

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

This declaration made this 7th day of July, 1977,  
by Briar West Inc., a Nebraska corporation, Owner and Developer  
of real property described as follows:

Lots One through Twenty (1 - 20) inclusive,  
Block Six (6) and Outlot A; Briarhurst West  
Fourth Addition to the City of Lincoln,  
Lancaster County, Nebraska

Said Owner and Developer does hereby declare that said real  
estate shall be held, sold and conveyed subject to the easements,  
restrictions, covenants, reservations, liens, charges and conditions  
which shall run with the land and shall be binding upon all  
parties having or acquiring any right, title or interest thereon  
or any part thereof, as follows:

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to the  
Briarhurst West Fourth Addition Multi-Family Owners Association of  
owners which has been incorporated under the Nebraska Non-profit  
Corporations Act, and its successors.

Section 2. "Property" shall mean and refer to the real  
estate above described together with such additions as may be  
made thereto under the terms of this Declaration.

Section 3. "Common Area" shall mean real estate owned by  
the Association and designated as such, which shall be held for  
the common use and enjoyment of all of the members of the  
Association.

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Section 4. "Lot" shall mean and refer to any designated portion of the property as shown on the recorded subdivision plat, with the exception of the Common Area and streets.

Section 5. "Dwelling Unit" shall mean and refer to each portion of a structure, designed for residential use as a separate unit thereof, authorized by the Community Unit Plan enacted by the City of Lincoln and located upon a lot.

Section 6. "Member" shall mean and refer to any 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 any Dwelling Unit or Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 8. "Developer" shall mean and refer to Briar West Inc., a Nebraska corporation, and its successors and assigns if such successors or assigns have or acquire a majority of the undeveloped Lots for the purpose of development.

ARTICLE II

Membership and Organization  
of the Association

Except as provided herein, every person or entity who is a record owner of a fee or undivided fee interest in any Lot or any Dwelling Unit located upon any Lot which is subject to the terms of this instrument shall be a member of the Association, including contract sellers, but not including persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit or Lot, and ownership of such Lot or Dwelling Unit shall be the sole qualification for membership.

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ARTICLE III

Voting Rights

The Association shall have two classes of voting membership:

Class A: Class A members of the Association shall be all of those owners with the exception of the Developer and shall be entitled to one vote for each dwelling unit constructed or authorized for development upon a lot in which they hold the interest required for membership.

Class B: Class B members shall be the Developer as defined in the filed covenants who shall be entitled to ten votes for each dwelling unit constructed or authorized for development upon a lot in which it holds the interest required for membership and two hundred votes for each outlot owned in the property. Class B membership shall expire when 90% of dwelling units are owned by persons other than Developer or on December 31, 1985, whichever shall first occur.

ARTICLE IV

Annexation of Additional Property

As long as there is a Class B membership in the Association, Developer may, by instrument duly executed by it, approved by the City of Lincoln and recorded, add additional land to the Property, and additional unencumbered property to the common area, and no consent or approval of other members of the Association shall be required, provided however, that such additional property

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and common area shall be located within Section 7-9-7 and that the added property and common area is finally platted in conformance with the community unit plan on file with the City of Lincoln. Additional residential property and common area not within the foregoing provisions may be annexed only with the consent of two-thirds (2/3) of each class of members.

#### ARTICLE V

##### Property Rights in the Common Area

Section 1. Developer hereby covenants for himself, his successors and assigns, that he will convey Outlot A as Common Area to the Association, subject to liens, easements, covenants and restrictions of record prior to the sale of 60% of building lots in the property.

Section 2. Every member shall have the right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) Subject to the provisions of Section 3 of this Article, use of the Common Area shall be restricted to members and their guests, and the Association shall have the right to limit the number of guests of members and to adopt reasonable regulations applicable to use by guests.
- (b) The Association shall have the right to charge a reasonable admission or other fee for the use of any facility situated upon the Common Area, and shall also have the right to contract with Developer or with any other person, persons or entity for the charging of reasonable admission or other fees in exchange for management, development, maintenance and improvement of any such area.
- (c) The Association shall have the right, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage said property provided such action has the consent of two-thirds (2/3) of each class of membership and provided, further, that the rights of any mortgagee shall be subject to the rights of the members of the Association while any mortgage is current and not in default.
- (d) The Association shall have the right to suspend the voting rights and rights to use the Common Area and recreational facilities therein by a member for the

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period during which any assessment against the Lot of the Owner remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

- (e) The Association shall have the right to dedicate or transfer all or any part of the Common Area to the City of Lincoln, with its consent, for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective, however, unless an instrument signed by members entitled to cast two-thirds of the vote of the Class A membership and two-thirds of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance of the taking of any such action. Developer shall have the right at any time prior to the complete development of the property described in Article II to use so much of the Common Area as it deems necessary or advisable for the purpose of aiding in the construction and development of unimproved lots and shall have the further right to dedicate such easements and right-of-way in the Common Area as it may consider to be necessary or advisable for the purposes of development.

Section 3. In addition to the aforementioned restrictions and conditions, the use of the Common Area shall be subject to the following restrictions:

- (a) No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over such Common Area.
- (b) No Owner, except Developer and the Association, shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which would temporarily or permanently deny free access to any part of the Common Area to all members.
- (c) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

Section 4. Any member may delegate, in accordance with the By-Laws of the Association, his right of enjoyment in the Common Area and facilities to members of his family, his tenants, or to contract purchasers who reside on the property.

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ARTICLE VI

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation

Assessments. The Declarant, for each Dwelling Unit owned or Lot owned in the event that Dwelling units have not yet been constructed and occupied within the Property, hereby covenants, and each Owner of any Lot or Dwelling Unit by acceptance of a deed therefor, 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. 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 Common Area, and for the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the issuance of an occupancy permit for a Dwelling Unit of the property to an Owner, the maximum annual assessment shall be Sixty Dollars (\$60.00) per Dwelling Unit authorized by the Community Unit Plan.

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- (a) From and after January 1 of the year immediately following the issuance of an occupancy permit for a Dwelling Unit to an Owner, the maximum annual assessment may be increased each year not more than 3% 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 issuance of an occupancy permit for a Dwelling Unit to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) 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 4. 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 upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of all the votes of both classes of membership who may vote in person or by proxy at a meeting duly called for this purpose.

Section 5. 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 of this Article 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 of 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.

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Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Dwelling Units or Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence as to all Dwelling Units or Lots of the property on the first day of the month following the filing of this document. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association 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 Dwelling Unit or Lot have been paid.

Section 8. Effect of Non Payment 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 rate of eight percent (8%) per annum. 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 non-use of the Common Area or abandonment of his Dwelling Unit or Lot.

Section 9. 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



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Dwelling Unit or Lot shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit or Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit or Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. All properties dedicated to and accepted by the City of Lincoln and the Common Area shall be exempt from all annual and special assessments of the Association.

#### ARTICLE VII

##### General Restrictions

Section 1. No lot shall be used except for residential purposes as prescribed by the community unit plan adopted by the City of Lincoln.

Section 2. No building shall be located on any lot except as provided by the ordinances and codes of the City of Lincoln.

Section 3. Easements for installation and maintenance of utilities, drainage facilities and walkways are reserved as shown on the recorded plat.

Section 4. No noxious or offensive activity shall be carried on upon any Dwelling Unit or Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 5. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be erected upon, or used, on any lot at any time as a residence, either temporarily or permanently.

Section 6. No boats, campers, or trailers shall be regularly parked on any Owner's lot or in the Common Area, except as specifically authorized by the Association.

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Section 7. Dwellings constructed in another addition or location shall not be moved to any lot within this addition.

Section 8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

Section 9. No excess dirt which has been removed from any lot shall be moved from the Addition except by the direction of the Developer. Any such excess dirt shall be deposited within an area designated by the Developer.

Section 10. The Owner of any lot or Common Area which abutts or touches any street within or adjacent to the subdivision or which abutts or touches any pedestrian way easement area or which abutts or touches the north side of Old Cheney Road shall, at his sole expense, construct sidewalks in the sidewalk space in a manner equivalent to the standards and specifications prescribed by the City of Lincoln. The construction of said sidewalks shall be completed not later than June 1, 1981. Said owners shall maintain said sidewalks in a safe and sound condition and keep them free from snow, ice and other obstructions.

Section 11. The Owners of all lots and Common Areas within the property shall at their sole expense, construct, install maintain and repair a lighting system to illuminate the area along the private roadways within the Property in accordance with the design standards, ordinances, agreements, community unit plan, and regulations enacted by the City of Lincoln. Said lighting system may be attached to or located upon the buildings constructed within the Property. Said owners may be relieved and discharged of such maintenance and repair obligation upon the acceptance and assumption of said obligation by the Briarhurst West Fourth Addition Multi Family Owners Association. The

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construction of said lighting system shall be completed prior to the issuance of any occupancy permits for the Property by the City of Lincoln.

Section 12. The owners of all lots and common areas within the Property shall at their sole expense, pay for all labor, material and related costs in connection with the installation of a landscape screen along the north, east, and south sides of the Property. Said landscape screen shall be implemented within two planting seasons following the issuance of occupancy permits by the City of Lincoln to sixty percent (60%) of the Dwelling Units in the Property. Said Owners may be relieved and discharged of such maintenance obligation upon the conveyance of the common area to the Briarhurst West Fourth Addition Multi-Family Owners Association which shall be charged with such obligation.

Section 13. The owners of any lot or common area abutting or touching Old Cheney Road shall not have or maintain direct vehicular access to Old Cheney Road.

Section 14. The owner of Outlot A shall develop and maintain said outlot as required by the ordinance accepting and approving the plat, including trees, shrubs, grasses, ditch liners, street lighting, private roadways, parking areas and sidewalks. Said Owner shall be relieved of such development and maintenance obligation upon the conveyance of said outlot, as common area, to the Briarhurst West Fourth Addition Multi-Family Owners Association, which shall be charged with such obligation.

Section 15. The owners of all lots and common area shall accomplish any cut, fill, and compaction of land within Block 6, Briarhurst West Fourth Addition, in accordance with the design standards of the City of Lincoln and subject to the approval of the Director of Public Works. To control erosion and sedimentation during and after land preparation, lot owners, their successors

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and assigns shall provide for disturbing only the areas needed for construction; removing only those trees, shrubs, and grasses that must be removed by construction, installing sediment basins and diversion dikes before disturbing the land that drains into them; and temporarily stabilizing each segment of graded or otherwise disturbed land by seeding and mulching or by other approved methods. As land preparation is completed, the owners, their successors and assigns, shall permanently stabilize each segment with perennial vegetation and structural measures. Diversion dikes and sediment basins shall be leveled after areas that drain into them are stabilized and permanent vegetation shall be established in those areas. Sediment basins that are to be retained for storm water retention shall be seeded to permanent vegetation no less than nine months after completion of the sediment basins and shall be permanently maintained by the owners or their successors and assigns.

ARTICLE VIII

Enforcement Of Requirements

Section 1. In the event that the owner of any Dwelling Unit or Lot located in Block 6, Briarhurst West Fourth Addition shall fail to fully satisfy the requirements set forth within these Covenants and Restrictions, within the time prescribed by the ordinance and community unit plan adopted by the City of Lincoln, the Developer or the Association may proceed, after prior written notice to Lot or Dwelling Unit owners of record, and fulfill and complete any work necessary to meet said requirements. The Developer or the Association may charge each Dwelling Unit or Lot owner for its proportionate share of any costs incurred in fulfilling said owner's requirements. If said charges are not paid within thirty (30) days from the date of billing, the Developer or the Association may file a lien upon the property of

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said owner and may bring an action at law to collect same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees shall be added to the amount of such charges.

#### ARTICLE IX

##### Architectural Control

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior additions to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the directors of the Association, or by an architectural committee composed of three or more representatives appointed by the board. In the event that the Board of Directors, or its designated committees, fails to approve or disapprove such design and location thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully satisfied.

Section 2. No construction of any dwelling unit shall proceed until the same has been approved by the Superintendent of Building Inspections for the City of Lincoln and no dwelling unit shall be occupied until said Superintendent of Building Inspections has found that the Permittee has complied with all the terms, conditions and requirements set forth by the City of Lincoln in approving said permit.

#### ARTICLE X

##### Exterior Maintenance

In the event that an Owner of any Dwelling Unit or Lot in the Property shall fail to maintain the premises and the improvements

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situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after approval by two-thirds (2/3) decision of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel of ground 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 a part of the annual assessments to which such Lot is subject.

#### ARTICLE XI

##### Easements

The easements over and across the Common Area shall be those shown on the recorded plat of the subdivision, and such other easements as may be established pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions, by the Developer or the directors of the Association.

#### ARTICLE XII

##### General Provisions

Section 1. It shall be the general obligation and duty of the Association to properly maintain and repair all Common Areas, walks, drives, open drainage areas, concrete low flow channel liners, parking areas, parking islands, storm sewers, private utilities, flood proofing of private utilities, landscaping, recreational facilities, and all structures and improvements therein, or a part of the common system in accordance with reasonable standards as generally required by the City of Lincoln. Nothing in this Declaration shall be construed as any limitation upon the authority of the City of Lincoln to enter upon said property and perform necessary maintenance should the Association fail to do so, and to assess the property with the cost thereof.

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Section 2. The Association, any member thereof or the City of Lincoln, shall have the right to enforce, by proceedings 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, any member thereof or the City of Lincoln to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so.

Section 3. Any firm, person, corporation or other entity which shall succeed to title of any Owner through foreclosure of a mortgage or other security instrument or through other legal proceedings, shall upon issuance of the official deed to any Dwelling Unit or Lot, become thereupon a member of the Association and succeed as herein provided. Conveyance by such person, firm, corporation or other entity shall pass membership in the Association to the Buyer as herein provided.

Section 4. The covenants and restrictions of this Declaration shall run with the land and bind the same, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit or Lot subject to this Declaration, or by their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of this Declaration after which time said covenants and restrictions shall be automatically extended for successive periods of ten years, unless revoked or amended by instruments signed by not less than ninety percent (90%) of the Owners in the Association if during the first twenty (20) years, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners in the Association. Any instrument amending, modifying or cancelling this Declaration must be approved by the City of Lincoln and must be properly acknowledged and recorded before it shall be effective.

Section 5. In the event that the Association, the members thereof, or the directors of the Association shall fail or neglect to perform its rights, duties and obligations in accordance with the intents, purposes and provisions of this Declaration, then Developer reserves the right to call such meetings, make such appointments and to take such further action as may be necessary, from time to time, to insure that the objects and purposes of this Declaration are being fulfilled.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be duly executed by its proper officers the day and year first above written.

Attest: BRIAR WEST INC., Owner and Developer

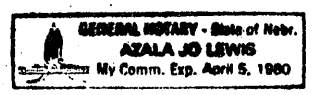
Howard D. Olson Secretary By John L. Hoppe, Jr. Vice President

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STATE OF NEBRASKA )  
                                  ) ss.  
LANCASTER COUNTY )

Before me, a duly qualified Notary Public in and for said county and state, personally came JOHN L. HOPPE, JR., known to me to be the same and identical person who signed the above and foregoing instrument as Vice-President of Briar West Inc., and HOWARD D. OLSON, known to me to be the same and identical person who signed the above and foregoing instrument as Secretary of Briar West Inc., and they did acknowledge the execution thereof to be their voluntary act and deed and the voluntary act and deed of said Briar West, Inc.

WITNESS my hand and seal on this 14th day of July 1977.



Azala Jo Lewis  
Notary Public

LANCASTER COUNTY NEBR.  
Kenneth L. Ferguson  
REGISTER OF DEEDS

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