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By

RICHARD H. TAKEICH  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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Martin P. Pelster  
Croker, Huck, Kasher, DeWitt, Anderson  
& Gonderinger, P.C.  
2120 South 72 St., Suite 1250  
Omaha, NE 68124-2356

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF WALNUT RANCHES, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by WALNUT ACRES, L.L.C., a Nebraska limited liability company, hereinafter referred to as the "Declarant" and the undersigned owner.

**PRELIMINARY STATEMENT**

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

Lots 1 through 13, inclusive, and Outlots A, B, C, D & E  
Walnut Ranches, a Subdivision, as surveyed, platted and  
recorded in Douglas County, Nebraska.

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

The Declarant and the undersigned owner desire to provide for the preservation of the values and amenities of Walnut Ranches, maintenance of the character and residential integrity of Walnut Ranches, and for the maintenance of Common Facilities for the use and enjoyment of the residents of Walnut Ranches.

NOW, THEREFORE, the Declarant and the undersigned owner hereby declare that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and enjoyment of the residents of the Lots. These restrictions, covenants, conditions 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 thereof, as is more fully described herein. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms:

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2. No structures shall be erected, altered, placed or permitted to remain on any residential building plot, as hereinafter defined, other than one detached single-family dwelling not to exceed two and one-half stories in height, a private garage, and two outbuildings which are similar in appearance to the dwelling. Exclusive of porches, breezeways, carports and garages, the minimum floor area for each dwelling is:

- a) One story structure shall have not less than 2,100 square feet;
- b) Two story structure shall have not less than 2,500 square feet, with a minimum of 1,300 square feet on the first level;
- c) One and one half (1 ½) story structure shall have not less than 2,250 square feet, with a minimum of 1,500 square feet on the first level;

No other structure shall be permitted upon any residential Lot except as provided above. Lot 13 shall not be subject to this section unless Lot 13 is subdivided in which case all covenants of this paragraph shall apply.

3. No residential structure shall be erected or placed on any building plot which has an area of less than 68,000 square feet, and such a plot of said minimum dimensions when used for residential purposes is herein defined as a "residential building plot". Except as hereinafter provided, no building shall be located on any "residential building plot" nearer than 35 feet to the front lot line; nor shall any building be located nearer than 10 feet to any side lot line or rear lot line; provided, however, that the City of Omaha setback requirements shall govern if they are more restrictive. No Lot shall be further subdivided or replatted except Lot 13 which can be further subdivided or replatted, provided, however, that the present zoning is utilized. In the event Lot 13 is further subdivided or replatted as allowed herein, the additional lots created by virtue of the subdivision or replatting shall be subject to the restrictions, covenants, conditions and easements contained herein without the exceptions applicable to Lot 13.

4. Improvements to be constructed or erected on Lot 13 shall be no less than three hundred (300) feet from the public street. Lot 13 shall not be subject to any other of the covenants contained in this Paragraph 4 unless Lot 13 is subdivided in which case all covenants of this Paragraph 4 shall apply. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, tree house, pool house, antenna, satellite receiving stations, dishes or discs, flag poles, solar heating or cooling devices, tool or storage shed, or other external improvement, including landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

- (a) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, detailed landscaping plans, and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing

Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the external design and location of the proposed Improvement does not harmonize or conform with the surrounding Improvements and topography and protect and enhance the integrity and character of all the Lots and neighboring lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(c) Written Notice of any approval or disapproval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval or disapproval is not mailed within such period, the proposed Improvement shall be deemed approved by Declarant.

(d) No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as result of any act or failure to act by Declarant with respect to any proposed Improvement.

5. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No outside radio, television or other electronic antenna, aerial or disc shall be erected on any Lot without recorded written consent of owners of record of all property within three hundred feet of any lot line on which such structure is sought to be or is placed, provided, however, that a disc not larger than 30 inches in diameter, adequately screened from view, is allowed without such written consent. Except for Lot 13, no outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any Lot. Except for Lot 13, no fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant. Except for Lot 13, no fence shall be of the chain link or wire type. Except for Lot 13, no fences shall be constructed without the prior approval of the Declarant.

6. 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", provided, however, that Lot 13 shall be allowed one additional sign consisting of not more than six (6) square feet for general advertising; 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 commercial businesses of

maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted outside on any Lot at any time; nor shall vehicles be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible. This Section 7 shall not apply to Lot 13.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, camper truck or similar chattel shall be maintained or stored on any part of a Lot, other than in an enclosed structure, unless it is on a concrete pad. No grading or 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. This Section 8 shall not apply to Lot 13.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No permanent clothes line shall be permitted outside of any dwelling at any time. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. This Section 9 shall not apply to Lot 13.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

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

12. Construction of any improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour of any Lot.

13. No trailer, basement, tent, shack, garage, barn or other out-building erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

14. Side wall foundation facing any street must be constructed of or faced with brick, stone, simulated brick or stucco. Except as above provided, all exposed side and rear concrete block or masonry foundation walls must be painted. All driveways must be constructed of asphaltic concrete, concrete, brick or laid stone.

15. Dwellings shall not be moved from outside of this subdivision to any Lot within this subdivision.

16. All telephone, cable television, electric, power and any other service lines from property line to dwelling shall be underground, except those service lines existing on Lot 13 as of the date this Declaration is filed with the Douglas County Register of Deeds.

17. The number of hooved animals of any nature or kind allowed on any Lot shall be restricted to two (2) per acre. Any manure, refuse or rubbish generated as a result of the existence of any animal(s) allowed hereunder shall be removed from the Lot on a regular basis, except manure from Lot 13 which may be disposed by spreading such manure on the surface of the lot.

## ARTICLE II. HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has caused the incorporation of WALNUT RANCHES HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Walnut Ranches, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; drainage easement areas in Walnut Ranches; and signs and entrances for Walnut Ranches. Common Facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property, or on property dedicated to a Sanitary Improvement District. Common Facilities shall include Outlots A, B, C, D, & E to the extent ownership of such outlots is acquired by the Association.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons who may be required to pay a fee or other charge in connection with the use of enjoyment of the Common Facility.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Walnut Ranches; and the protection and maintenance of the residential character of Walnut Ranches.

2. Membership and Voting. Walnut Ranches is divided into 13 separate residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association, except the owner of Lot 13 which will not be a member

of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons or entities, is entitled to one (1) vote on each matter properly coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(c) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverage for the Association, the Board of Directors of the Association and the Members.

(d) The exercise of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(e) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(f) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(g) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(h) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(i) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Imposition of Dues and Assessments. The Association may fix dues and

and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

5. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

6. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

7. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers, Responsibilities and Duties of the Association described in Sections 3 and 4 of this Article.

8. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed in each calendar year one hundred twenty five percent (125%) of the aggregate dues charged in the previous calendar year.

9. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility or drainage easement area, including fixtures and personal property related thereto, and related facilities.

10. Excess Dues. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues in excess of the maximums established in this Declaration.

11. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

12. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

14. Subordination of the Lien to Mortgage. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

### ARTICLE III. EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U S West telephone company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 429 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of the Lots.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend therein pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all streets; this license being granted for the use and benefit of all present and future owners of these Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Other easements are provided for in the final plat of Walnut Ranches which is filed in the Register of Deeds of Douglas County, Nebraska.

### ARTICLE IV. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot name herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and



2. The covenants and restrictions of this Declaration shall run with and bind the land for 25 years after recording, after which they shall be automatically renewed for successive 10 year periods unless terminated by an instrument signed by the owners of not less than 80 percent (80%) of the Lots covered by this Declaration. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof, provided, however, that any such amendments shall not create additional use restrictions applicable to Lot 13

3. Declarant may assign its Declarant status at anytime, or may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant, Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

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

IN WITNESS WHEREOF, the Declarant and the undersigned owner have caused these presents to be executed this 1<sup>st</sup> day of October, 1998.



WALNUT ACRES, L.L.C.,  
a Nebraska Limited Liability Company

By: Theodore J. Pelster  
Theodore J. Pelster, Managing Member

Jessica S. Huebert  
Jessica S. Huebert, Owner of Lot 13

STATE OF NEBRASKA    )  
                                  ) ss  
COUNTY OF DOUGLAS   )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of October, 1998, by Theodore J. Pelster, Managing Member, on behalf of Walnut Acres, L.L.C., a Nebraska limited liability company.

Stephen M. Cary  
Notary Public

STATE OF NEBRASKA    )  
                                  ) ss  
COUNTY OF DOUGLAS   )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of October, 1998, by Jessica S. Huebert, a single person.