

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Barry L. Larson, Elizabeth A. Larson, and Barry Larson Co., a Nebraska corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant represents the ownership of all of the following described real property: Lots 1 thru 11, inclusive, Pacific Park, a Subdivision in Omaha, Douglas County, Nebraska.

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.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Pacific Park 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 addition thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all 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 at the time of the conveyance of the first lot is described as follows: Lots Ten (10) and Eleven (11), Pacific Park, a Subdivision, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska, subject to a perpetual vehicular and pedestrian easement hereby reserved by the above described Common Areas; and the Declarant hereby reserves the right to hereafter grant one or several easements over said property in favor of any future owners, occupants and users of the road on said property.

Section 5. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot, shown upon any recorded subdivision map or plat of the properties, upon which a living unit is, or is proposed to be built, 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."

Section 7. "Developer" shall mean and refer to Barry L. Larson, Elizabeth A. Larson and Barry Larson Co., their successors and assigns, if such successors and/or assigns should acquire more than one undeveloped lot from them for the purpose of development.

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 to the Association to charge reasonable admission and other fees for 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 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 property.

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 Developer, and shall be entitled to one (1) 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 shall be the Developer and shall be entitled to two (2) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership, or
- (b) on January 1, 1999.

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 as are levied from time to time by the Association; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, delinquent charges 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, delinquent charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the 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 to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, exterior maintenance, insurance and such other purposes as are necessary to carry out the purposes of the Association, as more fully set out herein.

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 \$

(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) eight (8%) percent, 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 the 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, and for the cost of exterior maintenance, as set out in Article V herein, provided that any such assessment shall have the assent of a two-thirds (2/3) majority 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(b) or 4 shall be sent to all members not less than 10 days nor more than 20 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved lots shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance 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 the equivalent of 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 January 1, 1985. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. 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 Nonpayment of Assessment; Remedies of the Association. Any assessment not paid when due shall be deemed delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall include a delinquency charge of \$5.00 for each 30 day period for which the assessment remains unpaid. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any court in Douglas County, Nebraska, having jurisdiction of suits for the enforcement of such liens. 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 such proceeding in lieu thereof, shall extinguish the lien of such assessments as to the 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 VMAINTENANCE AND INSURANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot and improvements thereon which is subject to assessment hereunder, such as but not limited to the following: 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.

Section 2. Insurance.

(a) The Association shall keep in full force and effect Fire and Extended Coverage Insurance on all property owned by the Association as well as general Public Liability and Property Damage Insurance covering the Association Property and Directors' Insurance in such amounts as shall be deemed advisable by the Board of Directors.

(b) The Association shall purchase and keep in full force and effect Fire and Extended Coverage Insurance on all improvements constructed on any lot to the extent said improvements may be substantially repaired or reconstructed to the same condition and extent as when said improvement was originally constructed. In the event Owner is desirous of effecting such insurance coverage to include additions and improvements not originally constructed, then said insurance shall be purchased and paid for by said Owner and shall not be considered the responsibility of the Association. The cost for such insurance shall be paid by each Owner in accordance with the premium chargeable to his or her unit as set out in the master policy. Said premium shall be paid annually by each Owner within ten (10) days from date of receipt of a statement of such cost from the Association. This assessment for insurance is in addition to the annual assessment provided for above in Article IV, Section 3.

(c) Each member of the Association shall be responsible to procure and maintain such insurance as they deem necessary to protect the contents of their unit and liability for negligent acts outside of the Common Areas that are controlling them.

Section 3. Other Services. The Association shall contract for and pay for all services necessary to maintain and monitor the security systems installed in each of the townhomes constructed in Pacific Park Subdivision.

Section 4. Willful or Negligent Acts. 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 VI

ARCHITECTURAL CONTROL

Architectural control of Pacific Park Subdivision shall be vested in the Architectural Review Committee shall consist of three persons, two of whom shall be chosen by the Board of Directors of the Pacific Park Property Owners Association, Inc., and one of whom is designated as "the neighborhood representative" shall be an owner of property immediately abutting the P.U.D. on the north. Should the owners of the abutting property not agree among themselves as to who the representatives should be, that person shall also be chosen by the Board of Directors from and among those abutting property owners who are willing and able to serve. The neighborhood representative shall be given prompt notice of any matters requiring approval of the Architectural Review Committee. Upon the occurrence of the later of the passage of ten years from the date of this declaration or after all units designated on the P.U.D. plan are built, any rights, duties and obligations of the Architectural Review Committee shall fall upon the Board of Directors of the unit owner or homeowners association who shall otherwise be fully possessed of such rights of review and approval. Failure of the Architectural Review Committee to act within 30 days of a written submittal to it shall be deemed approval of the plans. The Architectural Review Committee shall have an obligation to meet and engage in a timely and good faith review of any plans submitted. The plans may be approved with an affirmative vote of at least two of the three members of the Committee.

ARTICLE VII

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 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 decision shall be by a majority of all the arbitrators.

ARTICLE VIII

RESPONSIBILITY TO REBUILD

If a structure on any of the properties is damaged or destroyed in whole or in any part thereof, the Owner or Owners of such structure must initiate within a reasonable time and pursue to full restoration any such damage or destruction. The rebuilding or restoration of a party wall is subject to Article VII.

ARTICLE IX

STAGED DEVELOPMENTS

Additional land substantially contiguous to Pacific Park, a Subdivision in Douglas County, Nebraska, may be annexed by the Developer, without the consent of the members within five (5) years from the date of this instrument.

ARTICLE X

GENERAL RESTRICTIONS

Section 1. Conformity with P.U.D. The living units to be constructed shall generally conform to the designations contained in the P.U.D. submittals to the City of Omaha as approved by the City Council with respect to location, building materials and such other data as may have been submitted to the City for its review and processing of the final P.U.D. approved. In no event shall

over 25% of the area within the P.U.D. be covered by dwelling units. The exterior materials shall consist of brick or stucco and shall conform generally to the materials indicated and the model presented to the City of Omaha Planning Department in conjunction with submittal of the P.U.D. to that department and the elevations similarly submitted. Street lighting shall not exceed four on the east nor two on the west without the consent of at least one neighbor abutting Shamrock Road or 93rd Street.

Section 2. Approval by Architectural Review Committee. No building or other structure shall be externally painted, resurfaced, commenced, erected or maintained upon the property until the plans, specifications and working drawing for said buildings or structure shall have been submitted to and approved as provided in this section by the Architectural Review Committee as to conformity with the P.U.D. and Section 1 of this Article.

Section 3. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Association.

Section 4. Buildings or Uses Other Than for Residential Purposes. 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, the 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 sales office, or by the Association, for its offices, or if written permission for such placement, erection or use under (a) above is first obtained from the Committee. Permission of the Committee is not required for exception of (b) above.

Section 5. 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 Declarant or its designated Architectural 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 shall hereafter

be erected on or about any of the building sites or property within the properties. No clothes lines or clothes hangers may be constructed or used unless completely concealed with enclosed patio areas.

Section 6. 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 7. Noxious Activity. No noxious or offensive activity shall be carried on 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 become an annoyance or nuisance to the neighborhood.

Section 8. Billboards Prohibited. The construction, placing or maintenance of billboards, advertising boards or structures, or "for sale" signs on a lot or improvements thereon is expressly prohibited except that "for sale" sign may be erected by Developer or Owner consisting of not more than six (6) square feet.

Section 9. Outbuildings Prohibited. No outbuildings or other attached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Declarant or its designated architectural committee.

Section 10. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict Developer or her 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. Developer or her 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 11. All garage doors should remain closed 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. Private barbeque grills will be subject to regulation and restriction and/or exclusion by the

Developer or her designated architectural committee. Automobile parking will be subject to regulation and restriction by the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. The covenants and restrictions contained in Section 1 of Article X shall not only be for the benefit of the owners but also shall run to and shall be for the benefit of the owners of property abutting immediately to the north of the P.U.D. and may be enforced by any owner of such property by any proceeding at law or in equity; provided, however, the right to enforce the covenants and restrictions in Article 1 Section X shall expire when all living units, landscaping, street construction, street lighting and other exterior improvements shown in the P.U.D. submittals have been completed. Any such article, covenant or restriction shall be waived or modified only upon the written consent of the owners of two-thirds of the total property immediately abutting on a front footage basis to the north of the P.U.D. combined.

Section 2. Any amendment must be recorded. Notwithstanding the foregoing, no such amendment shall be effective to modify the covenants and restrictions of Section 1 of Article X running in favor of owners of property abutting to the north of the P.U.D. unless such owners have consented to such amendment in a manner (and subject to the limitation) provided in Section 1 of this Article XI for the waiver and modification of such covenants and restrictions.

Section 3. 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 4. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and be enforceable by the Association, or the Owner of any land subject and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

Section 6. Amendments. The covenants and restrictions of this Declaration may be amended by the Developer, or any person, firm, corporation, partnership or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by any instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment, and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded. Nothing in this paragraph shall limit the rights of the abutting property owners, as set out in Section 2 of this Article.

IN WITNESS WHEREOF, the undersigned Declarants herein have set their hands this 13th day of May, 1985.

Barry L. Larson
Barry L. Larson

Elizabeth A. Larson
Elizabeth A. Larson

BARRY LARSON CO.

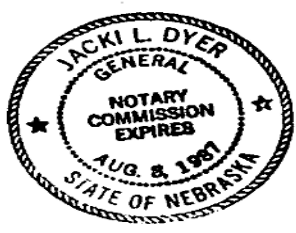
By Barry L. Larson
Barry L. Larson, President

STATE OF NEBRASKA)
; ss.
COUNTY OF DOUGLAS)

BE IT KNOWN, that on this 13th day of May, 1985, before me, a Notary Public in and for said county and state, personally appeared the above named BARRY L. LARSON and ELIZABETH A. LARSON, husband and wife, and BARRY L. LARSON, President of BARRY LARSON CO., a Nebraska corporation, to me known to be the identical persons described in and who executed the foregoing instrument, and they acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said corporation.

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

Jacki L. Dyer
Notary Public



-12-

1 m... (a)

RECEIVED
1985 MAY 13 PM 3:18
GEORGE J. DOMENICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

Book 738
Page 525
of 700

Fee 65.00
Del 10/1
Index 13/1
Compd 15
N 90-7ite 17
90-7 sur
Compd 17
MC BCL