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RICHARD H. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE



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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR INDIAN CREEK - ESTATES
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION made on the date hereinafter set forth, by Gottsch Land Co., a Nebraska corporation, ("Declarant").

PRELIMINARY STATEMENT

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

Lots 1 through 47, inclusive, in Indian Creek, 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, 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. No residence, building, fence, wall, driveway, patio enclosure, rock garden, landscaping, 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 the Architectural Control Committee as follows:

(i) An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to the Architectural Control Committee (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 Architectural Control Committee of the owner's mailing address.

(ii) The Architectural Control Committee 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 the Architectural Control Committee 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, the Architectural Control Committee 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 the Architectural Control Committee.

(iv) The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Architectural Control Committee 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 the Architectural Control Committee, or to control, direct or influence the acts of the Architectural Control Committee with respect to any proposed Improvement. No responsibility, liability or obligations shall be assumed by or

imposed upon Declarant or the Architectural Control Committee by virtue of the authority granted to the Architectural Control Committee in this Section or as a result of any act or failure to act by Declarant or the Architectural Control Committee with respect to any proposed Improvement.

The Architectural Control Committee shall consist of a Committee of the Declarant or its designated representative, successor or assigns, and the lot pool builders. The Declarant shall have a majority vote. At such time as all lots have had residential structures constructed thereon, then the Declarant's and home builders' rights hereunder shall transfer to the Homeowners Association.

3. Any exposed foundation wall (including side and rear) of all residential structures must be constructed of or faced with brick, exterior insulation and finish systems (EIFS), stone or stucco or other equivalent masonry product. All driveways, including driveway approaches, 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 and chases shall be covered with brick, stone, EIFS, stucco or other equivalent masonry product. The roof of all improvements shall be covered with wood cedar shake or shingles or other equivalent materials specifically approved in writing by the Architectural Control Committee. No vertical siding shall be permitted.

4. 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.

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

6. 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.

7. 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). 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.

8. 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.

9. 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 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 shielded from view by a fence or shrubs.

10. No fence shall be permitted to extend beyond the front line of a main residential structure. No fence shall be constructed abutting the Indian Creek Golf Course except six (6') foot galvanized black wrought iron between intermittently spaced (fifty (50) to sixty-five (65) foot) brick pillars to be specially selected, designed and approved by the Architectural Control Committee. Side fences and limited private fences around swimming pools, patios and the like on such lots shall be the same (galvanized black wrought iron specifically approved by the Architectural Control Committee) except that they may be four (4') feet nor more than six (6') feet in height. Fences on interior lots shall be limited to uniform black wrought iron which must be approved by the Architectural Control Committee.

11. No swimming pool may extend more than one (1') foot above ground. All swimming pool equipment shall be kept in an enclosed area for noise abatement and concealed from public view.

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

13. 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.

14. Driveway approaches between the sidewalk and curb on each lot shall be concrete or other approved material matching the driveway approved by the Architectural Control Committee. Should repair or replacement of the driveway or driveway approach be necessary, the repair or replacement shall be concrete or such other matching material approved by the Architectural Control Committee. No asphalt overlay of the driveway or driveway approach shall be permitted. All curb cuts shall be ground or cut out.

15. 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 the Architectural Control Committee. No dog runs shall be allowed. Dog houses shall only be allowed at the rear of the building, concealed from public view.

16. 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 fifteen (15) inches.

17. 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 Indian Creek to any Lot.

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

ARTICLE II **BOUNDARY FENCE**

1. Declarant and/or the Homeowners Association, at its option may construct boundary fences and/or plant boundary trees along Fort Street (the "Boundary Fence" and/or "Boundary Trees"). The Boundary Fence if constructed will be situated on the northerly most boundary line of Lots 8, 9, 19 and 20. Each of such lots are collectively referred to as the "Boundary Lots". Boundary Trees, if planted will be planted just inside the boundary line.

2. Declarant hereby declares that the Boundary Lots are subject to a permanent and exclusive right and easement in favor of Declarant and/or the Indian Creek - Estates Homeowners Association ("Association") as the case may be to maintain, repair and replace the Boundary Fence and/or Trees. Without limitation of the rights and easements granted by this Declaration, the Declarant or Association may come upon any of the Boundary Lots for the purpose of constructing, installing, repairing, maintaining, removing, and replacing the Boundary Fence if so constructed and/or Trees if planted.

3. The rights and easements granted in this Article shall fully and finally terminate as to any Boundary Lot if: (i) the owner of the Boundary Lot gives written notice to the Association that the Association has failed to maintain the Boundary Fence and/or Trees on the owner's Lot in neat and orderly condition and in good repair; and (ii) the Association fails to replace the Boundary Fence or Trees on the owner's Lot into good order and repair within ninety (90) days after the written notice.

4. Any Boundary Fence so constructed shall conform to the requirements of Article I, Section 10 for fences abutting the Golf Course. Should the Declarant and the Homeowners Association decline to construct a Boundary Fence then, and in that event, the owner of any "boundary" lot may construct a Boundary Fence on his lot provided the same conforms to this Article and has been approved by the Architectural Control Committee.

ARTICLE III
EASEMENTS AND RESTRICTIONS
RELATING TO GOLF COURSE

1. Declarant has constructed and operates and maintains a golf course adjacent to Lots 28 through 30 and 32 through 46, inclusive of Indian Creek. Declarant anticipates that the proximity of the Lots to the golf Course will enhance the desirability and value of the Lots to purchasers and their successors and assigns. Nevertheless, purchasers and owners of the Lots should be aware that: (i) golfers will from time to time hit golf balls from the Golf Course onto the Lots; and (ii) normal operation and maintenance of the golf course will involve operation of mowers and other power equipment during the evening and early morning hours.

2. The Declarant hereby declares, grants and establishes easements on the Lots in favor of the Grantees (defined below) for: (i) intrusion of errant shots onto the lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, an "errant shot" shall refer to a golf shot which is hit onto any Lot.

3. The easements granted in this Article are for the use and benefit of the Declarant and owner of the Golf Course, its successors and assigns in ownership of the golf Course, and any lessee, licensee, permittee or invitee of the owner of the Golf Course. Without limitation of the foregoing, the Grantees shall include any person or entity which contracts to operate the Golf Course, and any golfer who is duly authorized to play golf on the Golf Course.

4. No grantee shall have any liability, obligation or expense to the owner of a Lot in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not : (i) negligently, intentionally or recklessly hit onto a Lot; or (ii) hit in violation of the rules established by any operator of the Golf Course. By accepting title to a Lot, each owner hereby covenants that it will not sue any grantee for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future. All owners, by acceptance of delivery of a deed, assume all risks associated with errant golf balls, and all owners agree and covenant not to make any claim or institute any action whatsoever against Declarant, the Golf Course designer, the Golf Course builder, the Golf Course owner, or the builder of the unit arising or resulting from any errant golf balls, any damages that may be caused thereby, or for negligent design of the Golf Course or siting of the unit.

5. The owner of the Golf Course may from time to time change the configuration and layout of the Golf Course (including a driving range). Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Lot. Nevertheless, no owner of a Lot shall have any right to object to, or in any manner limit

changes to the golf course and the easements granted in this Article shall remain full effective as to all of the Lots after such changes.

6. The Golf Course is private property. Owners of Lots and their invitees shall comply with all the rules and regulations of the operation of the Golf course relating to use of and play on the Golf Course. Owners shall not enter onto the Golf Course without the prior written permission of the Golf Course owner or operator.

ARTICLE IV **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 the 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, an eight (8') foot wide strip of land abutting the rear boundary lines of all interior lots; and a sixteen-foot (16') wide strip of land abutting the rear boundary line of all exterior lots. The term exterior lots is herein defined as those lots forming the outer perimeter of the above-described addition. Said sixteen-foot (16') wide easement will be reduced to an eight-foot (8') side strip when the adjacent land is surveyed, platted and recorded, and we do further grant a perpetual easement to 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. Easements relating to the landscaping areas are set forth in Declaration of Easements which has been filed with the Register of Deeds of Douglas County, Nebraska.

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

U.S. West Communications, Inc. may, upon completion of its distribution system, require a connection charge on some or all of the lots at the time service is requested.

ARTICLE VI **HOMEOWNER'S ASSOCIATION**

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

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

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

3. **"Properties"** shall mean Lots 1 through 47, inclusive, Indian Creek and such additional lots as may be added by reason of Article VII Section 3.

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

B. Every owner shall be a member of the Indian Creek - Estates Homeowner's Association to be established for the following purposes: maintaining the Indian Creek perimeter, entryway, common and public area signage, fencing, landscaping and lighting; enforcement of the Article I restrictions and covenants; construction of Boundary Fences and Trees; promoting and maintaining the general aesthetic appearance and upkeep of the entire area; and otherwise promoting and sustaining the Association's business. The Homeowner's Association shall enter into a maintenance agreement with Sanitary and Improvement District No. 404 of Douglas County, Nebraska and the City of Elkhorn which obligates the Association on a permanent and continuous basis to provide for the proper and continuous maintenance and upkeep of all medians, street islands and common areas within the Properties including all subdivision signs, entrance signs and related fixtures including all landscaping. The Homeowner's Association shall cover all of the lots in the Properties. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot, whether there are one or more owners shall have one (1) vote.

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 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 for the purposes set forth in subparagraph B above.

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. 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 improved Lots shall commence the first day of the month following the month during which the dwelling was substantially completed. 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 nonprofit 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 nonprofit 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 VII **GENERAL PROVISIONS**

1. The Declarant, Homeowners Association 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, Homeowners Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded. Thereafter the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the owners of not less than seventy-five (75%) percent of said lots, which termination or amendment shall thereupon become binding upon all the lots. This Declaration may be amended by Declarant or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof.

3. Lots 1 through 47, inclusive, Indian Creek is the first of two or more anticipated phases of Indian Creek - Estates and Declarant shall, upon development of any subsequent phase, have the option, at its sole discretion to add such lots to this Declaration and include them as a part of the Indian Creek - Estates Homeowners Association.

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 13th day of November, 1997.

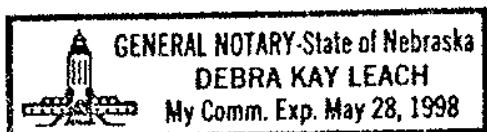
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A Nebraska Corporation

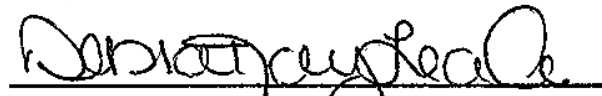
By: 

Brett A. Gottsch, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 13th day of November, 1997 by Brett A. Gottsch in his capacity as President of Declarant.




Notary Public