Lot, as confined to non-interference with any driveway, sidewalk or structural element of any Living Unit on any Lot. While the utility easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes, in order to maximize the buildable area of each Lot. The grantees of the above described easement agree that subsequent to the construction of their respective improvements on The Properties, they shall reduce said blanket utility easement to a specific metes and bounds easement setting forth the actual amount of the property used for said improvements, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket utility easement to a specific metes and bounds utility easement. Each such grantee, by acceptance or use of this easement right, shall 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. Said restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so.

Section 2. Roadway Easement. Declarants hereby reserve unto itself and grants to the Homeowners Association, their successors and assigns, a perpetual easement, together with rights of egress, ingress and other access thereto, for the purposes of constructing, maintaining, repairing and reconstructing roadways, private streets and parking areas, over, under and upon the Common Properties and each Lot, as confined to non-interference with any structural elements of any Living Unit and for the further purpose of pedestrian traffic. While the easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the buildable area of each Lot. Provided, however, that subsequent to the initial construction of the roadways, private streets and parking areas of The Properties, the Homeowners Association and the Declarant hereby agree to reduce said blanket easement to a specific metes and bounds easement setting forth the actual amount of The Properties used for said roadways, private streets and parking areas, and all Owners hereby covenant and agree to cooperate with reduction of the blanket easement to a specific metes and bounds easement. Declarant hereby reserves unto itself and grants to each member of the Associations, 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, private street and parking area as necessary to travel to and from each Lot and the Common Properties; provided, however, that such use does not interfere with an Owner's use and enjoyment of his Living Unit.

Section 3. Maintenance Easement. Declarants hereby reserve unto itself and grants to the Patihomes Association, their successors and assigns, a general easement, together with rights of egress, ingress and other access thereto, for purposes of cultivating, cutting, installing, maintaining, mowing, planting, raking, renewing, trimming or otherwise caring for grass, lawns, shrubs, trees or other decorative or landscaping vegetation and for purposes of maintaining, repairing, restoring or otherwise preserving any driveway or sidewalk, including the removal of ice, mud, snow or other debris, in, over and upon all parts of each Lot not occupied or used for a Living Unit.

Section 4. Support and Encroachment Easement. If any portion of the Common Properties encroaches upon a Lot or Living Unit or if any Living Unit encroaches upon the Common Properties as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of The Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such encroachment exists.

Each Owner or contract purchaser of each Lot shall have a general easement, together with rights of ingress, egress and other access thereto, for purposes of building, constructing and otherwise maintaining all approved or permitted common foundations, roofs or walls, fences, gates, patios, party walls or other structural elements of a single family clustered residence on adjoining Lots or to encroach or project not more than five (5) feet in, over or upon any part of any abutting Lot.

#### ARTICLE IX

##### 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 appropriate Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, and shall be automatically renewed and extended for successive periods of ten (10) years each unless this Declaration has been amended as hereinafter provided.

Section 2. Amendments. This Declaration may be amended, at any time, by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

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 properly sent when mailed by the regular United States mail, first class postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Associations at the time of such mailing, provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Associations, in writing, of its interest in a Lot prior to the responsibility arising in the Associations 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 or 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 Associations 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 of the other provisions hereof, which shall remain

in full force and effect.

IN WITNESS WHEREOF, the Declarants have caused these presents to be executed this 6<sup>th</sup> day of ~~August~~, 1990.  
*December*

WEST FAIRACRES PLACE JOINT VENTURE, a Nebraska Partnership,

By: First Omaha Corporation,  
General Partner, By Resolution  
Trust Corporation as Receiver for  
Heritage Federal Savings Bank of  
Omaha, its Parent Corporation and  
Successor-in-Interest,

By: *Harry Shearer*  
Harry Shearer  
Specialist in Charge

*Bruce A. Buehler M.D.*  
Bruce A. Buehler

*Jean E. Buehler*  
Jean E. Buehler

*Thomas F. Dolniecek*  
Thomas F. Dolniecek

*Julie Ford*  
Julie Ford

*Jean E. Andersen*  
Jean E. Andersen

*Benjamin Graber*  
Benjamin Graber

*Cynthia D. Graber*  
Cynthia D. Graber

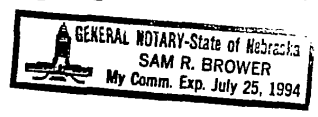
*Francis J. Jelyensperger*  
Francis J. Jelyensperger

*Kelly S. Jeltsperger*  
Kelly S. Jeltsperger

STATE OF NEBRASKA)  
                                  ) ss.  
COUNTY OF DOUGLAS)

On this 6<sup>th</sup> day of December, 1990, before me, a Notary Public for said County, personally appeared Harry Shearer, Specialist in Charge, known to me to the person whose name is subscribed to the foregoing Amended Declaration of Covenants, Conditions, Restrictions and Easements for West Fairacres Village, and acknowledged that he executed the same in his capacity as Specialist in Charge of and for Resolution Trust Corporation as Receiver for Heritage Federal Savings Bank of Omaha for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 6<sup>th</sup> day of December, 1990.



*Sam R. Brower*  
Notary Public

STATE OF NEBRASKA)  
                                  ) ss.  
COUNTY OF DOUGLAS)

On this 6<sup>th</sup> day of December, 1990, before me, a Notary Public for said County, personally appeared Bruce a Buehler and Jean E. Buehler, husband and wife, known to me to the persons whose names are subscribed to the foregoing Amended Declaration of Covenants, Conditions, Restrictions and Easements for West Fairacres Village, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 6<sup>th</sup> day of December, 1990.

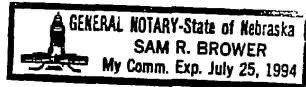


*Sam R. Brower*  
Notary Public

STATE OF NEBRASKA)  
 ) ss.  
 COUNTY OF DOUGLAS)

On this 6<sup>th</sup> day of December, 1990, before me, a Notary Public for said County, personally appeared Thomas F. Dolnicek and Julie Ford, husband and wife, known to me to the persons whose names are subscribed to the foregoing Amended Declaration of Covenants, Conditions, Restrictions and Easements for West Fairacres Village, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 6<sup>th</sup> day of December, 1990.

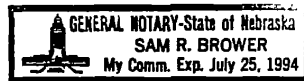


Sam R. Brower  
 Notary Public

STATE OF NEBRASKA)  
 ) ss.  
 COUNTY OF DOUGLAS)

On this 6<sup>th</sup> day of December, 1990, before me, a Notary Public for said County, personally appeared Jean E. Andersen, a single person, known to me to the person whose name is subscribed to the foregoing Amended Declaration of Covenants, Conditions, Restrictions and Easements for West Fairacres Village, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 6<sup>th</sup> day of December, 1990.



Sam R. Brower  
 Notary Public

STATE OF NEBRASKA)  
 ) ss.  
 COUNTY OF DOUGLAS)

On this 6<sup>th</sup> day of December, 1990, before me, a Notary Public for said County, personally appeared Benjamin Graber and Cynthia D. Graber, husband and wife, known to me to the persons whose names are subscribed to the foregoing Amended Declaration of Covenants, Conditions, Restrictions and Easements for West Fairacres Village, and acknowledged that they executed the same for the purposes therein contained.

