

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Meyer H. Feldman, Trustee, 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 Sub-division 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.

Declarant has heretofore caused the organization of Walnut Pointe Property Owners Association, Inc., which is a non-profit corporation organized under the laws of the State of Nebraska, formed for the purpose of providing for maintenance, preservation and 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., its successors and assigns.

Section 2. "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.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, 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 thereto) 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. "Declarant" shall mean and refer to Meyer H. Feldman, Trustee, his successors, assigns and legal representatives.

Section 7. "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' Easements 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 admission and other fees for the use of any recreational facility situated upon the Common Area;
- (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 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 signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the properties.

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.

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 two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, 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.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership upon the occurrence of the first of the following dates:

- a. The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership; or
- b. January 1, 1990.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, 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 to covenant and agree to pay to the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and 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. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. 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 recreational facilities and the homes situated on the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seven Hundred Twenty Dollars (\$720.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased by not more than the greater of either: 1) Five percent (5%); or 2) the

percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding October over the prior year's October, without a vote of the membership.

- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each group of members 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 Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association 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 construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; PROVIDED THAT, any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members 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 thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class 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 at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments, with respect to all improved Lots, shall be uniform in amount. In recognition of the fact that substantially all of the budget for the Association will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot will be equal to ten (10%) of the regular assessment due for

each improved Lot. Said assessment may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first 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 not less than thirty (30) days in advance of the first month in which such annual assessment is to take effect. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall 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. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments 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.

ARTICLE V

INSURANCE

Section 1. The Association shall purchase and provide with respect to the improvements (residential structures and

related 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, lightening, wind storm and other perils covered by standard extended coverage endorsements, and insurance against such other hazards of Directors of the Association. 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 only, any such liability insurance for the protection of the Owners of any Lots being the responsibility of each Owner.

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. In any cases of over insurance, any excess proceeds of the insurance received shall be credited to the working fund of the Association.

Section 3. Annual Review of Policies. All insurance policies shall be reviewed at least 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 improvements. Such exterior maintenance shall not include glass surfaces. Payments for exterior maintenance may be made from either annual or special assessments.

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.

ARTICLE VII

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, height, materials, and location of the 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 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 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 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.

ARTICLE X

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction 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. 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.

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 willfull 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. No awnings or sun screens of any type and no solar panels or items of a similar nature shall be affixed to any building or structure within the properties without the written consent of the Association.

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
- (b) To any portion of a building used by Declarant, its licensees or assigns, for a manager's office or a sales office, or by the Association, for its offices.

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 Committee. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use 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 Committee 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; PROVIDED that, with the written approval of the Committee, one or more master television antenna towers may be erected and/or cable television 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 except one umbrella-type clothesline per lot.

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.

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, placed, 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 or for-rent signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent.

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 Committee.

Section 8. Temporary Structure. No trailer, basement, tent, shack, trailer, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at any time as a residence. PROVIDED, however, nothing contained herein shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of the construction and sale of the Properties. Declarant or its assigns may also erect and maintain model homes for sales purposes and rental and lease purposes and may operate such office or offices therein for so long as they deem necessary for the purposes of selling, renting or leasing the Properties.

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. Automobile parking will be subject to regulation and restriction by the Association.

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.

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, their successors and assigns, to erect and 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. Said licenses being granted for the use and benefit of all present and future owners of said Lots; PROVIDED, however, that said easements are granted upon the specific condition that if both said utility companies fail to construct wires or conduits along any of the said Lot lines within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed but hereafter removed without being replaced within sixty (60) days after their removal, then this easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementways, 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.

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 to 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 common expenses; 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 a Lot. In its discretion, the Association may obtain such liability insurance for the Directors 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 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.

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 ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Douglas County, Nebraska.

Section 4. After the original construction, including any fences or walls, 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 each class of members.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

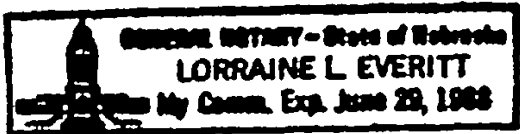
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this 9th day of October, 1985.

Meyer H. Feldman
Meyer H. Feldman, Trustee
Declarant

STATE OF NEBRASKA)
County of Douglas) ss.

The foregoing instrument was acknowledged before me on October 9, 1985, by Meyer H. Feldman, Trustee.

Lorraine L. Everitt
Notary Public



RECEIVED
1985 OCT 15 PM 3:57
GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DODGE COUNTY NEBR.

7046 F Misc

BK 754 Del. *✓* N 90-149 etc Fee -14- 83.00
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