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By

RICHARD N TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR A PART OF  
STANDING BEAR POINTE, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

This Declaration is made as of the 21<sup>st</sup> day of December, 2000, by STANDING BEAR DEVELOPMENT CORPORATION, a Nebraska corporation, referred to herein as the "Declarant."

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property in Douglas County, Nebraska, more particularly described as follows (the "Property"):

Lots 1, Standing Bear Pointe Replat 2, a subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska.

WHEREAS, Declarant is concurrently herewith selling the Property to Conoco Inc. in accordance with the terms of an Option Agreement dated August 24, 2000 (the "Option Agreement"). The Option Agreement contains certain provisions relating to the use of the Property that will impact the value of Declarant's adjacent property legally described as follows ("Declarant's Adjacent Property"):

Lot 2, Standing Bear Pointe Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska ("Declarant's Adjacent Property").

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of Declarant's Adjacent Property, and which shall run with the Property.

**ARTICLE I**

**DEFINITIONS**

1. **Building.** The term "Building" shall mean any enclosed structure, placed, constructed or located on the Development Property, which for purposes of this agreement shall include any canopies, supports, loading docks, ramps or outward extensions or protrusions of physical structures.

2. **Owner.** The term "Owner" shall mean the legal owner of fee title of the Property.

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## ARTICLE II

### BUILDINGS AND CONSTRUCTION

1. Plan Approval. No Building or other external improvement (herein an "Improvement") shall be constructed, erected or placed or permitted to remain on the Property, 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 shall deliver two sets of construction plans and site plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement, together with such other detailed drawings as may reasonably be requested by Declarant to review such Improvement. Concurrent with the 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 covenants, conditions, and restrictions in this Declaration, and in relation to the type and exterior of improvements which have been constructed or approved for construction on the Property and Declarant's Adjacent Property. In this regard, Declarant intends that the Property shall be developed with buildings constructed of high quality exterior materials. The decision to approve or refuse approval of any 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 Property and Declarant's Adjacent Property. 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 Declarant's Adjacent Property, Declarant 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 approved by Declarant.

2. Exterior Materials. The exterior walls of all Buildings must be constructed of brick or other materials approved in the sole discretion of Declarant.

3. Use Restriction. For a period of ten (10) years from the date of this Declaration, the sole use of the Property shall be for the operation of a gasoline service station and convenience store, with or without a complementing car-wash facility (the "Contemplated Use").

## ARTICLE III

### MAINTENANCE AND REPAIR OF DRIVE AREA

1. Construction of Drive. The Declarant, at its expense, will be constructing a common drive that will provide ingress to and egress from the Property and Declarant's Adjacent Property to public rights of way (the "Drive Area").

2. Maintenance and Repair of Drive Area. Declarant or its successor in ownership of Declarant's Adjacent Property (the "Responsible Owner") shall be responsible for maintaining and repairing the Drive Area, including, without limitation, the following (the "Drive Area Maintenance"):

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed:

(b) Removal of all papers, ice and snow, mud and sand, debris and filth and refuse to the extent reasonably necessary to keep this area in a clean and orderly condition;

(c) Placing, keeping and repair and replacing any necessary and appropriate directional signs, markers and lines; and

(d) Maintaining in good condition and repair all curb and guttering which is constructed as part of the drive.

The Owners of the Lots shall pay the Drive Area Maintenance expense in the proportion that the acreage of a lot with front footage along the Drive Area bears to the total acreage of lots with front footage along the Drive Area, which proportions the parties hereto agree are presently as follows:

<u>Lot Number</u>	<u>Acreage</u>	<u>Proportionate Share</u>
1	1.34	22.3%
2	4.67	77.7%
TOTAL	6.01	100.0%

In the event of a lot split or further subdivision of the referenced lots, the Proportionate Share shall be adjusted according to the proportionate square footage of the reconfigured lots with front footage along the Drive Area.

3. Assessment. The Responsible Owner shall, at the end of each calendar quarter, fix, levy and charge the Owner of each lot with an assessment for the Drive Area Maintenance expense incurred during the then ending calendar quarter, and shall deliver a notice of assessment to each Owner as soon as reasonably practical after the end of the then expiring calendar quarter. All assessments, together with interest thereon, costs and reasonable attorney fees shall be the personal obligation of the Owner of each lot and shall be paid within thirty (30) days of receipt of a notice of assessment. The assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien upon the lot in respect of which the assessments are charged.

4. Due Date. Any installment of assessments which is not paid within thirty (30) days following delivery of notice of assessment shall be delinquent. Delinquent assessments shall bear interest from the date when they become delinquent at the rate of sixteen percent (16%) per annum. The Responsible Owner may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the lot, or pursue any other legal or equitable remedy. The Responsible Owner shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs, and reasonable attorney fees incurred by the assessing owner with respect to such action. 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 Responsible Owner shall assign to any mortgagee who cures such a delinquency, all of its rights with respect to such lien and the right of foreclosure.

#### ARTICLE IV REPURCHASE OPTION

In consideration of Declarant's sale of the Property Conoco Inc., in the event that the Owner of the Property fails to secure necessary building permits and fails to commence construction of the Improvements consistent with the Contemplated Use on or before the date which is three (3) years following the date of this Declaration and fails to complete such Improvements on or before the date which is four (4) years from the date

of this Declaration, Declarant shall have the option to repurchase the Property from its then current owners under the following terms and conditions:

(i) The purchase price shall be equal to the gross purchase price reflected in the closing statement for the purchase and sale of the Property pursuant to the Option Agreement.

(ii) All prorations and closing costs shall be allocated between the Declarant and the owner of the Property in the same manner as provided in the Option Agreement.

(iii) All liens and encumbrances placed upon the Property following Declarant's transfer of the Property to Conoco Inc., shall be discharged or a corresponding amount of funds as necessary to discharge such liens and encumbrances shall be applied as a credit to the purchase price.

(iv) Declarant must notify the owner of the Property of the exercise of its option to repurchase the Property within the thirty (30) day period commencing on the date its option commences by written notice to the owner of the Property and by filing of a duplicate of such written notice with the Douglas County Register of Deeds, with the closing to occur thirty (30) days following such notice. If such notice and recordation are not timely given and made by Declarant within such thirty (30) day period, this option shall terminate and be of no further force or effect.

## ARTICLE V USE RESTRICTION

Declarant represents and warrants that the sole property that it owns within a one (1) mile radius of the Property that could be developed and improved for the Contemplated Use of the Property is Declarant's Adjacent Property. Declarant covenants and hereby agrees that for a period of ten (10) years from the date of this Declaration, Declarant's Adjacent Property shall not be used for the operation of a gasoline service station and convenience store, with or without a complementing car-wash facility.

## ARTICLE VI MISCELLANEOUS

1. Enforcement. In the event of a breach or threatened breach of this Declaration, only the Declarant or an owner of Declarant's Adjacent Property shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach.

2. Perpetual Duration. This Declaration and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns.

3. Waiver, etc. By the written consent of the Declarant for a period of ten (10) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Property may be waived, modified, or amended in any manner, for such time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion. 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 the 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. Termination of Declarant Status. Declarant, or its successors or assigns, 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 Owners of a majority of the acreage of Declarant's Adjacent Property may appoint 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. Survival. 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.

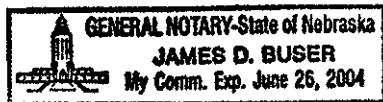
IN WITNESS WHEREOF, this Declaration has been executed effective as of the day and year first above written.

**STANDING BEAR DEVELOPMENT  
CORPORATION**, a Nebraska corporation

By: John C. Allen  
Title: President

STATE OF NEBRASKA       )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2000, by John C. Allen, President of Standing Bear Development Corporation, a Nebraska corporation, on behalf of the corporation.



James D. Buser  
Notary Public

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