

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by SCHWALB HOMES, INC. through its President, Natan Schwalb, herein-after referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property legally described as:

Lots 1 through 5 inclusive, Lots 7 through 10 inclusive, Schwalb's 5th Addition, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

NOW, THEREFORE, Declarant hereby declares that all the properties described above 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, the real property and be binding upon all the parties having any right, title or interest thereof, and upon their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple to any lot or part of a lot on which one residence, attached or unattached, is, or may be erected, as approved by the City of Omaha.

Section 2. "Properties" shall mean and refer to that certain real property hereinafter described and such additions thereto as may hereinafter be brought within the scope of this Declaration by the developer or its assigns or successors.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, or a portion of a legally platted plot upon which one residence attached or unattached is or may be erected. The Properties within this Declaration were zoned in 1983, to allow a maximum of eighteen (18) residential units by dividing each lot into two parcels. Each of said parcels shall mean and refer to as if it is a full lot.

Section 4. "Declarant" shall mean and refer to SCHWALB HOMES, INC., its successors, assigns and legal representative. Declarant shall also mean and refer to the developer of the Properties.

ARTICLE II

NON-EXISTENCE OF COMMON AREAS

Section 1. In order to minimize monthly and other assessments on property owners, to avoid costs of organization and other home owners' associations related costs, the developer has not created a Home Owner Association. Since there are no common areas there is no requirement for a Home Owner Association to own and maintain such common areas.

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Section 2. However, in the interest of the property owners to better maintain their respective property, Declarant covenants and agrees to enter into a "Maintenance Agreement" with any purchaser of a residence desiring such maintenance, the terms of which will be spelled out in said Agreement. Each Agreement will include the following basic provisions:

1. Complete lawn care.
2. Snow removal.
3. Maintenance of electrical wiring, plugs and switches.
4. Maintenance of plumbing fixtures: Water heater, toilets, faucets and pipes.
5. Maintenance of heating and cooling equipment.
6. Monthly rate for first year with a maximum raise for second year must be specified in the Agreement.
7. Parties may extend Maintenance Agreement beyond second year by mutual agreement.

Section 3. Any owner not under a "Maintenance Agreement" with developer assumes the obligation of properly maintaining the exterior of said owner's property. Any adjoining property owner may initiate arbitration, as set forth in this Declaration, in the event such adjoining property owner deems maintenance of exterior not adequately maintained or otherwise not substantially kept up as other properties covered herein.

Section 4. Notwithstanding the provisions of this Section or any other in this Declaration, the owners of the properties may at anytime they so desire organize and create a Homeowner Association, except that such Association may not be created without developer's written approval as long as developer holds title to any lot included herein.

#### ARTICLE III

##### ARCHITECTURAL CONTROL

After the construction of the original structure on each lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change, or alteration therein be made until the plans and specifications showing the nature, kind, shape, light materials, and locations of 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 by the developer. Such right of approval by the developer shall remain until developer will have sold all the Properties. Thereafter property owners shall be limited by (a) other provisions of this Declaration and (b) City zoning and building ordinances.

#### ARTICLE IV

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as part of the original cost of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance-Party Walls, Roofs and Painting. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Any roof repairs or total replacement of shingles shall be done as follows: (A) Partial replacement: Any Owner may undertake necessary repair on such Owner's roof without consent of Owner of adjoining roof. (B) Total replacement: If total replacement is deemed necessary by both parties, a written agreement shall be entered into by the respective parties and each owner shall bear the proportionate cost of such total replacement.

Section 2. Con't. Color of roof shall remain same unless mutually agreed otherwise. Any painting of eaves, garage doors, windows and trim, etc. shall always be matched as close as possible to original color unless mutually agreed otherwise.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other Owner thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right of Contribution-Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising, between two lot Owners, concerning a party wall or under any provision of this Declaration of Covenants, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision shall be done by a majority of all arbitrators.

#### ARTICLE V

#### GENERAL RESTRICTIONS

Section 1. Awnings-Antennas. No awnings or sun screens of any type, or antenna shall be affixed to any building or structure within the properties without the written consent of the developer. After the developer sold all properties an owner desiring awnings, etc. shall need to secure a written consent from the majority (3) of the (5) closest adjoining Properties, measured by distance from front door to adjoining Properties front door. If within 30 days of written request no decision was made, the request shall be deemed as approved. No clothes line or clothes hangers shall be permitted outside of any dwelling at any time except one umbrella-type clothesline per lot.

Section 2. Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.

Section 3. Noxious Activity. No noxious or offensive activity shall be carried on the Properties nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any vacant building site, nor shall anything ever be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 4. Billboards Prohibited. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yards of dwelling which are being offered for sale or rent. This prohibition does not apply to the developer.

Section 5. Outbuildings Prohibited. No outbuildings or other attached or unattached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing from the majority of five adjoining Owners as set forth in ARTICLE 5, Section 1.

Section 6. Temporary Structure. No trailer, tent, shack, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at anytime as a residence.

Section 7. Garbage Cans. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view except that on the day of garbage pick-up, garbage may be placed by street and cans must be removed from view on same day.

Section 8. Automobile Repair Prohibited. No automobile or vehicle repair will be permitted outside of garages on any Lot at anytime. No automobile in a state of disrepair shall be kept on the premises of any Lot for a period in excess of (3) days. All garage doors must remain closed at all times except when cars are entering or exiting from the garage.

#### ARTICLE VI

##### EASEMENTS AND LICENSES

A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company and to Omaha Public Power District, their successors and assigns, to erect, operate, maintain, repair, and renew cables, conduits, and other instrumentalities, and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service on, over, through, under and across a five foot (5') wide strip of land abutting all front and side boundary lot lines, and an eight foot (8') wide strip of land adjoining the rear boundary lines of all lots, except Lots 9, 10, and 11 upon which Lots the sideyard easements reserved is a three foot (3') strip. Said licenses being granted for the use and benefit of all present and future owners of said Lots. No permanent buildings shall be placed in perpetual easement ways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

#### ARTICLE VII

##### GENERAL PROVISIONS

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

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

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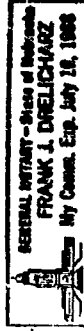
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of Twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of Ten (10) years. This Declaration may be amended during the first Twenty (20) year period by an instrument signed by not less than Twelve (12) Lot Owners (on the basis of 18 residential units.) However, Declarant may annex additional land adjacent to the Properties without the consent of Lot Owners within Six (6) years of the date of this instrument.

IN WITNESS WHEREOF, the undersigned being President of SCHWALB HOMES, INC., and authorized to execute this instrument, has caused this instrument to be executed as the Declarant on this 26<sup>th</sup> day of February, 1987.

*Natan Schwalb*  
Natan Schwalb, Pres.  
SCHWALB HOMES, INC.

STATE OF NEBRASKA )  
                                  ) ss  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me as the voluntary act and deed of NA'IAN SCHWALB, President, SCHWALB HOMES, INC. this 26 day of Feb, 1987.



*Frank J. Drelicharz*  
Notary Public