

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

BOOK 765 PAGE 80

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Brookhaven Replat II, County of Douglas, State of Nebraska, which is more particularly described as:

Lots 1 - 13 inclusive, in Brookhaven Replat II, 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 I
DEFINITIONS

Section 1. "Association" shall mean and refer to the Brookhaven Townhome Association, Inc., a Nebraska Non-Profit Corporation, 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 additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

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

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

Class B. Class B. Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B. membership shall cease and be converted to Class A membership on the happening of either of the following events which ever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On January 1, 1989.

ARTICLE III
COVENANTS 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 therefore, 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 for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, 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 and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such 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. Private Area Maintenance and Easement. In order to promote uniformity of maintenance and appearance, the Declarant for each Lot owned within the properties hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree subject to the approval of the Association through its Board, that:

- (a) The Association shall maintain the grounds of each and every lot (but not

the improvements thereon, defined as the original structure, driveway and any patio areas, in which case Section 11 shall be applicable);

(b) No fences or other obstructions as determined by the Board which interfere with the proper maintenance of the area shall be constructed on any Lot and that any proposed construction be specifically approved in writing by the Board prior to the commencement of construction; and

(c) Declarant and/or Owner does hereby grant a perpetual easement to the Association at all times upon, over and across such grounds for maintenance purposes, including but not limited to, mowing, watering and tree or shrubbery service. Nothing set forth herein shall be construed to grant to the Association, the Declarant or the owners of any other Lots the right of use and enjoyment to any Lot within the properties save such Lot and/or Lots as may be owned by said Declarant or other owners.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the homes situated upon the properties.

Section 4. Maximum Annual Assessment. Until January 1, of the year immediately following the conveyance of the first Lot to the Owner, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) per Lot.

(a) From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the Maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3's) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 5. 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 with its jurisdiction, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3's) 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 6. 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 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) 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 sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed, based on the status of each Lot. All Lots which have a Townhouse unit completed as evidenced by a certificate of occupancy issued by the local governmental authority, will be assessed the full amount as set by this declaration. Lots without a Townhouse unit or with a unit under construction, but without a certificate of occupancy, will be assessed at twenty percent (20%) of the full amount not to exceed Five Dollars (\$5.00) per month. The assessments may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Title of the first Lot to an Owner from the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate allowable in the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 10. 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 of any proceedings 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 for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exterior Maintenance. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3's) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 12. Painting. Section 11 places the primary responsibility for exterior maintenance upon the individual Owner, notwithstanding, all exterior surfaces of units connected by party walls shall be uniformly painted the same colors. To facilitate said uniform color scheme, the exterior painting of all units shall be the responsibility of the Association and there shall be no exterior painting of any individual unit by any Owner.

Section 13. Insurance. The Association shall provide insurance with respect to the improvement (homes/units) in an amount equal to at least one hundred percent (100%) of the full replacement value of said improvement or in an amount as may be required by any mortgageholder, whichever is higher, against loss by fire, lightning and other perils covered by standard extended coverage endorsement, and insurance against such other hazards and in amounts as are normally carried by owners of like units. Such insurance shall, however, exclude all glass, garage doors, and entrance doors. Nor shall Owner's personal property be covered thereunder, it being the Owner's sole responsibility to provide such coverage. The Association shall in addition to the above provide liability insurance for the Association and its members with respect to all activities under its jurisdiction, liability insurance associated with the owned units being the responsibility of each individual Owner. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 14. Undeveloped Lots. Lots on which no residential structure has been constructed and/or for which a certificate of occupancy has not been issued by the local governing body having such authority shall be assessed at twenty percent (20%) of the full assessment rate as set by the Board of Directors not to exceed Five Dollars (\$5.00) per month.

Section 15. Sanitary Sewers. It shall be the responsibility of the Association to maintain the portion of Sanitary Sewer which runs from the Lot to the main sewer line located in the street.

ARTICLE IV 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 Owners thereafter make use of the wall, they shall contribute to the cost of the 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 that 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 the 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 successor 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 a majority of all the arbitrators.

ARTICLE V 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 charge 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 by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, 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 VI RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and enjoyment to his individual Lot, subject to the following restrictions:

(a) No noxious or offensive trade or activity shall be carried upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any building plot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such a manner as to conceal them from view. Trailers and recreational vehicles shall not be continuously parked on driveways or side yards for more than 72 hours.

(b) No fences shall be erected in front of the main residential structure and all weeds and grass shall be cut down to a maximum height of six (6) inches above ground level. All lots shall be kept free of all types of trash and debris.

(c) No trailer, basement, tent, shack, garage, barn, or other building erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence until all exterior construction is fully completed according to approved plans.

(d) No house trailer (single wide or double wide) or mobile home shall be allowed to be used as a residence for permanent or temporary use except that this paragraph shall not be construed so as to prohibit new factory-built modular housing having a minimum of twelve-inch eaves, an exterior of wood, stone or brick and placed on a permanent concrete block or poured concrete foundation.

(e) No cattle, horses, sheep or poultry, hogs, or any other livestock shall be kept or maintained on any Lot in Brookhaven. This paragraph shall not be construed, however, as a prohibition with the keeping or ordinary domestic pets.

(f) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjoining Lots.

(g) Except for approved chemical temporary toilets to be used only during construction, no outdoor toilets may be constructed or maintained on any Lots.

(h) All Owners shall have the affirmative duty to maintain in good and orderly fashion any grass and landscape planting on their property by the Developer as a part of the Community Unit Plan for Brookhaven.

(i) As required by the City of Omaha, concrete sidewalks four (4) feet wide by four (4) inches thick shall be constructed for the Association. Said sidewalk shall be constructed and completed by the then Owner at the time of completion of the main residential structure and shall be located four (4) feet back of the curb line.

(j) As an aid to freer movement of vehicles at street intersections and in order to provide adequate protection for the safety of children, pedestrians, operators of vehicles and/or property, all fences, walls, gateways, ornamental structures, hedge, shrubbery and other fixtures shall be so constructed, built and maintained so as to provide clear, unobstructed vision at corners of street intersections.

(k) Said Lots shall be used only for residential purposes except such Lots, or portions thereof, as may hereinafter be conveyed or dedicated for public, church, educational or charitable uses.

(l) No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than dwellings not to exceed two and one-half (2½) stories in height, a private garage, attached breezeways and other out buildings incidental to such residential uses. No external television or other antenna shall protrude above the highest point of the roof of the dwelling situated of the Lot on which such antenna is located.

(m) Each dwelling shall contain at least one attached, detached or basement single car garage and driveway constructed of concrete, brick or asphaltic material which is a minimum of ten (10) feet wide with sufficient area to provide off-street parking for at least two automobiles.

(n) Prefabricated structures and structures moved from other locations shall not be permitted except that new factory-built modular housing having a minimum of twelve-inch eaves, an exterior of wood, stone or brick and placed on a permanent concrete foundation may be utilized provided that the plans and specification thereof have been approved by the undersigned Developer.

(o) No signs whatsoever, including but without limitation to commercial signs,

political signs and similar signs visible from streets and neighboring property or roads shall be erected or maintained upon any Lot except: Such signs as shall be required by legal proceedings; residential identification signs of a combined total face area of three square feet (3) or less for each residence, during the time of construction of any residence or other improvement, job identification signs having a maximum face area of nine square feet (9) per sign and of a type usually employed by contractors, subcontractors, and tradesmen; and not more than one "For Sale" or "For Rent" sign having a maximum face area of nine square feet (9).

Section 2. Utility Meters. Each Lot shall have separate water, electrical, gas and/or other applicable utility meters for separate reading.

Section 3. Utility Service Lines. Each Lot shall be serviced by separate utility service lines.

ARTICLE VII
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 an 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. Invalidity 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.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional property may be annexed to the Properties with the consent of two-thirds (2/3's) of each class. Additional land within the area described as Lot 481, Brookhaven, as surveyed, platted and recorded in Douglas County, Nebraska, may be annexed by the Declarant without the consent of members within ten (10) years of the date of this instrument provided that the FHA or the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12th day of November, 1985.

DECLARANT:

CONSTRUCTION SCIENCES, INC.,
a Nebraska Corporation,

ATTEST:

Arlene A. Boyd
Arlene A. Boyd, Secretary

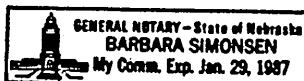
By Charles G. Smith
Charles G. Smith, President

BK 765 Del VK N 90-911tc Fee 31.00
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OF Min 12 Comp RP

STATE OF NEBRASKA) ss.
COUNTY OF DOUGLAS)

Before me, a notary public in and for said County and State, personally came Charles G. Smith, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation.

Witness my hand and notarial seal this 12th day of November, 1985.



Barbara Simonson
Notary Public

My Commission Expires: _____

RECEIVED
FEB 12 PM 2:45
REGISTRAR OF DEEDS
DOUGLAS COUNTY, NEBRASKA

RECEIVED
MISC

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