

79-736T

DECLARATION

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CANDLEWOOD ADDITION  
a subdivision in Douglas County, Nebraska  
as surveyed, platted and recorded

THIS DECLARATION, made this 7th day of July,  
1972, by the undersigned, E. B. MILLER REALTY CO., INC., TRUSTEE,

WITNESSETH: THAT,

WHEREAS, the undersigned E. B. MILLER REALTY CO., INC.,  
TRUSTEE, is the owner of the following described premises,  
to-wit: Lots One (1) through Four Hundred Three (403), inclusive,  
in Candlewood Addition, a Subdivision in Douglas County, Nebraska,  
as surveyed, platted and recorded, and

WHEREAS, the undersigned has heretofore agreed, pursuant  
to an Indenture executed September 30, 1971, that of the foregoing  
described real estate all that portion legally described as:  
Lots 1 through 84, inclusive, Lots 86 through 228, inclusive,  
and Lots 233 through 400, inclusive, in Candlewood Addition,  
a Subdivision in Douglas County, Nebraska, as surveyed, platted  
and recorded, will be subject to conditions and other terms  
appropriate, convenient, or necessary to preserve and promote  
its private residential character in conformity to and coordination  
with the general scheme of development and use expressed in  
said Indenture, and

WHEREAS, the Declarant being the owner of all that portion  
of the foregoing described real estate legally described as:  
Lots 85, 229, 230, 231, 232, 401, 402 and 403 in Candlewood  
Addition, a Subdivision in Douglas County, Nebraska, which  
lots have been zoned for multi-family Residential District  
and Commercial District uses, and in order to insure that  
the use made of said lots is in conformity and harmony with  
the general scheme of development planned by Declarant to  
protect the value and desirability of all the above described  
property, Declarant desires to subject said lots to the following  
covenants contained in Section II hereof only;

NOW, THEREFORE, in consideration of the matters herein  
recited Declarant does hereby

DECLARE as follows, to-wit:

I

SINGLE-FAMILY RESIDENCE PROPERTY

1. All single-family residence property involved in this Declaration, is and will be acquired, conveyed, devised, inherited, sold, or otherwise transferred and is and will be occupied and used subject to all and each of the conditions and other terms set out in this Section I of this Declaration; and the following does and will constitute the single-family residence property so subject to this Declaration:

a. Lots 1 through 84, inclusive, Lots 86 through 228, inclusive, Lots 233 through 400, inclusive, in Candlewood Addition, a subdivision in Douglas County, Nebraska will be subjected to this Declaration,

b. Declarant will retain the right at any time or from time to time through December 31, 2000, to subject additional real property owned by it in Douglas County, Nebraska, and comprised of one or more subdivisions or units suitable for individual private residential purposes, hereafter called "lot" or "lots", and any other owners will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Candlewood Homes Association, a Nebraska nonprofit corporation, hereafter called "Association", also to subject additional real property owned by them in Douglas County, Nebraska, and comprised of one or more lots, to this Declaration by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written Supplementary Declaration describing such property and extending to each of such lots all of the conditions and other terms set out in this Declaration with only such complementary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the different character of such property but not inconsistent with the private residential character of the single-family residence property.

2. The single-family residence property of Candlewood is and will be through December 21, 2000, subject to all and each of the following conditions and other terms, hereafter called "covenants":

a. Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit public purposes to the extent permitted by applicable zoning regulations, no single-family residence lot, hereinafter will be occupied or used for other than single-family residential purposes; and no lot will be occupied or used for such residential purposes; and no lot will be occupied or used for such residential purposes at a density greater than one single-family residence for each lot or for each part thereof of an area not less than Seven Thousand Five Hundred (7,500) square feet.

b. The structure or associated structures comprising a single-family residence will consist of a detached dwelling designed to accommodate a single person or one family group together with household servant or servants of not more than two and one-half stories in height which shall be constructed in compliance with the following restrictions:

(1) The ground floor area of every one-story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than One Thousand Six Hundred (1,600) square feet.

(2) The ground floor enclosed area of every two-story or one and one-half story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than Nine Hundred (900) square feet and the first floor and other floors combined shall be not less than One Thousand Nine Hundred (1,900) square feet of floor area.

(3) The ground floor enclosed area of every split-level type of dwelling with the garage built under the dwelling, shall have combined ground floor area including

the floor area above the garage, exclusive of open porches, open breezeways, basements and garages, of not less than Nine Hundred (900) square feet and the ground floor area and other floors combined shall be not less than One Thousand Seven Hundred (1,700) square feet.

c. No single-family residence will be altered, built, constructed, or otherwise maintained on any lot without an express written Approval executed by Association through its Architectural Control Committee or its permission by implied approval secured in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, as to general appearance, exterior color or colors, harmony of external design and location in relation to surroundings and topography and other relevant architectural factors, location within lot boundary lines, quality of construction, size, and suitability for residential purposes of such single-family residence; and no exterior air conditioning equipment, antenna, ditch, fence, flag pole, pool, tennis court, wall, or other structure or associated structures and no tree or other substantial landscaping in any location within public view will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken on any lot without such approval by Association so secured as to general appearance, composition, design, exterior color or colors, and suitability for residential purposes. The roof of all dwellings or any other structure shall be covered by shake, wooden shingle or tile roofing materials, and no roof shall be covered with asphalt composition material. All exposed foundations facing the front and side yards of each lot not adjoining Lake Candlewood shall be faced with brick, stone or wood, and all exposed foundations on each lot adjoining said lake shall be faced with brick, stone or wood. The chimney of all dwellings shall be faced with brick or stone. All dwellings shall have attached enclosed garages which must be capable of accommodating at least two standard size automobiles.

d. After commencement thereof all approved or permitted construction on any lot will be as diligently as practicable prosecuted to completion as soon as practicable, and no approved or permitted construction will be maintained on any lot in uncompleted or unfinished condition for more than eighteen (18) months.

e. No exterior burner, incinerator, or other receptacle for garbage, trash, or other refuse will be maintained above ground level on any lot; and no barn, shack, tent, trailer, or other movable or temporary structure will be maintained on any lot other than for temporary use or uses appropriate, convenient, or necessary for residential purposes for not more than seven (7) days within any calendar year or for use or uses connected with coterminous with approved or permitted construction. Public concrete sidewalks, four feet wide and four inches thick, shall be installed by the then owner in front of each improved lot and on the side street of each improved corner lot prior to completion of construction of the dwelling on each lot.

f. No driveway will be constructed or maintained on any lot and connected to or with an adjoining public street through its curb other than by a curb cut effected with a clean-cutting cement saw leaving a smooth and unpatched curb cut and by a construction design leaving a smooth and unpatched union along a line or lines outside the path of water flow along said curb and surfaced, from the line of any intersected public sidewalk nearest such lot to such union, only with concrete cement of quality similar to that used for such sidewalk and street and otherwise surfaced with asphalt, brick, concrete, laid stone, or other construction material so as to avoid and prevent erosion of or water damage to such curb, curb cut, sidewalk, or street, and no such driveway will be so constructed or maintained and connected across or over an adjoining intersection so as to avoid and prevent erosion of, water damage to, cracks in, or similar damage to such sidewalk.

g. 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 of undesirable contagion or proliferation, or detract from a neat and trim appearance. On lots adjoining Lake Candlewood, grass shall be seeded or sodded and maintained to the water frontage; that is, the point where the lot meets the edge of the lake; and, no paving, sand or other material shall be installed on any said lot on or in the proximate vicinity of said water frontage; provided, however, that the Architectural Committee may approve plans for placement of rocks along the water frontage to check erosion if the same shall be attractive in appearance and in harmony with relation to the surroundings.

h. No advertising sign or other poster other than a sign of an area of not more than four square feet advertising such lot for sale or a sign or signs belonging to Declarant as owner of such lot will be maintained on any lot.

i. No excess or unused building material or materials will be kept, stored or otherwise maintained on any lot in a location within public view, other than for use or uses connected and coterminous with approved or permitted construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any lot.

j. No boat, camper, trailer, or similar chattel will be maintained on any lot, other than in an enclosed structure, for more than seven days within any calendar year; and no automobile, motor cycle, truck, or other vehicle will be repaired, torn down, or stored on any lot, other than in an enclosed structure.

k. No birds, livestock, poultry, or animals other than domesticated noncommercial pets in no more than reasonable quantity will be bred, kept, or otherwise maintained on any lot.

1. No boat dock, boat house, float, boat ramp, raft, bouy or other structure shall be erected or placed upon any lot in the properties or placed in any water adjoining said lot, and no fence or wall shall be built or maintained along the rear lot line of any lot adjoining Lake Candlewood.

m. No motor boats, or power boats shall be permitted on Lot 303; that is, Lake Candlewood.

3. Association: The single-family residence property is and will be through December 30, 2000 or for such longer or other period as may otherwise be fixed included in membership in Association subject to all and each of the following conditions and other terms:

a. Association will have the right, in general, without any part of its net earnings inuring to the private benefit of its members, to promote and sustain their social welfare, and otherwise provide for their health, pleasure, recreation, safety, and other nonprofitable interests by acquiring, maintaining, operating, contributing to the acquisition, maintenance or operation of or otherwise making available for use any one or more area entrances or entry structures, boat docks, golf courses, lakes, parks, swimming pools, tennis courts, and any other recreational equipment, facilities, grounds, or structures, by providing weed and other actual or potential nuisance abatement or control, security service, other community services, by exercising architectural control and securing compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, by fixing and collecting or abating dues or other charges for financing its operations, by delegating by contract or otherwise to any other Nebraska nonprofit corporation general responsibility for administration and executive management of its affairs, and by undertaking any one or more other activities appropriate, convenient, or necessary to promote or sustain any such interest, to acquire by purchase or otherwise, hold for investment or otherwise, or dispose of for profit or otherwise any interest in or species

of personal or real property wherever located, and to engage in any other venture for the mutual non-profitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as amended.

b. Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit or public purposes to the extent permitted by applicable zoning regulations, every single-family residence lot will be automatically included in membership in Association as a benefit or burden running with and charge upon the ownership of each such lot; and the owners of any other lots will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Association thereafter to include any such lot in membership in Association as a benefit or burden running with and charge upon the ownership of such lot.

c. Dues or other charges for each lot included in membership fixed by Association in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, will each constitute until abated or paid a lien upon and charge against such lot in favor of Association, but not such dues or charges shall constitute a lien until and unless a written notice of such lien is filed by the Association on such lot with the Register of Deeds of Douglas County, Nebraska, and no such lien upon any such lot will at any time be superior to any earlier or later established lien upon such lot for security for a home improvement or purchase money loan or the unpaid balance of a purchase contract for such lot.

d. The obligations and privileges of membership in Association will in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, extend to contract purchasers and owners of all lots included in membership and appertain to and be coterminous with the duration of the interest for membership for a period or from period to period; but each member will be and remain personally liable to Association until abatement or payment for all dues or other charges fixed by it at any time or from time to time throughout the duration of such interest or membership.



e. Association will have the right in the manner set out in its Articles of Association or its By-Laws, as from time to time amended, to divide the membership into classes, to deny or limit voting rights of members of any membership class, and to deny access to or use of facilities or services, suspend the membership or privileges of, or otherwise discipline any member for failure to pay dues or charges or for other conduct detrimental to its affairs or otherwise improper.

4. Enforcement: The covenants, easements, conditions, and other terms set out in this Declaration for single-family residence property are and will be subject to the following enforcement:

a. Association and every contract purchaser or owner of any lot will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement as to any lot of any covenants or any easement granted to it and to fix a reasonable charge for such action as a lien upon and charge against such lot in favor of Association.

b. Every grantee, assign thereof, or successor thereto will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement of any easement granted to such grantee.

## II

### MULTI-FAMILY RESIDENTIAL PROPERTY AND COMMERCIAL PROPERTY

All multi-family residential property and commercial property involved in this Declaration and legally described as: Lots 85, 229, 230, 231, 232, 401, 402 and 403 in Candlewood Addition, a subdivision in Douglas County, Nebraska, is and will be through December 31, 1980, acquired, conveyed, devised, inherited, sold or otherwise transferred and is and will be occupied and used subject to the restriction that no construction shall be commenced upon any said multi-family residential lot or lots or any said commercial lot or lots until the plans

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therefore shall first have been submitted to and approved  
in writing by Declarant.

III

EXTENSION, MODIFICATION, TERMINATION

The conditions and other terms of Section I and/or Section  
II of this Declaration are and will be subject to the following  
provisions for extension, modification or termination:

a. Declarant will have the right by an express written  
permit for the purpose of avoiding undue hardship to waive  
partly or wholly the application to any lot of any covenant  
or easement granted to it;

b. Any grantee, assignee thereof, or successor thereto  
will have the right by an express written termination to terminate  
any easement granted to said grantee.

IN WITNESS WHEREOF, Declarant has executed this Declaration  
at Omaha, Douglas County, Nebraska.

E. G. MILLER REALTY CO., INC.,  
TRUSTEE

By \_\_\_\_\_

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.

Before me a notary public qualified for said county,  
personally came Bruce N. Miller, \_\_\_\_\_ of E. G.  
MILLER REALTY CO., INC., TRUSTEE, known to me to be the identical  
person who signed the foregoing instrument and acknowledged  
the execution thereof to be his voluntary act and deed and  
the voluntary act and deed of E. G. MILLER REALTY CO., INC.,  
TRUSTEE.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 1972.

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

My Commission Expires: \_\_\_\_\_



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INDEXED IN PHYSICAL INDEX AND RECORDED IN THE OFFICE OF DEEDS IN DOUGLAS COUNTY, NEBRASKA  
1972 MAY 12 20 A. C. HAROLD OSILER, REGISTER OF DEEDS  
30 DAY OF MAY