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BYLAWS  
REGISTER OF DEEDS

BIRCHFIELD TOWNHOMES ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is Birchfield Townhomes Association, Inc., a Nebraska non-profit corporation (hereinafter referred to as the "Association"). The principal office of the corporation shall be located at 1035 N. 127th Avenue, Omaha, NE 68154, but meetings of members and directors may be held at such places within the State of Nebraska, County of Sarpy, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Birchfield Townhomes Association Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions, and Restrictions, and such additions thereto as may hereafter be brought within the Jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to those plots of land shown on the recorded subdivision map of Birchfield.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities holding fee simple title to any townhome unit or Lot which is a part of the Properties, but excluding in all cases those having any such interest merely as security for the performance of any obligation. If a townhome unit or Lot is sold under a recorded contract of sale, the purchaser (rather than the fee Owner) will be considered the Owner.

Section 5. "Declarant" shall mean and refer to Pinnacle Homes, Inc., or its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the Registrar of Deed of Sarpy County, Nebraska.

Section 7. "Member" shall mean and refer to those persons entitled membership as provided in the Declaration.

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ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Unit which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. The Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Class B. Class B members shall be the Declarant, or its successors or assigns, and shall be entitled to three (3) votes for each Lot or Unit owned. The Class B membership shall cease and be converted to Class A membership on the earlier occurrence of either of the following events:

- (a) when the votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on July 1, 2001.

ARTICLE IV

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held at the registered office of the corporation within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of five o'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at anytime by the President or by the Board of Directors, or upon written demand made on one of the corporate officers by the members who constitute at least five percent (5%) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a

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copy of each notice to each member entitled to vote thereat, addressed to the members address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice at least ten (10) days in advance. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member or his/her Unit.

## ARTICLE V

### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be a member of the Association.

Section 2. Term of Office. At the first annual meeting, the members shall elect one director for a term of one year, one director for a term of two years, and one director for a term of three years; and at each annual meeting thereafter, the members shall elect one director for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he/she may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

Section 5. Action Taken Without A Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

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ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held annually without notice at the registered office of the corporation at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than two (2) days' written notice to each director of the date, time and place of such meeting.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power to:

- (a) Suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (b) Exercise for the Association all powers, duties and authority vested in the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors and appoint a successor thereto;
- (d) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to set their compensation and prescribe their duties; and,
- (e) Such other powers as may be vested in the Board by the laws of the State of Nebraska.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present

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a statement thereof to the members at the annual meeting of the members, or at any special meeting when such a statement is requested in writing by five percent (5%) of the Class A members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; and

(2) File and foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owners personally obligated to pay the same.

(d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Cause all officers or employees having fiscal responsibilities to be bonded, as may deem appropriate,

(f) Cause the Lots, Units and Outlot A to be maintained in accordance with the Declaration; and

(g) Enforce all covenants, conditions and restrictions affecting any Lot or Owner as set forth in the Declaration.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President and a Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may, from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

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Section 4. Special Appointment. The Board may elect such other officers as the affairs of the association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such a vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, contracts, and other written instruments and shall co-sign all checks and promissory notes; and, call special meetings of the members.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members, keep the corporate seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their address, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy to each of the members.

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ARTICLE IX

COMMITTEES

The Board of Directors shall appoint an Architectural Committee, as provided in the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose and powers.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member of the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual assessments which may be secured by a lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If any assessments are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate allowable in the State of Nebraska for individuals, which is presently sixteen percent (16%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property, and interest, costs, and attorney's fees of any such action shall be added to the amount of such assessment and be recoverable by the Association as part of the assessment. The liability established by this paragraph shall be personal. No Owner may waive or otherwise escape liability for the assessments provided for herein by performing his/her own lot maintenance to be provided by the Association or by transferring or conveying the Lot.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Birchfield Townhomes Association, Inc.

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ARTICLE XIII

AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members present, by a vote of a majority of the voting power of the members present in person or by proxy; provided, however, during the period that there is a Class B membership and the loan on any members Lot or Unit is made or insured by either the Federal Housing Administration or the Veterans Administration, any amendment of these Bylaws shall be required to be approved by the Federal Housing Administration or the Veterans Administration as the case may be before it shall become effective.

Section 2. In the case of any conflict between the Article of Incorporation, and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV

INDEMNIFICATION

Section 1. In civil or administrative proceedings, the corporation may indemnify a former or present Director of the corporation, provided that the Director, or former Director, conducted him/herself in good faith and reasonably believed, in matters concerning his/her conduct while acting in an official capacity of the corporation, that his/her conduct was in the best interest of the corporation; and, in all other cases, that his or her conduct was not opposed to its best interests.

In criminal proceedings, in addition to the foregoing criteria, the Director had no reasonable cause to believe that his/her conduct was unlawful.

The corporation may not indemnify a Director or former Director in: 1) connection with a proceeding by or in the right of the corporation in which the Director was adjudged liable to the corporation; and, 2) in connection with any proceeding charging improper personal benefit to the Director, whether or not involving action in his/her official capacity, in which the Director was adjudged liable on the basis that personal benefit was improperly received by the Director.

Section 2. The corporation shall indemnify a Director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the Director was a party because he or she was a Director of the corporation against reasonable expenses actually incurred by the Director in connection with that proceeding.

Section 3. The determination of entitlement of a Director or former Director to indemnification shall be made in accordance with Nebraska law.

Section 4. The Officers, employees, or agents of the corporation who are not a Director are entitled to mandatory indemnification in the manner provided in Section 2 above to the same extent as a Director of the corporation.



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Section 5. The Board of Directors shall be empowered to procure and maintain liability, and/or errors and omissions insurance for any Director, Officer, agent, or other person to the full extent authorized, empowered, or directed by applicable law.


ARTICLE XV

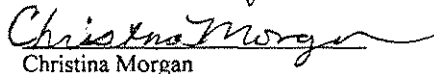
MISCELLANEOUS

The fiscal year of the Association shall be in on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of the Birchfield Townhomes Association, Inc. have hereunto set our hands this 21<sup>st</sup> day of July, 1997.



  
 \_\_\_\_\_  
 Joseph Duysen

  
 \_\_\_\_\_  
 Richard C. Morgan

  
 \_\_\_\_\_  
 Christina Morgan

STATE OF NEBRASKA)  
                                  ) ss.  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21 day of July, 1997, by Joseph Duysen, Richard C. Morgan, and Christina Morgan, directors of the Birchfield Townhomes Association, Inc.

  
 \_\_\_\_\_  
 Notary Public  


*Birchfield, 3<sup>rd</sup> addition, Lots 1-23 inclusive, & outlet "A". Sany county*

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*Sharon J. ...*  
REGISTER OF DEEDS

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**AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR BIRCHFIELD 2<sup>ND</sup> ADDITION IN  
SARPY COUNTY, NEBRASKA**

This Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Birchfield 2<sup>nd</sup> Addition in Sarpy County, Nebraska is made on this 3<sup>rd</sup> day of July 1997, by Construction Sciences, Inc., a Nebraska corporation, as the Declarant.

WITNESSETH:

WHEREAS, Declarant, pursuant to the declarant's right reserved under the Declaration of Covenants, Conditions, Restrictions and Easements for Birchfield 2<sup>nd</sup> Addition in Sarpy County, Nebraska, which is recorded in the Office of the Sarpy County Register of Deed, Instruments No. 95-05476 is desirous of amending and restating the Declaration as hereinafter set forth.

WHEREAS, this Amendment to the Declaration shall be filed of record against the following described real estate, to wit:

Lots 1 through 100, inclusive, Birchfield 2<sup>nd</sup> Addition, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and Sublots 1 through 23, inclusive, and Outlot "A", all in Birchfield 3<sup>rd</sup> Addition, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

NOW, THEREFORE, in furtherance thereof, the Declarant hereby adopts, declares, provides as follows:

97-013885A

1. The following shall become Article I to the Declaration:

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to the Birchfield 2<sup>nd</sup> Addition Homeowners Association, Inc., a Nebraska nonprofit 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, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner.

Section 3. "Properties" shall mean and refer to:

Lots 1 through 100, inclusive, Birchfield 2<sup>nd</sup> Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and Sublots 1 through 23, inclusive, and Outlot "A", Birchfield 3<sup>rd</sup> Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

Section 4. "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels or one of three parcels resulting from a Lot split of a duplex or triplex zoned Lot.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which a dwelling has been erected and the initial construction is completed.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot which the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

Section 7. "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

Section 8. "Common Area" shall mean and refer to the any land owned by Sanitary and Improvement District No. 156 of Sarpy County, Nebraska, and any land controlled by easement or right-of-way in favor of Sanitary and Improvement District No. 156 of Sarpy County, Nebraska..

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Section 9. "Common Area Improvements" shall mean and refer only to (i) to signs, landscaping, which may be located from time to time on the Common Area and (ii) any perimeter fencing on the Properties or Common Area and any signage which serves all of the Lots.

Section 10. "Common Area Expenses" means expenditures made on an annual basis by or financial liabilities of the Association, together with any allocations to reserves.

2. Article I of the Declaration shall be renamed Article II, Article II shall be renamed Article III, Article IV shall be renamed Article III, and Article V shall be renamed Article IV.
3. Article I--Paragraph 2 (which is now Article II) shall be amended in its entirety as follows:

No residential home shall be built or constructed or permitted to remain on any single-family zoned lot in Birchfield 2<sup>nd</sup> Addition which does not meet or exceed the following square footage requirements:

(a) The minimum square footage any detached, single family dwelling, exclusive of basements, breeze ways, carports and garages, shall be (1) 1,200 square feet of total finished living area for single-story dwellings; (2) 1,500 square feet of total finished living area, including lower level, for one-story dwellings with basement garages (split entry); (3) 1,600 square feet of total finished living area for a one and one-half-story and two-story dwellings; (4) 1,450 square feet of total finished living area for a tri-level (split level) dwelling, including lower level. Each residential home built or constructed shall have a private garage of not less than two vehicles and no more than three vehicles.

4. Article I--Paragraph 4 (which is now Article II) shall be amended in its entirety as follows:

The exposed front foundation wall of all main residential structures shall be constructed of or faced with genuine brick or simulated-brick poured foundations or stone or stucco. If the Lot has frontage on more than one street, the above provision shall apply only to that side constituting the front side of the house. All exposed side and rear concrete or concrete block foundation walls must be painted. All driveways must be constructed on concrete, brick, paving stone, asphalt or laid stone. All foundations shall be constructed of concrete,

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concreted blocks, brick or stone. Fireplace chimneys shall be covered with brick, stone or siding.

5. Article I--Paragraph 12 (which is now article II) shall be amended in its entirety as follows:

A public sidewalk shall be constructed of concrete four (4) feet wide by three and one half (3 1/2) inches thick in front of each built upon lot and upon the street side of each built upon corner lot. The sidewalk shall be placed four (4) feet back of the street curb line and shall be constructed by the Owner of the Lot prior to the time of completion of the dwelling and before occupancy thereof, provided, however, this provision shall vary to comply with any requirements of any governmental authority having jurisdiction thereof. It is understood, however, that from time to time because of weather or material shortages the Owner may be allowed to move in prior to sidewalk construction, but only after an escrow has been established to assure such construction when weather and material availability permits.

6. Article III shall be deleted in its entirety.
7. Article IV shall be amended and restated in its entirety as follows:

**ARTICLE III**  
**HOMEOWNERS ASSOCIATION**

1. General Information. The Association shall be required to maintain the Common Area Improvements in good condition and repair as more particularly set forth in this Declaration. The fiscal year of the Association shall be the calendar year. The Office of the Association shall be located at such location as the Board of Directors or the managing agent shall designate from time to time.

(a) All Lot Owners, by virtue of their ownership of a Lot, are automatically mandatory Members of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote, pursuant to the Declaration and in accordance with the By-Laws. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

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(b) The initial Board of Directors of the Association and all officers of the Association shall be appointed by the Declarant and thereafter be elected as provided for in the By-laws.

2. Membership. The membership of the Association shall consist of all Owners of Lots within Birchfield 2<sup>nd</sup> Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, and Birchfield 3<sup>rd</sup> Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska. Membership in the Association shall be mandatory and no Owner during his ownership of a Lot shall have the right to relinquish or terminate his membership in the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

3. Succession. The membership of each Owner shall terminate when they cease to be an Owner of a Lot, and their membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

4. Voting. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

Class A: Class A Members shall be the Owners of all Lots other than Lots owned by Declarant or Lots which are subject to a mortgage or deed of trust in favor of Declarant. Each Class A Member shall be entitled to one vote for each Lot Owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B: Class B Members shall be the Owners of all Lots owned by Declarant or Lots which are subject to a mortgage or deed of trust in favor of Declarant. Each Class B Member shall be entitled to four votes for each Lot owned. Each Class B Member shall be entitled to one vote for each Lot owned upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2001.

No Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown in the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

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5. Budget. The Board of Directors shall adopt a budget for each calendar year which shall include the estimated funds required to defray annual Common Expenses and administrative expenses of the Association.

6. Assessments.

(a) All Owners shall be obligated to pay the assessments imposed by the Board of Directors of the Association to meet the Common Area Expenses of the Association. The Common Area Expenses of the Association shall be equally assessed among all of the Lot Owners. Annual Assessments for the estimated Common Area Expenses of the Association shall be due in advance of the first day of January of each year. The method of assessment described herein may not be amended without the written approval of two-thirds (2/3) of the owners of the individual Lots.

(b) Each Lot Owner's obligation of payment of assessments shall be due on the first day of the month in which the closing of the purchase of a Lot occurs.

(c) Assessments shall be based upon the cash requirements deemed to be such aggregate sum of the Board of Directors of the Association shall from time to time determine is to be paid by all of the Lot Owners to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, alterations and improvements of and to Common Area Improvements and for the creation of a reasonable contingency and reserve for the same.

(d) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the owner's obligation to pay the same.

(e) Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall provide a summary of the Budget to all the Lot Owners, and shall set a date for a meeting of the Lot Owners to consider ratification of the Budget, which date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the vote entitled to be cast, or any larger vote specified in the Declaration, reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Lot Owners shall be continued until such

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time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

7. Association Lien for Non-Payment of Common Expenses.

(a) All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens of the Lot in favor of any assessing entity, and all sums unpaid on any Mortgage filed of record prior to the filing of the Declaration, including all unpaid obligatory sums as may be provided by such encumbrances. In the event of default in the payment of the assessment, the Owner shall be obligated to pay interest at the rate of ten percent (10%) per annum, on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees incurred together with such late charges as provided by the By-Laws of the Association. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest, late charges and expenses, including attorney's fees thereon, the name of the owner of the Lot and a description of the Lot. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Sarpy County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosures of the defaulting owner's Lot by the Association in the manner of a deed of trust or mortgage on real property upon the recording of a notice of claim thereof. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Lot being foreclosed shall be required to pay the Association the monthly assessment for the Lot during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.



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(c) Any Mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of this mortgage or encumbrance within the necessity of having to record a notice of claim of such lien. Upon request of a Mortgagee, the Association shall report to the Mortgagee of a Lot any unpaid assessments remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a Mortgagee shall have furnished to the Association notice of such encumbrance.

(d) The recorded lien may be released by recording a Release of Lien signed by one of the Members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Sarpy County, Nebraska.

(e) Notwithstanding any of the foregoing provisions, any Mortgagee who obtains a title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all annual assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments.

8. Except as amended herein, the provisions contained in the original Declaration of Covenants, Conditions, Restrictions and Easements for Birchfield 2<sup>nd</sup> Addition filed of record in the Office of the Sarpy County Register of Deeds, Instrument No. 95-05476, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed on the day and year set forth below.

CONSTRUCTION SCIENCES, INC., a Nebraska corporation,

By:  \_\_\_\_\_  
John J. Smith, President

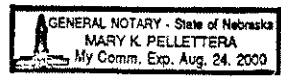
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STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

Before me, a notary public, in and for said county and state, personally came John J. Smith, President of Construction Sciences, Inc., known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 3rd day of July 1997

Mary K. Pelletiera  
Notary Public



97-015565

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
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Counter: [initials]  
Verify: [initials]  
D.E.: [initials]  
Proof: [initials]  
Fee: 57.00  
Ck  
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Charge  DATE

[Signature]  
REGISTER OF DEEDS

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made the date hereinafter set forth by Pinnacle Homes Inc., a Nebraska corporation, hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Sarpy County, Nebraska, which is more particularly described as:

Birchfield, 3rd Addition, Lots 1-23 inclusive, and Outlot "A", a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

NOW, THEREFORE, Declarant hereby declares that the property described above, together with all of the properties make a part hereof in accordance with Section 4, 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, perpetually with all of said 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 Birchfield Townhomes Association, Inc., a Nebraska nonprofit 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 townhome unit which is a part of the Properties, but excluding in all cases those having any such interest merely as security for the performance of any obligation or as an encumbrance upon the interest of a beneficial owner. If a townhome Unit or Lot is sold under a recorded contract of sale under which the seller retains title solely as security for the performance of the purchaser's obligations under the contract, the purchaser (rather than the fee Owner) will be considered the Owner.

Section 3. "Properties" shall mean and refer to Lots 1 through 23, inclusive, and Outlot A of Birchfield 3rd Addition, a Subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska that certain real property hereinafter 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 platted Lot shown upon any recorded subdivision map of the Properties, or one of two parcels resulting from a Lot split.

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Section 5. "Declarant" shall mean and refer to Pinnacle Homes, Inc., its successors and assigns.

Section 6. "Unit" shall mean each individual dwelling/townhome unit (1/2 of the duplex or 1/3 of the triplex) and the Lot upon which it is situated.

Section 7. "Common Area" shall mean and refer to all property owned by the Declarant or its successor or assign, including Outlot A, Birchfield 3rd Addition, a Subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska. Outlot A, Birchfield 3rd Addition, shall be owned and held by either the Declarant or its successors and assigns, and maintained by the Association pursuant to Article III, Sections 9 and 10.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Unit which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. 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. The Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each unit owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot or Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever 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 July 1, 2001.

## 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 Unit by

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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 annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Assessments. The assessments levied by the Association shall be used exclusively for the expenses and costs of the operation of the Association, the exterior maintenance of the Lots and the Common Area, as more particularly described in Section 9, insurance on the Common Areas, more particularly described in Section 10, for a sprinkler system in the common Areas, if installed, and for a privacy fence around the Properties, if constructed.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not exceed Seven Hundred Eighty Dollars (\$780.00) per Unit.

- (a) 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 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) 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. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article shall be sent to all members not less than ten (10) days nor more than thirty (30) 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 held within thirty (30) days following the preceding meeting.

Section 5. Rate of Assessment. Annual assessments must be fixed, based on the status of each Lot. All Lots which have a townhome Unit completed and residents living therein will be assessed. Lots or Units under construction, which are vacant, used as models and/or unsold

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to third party purchasers (not the Declarant's or his assigns) will not be assessed. All assessments may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual monthly assessments provided for herein shall commence as to all Units on the first day following the conveyance of the first townhome Unit to a third party purchaser. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit 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 or Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

Section 7. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest from the due date at the maximum legal rate allowable by law in the State of Nebraska, which at the time of execution of these Declarations is sixteen percent (16%) per annum. Should any assessment remain unpaid for more than thirty (30) days after the due date, the Association may declare the entire unpaid portion of the assessment immediately due and payable and thereafter delinquent. The Association may bring and action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in a court having jurisdiction for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his or her own Unit or Lot.

Section 8. Subordination or the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device. Sale or transfer of any Unit shall not affect the status or priority of the lien for assessments made therein. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of security device is in default if the Board determines that such lien has no value to the Association. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the responsibility to collect all assessments due.

Section 9. Exterior Maintenance and Services. "Exterior Maintenance" (as defined herein) of each townhome Unit and Lot shall be provided by the Association and each Owner does hereby consent and grant to the Association a perpetual and permanent easement over and across such Unit and Lot and the Common Areas at any reasonably time to perform such exterior maintenance. Exterior maintenance shall mean maintenance of the lawns (mowing, fertilization, and chemicals), snow removal (all walkways, front porches, and driveways), and other exterior landscaping improvements as originally installed by the Declarant, if any, except such improvements within any Lot installed by or at the direction of the owner thereof, which shall be the responsibility of such Owner, maintenance repair, and reconstruction of improvements,

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grounds, sprinkler systems installed in and utility improvements in, and insurance for, the Common Areas, and any privacy fences erected by the Declarant, or by its successors and assigns, or by the Association. Exterior maintenance shall not include any repairs or maintenance of sanitary sewer, water, gas or electrical lines on an Owner's Lot, roof repair or replacement, repair or maintenance of gutters, downspout, siding materials, sprinkler systems, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors, and owners personal property. All exterior surfaces of the townhome Units shall be in earth tone colors. To facilitate such earth tone color schemes, all units shall be vinyl sided with colors to be selected by the Architectural Control Committee of the Association. There shall be no exterior painting permitted of any townhome Unit by any Owner, except any portion of the exposed foundation and front door frame and door. All exterior maintenance that is not the responsibility of the Association shall be the responsibility of each Owner of a townhome Unit and Lot.

In the event that the need for any exterior maintenance of a Unit or the improvements thereon by the Association is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests, and invitees of the Owner of the Unit needing such maintenance, the cost of such added to and exterior maintenance by the Association shall become part of the assessment to which such Unit is subject under this Declaration.

With respect to those maintenance obligations that are not the responsibility of the Association, in the event an Owner of any Unit shall fail to maintain the exterior of the Owner's Unit and any other improvements situated on the owner's Lot in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Owner's Lot and to repair, maintain, and restore the Unit and any other improvements erected on the owners Lot, and each Owner hereby grants to the Association, its agents, servants, employees, representatives and contractors a perpetual easement therefor. The cost of such exterior maintenance shall be added to and become an additional part of the assessment to which such Unit is subject under this Declaration. Further, the Owners of the Units appurtenant to the Common Areas hereby grant to the Declarant, its successor and assigns, and to the Homeowner's Association a perpetual easement for the purpose of installing and maintaining a separate water meter to control and monitor the water usage of any sprinkler system installed in the Common Areas.

Section 10. Insurance. Each townhome Owner shall provide homeowners insurance with respect to the improvements (townhome Units) in an amount equal to at least eighty percent (80%) of the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like Units. Upon request of the Association from time to time, each Owner shall provide written evidence of this insurance coverage. Liability insurance for the Common Areas shall be maintained by the Association at its expense.

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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 town home Unit upon the Porperties and placed on the dividing line between the Units 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 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 restoration thereof in proportion to such use without prejudice, subject however, to the night of any such owners to call for a larger contribution from the others under and 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 Run 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 to the dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be binding and enforceable against the parties to the dispute.

ARTICLE V

RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS

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

- (a) No noxious or offensive trade or activity shall be carried on in or from any Unit, 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 Lot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened



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by adequate planting or by other means in such a manner as to conceal them from view. boats, boat trailers, recreational trailers and recreational vehicles shall not be parked on driveways or side yards on any Lot or Unit for more than seven (7) days cumulatively in any calendar year.

(b) No fences, except the privacy fence erected by Declarant or his assigns, shall be erected without the prior written consent of the Board of Directors of the Association. All lots shall be kept free of all kinds of trash and debris.

(c) No trailer, basement, tent, shack, garage, barn or other building erected on any Lot 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 birds, snakes, cattle, horses, sheep, poultry, pigs or any other animals shall be kept or maintained on an Lot. Each Owner may, however, keep a maximum of two (2) domestic pets.

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

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

(g) All 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.

(h) No clothes lines or clothes hangers shall be constructed on any Lot or Unit or used on any Lot outside of a building located thereon.

(i) No exterior T.V. or radio antenna shall be erected on any Lot or Unit; provided, however, that with the written permission of the Association, a satellite dish measuring 24 inches or less in diameter may be erected so long as such dish is hidden from the view of adjoining Lots.

(j) No awnings or sunscreens of any type shall be affixed to any Unit without the written consent of the Association.

(k) No auto, truck, motorcycle or other vehicle shall be repaired, torn-down, rebuilt, or stored on any Lot other than in an enclosed building.

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ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence (except for a privacy fence which may be installed by the Association in its sole discretion), wall or other structure or improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until complete 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 representatives appointed by the Board. In the event said Board, or its designated committee, falls to approve or disapprove such design and location within thirty (30) days after said complete 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 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 the 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. 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.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they may be automatically extended for successive periods of ten (10) years by action of not less than seventy-five percent (75%) of the Unit Owners. Subject to complying with the provisions of Section 5 of this Article, this Declaration may be amended or dissolved by an instrument signed by not less than seventy-five percent (75%) of the Unit Owners. Any amendment or extension must be recorded to be effective.

Section 4. FHA/VA Approval. During the period that there is a Class B membership and the loan on any members Lot or Unit is made or insured by either the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration as the case may be: (a) annexation of additional properties within the Jurisdiction of the Association; (b) any mortgaging or dedication of any common areas of the Association; and (c) the amendment of

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this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has hereunto set its hand and seal this day of July, 21, 1997.

Declarant: Pinnacle Homes, Inc.

By Richard C. Morgan  
Richard C. Morgan, Vice-President

STATE OF NEBRASKA)

)ss

COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 21 day of July, 1997 by Richard C. Morgan, Vice-President of Pinnacle Homes, Inc.

Notary Public in and for the State of Nebraska  
My Commission expires:



Jeffrey C. Smith

Please return to:  
**Walsh, Fullenkamp & Doyle**  
11440 West Center Road  
Omaha, Nebraska 68144  
*Walter K. Kline*

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR BIRCHFIELD 2ND ADDITION  
IN SARPY COUNTY, NEBRASKA**

THIS DECLARATION made on the date hereinafter set forth, by R.S. Land, Inc. ("Declarant").

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 1 through 113, inclusive, Birchfield 2nd Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation, protection and enhancement of the values and amenities of such community and for the maintenance of the character, value, desirability, attractiveness and residential integrity of the Lots.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These restrictions, covenants, conditions and easements shall run with such real estate and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

**ARTICLE I  
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for residential purposes except for such Lots or parts thereof as may hereafter or previously have been conveyed or dedicated by Declarant, for use as a school or park.

2. The ground floor finished and enclosed living area of main residential structures, exclusive of porches, breezeways, basements and garages, shall be not less than the following minimum sizes:

- |  |             |  |
|--|-------------|--|
| i) One-story house with attached garage    | 1400 sq.ft. | On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor) |
| ii) One-story house with basement garage   | 1400 sq.ft. | On the main floor  |
| iii) One and one-half and two story houses | 1800 sq.ft. | Total area above the basement level; minimum 1000 sq.ft. on the main floor                                     |
| iv) Tri-level (split level) house          | 1700 sq.ft. | Total area above grade   |

For each dwelling there must be erected a private garage for not less than two (2) cars, nor more than (3) cars (each car stall to be a minimum size of ten feet by twenty-one feet).

3. For a period of ten (10) years after the filing of this Declaration, no residence, building, fence, wall, driveway, patio enclosure, rock garden, swimming pool, tennis court, dog house, tree house, antenna, satellite receiving station ("dish"), flag pole, solar heating or cooling device, tool shed, wind mill, wind generating equipment, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

- (i) An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall reflect the type of structure, quality and use of exterior materials, exterior design, exterior color or colors, and location of structure proposed for such Improvement. Concurrent with submission of the Plans, owner shall notify the Declarant of the owner's mailing address.

(ii) Declarant shall review such Plans in relation to the type and exterior of improvements and construction, or approved for construction, on neighboring Lots and in the surrounding area and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a developed residential community with homes constructed of high quality materials. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(iii) Written notice of any refusal to approve a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the Plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the Plans. If notice of refusal is not mailed within such period, the proposed Improvement shall be deemed approved by Declarant.

(iv) The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Declarant to protect the values, character and residential quality of all Lots. However, no Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligations shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

4. The exposed front foundation wall as well as any foundation wall facing a street of all main residential structures must be constructed of or faced with brick or simulated brick or stone or stucco. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, asphalt or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, stone or siding.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of

not more than six (6) square feet advertising a Lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no retail business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

6. No exposed exterior television, broadcasting or radio antenna of any sort shall be permitted on any Lot unless approved by Declarant.

7. No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) except that during the months of May through September vehicles may be parked in the driveway only. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, airplanes, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this restriction shall not apply to trucks, tractors, or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction.

9. No outside trash or garbage pile, burner, receptacle or incinerator shall be erected, placed or permitted on any Lot. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. Lots shall be maintained free of trash and debris. No clothes line shall be permitted outside of any dwelling at any time except one umbrella-type clothes line per residence.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots. No fence shall be permitted to extend beyond the front line of a main residential structure unless written approval is first obtained from Declarant. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. All produce or vegetable gardens shall be maintained only in rear yards.

11. A dwelling on which construction has begun shall be completed within one (1) year from the date the foundation was commenced for such dwelling.

12. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each built upon Lot and upon the street side of each built upon corner Lot. The sidewalk shall be placed four (4) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof.

13. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except that a dog house constructed for one (1) dog shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or their assigns, if required by this Declaration. Dog runs and dog houses shall only be allowed at the rear of the building, concealed from public view.

14. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of eight (8) inches.

15. No structure of a temporary character, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structures, dwellings or modular housing improvements shall be moved from outside Birchfield 2nd Addition to any Lot.

## **ARTICLE II EASEMENTS**

A perpetual license and easement is hereby granted to the Omaha Public Power District, US West Communications and any company which has been granted a franchise to provide a cable television system in the area to be subdivided, their successors and assigns, to erect, operate, maintain, repair and renew poles, wires, cables, conduits and other related facilities, and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power and for transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5') foot



wide strip of land abutting all front and side boundary lot lines, and an eight (8') foot wide strip of land abutting the rear boundary lines of all Lots, and we do further grant a perpetual easement to the Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes for the transmission of gas and water on, through, under and across a five (5') foot wide strip of land abutting all streets. No permanent buildings or retaining walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted. All such utility service lines from the property line to dwelling shall be underground.

**ARTICLE III**  
**NOTICE OF POTENTIAL TELEPHONE**  
**FACILITIES CHARGE**

In the event that ninety (90%) percent of all Lots within the Birchfield 2nd Addition Subdivision are not improved within five (5) years from the date that U.S. West Communications, Inc. shall have completed its distribution system and filed notice of such completion ("Five Year Term"), then such unimproved Lot shall be subject to a charge of Four Hundred Fifty (\$450.00) Dollars.

A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the County or other appropriate governmental authority.

Should such charge be implemented by U.S. West Communications, Inc. and remain unpaid, then such charge may draw interest at the rate of twelve (12%) percent per annum commencing after the expiration of sixty (60) days from the time all of the following events have occurred: (1) expiration of the Five Year Term, (2) ninety percent (90%) of the Lots in Birchfield 2nd Addition remain unimproved, and (3) each owner of record is to send a written statement for Four Hundred Fifty Dollars (\$450.00) per unimproved Lot owned.

**ARTICLE IV**  
**HOMEOWNER'S ASSOCIATION**

A. The following definitions shall apply for the purposes of this Article:

1. "Association" shall mean and refer to the Birchfield 2nd Addition Homeowners Association, Inc., its successors and assigns, a Nebraska non-profit corporation.

2. "Improved Lot" shall mean and refer to any Lot of the Properties on which a dwelling has been erected and the construction thereof is substantially complete.

All other definitions contained in Article I will likewise be applicable to this Article.

B. Every owner shall be a member of the Birchfield 2nd Addition Homeowner's Association to be established for the purpose of maintaining the entry islands, sign areas and cul-de-sac islands for Birchfield 2nd Addition and/or any perimeter fence built by the Developer. The Homeowner's Association shall cover all of the lots in Birchfield 2nd Addition. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

C. The Declarant, for each Lot owned within the Properties as defined herein, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed covenant and agreed to pay to the Association regular annual maintenance assessments for the charges for the purposes hereinafter set forth, which assessments, together with interest, costs, and reasonable attorneys' fees shall be and constitute, until paid, a continuing charge against and a lien upon such Lot or property against which each such assessment is made.

D. The assessments levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to maintain the Birchfield 2nd Addition Subdivision cul-de-sac, perimeter fences built by the Developer, entryway islands and sign areas and more particularly for the watering, maintenance and replacement of trees, grass and shrubbery planted thereon.

E. Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual assessments from each Lot on the Properties, which shall be sufficient to fund the budget for the fiscal year. In recognition of the fact that the sole purpose of this Homeowner's Association is for the maintenance of the areas described in Subparagraph D above, the regular assessment for each Lot for the initial year shall be Twenty-Five (\$25.00) Dollars and for each improved Lot shall be Fifty (\$50.00) Dollars. The regular assessment for each unimproved Lot shall be no more than fifty (50%) percent of the regular assessment for improved lots.

F. The regular annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The regular annual assessments provided herein as to all improvement Lots shall commence the first day of the month following the month during which the dwelling was

substantially completed. As provided in the By-laws, the first regular 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. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

G. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine (9%) percent per annum. The Association may foreclose the lien against the property in the same manner as provided by law for foreclosure of mortgages.

H. 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 a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments to payment 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.

I. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

J. The Homeowner's Association is a non-profit corporation originally formed by the Declarant and its Articles of Incorporation and Bylaws, to the extent not inconsistent with this Declaration, are hereby incorporated herein by this reference. In the event of any conflict between the Articles and/or Bylaws of the corporation and this Declaration, then this Declaration shall control.

#### **ARTICLE V** **GENERAL PROVISIONS**

1. The Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now, or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant 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.

2. 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. This Declaration may be amended by Declarant or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof.

3. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

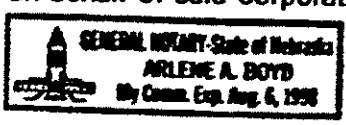
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 19th day of April, 1995.

R.S. LAND, INC., a  
Nebraska corporation

By Ronald E. Smith  
President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of April, 1995 by Ronald E. Smith, President of R.S. Land, Inc., a Nebraska corporation, on behalf of said corporation.



Arlene A. Boyd  
Notary Public

INSTRUMENT NUMBER  
95-05476  
95 APR 26 PM 2:02  
Glenn D. [Signature]  
REGISTER OF DEEDS

Counter S C  
Verify JM  
D.E. JW  
Proof JW  
Film \_\_\_\_\_  
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