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GEORGE J. SUDLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PART OF HAWTHORNE, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

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

Lots 121 through 158, inclusive, in Hawthorne, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

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

Declarant, as Seller, has entered into an Agreement and Option to Purchase Lots with Apollo Building Corp., a Nebraska corporation ("Apollo"), pursuant to which it has granted Apollo an option to purchase the Townhome Lots. Declarant previously recorded with the Douglas County Register of Deeds a Declaration of Covenants, Conditions, Restrictions and Easements of Hawthorne, on May 1, 1995, in Book 1145 at Page 678, Miscellaneous Records (the "Hawthorne Declaration"). The terms "Lot" and "Lots" as used in this Declaration shall include the Townhome Lots and the "Lots" as defined in the Hawthorne Declaration.

The Declarant desires to provide for the preservation of the values and amenities of the Hawthorne Subdivision, of which the Townhome Lots are a part, and desires to provide for the maintenance of the character and residential integrity of Hawthorne, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Hawthorne.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Townhome 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 Townhome Lots, and the enjoyment of the residents of the Townhome Lots. These restrictions, covenants, conditions and easements shall run with such Townhome Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Townhome Lot, or any part thereof, as is more fully described herein. The Townhome Lots are, and each Townhome Lot is and shall be subject to all and each of the following conditions and other terms:

**ARTICLE I.  
DEFINITIONS**

Terms used in this Declaration with an initial capitalized letter and which are not otherwise defined in this Declaration shall have the meaning ascribed to them in the Hawthorne Declaration

**ARTICLE II.  
HOMEOWNERS' ASSOCIATION**

1. The Association. Declarant has caused the incorporation of HAWTHORNE HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Hawthorne, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities (including common areas on Outlots) for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas (including landscaping); and signs and entrances for Hawthorne.

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Common Facilities may be situated on property owned or leased by the Association, on Outlots within the Hawthorne subdivision, on private property subject to an easement in favor of the Association, on public property, or on property dedicated to a Sanitary and Improvement District.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Hawthorne; and the protection and maintenance of the residential character of Hawthorne.

2. Membership and Voting. Hawthorne is divided into two hundred seventy (270) separate residential lots which includes the Townhome Lots. The "Owner" of each Lot in Hawthorne shall be a Member of the Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote for each Lot owned on each matter properly coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, or Outlots within or near Hawthorne.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of the Association. The Association shall:
- (a) Maintain and repair the signs which have or will be installed by Declarant at the entrances at 180th Street and Orchard Avenue, and at "Q" Street and 176th Avenue, in good repair and neat condition; and
  - (b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along 180th and "Q" Streets at the exterior of Hawthorne and on and along all Outlots, so that such are in good repair and neat condition; and
  - (c) Maintain, repair, construct, and replace, as necessary, the wells and irrigation systems constructed by Declarant in accordance with the easements reserved in the Final Plat.
5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.
6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant or Apollo.
7. Lien and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.
8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.
9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:
- (a) Sixty and no/100 Dollars (\$60.00) per Lot.
  - (b) In each calendar year beginning on January 1, 1996, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.
10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.
11. Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.
12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.
13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessments or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.
14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided

for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

### ARTICLE III. EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U S West telephone company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities District, and Sanitary and Improvement District No. 393 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the 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 the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the subdivision. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for 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, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all streets; this license being granted for the use and benefit of all present and future owners of these Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which U S West telephone company files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date"), then the telephone company may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). 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 City or other appropriate governmental authority.

Should such charge be implemented by the telephone company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) the telephone company sends each owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

4. Other easements are provided for in the final plat of Hawthorne which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2002, Page 302).

### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot 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 in perpetuity. This Declaration may be amended by HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, or any person, firm, corporation, partnership, or entity designated in writing by HAWTHORNE DEVELOPMENT CO., in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the Lots covered by this Declaration.

3. By written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Hawthorne subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation 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 requested waiver, modification, or amendment. Declarant agrees to provide Apollo with written notification of any waivers granted to Owners of a Townhome Lot pursuant to this Article IV, Section 3.

4. HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

5. Invalidity of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

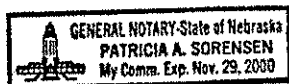
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 5<sup>th</sup> day of December, 1996.

HAWTHORNE DEVELOPMENT CO., a Nebraska corporation,

By: [Signature]  
Title: President

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

The foregoing instrument was acknowledged before me this 5 day of December, 1996, by David H. Tanaka, Chairman of HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, on behalf of the corporation.

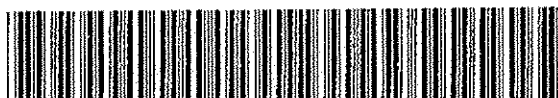


[Signature]  
Notary Public

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GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made as of the date shown on the close of this instrument, by Hawthorne Development Co., a Nebraska corporation, and Apollo Building Corp., a Nebraska corporation, collectively referred to as the "Declarants".

## W I T N E S S E T H:

WHEREAS, Hawthorne Development Co. is the owner of certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 121 through 158, inclusive, of Hawthorne, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

WHEREAS, Hawthorne Development Co., as seller, has entered into an Agreement and Option to Purchase Lots with Apollo Building Corp. pursuant to which Apollo Building Corp. has an option to purchase all or a portion of the property hereinabove described;

WHEREAS, Apollo Building Corp. desires to purchase some or all of such property and construct and sell townhomes thereon;

WHEREAS, Declarants desire to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarants hereby declare that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their

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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 Villas of Hawthorne Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) 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, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

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

Lots 121 through 158, inclusive, of Hawthorne,  
a Subdivision located in Douglas County,  
Nebraska, as surveyed, platted and recorded,

together with any 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 of a duplex zoned Lot.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot (other than any Lot owned by one of the Declarants) 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. "Declarants" shall mean and refer to the entities signing this instrument, their successors and assigns.

ARTICLE II  
PROPERTY RIGHTS

Section 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

Section 2. Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

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

Section 2. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. A Lot Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant.

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Lot Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.



Section 3. 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 all Owners, with the exception of the Declarants. 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 Declarants. The Declarants shall be entitled to nine (9) votes for each Lot owned by any of the Declarants. The Class B membership shall terminate and be converted into Class A membership (with the Declarants then entitled to one vote for each Lot owned by any of the Declarants) 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, 2006.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants hereby covenant for each Assessable Lot and for each Owner (other than Declarants) of any Assessable Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association,

which assessments shall be established and collected as hereinafter provided. The special assessments and monthly 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 shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal

obligation for delinquent assessments shall not pass to such Owner's 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 health, safety, recreation and welfare of the residents in the Properties and for exterior maintenance, and other matters as more fully set out in Article V herein.

Section 3. Monthly Assessments. The Board of Directors shall have the authority to levy and assess against each Assessable Lot an initial monthly maintenance assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance. At the commencement of each calendar year thereafter, the Board of Directors shall have the authority to increase the monthly maintenance assessment against each Assessable Lot by a percentage of the prior assessment, which percentage shall be the greater of five percent (5%) or the percentage increase in the U. S. Department of Labor Consumer Price Index (All Items) for All Urban Consumers, 1982-84=100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other index which will accomplish the same result of reflecting general consumer price changes in the United States economy. Any additional increase in the monthly maintenance assessment above that authorized by the Board of Directors must be approved by a majority of the votes cast by the Members at a meeting duly called for such purpose.

Section 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article V herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Lot, including fixtures and personal property related thereto, provided that any such assessment shall be approved by the vote of the members, who shall vote in person or by proxy at a meeting duly called for such purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article IV shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, 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 such subsequent meeting shall be one-half (1/2) of the required quorum at the

preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen (16) percent per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an 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 any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

Section 8. Subordination of the Lien to Mortgages. The lien on 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, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect

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the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

ARTICLE V  
EXTERIOR MAINTENANCE

The Association may provide exterior maintenance upon each Assessable Lot as set forth hereinafter.

Section 1. Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed by the builder, except such improvements as may be within the confines of any fenced in area on any Assessable Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner. The Owner understands that the original landscape as installed by the builder is warranted for a period of one year from the time of planting. The Owner is responsible for replacement of all dead landscaping improvements after the one year warranty period expires and the Owner agrees to allow the Association to replace such dead landscape improvements at the expense of the Owner of record at the time of replacement and the Owner shall reimburse the Association on demand. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.
- (b) Operation and maintenance of an underground watering system.
- (c) Snow removal as to be determined by the guidelines set forth by the Board of Directors.
- (d) Optional exterior window cleaning as deemed necessary by the Board of Directors.

Section 2. Special assessments may be assessed for, but not limited to, the following:

- (a) Maintain, repair, and replace roofs.

- (b) Maintain, repair, including painting, of all exterior walls, with the exception that the Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditions systems. However, the Association shall assume the duty to paint the exterior surfaces of exterior doors.
- (c) Maintain, repair, and replace gutters.  
All replacements shall be of like kind if at all possible.

#### ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color 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, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications. Board approval shall be independent of and in addition to the restrictions imposed and approvals required by Article VII of this Declaration.

#### ARTICLE VII GENERAL RESTRICTIONS AND OTHER PROVISIONS

Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

Section 1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by any of the Declarants, or their successors or assigns, for use in connection with a common facility, or as a church, school, park, or for other non-profit use.

Section 2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboard, dog house, pool house, flag pole, or other external improvement, including landscaping, 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

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excavation for any Improvement be commenced, except for Improvements which have been approved as follows:

(a) An Owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans, grading plans and plot plans to Hawthorne Development Co. (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify Hawthorne Development Co. of the Owner's mailing address.

(b) Hawthorne Development Co. shall review such plans in light of the conditions and restrictions in Article VII of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Hawthorne Development Co. intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Hawthorne Development Co. in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Hawthorne Subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. Atypical improvements and home designs such as dome houses, A-frame houses and log cabins will not be approved unless the Hawthorne Development Co. determines that construction of these Improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If Hawthorne Development Co. determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots, if any, as a quality residential community, Hawthorne Development Co. may refuse approval of any proposed Improvement.

(c) Written Notice of any approval of 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 approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Hawthorne Development Co.

(d) No Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by Hawthorne Development Co., or to control, direct or influence the acts of Hawthorne Development Co. with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Hawthorne Development Co. by virtue of the authority granted to it in this Section 2, or as a result of any act or failure to act by it with respect to any proposed Improvement.

(e) Hawthorne Development Co., or its successor or assign, may terminate its authority to grant or withhold approval of any Improvement under this Section 2, at any time, by filing a Notice of Termination. Upon such filing, the Association may appoint itself or another entity, association or individual to serve in such capacity, and such appointee shall thereafter have the same authority and powers as Hawthorne Development Co. under this Section 2.

Notwithstanding the provisions of this Section 2, the obligations of Apollo Building Corp. to comply with this Section 2 shall be subject to the provisions of a separate agreement between Apollo Building Corp. and Hawthorne Development Co. dated the same date as the date of this Declaration.

Section 3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height, exclusive of basement level.

Section 4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick or other material approved by the Association. 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, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, or other material approved in writing by the Association. Unless other materials are specifically approved by the Association, the roof of all Improvements shall be covered with wood shake shingles. Hardboard, pressed wood, bonded wood and woodruff products will not be allowed for roofs.

Section 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". No business activities of any kind whatsoever shall be conducted on

any Lot; 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. Nothing contained in this Section 5 shall apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarants, their agents or assigns, during the construction and sale of the Lots.

Section 6. No exterior television or radio antenna or disc of any sort shall be permitted on any Lot. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

Section 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.

Section 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) for more than twenty (20) days within a calendar year. 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, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska. All garage doors must be closed when not in use.

Section 9. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be stored or be permitted to remain outside except for pickup purposes. 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. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothes line or clothes hanger (including but not limited to laundry umbrellas or other retractable apparatus) shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.



Section 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.

Section 11. No fence or mass planted hedges or shrubs or other structures which effectively act as a fence shall be permitted on any Lot; provided, however, invisible sound-barrier fencing to restrain pets is permitted.

Section 12. No swimming pool may extend more than one foot above ground level.

Section 13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement.

Section 14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each 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; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

Section 15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

Section 16. 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 for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved as required by this Declaration. Dog houses shall only be allowed at the rear of the residence, concealed from public view. No dog runs or kennels of any kind shall be allowed in the Hawthorne Subdivision.

Section 17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards. 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 twelve (12) inches.

Section 18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

Section 19. No temporary structure of any character, and no carport, trailer, open basement, storage or tool shed or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently; provided, however, this shall not prevent the location of a temporary real estate or construction office on any Lot for use during the period of construction or sale of the Lots. An Owner may erect a swing set, playground equipment, pool house, or other non-prohibited structure on a Lot only after securing the prior written approval of the Association. No structure or dwelling shall be moved from outside Hawthorne to any Lot without the written approval of the Association.

Section 20. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

Section 21. The use of private barbecue grills and the outside use or storage of barbecue grills is allowed on outside decks and patios, but may be subject to written regulation, restriction or exclusion by the Association.

Section 22. No tree situated upon any Lot may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, shall have been submitted to and approved in accordance with Section 2 of this Article VII. For purposes of this Section, "tree" shall mean and refer to a tree of any type with a diameter larger than one (1) inch at a height of five (5) feet. The front yard of each Assessable Lot must have a minimum of two (2) trees which are classified as deciduous. Subject to the Association's exterior maintenance as provided in this Declaration, each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along the ten (10) foot public sidewalk easement area on their Lot. Should any of such trees, shrubs or bushes be removed, die, or deteriorate into a poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur within thirty (30) days following written notice from either the Declarants or the Association, then either Declarants or the Association may cause such replacement to occur and charge the Owner of the Lot for such replacement.

Section 23. The exterior trim and siding on each residence constructed on a Lot must be maintained in good and proper condition and must be fully painted no less frequently than the

earlier of (i) sixty (60) months following completion of initial construction and thereafter no less frequently than sixty (60) months following the previous painting; or (ii) within ninety (90) days following notification from the Association to the Owner that the exterior paint on the Owner's residence has deteriorated to less than a good and proper condition.

Section 24. Any landscape beds that are to be maintained by the Association shall be covered with river rock.

Section 25. The Association does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

Section 26. No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets which, in the case of dogs, shall be limited to one per household. With respect to other non-exotic household pets, the Board of Directors of the Association may from time to time establish limits as to the size, weight, and quantity per household. All pets shall be leashed when outside of the residential structure unless restrained by fencing (including invisible sound-barrier fencing) authorized as provided in this Declaration. No such pet shall be kept, bred or maintained for commercial purposes. All reptiles and pot-bellied pigs are classified as exotic pets. All unpleasanties created by the household pet shall be the responsibility of the Owner who shall be obligated to clean up after the animal. The Owner also shall prevent any prolonged barking or other noises from the household pets from becoming offensive or annoying to other Owners.

Section 27. No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.

Section 28. No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

Section 29. No finish or preservative shall be applied to any wooden decks other than a clear wood finish or preservative unless authorized by the Association.

ARTICLE VIII  
INSURANCE

Section 1. The Association shall purchase and provide comprehensive general liability coverage insurance for the Properties in such amounts as shall be determined from time to time by the Board of Directors of the Association. The Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Association, for its Officers, and members of the Board of Directors. Finally, if the Association has any employees of any nature, the Association shall purchase and provide Worker's Compensation Insurance for all employees who may come within the scope of Nebraska Worker's Compensation laws.

Section 2. Each Owner shall, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of insurance insuring such Owner and the Association, as an additional insured, against loss or damage by fire and such or risks as may be included within an extended coverage endorsement covering the full replacement cost of the buildings and other improvements from time to time erected upon or under such Owner's Lot. All such insurance shall be written by companies which are satisfactory to the Association and which are authorized to do insurance business in the State of Nebraska. Each policy shall contain an agreement by the insurer that it will not cancel or modify such policy except after thirty (30) days prior written notice to the Association and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the insured. Certificates evidencing the existence of such insurance policies shall be delivered to the Association by the Owner annually and upon the reasonable request of the Association. Each Owner may obtain such additional insurance for such Owner's benefit and at such Owner's own expense as may be deemed necessary by the Owner, including coverage for personal property damage or personal liability.

Section 3. In the event that any building on the Properties shall be damaged or destroyed (partially or totally) by fire, the elements, or any other casualty, the Owner of such building shall, at its expense, promptly and with due diligence repair, rebuild, and restore the same as nearly as practical to the condition existing just prior to such damage or destruction; or alternatively, the Owner of such building shall be required to clear, clean and raze the damaged building and landscape the entire Lot.

## ARTICLE IX ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

## ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of 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.

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

Section 3. Amendment. Additional lots owned by Declarants in Hawthorne Subdivision in Douglas County, Nebraska, if any, may be added to the Properties and become subject to these Declarations upon the written direction of all Declarants recorded in the same manner as Deeds shall be recorded at such time. Subject to the preceding sentence, these Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations; provided, however, the definition of Assessable Lot contained in Article I and the provisions of Section 2 of Article VII shall not be amended without the approval of Hawthorne Development Co. and Apollo Building Corp. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

Section 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

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IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have executed these Declarations of Covenants, Conditions and Restrictions as of this 5th day of December, 1996.

HAWTHORNE DEVELOPMENT CO.

By: [Signature]  
Title: Chairman

APOLLO BUILDING CORP.

By: [Signature]  
Terrence J. Ficenec, President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

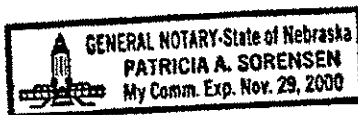
Before me the undersigned, a notary public, personally came David H. Kanoka, to me personally known to be the Chairman of Hawthorne Development Co., a Nebraska corporation, and that he acknowledged the execution of the above to be his voluntary act and deed as Chairman and that the execution of this document was duly authorized by the Board of Directors as the voluntary act and deed of such corporation.

WITNESS my hand and notarial seal this 5 day of December, 1996.

[Signature]  
Notary Public

My Commission Expires:

Nov. 29, 2000



STATE OF NEBRASKA     )  
                               ) ss.  
 COUNTY OF DOUGLAS    )

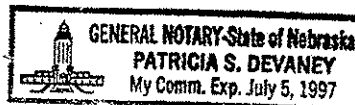
Before me the undersigned, a notary public, personally came Terrence J. Ficenec, to me personally known to be the President of Apollo Building Corp., a Nebraska corporation, and that he acknowledged the execution of the above to be his voluntary act and deed as President and that the execution of this document was duly authorized by the Board of Directors as the voluntary act and deed of such corporation.

WITNESS my hand and notarial seal this 7<sup>th</sup> day of November, 1996.

Patricia S. Devaney  
 Notary Public

My Commission Expires:

7-5-97





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GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

**FIRST AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF HAWTHORNE, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

This First Amendment is made to the Declaration of Covenants, Conditions, Restrictions and Easements of Hawthorne, a subdivision in Douglas County, Nebraska, dated April 3, 1995, and recorded with the Douglas County Register of Deeds on May 1, 1995, in Book 1145 at Page 678, Miscellaneous Records (the "Declaration"), by Hawthorne Development Co., a Nebraska corporation (the "Declarant").

**PRELIMINARY STATEMENT**

The Declaration was made by the Declarant in connection with the development of residential lots legally described as follows:

Lots 1 through 81, inclusive, Lots 83 through 120, inclusive, and Lots 159 through 271, inclusive, in Hawthorne, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot." The Lots are part of Hawthorne, a subdivision in Douglas County, Nebraska ("Hawthorne"). Townhome residential lots which are contiguous to the Lots are being developed as part of Hawthorne and Declarant desires to amend the Declaration to permit the inclusion of additional lots in the Hawthorne Home-owners Association.

Article IV, Section 2 of the Declaration allows the Declarant to amend the Declaration in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date of the Declaration. Declarant has investigated the effect which including additional lots in the Association would have on the Lots and has determined that inclusion of additional lots would further the preservation of Hawthorne, would further the maintenance of the character and residential integrity of Hawthorne, and would further the intent, purpose and protection afforded to the Lots by the Declaration.

NOW, THEREFORE, pursuant to the authority granted to the Declarant in Article IV, Section 2 of the Declaration, Declarant hereby amends and supplements the Declaration as follows:

1. A new Article II, Section 16 shall be adopted as part of the Declaration, as follows:

16. Additional Lots. From time to time, without the consent or approval of the Owners or Members, the Association may be expanded to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansions may be

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affected from time to time by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (herein the "Subsequent Phase Declaration"). Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article II, and the owners of the additional residential lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

2. In each and every other respect, the Declaration shall remain in full force and effect according to its terms.

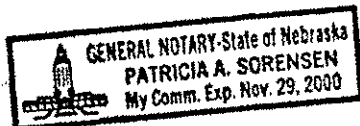
IN WITNESS WHEREOF, the Declarant has executed this First Amendment as of the 5<sup>th</sup> day of December, 1996.

HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, "Declarant"

By: [Signature]  
Title: Chairman

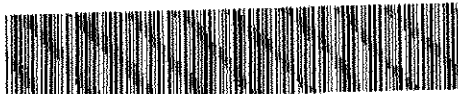
STATE OF NEBRASKA )  
                              ) ss.:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 5 day of December, 1996, by David F. Sanola Chairman of HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, on behalf of the corporation.



[Signature]  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS



BK 1385 PG 129-139



MISC 2001 08440

RICHARD M. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE.

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DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE SINGLE FAMILY RESIDENTIAL LOTS  
OF SHADOW VIEW, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA  
(Lots 1 - 87)

THIS DECLARATION, made on the date hereinafter set forth, is made by  
WOODLAND HOMES, INC., hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

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

Lots 1 through 87, inclusive, in Shadow View, a  
Subdivision, as surveyed, platted and recorded in  
Douglas 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 of the values and  
amenities of Shadow View, for the maintenance of the character and residential  
integrity of Shadow View, and for the acquisition, construction and maintenance  
of Common Facilities for the use and enjoyment of the residents of Shadow View.

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, and the enjoyment of the residents of the Lots. These restrictions,  
covenants, conditions and easements shall run with such Lots 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 single-family residential  
purposes, except for such Lots or parts thereof as may hereafter be conveyed or  
dedicated by Declarant, or its successors or assigns, for use in connection  
with a Common Facility, or as a church, school, park, or for other non-profit  
use.

After recording, return to:

John Q. Bachman  
GAINES, PANSING & HOGAN  
10050 Regency Circle, Suite 200  
Omaha, Nebraska 68114

2394

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BKP C/O COMP  
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2. No residence, building, fence (other than fences constructed by the Declarant), wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or "discs", solar heating or cooling device, 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, excavation or tree removal for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

A. 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 include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, 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 residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. 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.

C. Written Notice of any approval of 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 approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. 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 obligation 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.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height and shall conform to the following minimum requirements:

- |    |   |               |   |
|----|---|---------------|---|
| A. | One-story ranch type house with attached garage | 1,400 sq. ft. | On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor |
| B. | One-story house with basement garage            | 1,800 sq. ft. | On the main floor   |

C.	One and one-half and two-story houses	1,800 sq. ft.	Total area above the basement level; minimum 1,200 sq. ft. on the main floor
D.	Split entry (bi-level) house	1,500 sq. ft.	On the main floor
E.	Tri-level (split level) house	1,750 sq. ft.	Total area above grade

4. For purposes of these restrictions, two-story height shall, when the basement is exposed above grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred percent (100%) above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have attached, enclosed, side-by-side, two (2) car garages minimum which must contain area of not less than four hundred twenty (420) square feet.

5. No structure, building or porch shall be constructed, erected, installed or situated within thirty (30) feet of the front yard line. Except as set forth herein, all Improvements on the Lots shall comply with all other set back requirements of the Zoning Code of the Municipal Code of the City of Omaha, Nebraska.

6. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be covered with clay-fired brick, stone, siding or shall be painted. All front main walls of the residential structure must be constructed of at least fifty percent (50%) clay-fired brick unless otherwise approved in writing by the Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with wood or other material approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with asphalt shingles of weatherwood color or other approved material shingles.

7. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. 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". No business activities of any kind whatsoever shall be conducted on any Lot including home occupations as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska; 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. 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.

8. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. 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.

9. No exterior television or radio antenna of any sort shall be permitted on any Lot. Notwithstanding the foregoing, an antenna that is designed to receive direct broadcast satellite service not exceeding one meter in diameter and attached directly to the residence may be permitted provided that the location and size of the proposed satellite receiving dish be first approved by the Declarant, or its assigns. No treehouses, tool sheds, dollhouses, windmills, or similar structures shall be permitted on any Lot.

10. No repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles 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.

11. 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) for more than twenty (20) days within a calendar year. 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, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 11 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

12. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any residential structure for a continuous time period in excess of eight (8) hours. 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. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

13. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of wood or wrought iron.

14. No swimming pool may extend more than one foot above ground level.

15. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

16. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5) 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; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

17. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

18. 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 for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. Dog houses shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence. Dog runs or kennels shall be permitted only with the approval of the Declarant, or its assigns; provided always that any permitted dog run or kennel shall be located immediately adjacent to the rear of the residence. No animals, livestock, agricultural-type animals, fowl, or poultry of any kind, including pot-bellied pigs, shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their Owner and are not permitted to run loose outside the Lot of the Owner.

19. 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 twelve (12) inches.

20. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

21. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside Shadow View to any Lot without the written approval of Declarant.

22. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

23. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

ARTICLE II.  
SHADOW VIEW HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused the incorporation of Shadow View Homeowners Association, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots 1 through 87, inclusive, Shadow View, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities may include recreational

facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways, linear trails, outlots and green areas; and signs and entrances for Shadow View. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Shadow View; and the protection and maintenance of the residential character of Shadow View.

The Association is formed for the benefit of all residential property owners in Shadow View.

2. Membership and Voting. Shadow View is initially divided into 87 separate residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. It is understood that the Owner of each respective Lot created as a result of a Lot split shall be each entitled to one (1) vote.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter property coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks, outlots and other public property and improvements on parks or public property within or near Shadow View.

7

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair the fence, signs, sidewalks, trails, pathways and landscaping which have been installed in easement areas of the Shadow View subdivision, center islands dividing dedicated roads and in outlots within the Shadow View subdivision, in generally good and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation



for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11 below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. One Hundred Twenty-Five and no/100 Dollars (\$125.00) per Lot.

B. In each calendar year beginning on January 1, 2002, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

11. Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5 above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

16. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time to time by the Declarant or Declarant's assignee by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article II, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

ARTICLE III.  
EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest and any company which has been granted a franchise to provide a telephone, fiber optic or cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 464 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the 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 the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for 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, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific condition that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other

purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which Qwest files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date"), then Qwest may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). 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 City or other appropriate governmental authority.

Should such charge be implemented by Qwest and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) Qwest sends each owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

4. Other easements are provided for in the final plat of Shadow View which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2177, Pages 520-526).

#### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, 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 in perpetuity. This Declaration may be amended by Woodland Homes, Inc., a Nebraska corporation, or any person, firm, corporation, partnership, or entity designated in writing by Woodland Homes, Inc., a Nebraska corporation, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. Woodland Homes, Inc., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any covenant 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 8<sup>th</sup> day of June, 2001.

WOODLAND HOMES, INC., a Nebraska corporation, "Declarant"

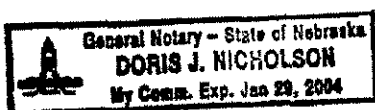
By:

Gerald L. Torczon  
Gerald L. Torczon President

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

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of June, 2001 by GERALD L. TORCZON, President of WOODLAND HOMES, INC., a Nebraska corporation, on behalf of the corporation.

Doris J. Nicholson  
Notary Public



GAINES, MULLEN, PANSING &  
HOGAN  
10050 REGENCY CIRCLE, SUITE 200  
OMAHA, NEBRASKA 68114

RECEIVED

MAY 1 4 15 PM '95

GEORGE J. DUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE



B4546 ML-15923  
FEE 167.50 R FB  
DEL. C/O COMP  
LEGAL PG SCAN FV

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF HAWTHORNE, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

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

Lots 1 through 81, inclusive, Lots 83 through 120, inclusive, and Lots 159 through 271, inclusive, in Hawthorne, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

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

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

Outlot A, Outlot B, and Outlot C, in Hawthorne, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such outlots are referred to collectively as the "Outlots" and individually as each "Outlot."

The Lots and Outlots are situated in Hawthorne, a residential subdivision situated in part of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 4, T14N-R11E in Douglas County, Nebraska and herein referred to as "Hawthorne".

The Declarant desires to provide for the preservation of the values and amenities of Hawthorne, for the maintenance of the character and residential integrity of Hawthorne, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Hawthorne.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots and Outlots 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 and Outlots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and Outlots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot or Outlot, or any part thereof, as is more fully described herein. The Lots and Outlots are, and each Lot and Outlot 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 single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or for a church, school or park, or for other non-profit use. The Outlots are specifically declared to be nonbuildable except for incidental park or recreational use consistent with the powers and purposes of the Hawthorne Homeowners Association.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, tree house, pool house, antenna, satellite receiving stations, dishes or discs, flag poles, solar heating or cooling devices, tool or storage shed, or other external improvement, including landscaping, 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:

(a) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, detailed landscaping plans, and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

(b) Declarant shall review such plans in light of the conditions and restrictions in Article I of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Hawthorne subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the architecture of the residential structures constructed shall be consistent with the architecture found in the Bay Shores and Autumn Ridge subdivisions in Douglas County, Nebraska. Atypical improvements and home designs such as dome houses, A-frame houses and log cabins will not be approved unless the Declarant determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(c) Written Notice of any approval of 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 approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

(d) 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 the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation 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.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. Residences on all Lots shall have a minimum front set back of thirty-five (35) feet.

4. The exposed foundation walls facing dedicated public streets must be constructed of or faced with brick or other material approved in writing by Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, or other material approved in writing by Declarant. The roof of all Improvements shall be covered with wood cedar shakes or shingles, or other material approved in writing by Declarant. Hardboard, pressed wood, bonded wood, and the like will not be approved by Declarant for coverage of any roof.

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.

6. No exterior television or radio antenna, satellite receiving disc, or exterior solar heating or cooling device of any sort shall be permitted on any Lot.

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) for more than twenty (20) days within a calendar year. 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, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. 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. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards.

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.

11. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by Declarant. No fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant. No fence shall be of the chain link or wire type. No fences shall be constructed without the prior approval of the Declarant.

12. No tennis courts shall be allowed on any residential lots.

13. No swimming pool may extend more than one foot above ground level.

14. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

15. Commencing with completion of construction of any Improvement on a Lot, a public sidewalk constructed of concrete four (4) feet wide by four (4) inches thick shall be installed and maintained in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed a minimum of four (4) feet and a maximum of seventeen and one-half (17.5) feet from the street curb line, in conformance with the master sidewalk plan. The sidewalk alignment shall be approved by HAWTHORNE DEVELOPMENT CO. prior to construction. After approval of the sidewalk alignment, the sidewalk shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

16. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

17. 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 for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed adjacent to the rear of the residence, concealed from public view. No dog runs or kennels may be constructed or installed on any Lot. No livestock or agricultural-type animals shall be allowed in Hawthorne subdivision, including pot-bellied pigs.

18. 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 twelve (12) inches.

19. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

20. No structure of a temporary character, carport, trailer, basement, tent, storage shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. Pool and bath houses may be approved by the Declarant as an Improvement, pursuant to Paragraph 2 of this Article. No structure or dwelling shall be moved from outside Hawthorne to any Lot without the written approval of Declarant.

21. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

22. No tree situated upon any Lot may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, shall have been submitted to and approved in writing by Declarant in accordance with Section 2 of this Article I. For purposes of this Section, "tree" shall mean and refer to a tree of any type with a diameter larger than one (1) inch at a height of five (5) feet. Unless waived in writing by the Association, each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along the ten (10) foot public sidewalk easement area on their Lot. Should any of such trees, shrubs or bushes be removed, die, or deteriorate into a poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur upon thirty (30) days written notice from either



the Declarant or the Association, then either the Declarant or the Association may cause such replacement to occur and charge the owner of the Lot for such replacement as allowed hereinafter.

23. Restrictions on Outlots. Each of the Outlots is hereby designated as a common area for the use, benefit, and enjoyment of the residents of Hawthorne. The Declarant will initially construct improvements on the Outlots generally consistent with the use of the Outlots as a green area and landscape buffer. The only facilities and improvements which may be constructed on the Outlots are trail paths, landscaping, boundary fencing, signage, benches, structures found in playgrounds and parks, such as pavilions, gazebos, and playground equipment, and lighting and utilities. Except as stated above, the Outlots may not be used for any building development. Declarant may not transfer the Outlots except to the homeowners association for Hawthorne to be utilized consistently with the foregoing.

## ARTICLE II. HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has caused the incorporation of HAWTHORNE HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Hawthorne, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities (including common areas on Outlots) for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas (including landscaping); and signs and entrances for Hawthorne. Common Facilities may be situated on property owned or leased by the Association, on Outlots within the Hawthorne subdivision, on private property subject to an easement in favor of the Association, on public property, or on property dedicated to a Sanitary and Improvement District.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Hawthorne; and the protection and maintenance of the residential character of Hawthorne.

2. Membership and Voting. Hawthorne is divided into two hundred thirty-two (232) separate residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote for each Lot owned on each matter properly coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by

the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, or Outlots within or near Hawthorne.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of the Association. The Association shall:

(a) Maintain and repair the signs which have or will be installed by Declarant at the entrances at 180th Street and Orchard Avenue, and at "Q" Street and 176th Avenue, in good repair and neat condition;

(b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along 180th and "Q" Streets at the exterior of Hawthorne and on and along all Outlots, so that such are in good repair and neat condition;

(c) In the event any Owner of a Lot shall fail to perform and fulfill his obligations and responsibilities under Article I, Section 22 of this Declaration, and if such failure continues for thirty (30) days after written notice to the Owner from the Association, the Association shall perform or have performed such obligation or responsibility. If the Association undertakes to perform or have performed the responsibilities of the Owner, the cost of such performance plus a fifteen percent (15%) administrative

charge shall be assessed against the Owner, and the Owner shall be obligated to promptly pay such sums to the Association. Assessment of such costs shall be made by written demand from the Association for payment by the Owner. If such assessment is not paid within thirty (30) days after written demand from the Association, such assessment shall constitute a lien on the Lot, which lien shall attach, have the priority and be enforceable by the Association in the same manner as liens for assessments and dues as provided in this Article II;

(d) Maintain, repair, construct, and replace, as necessary, the wells and irrigation systems constructed by Declarant in accordance with the easements reserved in the Final Plat.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) Sixty and no/100 Dollars (\$60.00) per Lot.

(b) In each calendar year beginning on January 1, 1996, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

11. Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Except for assessments as provided in Article II, Section 4, Subparagraph (c), assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessments or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

### ARTICLE III. EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U S West telephone company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities District, and Sanitary and Improvement District No. 393 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the 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 the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the subdivision. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for 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, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all streets; this license being granted for the use and benefit of all present and future owners of these Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which U S West telephone company files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date"), then the telephone company may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). 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 City or other appropriate governmental authority.

Should such charge be implemented by the telephone company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) the telephone company sends each owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

4. Other easements are provided for in the final plat of Hawthorne which is filed in the Register of Deeds of Douglas County, Nebraska (Book 200, Page 302).

#### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, 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 in perpetuity. This Declaration may be amended by HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, or any person, firm, corporation, partnership, or entity designated in writing by HAWTHORNE DEVELOPMENT CO., in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the Lots covered by this Declaration.

3. By written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Hawthorne subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation 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 requested waiver, modification, or amendment.

4. HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

5. Invalidity of any covenant 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 3rd day of April, 1995.

HAWTHORNE DEVELOPMENT CO., a Nebraska corporation,

By Kevin Irish, Secy

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

The foregoing instrument was acknowledged before me this 3rd day of April, 1995, by Kevin Irish, Secretary of HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, on behalf of the corporation.



Herbert L. Freeman  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS



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## DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 26 day of June, 1994, among HAWTHORNE DEVELOPMENT CO., a Nebraska corporation, whose mailing address is c/o Kevin D. Irish, CBS Real Estate Co., 12002 Shamrock Plaza, Suite 100, Omaha, Nebraska 68154 as Trustor, FIRST NATIONAL BANK OF OMAHA, a national banking association, whose mailing address is One First National Center, Omaha, Nebraska 68102 as Trustee, and FIRST NATIONAL BANK OF OMAHA, a national banking association, whose mailing address is One First National Center, Omaha, Nebraska 68102 as Beneficiary:

### WITNESSETH:

That Trustor irrevocably grants, transfer and assigns to Trustee in trust, with power of sale, the following described Real Estate:

See Exhibit "A" attached hereto and by this reference incorporated herein.

THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT WITHIN THE PURVIEW OF THE NEBRASKA CONSTRUCTION LIEN ACT (§§ 52-125 TO 52-159, R.R.S. 1943) AND SECURES AN OBLIGATION WHICH TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THIS SECURITY INTEREST IS GIVEN AND IS A CONSTRUCTION SECURITY INTEREST.

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 DEL CO  
 LEGAL CO

GEORGE J. BOLEWICZ  
 REGISTERED CLERK  
 DOUGLAS COUNTY, NE

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together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements thereof; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The property so conveyed hereunder is hereinafter referred to as "such property".

#### FOR THE PURPOSE OF SECURING:

A. Payment of the principal sum of Three Million Nine Hundred Thousand Dollars (\$3,900,000.00) evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein or in any other security agreement or deed of trust at any time given to secure any indebtedness hereby secured, or any part thereof.

C. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

D. Payment of future advances necessary to protect such property.

E. Payment of future advances to be made at the option of Trustor and Beneficiary.

#### TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to such property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whatsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon such property.

2. **Maintenance:** To keep such property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of restrictions affecting such property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon such property in violation of law; to do all other acts in a timely and proper manner which from the character or use of such property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against such property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any construction loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect such property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.



4. **Fire and Casualty Insurance:** To keep such property insured against loss or damage by fire and other risk or risks which, in the opinion of Beneficiary should be insured against, under policies of insurance with loss payable to Beneficiary in form, amount and companies acceptable to Beneficiary. Said policies shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and make payment of premiums thereon, which payment is repayable on demand. Neither Trustee nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not default hereunder has occurred shall Beneficiary, by the fact or approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. In case of any loss the amount collected under any policy of insurance on such property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount, or any portion thereof, may be released to the Trustor. In any such event neither the Trustee nor the Beneficiary shall be obligated to see the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

5. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting such property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on such property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto; (2) all costs, fees and expenses of this trust, whether or not described herein; (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law therefor at the time when such request is made; (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor; (5) if such property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instruments or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to do so, without the written consent of Beneficiary being first obtained; (6) all payments and monetary obligations required of the owner of such property under any declaration of covenants, conditions and restrictions pertaining to such property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of such property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

In the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, the holder of this Deed of Trust and of the obligations which it secures shall have the right to declare all sums secured hereby due as of a date to be specified by not less than 30 days' written notice to be given to Trustor by Beneficiary; provided, however, that such election shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when hereafter levied or assessed against such property.

6. **Sums Advanced to Bear Interest:** To pay upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate in the Promissory Note and shall be secured by this Deed of Trust.

7. **Assignment of Deposits:** That as further additional security if this be a construction loan, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to such property.

8. **Failure of Trustor to Comply with Deed of Trust:** Should Trustor fail to make any payment, or to do any act as provided in this Deed of Trust, or fail to perform any obligation secured by this Deed of Trust, or do any act Trustor agreed not to do, Trustor shall be in default under this Deed of Trust. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof and without contesting the validity or amount of the same, may (a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon such property for such purposes, and (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto, and (c) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary.

#### IT IS MUTUALLY AGREED THAT:

9. **Litigation:** Trustor shall defend this Trust in any action or proceeding purporting to affect such property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of such property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgement be entered in any action or proceeding; and Trustor or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on demand shall pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in such property is directly questioned by such action, including but not limited to any action for the condemnation or partition of such property.

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgement, settlement or otherwise, (a) for injury or damage to such property, or (b) in connection with any condemnation for public use or injury to such property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use or injury to such property, for injury or damage to such property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any default, or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of such property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of such property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of such property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants; set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Judicial Foreclosure or Trustee's Sale on Default:** Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, or any agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell such property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of such property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee may also sell at any sale and as part thereof any shares of corporate stock securing the obligation secured hereby, and Trustor waives demand and notice of such sale. (Beneficiary at its option may also foreclose on such shares by independent pledge sale, and Trustor waives demand and notice of such sale.) The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

Upon any default under this Deed of Trust or any note secured hereby and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms hereof and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a premium required under the prepayment privilege, if any, contained in any note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a premium for such prepayment of five percent of the then principal balance.

15. **Personal Property:** This Deed of Trust is also intended to encumber and create, and Trustor does hereby grant to Beneficiary, a security interest in any and all of such property which is personal property owned by Trustor and now or hereafter located on or used in connection with such property including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property owned by Trustor and now or hereafter located on, attached to or used in and about the improvements which are necessary to the complete and comfortable use and occupancy of the improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Trustor as are ever to be used or furnished in operating the improvements, or the activities conducted therein, and all renewals or replacements thereof or therefore, whether or not the same shall be attached to the improvements in any manner, and all building materials and equipment hereafter situate on or about the Real Estate or the improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing items which are leased by Trustor. Trustor shall, from time to time, upon request of Beneficiary, provide Beneficiary with a current inventory of all of the personal property in such detail as Beneficiary may require.

16. **Security Agreement:** This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of such property which is personal property and subject to security interest of Beneficiary hereunder to be sold in one of public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of such property by Trustee, as provided for in this Deed of Trust, and Beneficiary shall further have all rights and remedies, whether at law in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, selling or the like shall be born by Trustor and shall include Beneficiary's and Trustee's fees and legal expenses. Beneficiary shall have the right to enter upon the Real Estate and the improvements or any other real property or any personal property which is the subject of the security interest granted herein as located to take possession of, assemble and collect such personal property or to render it usable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale under the power of sale given the Trustee under this Deed of Trust.

17. **Fixture Financing Statement:** This Deed of Trust is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to those items of such property as constitute fixtures on the Real Estate. The address of Trustor (Debtor) and Beneficiary (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of Trust is to be filed for record with the real estate where the real estate is located. Trustor is the record owner of the

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

19. **No Waiver by Beneficiary:** No waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or of any provision of this Deed of Trust as to any transaction or occurrences shall not be deemed a waiver as to any future transaction or occurrences. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder, but failed to make or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

20. **Waiver of Statute of Limitations:** Time is of the essence in all Trustor's obligations hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitations with respect to any debt, demand or obligation secured hereby in any action or proceeding for the purpose of enforcing this Trust or any right or remedies hereunder.

21. **Inspection and Business Records:** Beneficiary at any time during the continuation of this Trust may enter and inspect such property at any reasonable time. Trustor agrees that in the event such property is now or hereafter used for commercial or residential income purposes, when requested by Beneficiary, Trustor will promptly deliver to Beneficiary, such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Beneficiary, which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to such property. Trustor further agrees when requested by Beneficiary to promptly deliver in writing such further additional information as required by Beneficiary relating to any such financial statements.

22. **Acceleration Clause:** Should Trustor be in default under this Deed of Trust, or should Trustor, or any successor in interest of Trustor, voluntarily or involuntarily sell, exchange, convey, transfer, contract to sell, lease with option to purchase, sublease, change the character or use of, or further encumber such property, or any part thereof, or any interest therein; or if any said parties shall be divested of title to such property, or any part thereof, or any interest therein, either voluntarily, or involuntarily; or if title to such property be subjected to any lien or charge, voluntarily or involuntarily, contractual or statutory, without the written consent of Beneficiary being first had and obtained, then Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable; and this same right of acceleration shall be available to Beneficiary if the undersigned is a partnership and any interest of a general partner terminates, is assigned or transferred, or is diminished; or if the undersigned is a corporation and any of the corporate stock is transferred, sold or assigned; or if the undersigned is a trustee of a trust and there is a change of any of the beneficial interest of the trust.

23. **Remedies:** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness secured hereby, and the Beneficiary is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness of the Trustor to the Beneficiary any and all sums of money of Trustor which Beneficiary may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

24. **Acknowledgment:** Trustor agrees and acknowledges that prior to the execution of this Deed of Trust, Trustor did acknowledge in writing and hereby confirms again that (a) this Deed of Trust is not a mortgage, but a deed of trust, (b) that the power of sale provided for herein provides substantially different rights and obligations for Trustor than a mortgage in the event of a default or breach of any obligation hereunder, and (c) the aforementioned written acknowledgment was executed prior to the execution of this Deed of Trust.

25. **Law Applicable:** That this Deed of Trust shall be construed according to the laws of the State of Nebraska

26. **Illegality:** In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

27. **General Provisions:** (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement, and shall not be used in construing it. If more than one person is named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

28. **Trustee Accepts** this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

29. **Address for Mailing Notices:** Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each person itemized below at the address indicated:

Hawthorne Development Co., c/o Kevin D. Irish, CBS Real Estate Co., 12002 Shamrock Plaza, Omaha, NE 68154  
(Trustor) (Address of Trustor)  
First National Bank of Omaha, Trustee & Beneficiary, One First National Center, Omaha, NE 68102

5. & 30. See additional provisions attached hereto.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

HAWTHORNE DEVELOPMENT CO., a Nebraska corporation

By: David F. Lanoha  
David F. Lanoha, President

(CORPORATE SEAL)-

By: Kevin D. Irish  
Kevin D. Irish, Secretary

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

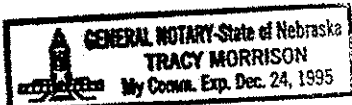
On this 20th day of July, 19 94, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said county, personally came David F. Lanoha, President of Hawthorne Development Co., a Nebraska corporation,

to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

My commission expires: \_\_\_\_\_

Tracy Morrison  
Notary Public



ADDITIONAL PROVISIONS TO DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS

5. **Taxes and Other Sums Due (continued):** Notwithstanding the foregoing, nothing in this Deed of Trust shall be construed to obligate the Trustor to pay special assessments on the Real Estate prior to the time said special assessments become delinquent.

30. **Miscellaneous:**

(a) Any provision in this Deed of Trust to the contrary notwithstanding, the occurrence of any default and the right of Beneficiary to accelerate contained herein shall be subject to the applicable grace and cure periods, if any, provided in the Promissory Note secured hereby.

(b) Notwithstanding anything contained in this Deed of Trust to the contrary or contained in the Promissory Note or any of the other "Security Documents," as defined in the Promissory Note, the sale of lots, or portions of lots, and commercially zoned ground, from the Real Estate of the Trustor in the ordinary course of its business shall not constitute an Event of Default or a default under the Promissory Note, this Deed of Trust or any of the other Security Documents, or enable the Beneficiary or Trustee to accelerate the indebtedness secured hereby.

(c) Provided that an Event of Default or default has not occurred and is continuing under this Deed of Trust, the Promissory Note or any of the other Security Documents, Trustor and Beneficiary shall reconvey platted lots comprising the Real Estate upon receipt of a \$18,250.00 principal reduction for each platted lot, or part thereof, reconveyed and a \$1.00 per square foot, multiplied by the area in square footage to be released, or fifty percent of the net proceeds of any commercial ground, whichever is greater, with respect to the reconveyance of commercially zoned property to be reconveyed from this Deed of Trust.

(d) Trustee and Beneficiary hereby agree to execute such documents and take such actions as shall reasonably be required for the subdivision platting of the Real Estate into approximately 265 single family residential lots and 29 to 30 acres of commercially zoned property, to be known as Hawthorne Subdivision, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.