

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration, is made as of the 4th day of December, 2002 by Thomas J. and Marilyn K. Walling, husband and wife, Jeffery N. and Brandie L. Schoeneck, husband and wife, and Danny Joe W. and Erica D. Martinez, husband and wife, hereinafter referred to as "Declarants".

WITNESSETH:

Whereas, Declarants are the owners of certain real property known as "Elkhorn Oaks" and more particularly described as follows:

Lots 1 through 4, inclusive, of Elkhorn Oaks, a subdivision platted in the South Half of the Southwest Quarter of Section 28, Township 18 North, Range 9 East of the Sixth P.M., Washington County, Nebraska; (the "Property") and

Whereas, Declarants desire to develop the Property for residential purposes for the construction of single-family dwellings.

Whereas, Declarants desire hereby to impose upon the Property mutual and beneficial restrictions, covenants, conditions and charges under a general plan for the benefit of current and future owners of the Property.

Whereas, Declarants have deemed it desirable, for the efficient preservation of the values and amenities in said subdivision, to create an agency to which should be delegated and assigned the powers of maintaining, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Whereas, Declarants have or shall within the immediate future incorporate the "Elkhorn Oaks Homeowners Association" under the laws of the State of Nebraska as a non-profit corporation, the purpose of which shall be to exercise the functions aforesaid;

Whereas, Declarants will convey the said lots, subject to certain protective covenants, restrictions, liens and charges as hereinafter set forth;

Now, Therefore, Declarants hereby declare that all of the lots above shall be held, sold and conveyed subject to the following restrictions, covenants and conditions (all of which are hereby termed "Covenants"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These covenants shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

By accepting the delivery of a deed conveying any of the lots, a grantee shall bind himself, his heirs, successors, personal representatives, administrators, assigns and grantees to observe and perform all covenants as fully as if they had joined in this Declaration.

20027362

STATE OF NEBRASKA COUNTY OF WASHINGTON)SS
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD
THIS 12th DAY OF December A.D. 2002
AT 10:47 O'CLOCK A M AND RECORDED IN BOOK
384 AT PAGE 381-388
COUNTY CLERK Charlotte K. Peterson
DEPUTY Kasim Madsen

Recorded ✓
General ✓
Numerical _____
Photostat _____
Prooted _____

CHARLOTTE L. PETERSEN
COUNTY CLERK
WASHINGTON COUNTY, NEBRASKA

02 DEC 12 AM 10:47

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DEFINITIONS

When used in this Declaration, the following terms shall be defined as set forth herein below:

"Association" shall mean and refer to the Elkhorn Oaks Homeowners Association, Inc., a Nebraska non-profit association, its successors and assigns.

"Building Site" shall mean any Lot or combination of Lots configured for the construction of a single-family dwelling and accessory buildings. Reference herein to Lots shall include Building Sites.

"Declarants" shall mean and refer to Thomas J. and Marilyn K. Walling, husband and wife, Jeffery N. and Brandie L. Schoeneck, husband and wife, and Danny Joe W. and Erica D. Martinez, husband and wife, their heirs, successors and assigns.

"Lot" shall mean and refer to Lots 1 through 4, inclusive, of Elkhorn Oaks, or any one of them individually, or any replat or subdivision or combination thereof. For the purpose hereof, all references to Lot or Lots shall apply equally to Building Sites.

"Member" shall mean and refer to every person or entity that holds membership in the Association.

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

"Properties" shall mean and refer to all such properties as are subject to the Declaration or any supplemental declaration under the provisions set forth, which shall initially consist of Lots 1 through 4, inclusive, in Elkhorn Oaks, a subdivision, as surveyed and platted and recorded in Washington County, Nebraska.

"Subdivision" shall mean Elkhorn Oaks, a subdivision, as surveyed and platted and recorded in Washington County, Nebraska.

"Tree" shall mean and refer to any specie of tree with a trunk larger than three inches (3") in diameter.

The Covenants contemplated by this Declaration are herewith stated to be as follows:

Section A. The Lots and Building Sites shall be used for single-family residential purposes only.

Section B. No structures shall be erected, altered, placed or permitted to remain on any Lot, as hereinafter defined, other than one single-family dwellings and accessory buildings.

Section C. Lots may be replatted and multiple Lots combined as a Building Site only as provided in this Section C.

1. No residential structure shall be erected or placed on any Lot, which has an area of less than 2 acres.
2. Where two or more Lots are combined into a single Lot, such Lot shall be developed as though it had been originally platted as a single Lot.
3. Where two or more Lots are replatted the minimum area of any Lot created by such replat shall be 2 acres.

Section D. No building shall be created, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling, with exception of accessories buildings. Said single-family dwelling shall conform to the following requirements:

1. A one-story house with attached garage shall contain a minimum of 1,000 square feet of living area on the main floor, excluding garage.
2. One and one-half and two-story houses shall contain a minimum of 1,400 square feet in total area above the basement level, excluding garage.
3. Area shall mean finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements or garages.

Section E. All accessory buildings shall be of neat construction and of such character as to enhance the value of the property, subject to the foregoing restrictions.

Section F. All structures constructed on any Lot shall meet or exceed all applicable building codes in effect at the time construction, as per the political subdivision having zoning authority over the Subdivision.

Section G. All single-family structures shall have a minimum roof pitch of 5:12.

Section H. All Lots shall be kept free of rubbish, debris, merchandise and building materials; however, building materials may be placed on Lots when construction is started on the single-family dwelling.

Section I. No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the Subdivision, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

Section J. No vehicles shall at any time be permitted to park within the right-of-way of Elkhorn Oaks Circle.

Section K. For the purpose of maintaining and protecting the value, desirability and attractiveness of said lots, owners are not permitted to remove any trees within twenty (20) feet of any side-yard or rear-yard lot lines, or within thirty (30) feet of any front-yard lot lines, except for driveway locations.

Section L. Construction of any structure must be completed within one (1) year from the date of the building permit being issued.

Section M. No signs may be placed or maintained on any Lot other than the name or names of the residents. Signs for the sale of a house may be placed on a Lot.

Section N. Prior to the construction of any improvements on any Lot, a plot plan showing the location of the proposed improvements and a complete set of the building plans shall be submitted to the Association for review and approval. The review shall be conducted in a manner to assure that the construction is consistent with this Declaration.

Section O. By the filing of this Declaration, a homeowners association known as the "Elkhorn Oaks Homeowners Association" is hereby formed. The Association shall be organized as a Nebraska non-profit corporation. The owner of each Lot shall be a member of the Association. Each Lot shall have one vote in all matters to be decided by the Association; provided, however, that where an owner has combined two or more Lots into one Lot, such owner shall have one vote. Each owner by accepting a deed to any Lot agrees to be bound by this Declaration, the Articles of Incorporation, the Bylaws and rules and regulations of the Association. The rights, duties and obligations of the Association shall be as set forth in this Declaration, its Articles of Incorporation and Bylaws. In addition to the rights, duties and obligations set forth in the Articles of Incorporation and the Bylaws, the Association shall maintenance, repair and provide snow removal of Elkhorn Oaks Circle, as dedicated on the final plat of Elkhorn Oaks.

Section P. (Creation of the Lien and Personal Obligation of Assessments):
Each owner of any lot, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, hereby covenants, and agrees 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 herein 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. All subsequent purchasers shall take title to the lots subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. 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 assessment shall not pass to his successors in title unless expressly assumed by them.

Section Q. (Purpose of Assessments):
The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property and, in particular, annual assessments shall be used for the care, maintenance, repair and snow removal of Elkhorn Oaks Circle, as dedicated on the final plat of Elkhorn Oaks. Annual assessments, and annual

assessment revenues, are not intended to be for maintenance, repair or replacement of appurtenant structures or improvements.

Section R. (Initial / Annual Assessments):

1. The initial assessment shall be One Hundred Dollars (\$100.00) per lot, payable in one installment in advance and due on March 1, 2003.
2. Thereafter, the Association shall fix the annual assessment.
3. Each annual assessment shall be due and payable in advance and in full on January 1st of each year.

Section S. (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 within Elkhorn Oaks Circle; provided that any such assessment shall have the assent of a simple majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section T. (Notice and Quorum for Action Authorized Under Sections R and S):

Written notice of any meeting called for the purpose of taking any action authorized under Sections R and S shall be delivered either personally or by mail to all members not less than ten (10) 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 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 fifty percent (50%) of all of the votes.

Section U. (Rate of Assessment):

Both annual and special assessments rates will be calculated by dividing the total assessment by the total number of Lots (adjusted to account for combined Lots and replatted Lots).

The Association shall adopt a budget for each calendar year, which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar (fiscal) year and provide funds for reserves as herein set forth. The budget shall be adopted in November of each year for the coming calendar year and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each owner on or before December 31st, preceding the year for which the budget is made. Budgets may be amended during the current year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to owners shall not apply to any budgeting for any period prior to January 1, 2003.

The Association shall fix the amount of annual assessment to be assessed against each lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1st of each year and terminating on December 31st thereof. Written notice of the annual assessment shall be sent to each owner subject thereto at least twenty (20) days prior to the due date of the assessment, including the due date and amounts thereof. The failure of the Association to so notify each

owner in advance shall not, however, relieve any owner of the duty and obligation to pay such assessment or any installment thereof. The Association shall have the authority, in its discretion to require that all owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessment shall be and become a lien as of the date of the annual assessment.

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 specific lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section V. (Effect of Non-Payment of Assessments: The Personal Obligation of the Owner: The Lien: Remedies of the Association):

If any Assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of Elkhorn Oaks Circle or abandonment of his lot. The Mortgagee of the subject property 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 rights of foreclosure to the Mortgagee.

Section W. (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 become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability or any assessments thereafter becoming due, or from the lien thereof.

Section W. (General Provisions):

In addition to the Covenants enumerated herein, the real estate described hereinabove shall be subject to all applicable zoning ordinances and subdivision ordinances, rules and

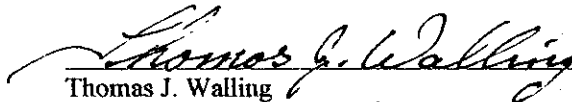
regulations of Washington County, Nebraska, and any other political subdivision having jurisdiction over Elkhorn Oaks.


In the event that any present or future owners of any of the real estate described hereinabove, their grantees, heirs or assigns, shall violate or attempt to violate any of the Covenants contained in this Declaration, it shall be lawful for the Association or any other person or persons owning any part of said real estate to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant to prevent him or them from doing so, and/or to recover damages or other relief for such violation.

Invalidation of any one of these Covenants by statute, ordinance, judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

This Declaration and the Covenants herein shall remain binding and in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, unless at any time they are waived, changed or amended in writing by the owner or owners of a majority of the Lots comprising the real estate described hereinabove. This Declaration and the Covenants contained herein shall be automatically extended for successive periods of ten (10) years unless by vote of the owners of a majority of the Lots in Elkhorn Oaks, it is agreed to waive, change or amend the Covenants in whole or in part.


In Witness Whereof, the Declarants have caused this Declaration to be duly executed the date and year first aforesaid.

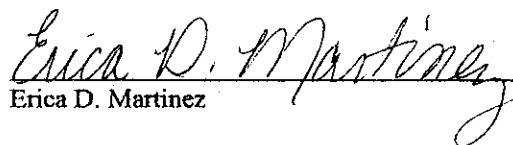

Thomas J. Walling


Marilyn K. Walling


Jeffery N. Schoeneck


Brandie L. Schoeneck


Danny Joe W. Martinez

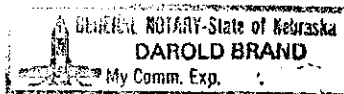

Erica D. Martinez

STATE OF NEBRASKA)
COUNTY OF Dodge) ss:

On this 4 day of Dec, 2002, before me, the undersigned Notary Public, duly commissioned and qualified for in said County, personally came Thomas J. and Marilyn K. Walling, to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

Darold Brand
Notary Public

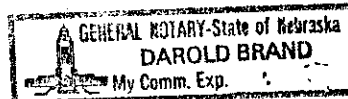


STATE OF NEBRASKA)
COUNTY OF Dodge) ss:

On this 4 day of Dec, 2002, before me, the undersigned Notary Public, duly commissioned and qualified for in said County, personally came Jeffery N. and Brandie L. Schoeneck, to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

Darold Brand
Notary Public



STATE OF NEBRASKA)
COUNTY OF Dodge) ss:

On this 4 day of Dec, 2002, before me, the undersigned Notary Public, duly commissioned and qualified for in said County, personally came Danny Joe W. and Erica D. Martinez, to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

Darold Brand
Notary Public

