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*Doug Ruge
14769 California
Omaha NE
68154*

**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF WALNUT POINTE PROPERTY OWNERS ASSOCIATION, INC.**

THIS AMENDED DECLARATION, made on the date hereinafter set forth by the current Board of Directors, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the City of Omaha, Douglas County, Nebraska, which is more particularly described as:

Lots 1 through 10, and 12 through 27, all inclusive, in Walnut Pointe, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

NOW, THEREFORE, Declarant hereby declares that all of 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 on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Incident to the filing of this Declaration, the Walnut Pointe Property Owners Association, Inc. is in existence. It is a non-profit corporation organized under the laws of the State of Nebraska and was formed for the purposes of providing for maintenance, preservation, architectural control of the dwelling amenities and common area within the above described property.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Walnut Pointe Property Owners Association, Inc., and its successors and assigns.

Section 2. "Owner" shall refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties.

Section 3. "Properties" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows:

Lots 26 and 27, Walnut Pointe Replat, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specifications for construction of said dwelling. All other lots, exclusive of the Common Area, which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots."

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for the use of any of the Common Areas;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of the Association.

Section 2. Delegation of Use. Any guests and licensees and invitees shall have the right to use such Common Areas, subject to the same restrictions as would be applicable to an owner, with the permission of an owner; subject, however to the Association's right to pass rules and resolutions to reasonably restrict use of the Common Areas.

Section 3. Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

Section 4. Homes must be owner occupied, and may not be rented or leased to others. Homes that are currently rented must become owner occupied when fee simple title is transferred.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have the following membership. Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Each lot owner, his heirs, devisees and assigns forever, hereby covenant and agree to pay the Association:

- (1) Annual assessments or charges are due monthly and delinquent after the 5th of each month; and
- (2) Special Assessments for replacement, repair and construction of improvements ("Capital Improvements") and such assessments shall be collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, and for the improvement and maintenance of the Common Area and Properties.

Section 3. Maximum Annual Assessment.

- (a) From and after January 1 of each year, the annual assessment may be increased by not more than, five percent (5%) without a vote of the membership.
- (b) From and after January 1 of each year, the annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of the Association who are voting by person or proxy at a meeting duly called for this purpose.

- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessment. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of any existing structures in the Common Area or Properties, including fixtures and personal property related thereto; provided that, any such assessment for erecting any new, capital improvements on the property shall require the assent of two-thirds (2/3) of the votes of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast two thirds (2/3) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum shall be one-half (1/2) of the required quorum..

Section 6. Uniform Rate of Assessment. Both monthly and special assessments, with respect to all improved Lots, shall be uniform in amount. Said assessment may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The Board of Directors shall fix the amount of the annual assessment no less than thirty (30) days in advance of the first month in which such annual assessment is to take effect. The annual assessments provided for herein shall be due as to all Lots on the first day of the month. Written notice of the annual assessment shall be sent to every Owner. Alternate due dates may be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Assessments are due on the 1st of the month and shall incur late fees and interest if not received by the 5th of the month, unless provided otherwise by the Board of Directors at the time of establishing the Assessment. The Association or Board of Directors may establish late fees and interest and shall notify each owner of each such policy. The late fee at the time of execution of this document shall be \$25 for each month the payment is delinquent. The Board of Directors of the Association may foreclose the lien against any property for which assessments are not paid within 60 days after the due date or bring an action at law against the owner personally obligated to pay the same.

Section 9. Subordination of the Lien to Mortgages. 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. No sale or transfer shall relieve such Lot or Owner from liability for any assessments or from the lien.

ARTICLE V INSURANCE

Section 1. The Association shall purchase and provide with respect to the improvements (residential structures and other structures in an amount equal to one hundred percent (100%) of the full replacement value of said improvements, without deduction for depreciation or co-insurance, against losses by fire, lightning, wind storm and other perils covered by standard extended coverage endorsements, and insurance against such other hazards of Directors of the Association shall reasonably determine. Such insurance shall not cover personal property of any Owner of any Lot, it being the Owner's sole responsibility to provide such insurance coverage. The Owner shall be responsible for payment of any deductible amount related to an insurance claim made with respect to the Lot owned by each Owner. The Association, in addition to the foregoing, shall provide liability insurance for the Association and for its members with respect to the Common Area, and liability insurance for the protection of the Owners of any Lots shall be the responsibility of each Owner unless the Association shall vote otherwise. The amounts of such liability insurance maintained by individual owners shall be in amounts which are reasonably determined by the Directors and the Directors may require proof of such insurance. The Directors may also require that such liability insurance policies name the Association as an additional insured, if available under a particular policy. In the event any Owner fails to provide proof of the insurance or fails to pay for such liability insurance, the Board of Directors may pay for the cost of such insurance and treat it as an assessment against the Owner and Lot as provided above.

Section 2. The Association is hereby irrevocably appointed as agent for each Owner of each and every Lot in the Properties and for the holder of any mortgage of any Lot in the Properties to adjust all claims arising under insurance policies purchased by the Association on the improvements on the Properties, and to execute and deliver releases upon payments of claims without joinder by any such Owner or mortgagee. All insurance proceeds shall be applied by the Association toward repairing the damage covered by such insurance, unless agreed otherwise by a two-thirds (2/3) vote of the Association. In any cases of over insurance, any excess proceeds of the insurance received shall be credited to the fund of the Association.

Section 3. Annual Review of Policies. All insurance policies shall be reviewed at least semi-annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property which may have been damaged or destroyed.

Section 4. Each Lot Owner may obtain additional insurance for such Lot Owner's own benefit and at such Lot Owner's own expense.

ARTICLE VI EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair,

replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior maintenance. Such exterior maintenance shall not include air conditioners, patio doors, garage doors, front doors, and storm doors. Payments for exterior maintenance may be made from either annual or special assessments. Such maintenance, repair or replacement, as provided in this paragraph, shall be conducted upon approval of the Board or upon approval of the Association.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject, including broken windows.

ARTICLE VII ARCHITECTURAL CONTROL

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, height, materials, and location of the same shall have been submitted to and approved in writing so as to promote harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated 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.

ARTICLE VIII ACCESS

The Association, its Directors, officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement and license for such purposes.

ARTICLE IX UTILITY METERS AND SERVICE LINES

Section 1. In order to facilitate the installation and operation, maintenance and repair of an underground watering system, such Lots as shall be designated from time to time by the Association shall have a dual metering system for water, so as to permit the drawing of water for watering of the lawns shrubs, trees, and other vegetation located upon the Lots and upon the Common Area. It is understood that the amount of water metered for such purposes shall be paid for by the Association, with only the water metered for the residential structure on any such Lot being paid for by the Owner of such Lot.

Section 2. Each Lot, other than the Common Area, shall have a separate water, electric, gas and/or other applicable utility meter, and shall be serviced by separate utility service lines. Any associated costs for each lot shall be the responsibility of each respective lot owner.

ARTICLE X PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built 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. 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, except where such repair, replacement or maintenance is necessitated by the negligence or willful misconduct of a particular Owner, then the cost of such repair or maintenance shall be borne by that Owner. The Association or the Board may require such repairs and, after thirty (30) days notice, may pay for and cause such maintenance and repair be charged to the applicable lot(s) as provided above.

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 Owners 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 Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to 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 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

ARTICLE XI GENERAL RESTRICTIONS

Section 1. Awnings. Awnings or sun screens as designated and approved by the Board may be affixed to any building or structure within the properties with the written consent of the Association or Board.

Section 2. Building or Uses Other Than for Residential Purposes. The Properties shall be used only for residential purposes, in accordance with appropriate zoning regulations. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within the Properties. Provided, however, this prohibition shall not apply:

- (a) To any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the Properties; or

Section 3. Fences, etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the properties, except such fences or enclosures as may be authorized by the Board. No truck, trailer, boat, motor home, camper equipment or machinery shall ever be parked, located or otherwise maintained on any building site, parking area, street or common area in the Properties. Automobiles shall be parked only in designated parking areas as published by the Board in its Rules and Regulations. No external television or radio antenna or satellite communication reception device shall hereafter be erected on or about any of the building sites or property within the Properties; however, with the written approval of the Board, one or more television antenna towers may be erected and/or cable television or Direct TV or similar facilities installed, for the benefit and use of all or part of the residents of the Properties. No clothesline or clothes hangers shall be permitted outside of any dwelling at any time.

Section 4. Livestock and Poultry Prohibited. 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. No animal enclosures shall be permitted.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on in the Properties, nor shall any trash, ashes or other refuse be thrown, place, 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 6: Bill Boards 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 signs shall be permitted temporarily in the yards of dwelling which are being offered for sale.

Section 7: Outbuildings Prohibited. No outbuildings or other attached or unattached structures appurtenant to a residence, including swimming pools, may be erected on any of the building sites hereby restricted without the consent in writing of the Board.

Section 8. Temporary Structure. No trailer, basement, tent, shack, garage, bar or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at any time

as a residence. However, the Association may erect an office for its use or construct other buildings on the Common Area as otherwise is provided in this Declaration.

Section 9. All garage doors must remain closed at all times except when cars are entering or exiting from the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view in a manner approved in writing by the Association. Private barbecue grills may be used in the Common Areas, and outside use or storage of barbecue grills will be subject to regulation, restriction or exclusion by the Association or Board of Directors. Automobile parking will be subject to regulation and restriction by the Association or Board of Directors.

Section 10. Vehicle Repair. No automobile or vehicle repair will be permitted outside of garages on any Lot at any time. No automobiles in a state of disrepair shall be kept on the premises of any Lot for a period in excess of three (3) days.

Section 11. The Board of the Association may remedy any violations of these Covenants and assess each Owner's Lot for such cost after ten (10) days written notice to the Lot Owner.

ARTICLE XII EASEMENTS AND LICENSES

Section 1. 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, and other necessary utilities, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities and utilities, on, over, through, and 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. Said licenses being granted for the use and benefit of all present and future owners of said Lots.

Section 2. All telephone and electric power service lines from property line to dwelling shall be underground.

Section 3. A four foot (4') wide strip of common ground shall abut each side of all roads within the subdivision, as surveyed, platted and recorded.

ARTICLE XIII INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify every Director and officer, his heirs and personal representatives against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been Director or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as which the Board of Directors may determine that the person to be indemnified has not been guilty of gross negligence or

willful misconduct in the performance of his duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason of, arising out of, or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as expenses and a corresponding assessment if necessary; provided, however, that nothing in this Article XIV shall be deemed to obligate the Association to indemnify any member or Owner of a Lot who is or has been a Director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Declaration as a member of the Association or Owner of Lot. In its discretion, the Association may obtain such liability insurance or errors and omissions for the Directors and officers as the Association may deem appropriate.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right 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.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with the land and shall be binding on the owner of each lot, and such owner's heirs, successors and assigns forever. This Declaration may be amended by two-thirds (2/3) vote of the Owners. Any amendment must be recorded with the Register of Deeds in and for Douglas County, Nebraska.

Section 4. After the original construction, any area lying outside the residential structure, fence or wall, although not Common Area, shall be kept maintained and used as Common Area.

Section 5. Annexation. Additional residential property and common area may be annexed to the Properties with the consent of two-thirds (2/3) of the membership.

IN WITNESS WHEREOF the undersigned, being an authorized officer of the Association, certifies that this instrument was amended at a properly called meeting of the members of the Association.

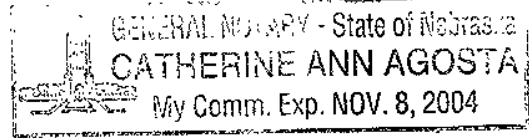
**THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE
ENFORCED BY THE PARTIES.**

DATED this 5TH day of MARCH, 2003.

WALNUT POINTE PROPERTY OWNERS ASSOCIATION, INC.

By: *Daniel P. Peterson*

Its: PRESIDENT



STATE OF NEBRASKA)
)SS
County of Douglas (

The foregoing instrument was acknowledged before me on March 5, 2003
by *Daniel P. Peterson* of the Walnut Pointe Property Owners
Association, Inc.

Catherine Ann Agosta
Notary Public