

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

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

WITNESSETH:

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

ARTICLE II

OBJECT

(PLAN OF OWNERSHIP)

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

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTY

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

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

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

ARTICLE IV

MEMBERSHIP, VOTING, MAJORITY OF OWNERS QUORUM

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

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

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

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

ARTICLE V

ADMINISTRATION

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

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

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

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

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

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

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

ARTICLE VI

BOARD OF MANAGERS

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

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

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

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

ARTICLE VII

COVENANTS FOR MAINTENANCE ASSESSMENTS

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

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

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

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

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

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

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

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

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

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

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

right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

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

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

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

Section 2. Review of Committee.

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

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

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

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

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

ARTICLE IX

COMMON SCHEME RESTRICTIONS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X

INSURANCE

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

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

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

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

ARTICLE XI

EASEMENTS

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

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

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

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

ARTICLE XII

GENERAL PROVISIONS

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

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

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

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

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

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

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

Arlyne Geschwender

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss

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

WITNESS my hand and Notarial Seal the date last aforesaid.

GENERAL NOTARY - State of Nebraska
ROGENA SCHLAX
My Comm. Exp. Sept. 6, 1985

Rogena Schlax
Notary Public

My Commission expires on the 6 day of September 1985.

317.39'

103.53'

211.0

First Floor Elev = 211.0

104.24'

First Floor Elev = 208.0

2

208.0

3

First Floor Elev = 206.0

206.0

4

First Floor Elev = 205.0

205.0

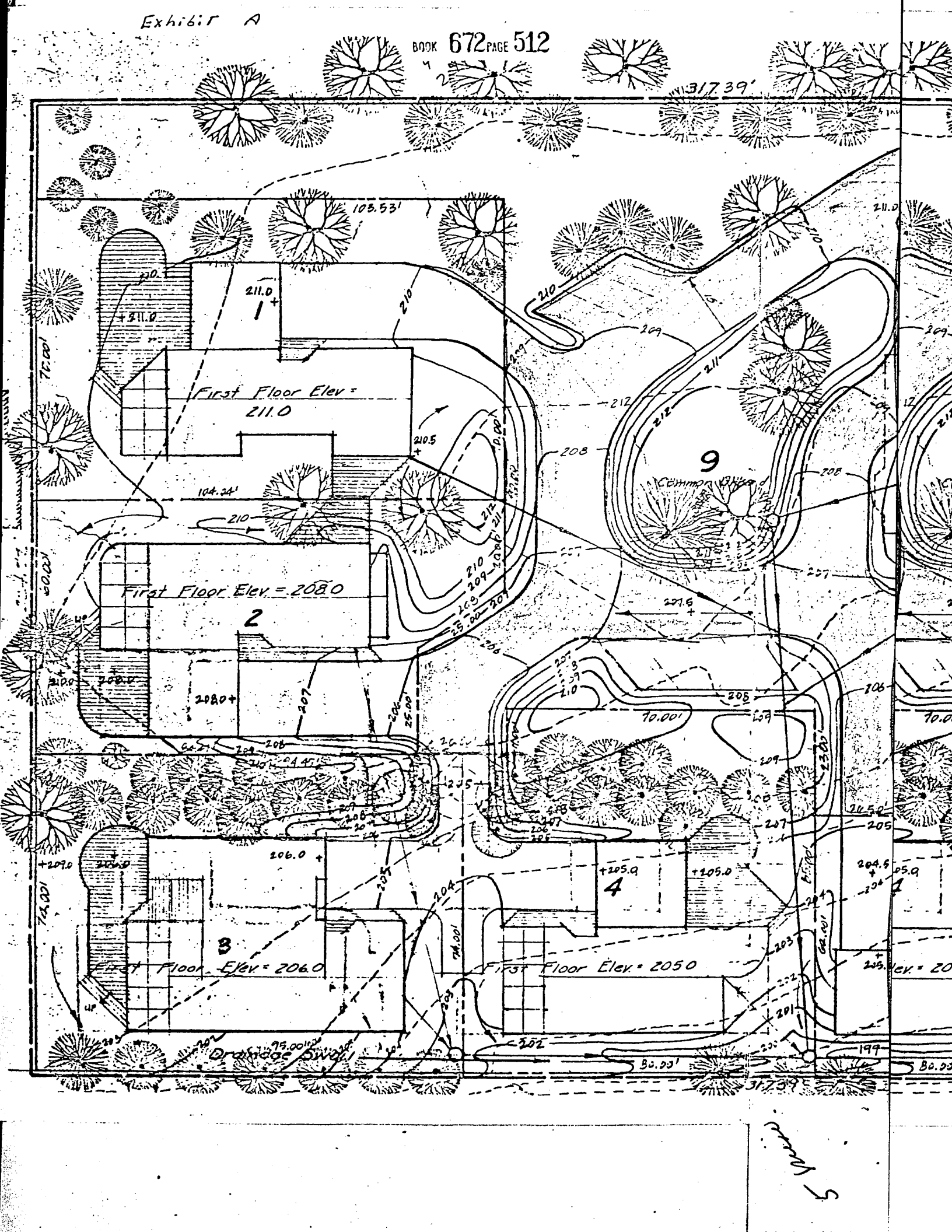
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70.00'

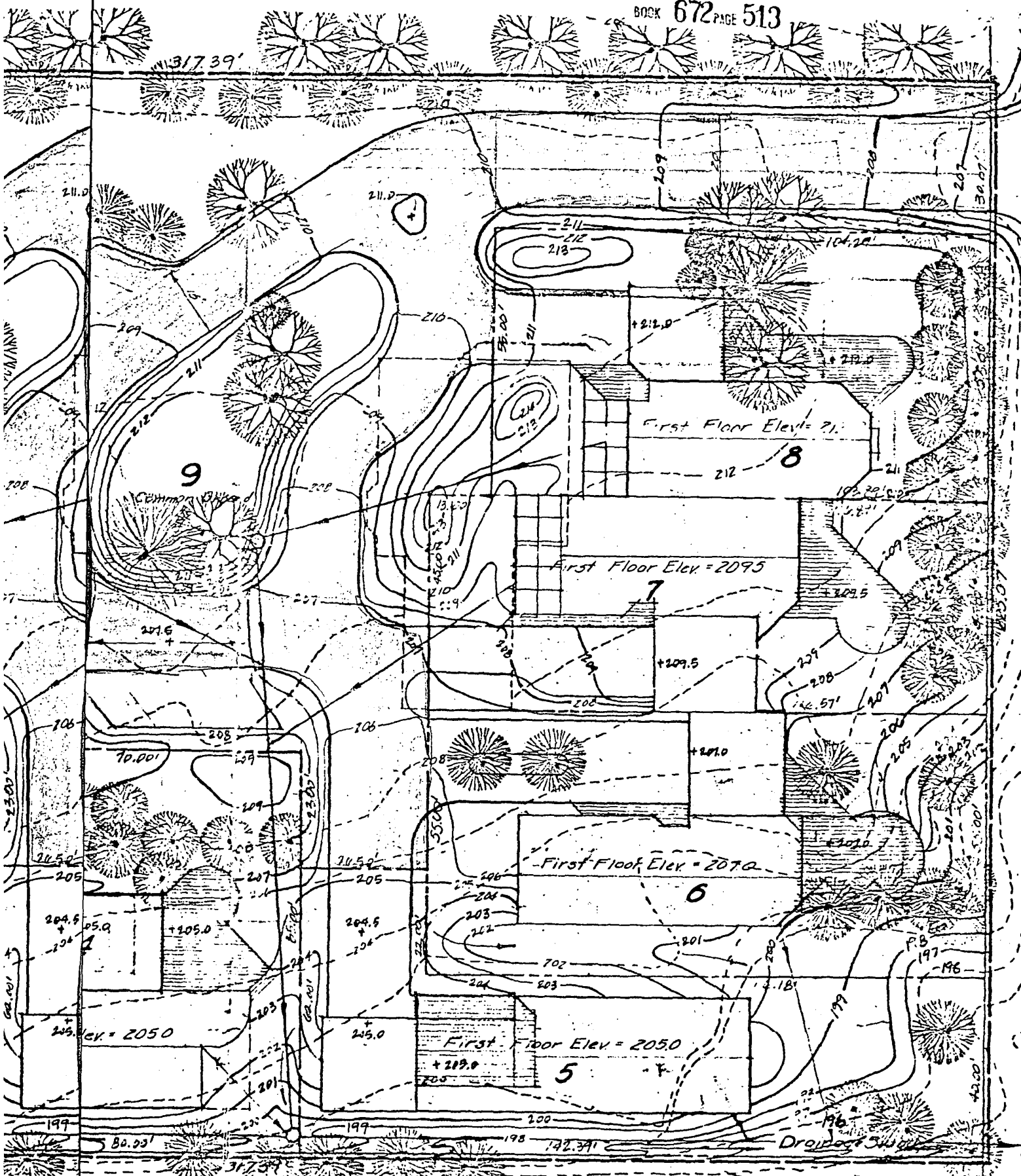
Drainage Swale

80.00'

Handwritten signature



3/7.39'



RECEIVED
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 C. MARJORIE OSLER
 REGISTER OF DEEDS
 DOUGLAS COUNTY, NEBR.

Book 672
 Page 504
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