

Proof	<i>[Signature]</i>
D.E.	<i>[Signature]</i>
Verify	<i>[Signature]</i>
Films	
Checked	
Fee \$	83 <sup>00</sup>

93-04926

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
93-004926

93 MAR 15 PM 2:21

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

*Carol A. Davis*  
REGISTER OF DEEDS

THIS DECLARATION made on the date hereinafter set forth, by Midlands Growth, Inc. ("Declarant").

**PRELIMINARY STATEMENT**

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

Lots 1 through 76, inclusive, Birchfield, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

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

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

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

**ARTICLE I**  
**RESTRICTIONS AND COVENANTS**

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

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

004926



- |  |             |  |
|--|-------------|--|
| i) One-story house with attached garage    | 1400 sq.ft. | On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor) |
| ii) One-story house with basement garage   | 1400 sq.ft. | On the main floor  |
| iii) One and one-half and two story houses | 1800 sq.ft. | Total area above the basement level; minimum 1000 sq.ft. on the main floor                                     |
| iv) Split entry (bi-level) house           | 1500 sq.ft. | On the main floor  |
| v) Tri-level (split level) house           | 1700 sq.ft. | Total area above grade   |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II** **EASEMENTS**

A perpetual license and easement is hereby granted to the Omaha Public Power District, US West Communications and any company which has been granted a franchise to provide a cable television system in the area to be subdivided, their successors and assigns, to erect, operate, maintain, repair and renew poles, wires, cables, conduits and other related facilities, and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power and for transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5') foot wide strip of land abutting all front and side boundary lot lines, and an eight (8')

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. The regular annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The regular annual assessments provided herein as to all improvement Lots shall commence the first day of the month following the month during which the dwelling was substantially completed. As provided in the By-laws, the first regular annual

assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

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

H. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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

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

#### ARTICLE V GENERAL PROVISIONS

1. The Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now, or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.









94-07242B

LEGAL DESCRIPTION  
DISTRICT BOUNDARY  
SARPY COUNTY SID NO. 156

Part of Tax Lot 1, also part of Tax Lot 18A, also part of the abutting rights-of-way of 156th Street and a county road, also all of Birchfield and Emerald Oaks subdivisions, all located in the NW 1/4 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska:

Commencing at the North 1/4 corner of said Section 14; thence  $S00^{\circ}07'51''E$  (assumed bearing) along the East line of said NW 1/4 of Section 14, a distance of 90.00 feet to a point on the South right-of-way line of Harrison Street, said point also being the Northeast corner of Outlot "A", said Birchfield; said point also being the point of beginning; thence continuing  $S00^{\circ}07'51''E$  along said East line of the NW 1/4 of Section 14, said line also being the East line of said Birchfield, a distance of 1234.25 feet to the Southeast corner of Outlot "B", said Birchfield, said point also being on the North right-of-way line of Meredith Street and said point also being the Southeast corner of the N 1/2 of said NW 1/4 of Section 14; thence  $S89^{\circ}26'11''W$  along said North right-of-way line of Meredith Street, said line also being the South line of said N 1/2 of the NW 1/4 of Section 14, a distance of 1339.17 feet to the point of intersection of said North right-of-way line of Meredith Street and the West right-of-way line of Jasper Avenue, said point also being the Northeast corner of said SW 1/4 of the NW 1/4 of Section 14; thence  $S00^{\circ}10'58''E$  along the east line of said SW 1/4 of the NW 1/4 of Section 14, a distance of 1069.71 feet to a point on the centerline of a county road; thence along said centerline of a county road on the following described courses; thence  $N77^{\circ}59'25''W$ , a distance of 516.21 feet; thence  $S87^{\circ}20'25''W$ , a distance of 192.76 feet; thence Northwesterly on a curve to the right with a radius of 179.20 feet, a distance of 194.31 feet, said curve having a long chord which bears  $N61^{\circ}35'47''W$ , a distance of 184.93 feet; thence  $N30^{\circ}31'58''W$ , a distance of 263.00 feet; thence Northwesterly on a curve to the left with a radius of 1096.52 feet, a distance of 336.04 feet, said curve having a long chord which bears  $N39^{\circ}18'44''W$ , a distance of 334.73 feet; thence  $N48^{\circ}05'30''W$ , a distance of 182.25 feet to a point on the West line of said Section 14; thence  $N00^{\circ}14'04''W$  along said West line of the NW 1/4 of Section 14, a distance of 751.42 feet to the point of intersection of said West line of Section 14 and the Westerly extension of the Easterly right-of-way line of 156th Street; thence  $N89^{\circ}45'56''E$  along said Westerly extension of the Easterly right-of-way line of 156th Street and said Easterly right-of-way line of 156th Street, a distance of 50.00 feet; thence  $N00^{\circ}14'04''W$  along said Easterly right-of-way line of 156th Street, a distance of 179.51 feet to a point on the South line of Tax Lot 14, a tax lot located in said NW 1/4 of Section 14, said point also being the Northwest corner of Lot 44, said Emerald Oaks; thence  $N89^{\circ}30'49''E$  along the South line of said Tax Lot 14, a distance of 350.00 feet to the Southeast corner of said Tax Lot 14; thence  $N00^{\circ}14'04''W$  along the East line of said Tax Lot 14, a distance of 535.00 feet to the Southwest corner of Tax Lot 18B, a tax lot located in said NW 1/4 of Section 14; thence  $N89^{\circ}30'49''E$  along said South line of Tax Lot 18B, a distance of 35.00 feet to the Southeast corner of said Tax Lot 18B; thence  $N00^{\circ}14'04''W$  along the East line of said Tax Lot 18B, a distance of 40.00 feet to a point on said South right-of-way line of Harrison Street; thence  $N89^{\circ}30'49''E$  along said South right-of-way line of Harrison Street, a distance of 65.00 feet; thence  $N00^{\circ}14'04''W$  along said South right-of-way line of Harrison Street, a distance of 10.00 feet; thence  $N89^{\circ}30'49''E$  along said South right-of-way line of Harrison Street, a distance of 290.00 feet; thence  $N00^{\circ}14'04''W$  along said South right-of-way line of Harrison Street, a distance of 25.00 feet; thence

94-07242C

N89°30'49"E along said South right-of-way line of Harrison Street, a distance of 243.00 feet; thence S00°14'04"E along said South right-of-way line of Harrison Street, a distance of 4.00 feet; thence N89°30'49"E along said South right-of-way line of Harrison Street, a distance of 634.00 feet; thence S00°14'04"E along said South right-of-way line of Harrison Street, a distance of 17.00 feet; thence N89°30'49"E along said South right-of-way line of Harrison Street, a distance of 33.55 feet; thence S00°29'11"E, a distance of 174.54 feet to a point on the Westerly extension of the North line of Lots 68, 69 and 70, said Birchfield; thence N89°26'11"E along said Westerly extension and said North line of Lots 68, 69 and 70, Birchfield, a distance of 378.92 feet to the Northeast corner of said Lot 70, Birchfield; thence N00°07'51"W along the West line of Lots 71 and 72, said Birchfield, a distance of 174.03 feet to the Northwest corner of said Lot 72, Birchfield, said point also being on the said South right-of-way line of Harrison Street; thence along said South right-of-way line of Harrison Street on the following described courses; thence N89°30'49"E, a distance of 232.40 feet; thence N00°07'51"W, a distance of 21.00 feet; thence N89°30'49"E, a distance of 302.00 feet; thence S41°28'47"E, a distance of 53.00 feet; thence N89°30'49"E, a distance of 30.60 feet to the point of beginning.

Said tract of land contains an area of 95.731 acres, more or less.

#91042.3

2/21/94

ELLIOTT & ASSOCIATES  
5316 SOUTH 132ND STREET  
OMAHA, NE 68137