

**Second Amended Declarations of Covenants, Conditions,  
Restrictions and Easements for Birch Tree Lofts  
Property Owners Association, Inc.  
Adopted the 23rd day of February, 2022**

These Second Amended Declarations of Covenants, Conditions, Restrictions and Easements for Birch Tree Lofts Property Owners Association, Inc. ("Second Amended Covenants") are made this 23rd day of February, 2022, by the Owners of Lots 1 through 9 of Birch Tree Lofts, an Addition to the City of Omaha, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska, being a replatting of the East 225 feet of the North 1/2 of Lot 6, in Piersons Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska ("Birch Tree Lofts"). The Second Amended Covenants restate and replace all prior declarations of covenants, conditions, restrictions, and easements for Birch Tree Lofts including the Declaration of Covenants recorded as Instrument # 1998004442, MISC Book 1243 Page 326, and the Amended Declarations of Covenants recorded as MISC Instrument # 2019033007.

Declarants hereby declare that all Birch Tree Lofts 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 collective value, desirability, and attractiveness of Birch Tree Lofts, and which obligations 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 of property within Birch Tree Lofts.

Return To: Gene Summerlin  
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Omaha, NE 68154

## **ARTICLE I – DEFINITIONS**

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

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

Section 3. “Properties” shall mean the real property located within Birch Tree Lofts including all Lots and Common Areas, and all additions which may later be brought within the jurisdiction of the Association.

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

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

Section 6. “Board of Directors” shall consist of the duly elected President, Vice President, Secretary and Treasurer of the Association.

Section 7. “Member” shall mean every Owner of a Lot.

Section 8. “Alterations” shall mean the erection, construction, addition, or revision to (a) the exterior of any building, fence, wall, or other external structure on a Lot (including changes to the exterior siding or trim and to colors of siding, trim, or roofing materials); or (b) substantial modifications to landscaping, trees, or shrubs on a Lot which change the appearance or ambience of Birch Tree Lofts.

## **ARTICLE II - PROPERTY RIGHTS**

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

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

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

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

### **ARTICLE III - MEMBERSHIP AND VOTING RIGHTS**

For the purposes of any vote allowed or required by the Members, there shall be only one Member vote allowed per Lot regardless of the number of Owners of a given Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

### **ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS**

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

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

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

### Section 3. Annual Assessment.

(a) The annual assessment shall be \$1,600.00 payable in two installments of \$800.00 payable January 1 (delinquent after 30 days) and July 1 (delinquent after 30 days).

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

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

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

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

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

Common Area or abandonment of his Lot.

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

## **ARTICLE V - MAINTENANCE AND INSURANCE**

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

Section 2. Insurance.

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

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

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

## **ARTICLE VI - ARCHITECTURAL CONTROL**

No Alterations shall be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the Alterations have been submitted to and approved in writing by a majority of the Members as the Members, in their sole discretion, deem appropriate. If the Members fail to approve or disapprove such Alterations within thirty days after the plans and specifications have been submitted to the Members, further approval will not be required and the requirements of this Article will be satisfied. As of the date of the approval of these Second Amended Covenants, the Association acknowledges that all existing Alterations have been approved by a majority of the Members.

## **ARTICLE VII - PARTY WALLS**

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

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

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

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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

## **ARTICLE VIII – RESPONSIBILITY TO REBUILD**

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

## **ARTICLE IX – GOVERNANCE**

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

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

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

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

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

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

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

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

Section 5. Meetings of the Association. The Association shall meet at least semiannually. The meetings shall be called by the President and written notices (specifying the time, date, location and agenda) shall be delivered to all Association members (by hand, United States mail, or electronic correspondence) between ten and twenty days prior to the meeting.

## **ARTICLE X - GENERAL RESTRICTIONS**

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the approval by the Members as provided in Article VI of these Covenants.

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

Section 3. Fences. Etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the properties, except such fences or enclosures as may be authorized under these Covenants. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any building site, parking area, street or common area in the properties. Automobiles shall be parked only in designated parking areas as published by the committee in its Rules and Regulations. No external television, satellite dish or radio antenna shall be erected on or about any of the building sites or property within the properties without prior approval by the Members as provided in Article VI of these Covenants. No clothes lines or clothes hangers may be constructed or used unless completely concealed from view.

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

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

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

Section 7. Outbuildings Prohibited. No outbuildings or other attached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Members as provided in Article VI of these Covenants.



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

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

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

Section 11. Rental of Living Units. The Owner may rent part or all of his/her home. The renters will not be members of the Association but will be bound by these covenants and any other Association rules and regulations.

#### **ARTICLE XI – EASEMENTS**

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

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

Section 2. Roadway Easement. The Association hereby reserves and grants to itself its successors and assigns, an easement for the maintenance, repair and reconstruction and otherwise maintaining any existing private roadway upon, and over

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

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

## **ARTICLE XII - GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Second Amended Covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

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

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

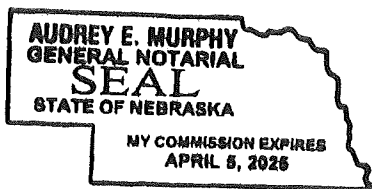
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 23rd day of February, 2022.

Birch Tree Lofts Property Owners Association, Inc.,  
a Nebraska corporation, "Declarant"

By *Carel E. Wilson*  
President

STATE OF NEBRASKA            )  
  ) SS.:  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 23rd day of February, 2022, by Erin Wilson, President of Birch Tree Lofts Property Owners Association, Inc., a Nebraska corporation, and acknowledged such to be her voluntary act and deed in her authorized capacity as such on behalf of Birch Tree Lofts Property Owners Association, Inc.



*Audrey E. Murphy*  
Notary Public

**Approval of the Second Amended Declarations of Covenants, Conditions, Restrictions and Easements for Birch Tree Lofts Property Owners Association, Inc.**

The undersigned Owners of Lots in Birch Tree Lofts, an Addition to the City of Omaha, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska, being a replatting of the East 225 feet of the North 1/2 of Lot 6, in Piersons Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, hereby approve the Second Amended Declarations of Covenants, Conditions, Restrictions and Easements for Birch Tree Lofts Property Owners Association, Inc. ("Second Amended Covenants") as evidenced by the signatures below which represent at least two-thirds of the Owners of Lots entitled to vote on the Second Amended Covenants.

Effective this 23<sup>rd</sup> day of February, 2022.

Carol E Wilson  
Woodrow T and Carol E Wilson  
By: \_\_\_\_\_

John R Karnish  
John R Karnish

Jamie Costine  
Jamie Costine and Blair Hartigan  
By: \_\_\_\_\_

Ronald D Samuelson  
Ronald D Samuelson

Susan Fieber Strohn  
Susan Fieber Strohn

Vollis and Theresa Summerlin Jr  
By: Vollis Summerlin Sr.

Michael Blum  
Michael Blum

Michael and Tina McDermott Sr  
By: Michael J. McDermott