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BOOK 859 PAGE 69

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

DECLARATIONS  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR NELSON'S CREEK SUBDIVISION

THIS DECLARATION, made on this date hereinafter set forth by JACOBS LIMITED PARTNERSHIP, a Nebraska Limited Partnership organized under and subject to the Uniform Limited Partnership Act of Nebraska, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of the following real property:

Lots 192 through Lot 330 of Nelson's Creek Subdivision, in the County of Douglas, State of Nebraska

such lot are herein referred to collectively as the "Lots" and individually as each "Lot".

WHEREAS, the Declarant will convey said Lots, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

DEFINITIONS

"OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

"PROPERTIES" shall mean and refer to all such properties that Lot 192 through Lot 330 are subject to the Declaration or any supplemental Declaration under the provisions hereof, which shall initially consist of Lot 192 through Lot 330 in Nelson's Creek, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

"LOT" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties, including lots and outlots.

"DECLARANT and DEVELOPER" shall mean and refer to Jacobs Limited Partnership, a Nebraska Limited Partnership, its successors and assigns.

"ARCHITECTURAL CONTROL COMMITTEE" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following conditions, covenants, restrictions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots and the enjoyment of the residents of the Lots. These conditions, covenants, restrictions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereto, 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:

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1. SINGLE FAMILY RESIDENTIAL. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or portions thereof as may hereinafter be conveyed or dedicated by Declarant, or it's successors or assigns, for use for a church, school or park, or for other non-profit use(s).

2. SET-BACKS. All set-backs, side yards and rear yard requirements shall be in conformity with applicable laws and ordinances. All structures, including driveways, sidewalks and patios placed upon any Lot shall conform to the zoning requirements and the building code requirements of the City of Omaha.

3. NOXIOUS OR OFFENSIVE ACTIVITY PROHIBITED. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Further, home occupations, as defined in the zoning ordinances of the Municipal Code of the City of Omaha, Nebraska shall not be permitted to take place within any of the residential dwellings.

#### BUILDING REQUIREMENTS

4. AREA. No building shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed two stories in height, nor containing finished living area, exclusive of porches, breezeways, carports and garages of less than the following: a two-story dwelling house constructed on any of said residential Lots shall have a minimum of 2,100 square feet, exclusive of the basement area, with a first floor area, above the basement area, of not less than 1,050 square feet with an attached garage on the first floor level. A one-and-a-half story dwelling house shall have a total area of not less than 1,800 square feet, exclusive of the basement area, with a first floor area of not less than 1,350 square feet with an attached garage on the first floor level. A one-story dwelling house shall have a total of not less than 1,500 square feet with an attached garage on the first floor level above the basement level. Dwelling houses constructed of a split-level plan shall contain a total of not less than 1,600 square feet on the two levels above the basement level and have an attached garage. Dwelling houses constructed on a tri-level plan shall have a total area of not less than 1,750 square feet plus an attached garage. That said areas are exclusive of porches or attached garages. Each house shall have an attached garage for not less than two automobiles, however, additional garages may be put in the basement area as long as they do not face the street at the front of the house. The maximum height of a dwelling shall be two stories. A basement is not considered a story if it is 100% above grade on one side and essentially below grade on the other sides. Area means finished habitable space measured to the exterior of the enclosing walls, and does not include porches, breezeways, courtyards, patios, basements, garages or carports.

5. ROOFS. All dwellings shall be roofed with wood shakes or wood shingles. Except that application may be made for possible approval of an alternate roofing material, however, asphalt shingles shall not be permitted. All pre-fabricated metal furnace flues that protrude from the roof of a dwelling must be painted and no furnace flue may protrude more than five (5) feet from the roof of the dwelling, as measured from the top cap of the flue to the point from which the flue emerges from the roof. All furnace flues must be located on the rear side of the roof edge.

6. FOUNDATION. Exposed portions of the foundation on the street side of each dwelling (except those sides exposed to Blondo Street or 144th Street) are to be covered with either siding or brick and exposed portions of the foundation on the sides and rear of each dwelling shall be either covered with brick, stone, or siding or shall be painted. Fireplace chimneys are to be covered with brick, stone or siding.

7. SODDING. Within one year after construction is initiated, the front, side and rear yards of all Lots shall be sodded, and one tree, not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. All yards shall be sodded and the trees planted within four (4) months from the date the dwelling on the Lot was completed.

8. SIDEWALKS. Public sidewalks shall be constructed of concrete four feet wide by four inches thick in front of each built-upon Lot and along the street side of each built-upon corner lot. The sidewalks shall be placed five feet back of the street curb line and shall be constructed by the then owner of the Lot prior to time of completion of the main structure and before occupancy or use thereof; provided, however, this provision shall be varied to the extent required to comply with any subsequent requirements of the City of Omaha.

9. DRIVEWAYS. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

10. SWIMMING POOLS. No swimming pool shall be permitted which extends more than one foot above ground level.

11. ARCHITECTURAL CONTROL COMMITTEE. The Declarant, through its Architectural Control Committee shall consider general appearance, exterior color or colors, architectural character, harmony or external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Similar designs, forms, plans, styles or motifs will be considered repetitive if they are not separated by at least three adjacent Lots regardless of orientation. Superficial, cosmetic or minor architectural detail differences in like designs will not constitute a basis for approval.

Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required of the applicant at the discretion of the Architectural Control Committee. Submittals for the approval shall be made in duplicate and the comments and actions of the Architectural Control Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or drawings:

- A. Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks.

- B. Complete construction plans, including, but not limited to, basement, upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.
- C. An architectural review fee of fifty dollars (\$50.00) per improvement plan per Lot will be charged. Said fee is subject to adjustment or waiver if so determined by the Architectural Control Committee. Additional review fees will be required for resubmissions for the same Lot or alterations or additions to previously reviewed submittals. If construction has commenced on any Lot without Architectural Control Committee approval, the review fee will be one hundred dollars (\$100.00). The applicant's name, address and telephone number shall appear on each set of plans submitted to the Architectural Control Committee. If applicant wishes that his plans be returned via the mail, he shall include with his submittal an additional two dollars (\$2.00) for postage and handling. These fees may be waived on individual basis by the Architectural Control Committee.

The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. Failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents and the fee required above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate to release such Lot from the provisions of foregoing provision.

12. PROHIBITIONS. 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) for more than twenty (20) days within a calendar year. 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 nor excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

No incinerator or trashburner shall be permitted on any Lot. No garbage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clotheslines shall be permitted outside of any dwelling at any time. Any exterior air conditioner condensing units or heat pump units shall be placed in the designated rear yard of the dwelling

and in no case closer than ten (10) feet to the neighboring property line. Detached accessory buildings are not permitted.

No outside radio, television, Ham broadcasting or other electronic antenna or aerial shall be erected or placed on any structure or on any Lot. If used, any such antenna or aerial shall be placed in the attic of the house, or in any other place in the house where it will be concealed from public view from any side of the house.

No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on said Lot, or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said Lots. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

#### EASEMENTS

13. POWER AND TELEPHONE EASEMENTS. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District and U.S. West Communications Northwestern Bell Telephone Company, their successors and assigns, to erect, operate, maintain, repair and renew underground conduit and wires for the carrying and transmission of electric current for light, heat and power, and for all telephone, telegraph and message service below a five foot (5') strip of land adjoining the rear and side boundary lines of said Lots in said addition; said license is granted for the use and benefit of all present and future owners of Lots in said addition; provided, however, that said side Lot easement is granted upon the specific condition that if both of said utility companies fail to construct underground conduit and wires along any of said Lot lines within thirty-six (36) months of the date hereof, or if any underground conduits and wires are constructed but are thereafter removed without replacement within sixty (60) days after their removal, such side Lot easement shall automatically terminate as to such unused or abandoned easement ways and provided further, the above easement is subject to the right of Developer to install or contract for the installation of lines for cable television within the above described easement area as set forth in paragraph 14 below.

All telephone, cable television and electric power service lines from property line to dwelling shall be underground.

14. CABLE TELEVISION LINE EASEMENTS. A perpetual license and easement is hereby reserved in favor of the Developer, its successors and assigns, to erect, operate, maintain, repair and renew, or contract for the erection, installation, operation, maintenance and repair of underground conduit, wires and/or cable for the carrying and transmission of cable television service buried within a five foot (5') strip of land adjoining the rear and side boundary lines of said Lot in said addition, said license is granted for the use and benefit of all present and future owners of Lots in said addition; provided, however, that said side Lot easement is granted upon the specific condition that if cable television lines are not installed along any of said Lot lines within forty-eight (48) months of the date hereof, or if any underground television cable lines are constructed but are thereafter removed without replacement within sixty (60) days after removal, such side Lot easement shall automatically terminate as to such unused or abandoned easement ways.

15. NOTICE OF POTENTIAL TELEPHONE FACILITIES CHARGE. In the event that ninety percent (90%) of all Lots within a particular phase of Nelson's Creek Subdivision are not improved within five (5) years from the date that U.S. West Communications Northwestern Bell Telephone Company shall have completed the installation of it's distribution system within such phase of said subdivision and filed notice of such completion ("Five Year Term"), then every Lot that is unimproved at the end of the Five Year Term shall be subject to a charge of Four Hundred Fifty Dollars (\$450.00) by U.S. West Communications Northwestern Bell Telephone Company or its successors. A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on that Lot. Construction shall be considered as having commenced if a footing inspection has been made on the Lot in question by officials of the City or other appropriate governmental authority.

Each development phase of Nelson's Creek Subdivision shall be considered separately in determining whether ninety percent (90%) of the Lots within that Phase have been improved within the Five Year Term. In determining the date U.S. West Communications Northwestern Bell Telephone Company shall have completed the installation of it's distribution system, each development phase shall also be considered separately.

Such charge shall be due and owing immediately upon the expiration of the Five Year Term, and if such charge is not paid within sixty (60) days after the sending of written notice by U.S. West Communications Northwestern Bell Telephone Company or its successors to the owner of an unimproved Lot that such charge is due, then such charge will begin drawing interest commencing upon the expiration of the sixty (60) day period at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law if said maximum rate is less than twelve percent (12%) per annum at that time.

16. EASEMENTS FOR ENTRANCE AND DEVELOPMENT SIGNS. The Nelson's Creek Homeowners Association shall have an easement on portion of Lots 1, 30, and 40 and on outlots 1 and 2 for placement and maintenance of entry signs showing the Subdivision. Said easements are as shown on surveyors certificate.

17. NELSON'S CREEK HOMEOWNER'S ASSOCIATION. All of the involved property is and will be through January 10, 2011, included in membership in Nelson's Creek Homeowner's Association as a benefit or burden running with and as a charge upon the ownership of any of the Lots and parcels contained in said property.

The Association will have the right, in general, without any part of its earnings inuring to the private benefit of its members, to promote and sustain their business, welfare and otherwise provide for their mutual interest by maintenance of public facilities, whether streets, medians or similar property and by acquiring and maintaining or contributing to the general esthetic appearance and upkeep of the entire area including making any necessary contracts with public authorities relative to the cleaning, removal of snow, or planting, and upkeep of medians and right-of-way areas within and adjacent to the property covered by the Homeowner's Association.

Every Lot or parcel in Nelson's Creek Subdivision, including later plattings as and when platted, will be automatically included in membership in the Association as a benefit or burden running with and as a charge upon the ownership of each such Lot or parcel or portion thereof, and the owners of any other property will have the right at any time or from time to time, but only upon receipt of an express written acceptance executed by the Association

thereafter to include any such Lot or parcel in membership in the Association as a benefit or burden running with and charge upon the ownership of such Lot or parcel.

Dues or other charges for each Lot or parcel included in membership as fixed by the 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 or charged against such Lot or parcel in favor of the Association; but no such lien upon any Lot or parcel will at any time be superior to any earlier or later established lien upon such Lot or parcel for security for a building made or purchase money loan or the unpaid balance of a purchase contract for such Lot or parcel.

The obligations and privileges of membership in the 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 purchaser and owners of all Lots or parcels included in membership and appertain to and be coterminous with the portion of the interest of each such contract purchaser or owner; but each member will be and remain personally liable to the Association until abatement or payment for all dues or other charges is fixed by it at any time or from time to time throughout the duration of such interest and membership.

Enforcement. The Covenant and Declaration set out herein may be enforced by the Association, which will be entitled at any time or from time to time to institute any equitable or legal proceedings appropriate, convenient, or necessary for enforcement as to any contract purchaser or owner to fix a reasonable charge for such action as to any Lot or parcel as a lien upon and charge against such Lot in favor of the Association.

18. FENCES.

- A. Fences. All split rail fences on Lots 1 through 5, 30 through 46, 69 through 82 and 161, or Lots bordering on Blondo Street or 144th Street shall be maintained by the Lot owner in a manner that will perpetuate the original aesthetic intent. Also, no additional fence shall be built within three (3) feet of the split rail fence. On all of the aforesaid Lots, there shall be an easement across the rear two feet of each of said Lots for the split rail fence designated herein.
- B. Fences and Dog Runs. Front fences shall not be located on any Lot nearer to the street than the structure located on said Lot, the side yard fence may be located up to the side yard property line, however, in no event, shall the fence be located nearer to the street that runs in front of the structure located on said Lot than the structure itself. Dog runs and kennels shall not be permitted on any Lot.

19. SIGNS. 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 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. Exception to sign restriction shall be permanent subdivision entrance signs.

20. REMOVAL OF DEBRIS. Upon completion of the construction of any dwelling house or building on the above Lots, the construction debris must be removed from the area of the Nelson's Creek Addition and neither burned nor left in the area.

21. LOT SIZE. No residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

22. COMPLETION OF CONSTRUCTION. Construction of any improvement shall be completed within one (1) year from the date the foundation was commenced for such dwelling. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour of any Lot.

No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Architectural Control Committee.

23. ASSIGNMENT BY DEVELOPER. The rights, powers and responsibilities of the Developer as outlined and contained in this Agreement may be assigned and delegated by Jacobs Limited Partnership.

24. WAIVER FOR HARDSHIP. Until such time as all Lots are improved, Developer shall have the right in its discretion to waive any one or more of the covenants, conditions or restrictions herein contained for hardship or other just cause.

25. NON-LIABILITY OF DECLARANT AND ITS AGENTS. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Committee by virtue of his membership thereon, or discharge of his duties required thereby, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said Lots thereafter shall be moved without the prior written approval of the Committee. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

26. ENFORCEMENT OF COVENANTS. Except for the authority and powers specifically granted to the Declarant, 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.

27. AMENDMENT. For a period of ten (10) years following the date hereof, the Developer shall have the right to amend, modify or supplement all or any portion of these Protective Covenants from time to time by executing and recording one or more duly acknowledged Amendments to Protective Covenants in the Office of the Register of Deeds, Douglas County, Nebraska.

28. TERM OF COVENANT. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than eighty percent (80%) of the Lots covered by this Declaration.

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

IN WITNESS WHEREOF, Jacobs Limited Partnership has executed these presents, this 12<sup>th</sup> day of JULY, 1988.

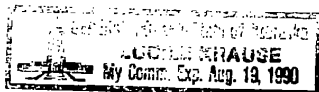
JACOBS LIMITED PARTNERSHIP, A  
Nebraska Limited Partnership

By: Warren L. Jacobs  
Warren L. Jacobs,  
General Partner

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

On the day and year last above written before me, the undersigned, a Notary Public, personally came Warren L. Jacobs, General Partner of Jacobs Limited Partnership, to me personally known to be the General Partner and the identical person whose name is affixed to the above Covenant and Declaration, and acknowledged the execution thereof to be his voluntary act and deed as such General Partner and the voluntary act and deed of said partnership.

WITNESS my hand and notarial seal at Omaha in said County, the day and year last above written.



Lucille Krause  
Notary Public

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OMAHA NE 68124  
SUITE 1 218 SOUTH AVE.  
RICKERSON WELCH & RUGER