

FILED

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR BLOCK ONE OF  
WHITE FEATHERS SUBDIVISION

00 SEP -5 PH 1:57

CHARLOTTE L. PETERSEN  
WASHINGTON COUNTY CLERK  
BLAIR, NEBR.

This declaration is made on this 1<sup>st</sup> day of Sept., 2000, by White Feathers, LLC, a Nebraska Limited Liability Company, hereafter referred to as "Declarant".

Preliminary Statement

The Declarant is the owner of the following described real property, to wit:

Block One (1) in White Feathers Subdivision, which is situated in the East 190.3 feet of Lot C and Lots D and E in Richard's, Keene and Co.'s Addition to the Village of Arlington Washington County, Nebraska.

Such property (Block One in White Feathers Subdivision) is hereinafter referred to collectively as the "lots" and individually as each "lot".

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities of such community and for the maintenance of the character and residential integrity of the lots; and

WHEREAS, separate Townhouse/Townhome buildings or units and Villas are to be located on the lots hereof, with Townhome dwelling units to have a wall common or party wall between said units; and

WHEREAS, there is a need to establish covenants, restrictions and/or conditions (hereafter covenants) with regard to certain matters concerning the upkeep, maintenance and repair of the Townhomes on said lots;

NOW, THEREFORE, Declarant herein hereby declares that the following Covenants (to include any conditions, restrictions, provisions and/or easements herein) shall apply to each Townhome and the lot(s) upon which same is or are located for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots.

Recorded \_\_\_\_\_  
General ✓ \_\_\_\_\_  
Numerical \_\_\_\_\_  
Photostat \_\_\_\_\_  
Proated \_\_\_\_\_

20003504  
STATE OF NEBRASKA COUNTY OF WASHINGTON)SS  
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD  
THIS 5<sup>th</sup> DAY OF September A.D. 2000  
AT 1:57 O'CLOCK p M AND RECORDED IN BOOK  
322 AT PAGE 646-660  
COUNTY CLERK Charlotte L. Petersen  
DEPUTY James Madison

**ARTICLE I**  
**COVENANT LONGEVITY, ENFORCEMENT AND POSSIBLE INVALIDATION**

1. This Declaration (including the covenants, conditions, provisions and/or restrictions herein) are to run with Block One (1) in White Feathers Subdivision and shall be binding upon the owner of the lots thereof and any buildings constructed after the platting of Block One in White Feathers Subdivision and for the initial or any subsequent term(s) as provided in Paragraph 2. of **ARTICLE XV** herein and until amended, modified or revoked or altered according to the terms thereof.

2. If the present or future owner of any of said lots, or their grantees, heirs, or assigns, shall violate or attempt to violate any of these covenants, it shall be lawful for any other person or persons owning any part of said Block one (1) in White Feathers Subdivision to prosecute any proceedings at law or at equity against the person or persons violating or attempting to violate any such covenant and either to prevent said owner(s) from so doing or to recover damages or other compensation for such violation.

3. Invalidation of any of these covenants, by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect. The Declarant reserves the right to modify or waive these covenants, restrictions or conditions as to any lot or lots in cases where the Declarant deems it necessary or advisable in unusual circumstances or to prevent hardship.

**ARTICLE II**  
**STRUCTURE**

The "Townhomes" on the property hereinbefore described and which is the primary subject matter of these covenants consists of one residential structure containing two (or more) living units. A Villa, defined herein as a separate (i.e. not physically attached or connected to a Townhome), single-family, residential structure within said real property hereinbefore described, shall be subject to all of the (appropriate) herein described Townhome requirements, to specifically include all of the Declarant approval provisions herein.

**ARTICLE III  
COMMON WALL**

Located within each Townhome described in **ARTICLE II** is a common wall dividing the adjoining living units, which common wall is hereby declared to be and shall henceforth constitute a "party wall" for the use and benefit of the entire, contiguous Townhomes. A Villa, by definition, will not include a said "party wall".

**ARTICLE IV  
REPAIR AND BUILDING OF PARTY WALL**

1. Should the party wall, at any time, be damaged or destroyed by any cause other than an act of commission or omission by either owner, or said owner's respective agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under said owner, said party wall shall be repaired or rebuilt at the owners' joint expense, with said expenses to be proportioned equally among the parties/owners. Should the party wall be damaged by any act of commission or omission by either owner, or the owner's respective agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under said owner, the party wall shall be repaired or rebuilt at that owner's expense.

2. The owners shall cooperate with one other in giving and granting access one to the other to their respective living units as may be reasonably necessary to effect any required repairs on or of said party wall.

**ARTICLE V  
USE OF PARTY WALL**

The owners, their respective heirs and assigns, shall have equal right in all respects to the party wall; and neither owner, or the owner's heirs or assigns, shall use the wall in any manner whatsoever that may interfere with the equal use of said wall by the other owner; nor may either owner use the wall in any manner which will result in damage to the premises of the other owner or interfere with the other owner's use of that owner's living unit.

**ARTICLE VI  
DAMAGE TO OR DESTRUCTION OF TOWNHOUSE**

1. In the event a Townhome (to include a Villa) or any part hereof shall be destroyed (or damaged to such extent that it is not reasonably habitable) by fire or other casualty, then, unless otherwise agreed by the owner, the Townhome and/or Villa shall forthwith and with due diligence be reconstructed by the owner(s) in such a manner as to place said Townhome/Villa in as nearly possible the same condition as it existed prior to any such damage or destruction. In the event a damaged Townhome is reconstructed after such damage or destruction, the respective owners thereof shall each bear that share of the costs of such reconstruction attributable to that owner's respective living unit of the Townhome.

2. If either Townhome unit's owner fails to perform said owner's obligation under this ARTICLE, the other owner may take such action as is reasonably necessary to reconstruct the damaged or destroyed living unit or units and the owner paying the cost thereof shall have a lien upon the real property of the owner failing to perform the owner's obligation under this ARTICLE to the extent of said owner's share of the costs of such reconstruction.

**ARTICLE VII  
NEGLIGENCE OF AN OWNER**

1. Notwithstanding any other ARTICLE in these covenants, etc., if damage shall be caused to the Townhome (to include a Declarant approved Villa) by reason of the fault or negligence of an owner, or that owner's respective agents, employees, permissive occupants, tenants, or invitees, or any person acting, by, through or under them, that owner shall be fully responsible for repairing such damage and for the payment of the cost of such repairs.

2. In the event that it shall become the obligation of a Townhome unit's owner hereto to repair at said owner's own expense, by reason of the fault or negligence of said owner, or said owner's agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under said owner, and the other Townhome unit's owner(s) causes such repair to be made or pays for same, then the owner(s) paying such amount shall have a lien for the amount so paid upon the repaired real estate

of the owner failing to make repairs and failing to pay for the cost thereof.

**ARTICLE VIII  
LIENS**

1. Any liens to which an owner may hereto be entitled on the property of the other owner(s) (exclusive of Villas) shall be created and perfected in the following manner; the owner who pays the cost or expense created by an obligation under these covenants may record an Affidavit of Non-Payment of said costs or expenses in the office of the County Clerk (ex-officio Register of Deeds) in Washington County, Nebraska, stating:

- a) The legal description of the property upon which the lien is claimed; and
- b) The name(s) of the owner(s) of said property; and
- c) The amount of the cost or expense unpaid and for which claim is made.

2. The lien shall be deemed created and perfected at the time of the filing and record of the Affidavit of Non-Payment and such lien shall be superior to all other charges. Liens or encumbrances which may thereafter in any manner arise or be unpaid upon the property, whether arising from or unpaid by judgment or decrees or by any agreement, contract, mortgage or other instrument, shall be junior and inferior to the lien herein described saving and excepting only such liens for taxes or other public charges as are by law made superior.

- a) Any lien created and perfected according to these covenants may be foreclosed by suit by the owner filing said lien in like manner as a lien and/or mortgage on real property is foreclosed. A suit to recover a money judgment for unpaid costs or expenses under these covenants shall be maintained by the party/ies filing the lien without foreclosure or waiving the lien securing the same.
- b) In the event a lien is created and perfected according to these covenants and thereafter the costs or expenses (plus interest at the rate of ten percent [10%] per annum from the date the lien is filed) shall be fully paid, the owner filing the lien shall, within ten (10) days following payment,

file with the County Clerk (ex-officio Register of Deeds) of Washington County, Nebraska, an Affidavit of Payment of said costs or expenses, which Affidavit shall (i) refer to and identify the Affidavit of Non-Payment of costs or expense which created the lien which has been satisfied, (ii) state the legal description of the property affected, and (iii) state name(s) of the owner(s) of the property. Recording of the Affidavit of Payment of costs or expenses shall fully and completely release the lien referred to in said Affidavit and said Affidavit of payment shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully released and discharged.

**ARTICLE IX  
USE OF THE PROPERTY**

Each owner will so use that owner's respective properties/real property in such manner that said use will not interfere with any other owner's use of the other owner's property; also, an owner will not maintain or create a nuisance in that owner's respective uses of that owner's living unit(s) or on any other owner's part of that owner's property.

**ARTICLE X  
RESTRICTIONS AND COVENANTS**

1. Each Townhome dwelling unit and/or Villa shall be used exclusively for single-family, residential home purposes.

2. The only dwelling units which may be erected on said property shall be single family dwellings inclusive of attached garages (with each separate, dwelling unit to include a side-by-side, two [2] car or larger garage) and other reasonable appurtenances attached thereto of at least one thousand (1,000) square feet of living space exclusive of basement, garage, and other areas appurtenant to the principal building (or in the event of a multi-level building, one thousand [1,000] square feet of living space on the main level of the building exclusive of basement, garage, other levels, and other areas appurtenant to the principal building). Mobile homes and homes substantially constructed off-site shall not be allowed. No owner shall commence residing in any Townhome/Villa dwelling that is less than ninety percent (90%) complete unless the appropriate City or

Village governing body grants an occupancy permit and such owner furnishes reasonable proof thereof to Declarant.

3. No residence, structure building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, antenna, satellite receiving stations, ("discs"), flag pole, solar heating or cooling device, tool shed, windmill or other external improvement, 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 shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"); such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement; concurrent with submission of the plans, owner shall notify Declarant of the owner's mailing address.
- b) Declarant shall review such plans in relationship to the type and exterior of improvements constructed, or approved for construction, on neighboring lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the lots shall be developed as a residential community, with said Townhomes/Villas 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 proposed Improvement will not 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 refusal to approve a proposed Improvement shall be mailed to the lot owner at the address specified by the lot 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 refusal is not mailed within such period, the proposed Improvement shall be deemed approved by Declarant.

- d) No dwelling unit owner, or combination of dwelling unit owner, or other person or persons shall have any right to any action by Declarant or to control, direct or influence the act of Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant herein, or as a result of any act or failure to act by Declarant, with respect to any proposed Improvement.

4. No structure or dwelling shall be created, altered, placed or permitted to remain on any lot within Block One of White Feathers Subdivision other than those units that do not exceed two and one-half stories in height, all of said dwelling units to have attached garages for not less than two (two) automobiles, with each said garage to be a "side-by-side" garage, with no carports being permitted or allowed. The roofs of said dwelling units shall have a minimum of six/twelfths (6/12ths) pitch on the roof and any permanent structure built on a lot (including any basement walls) shall be at least five (5) feet from the boundary or lot line of said lot if the dwelling, structure or improvement is one (1) story or less, and at least seven (7) feet from the boundary or lot line regarding any structure or dwelling in excess of one (1) story excepting, however, that no permanent structure shall be built within twenty (20) feet or less of the rear lot or boundary line.

5. The exposed portion of the front foundation wall as well as any foundation wall facing a street must be construed of or faced with brick or simulated brick or stone or stucco or other Declarant approved material, and the front of all residential structures shall be constructed with not less than twenty-five percent (25%) of brick, simulated brick, stone, stucco or other approved material. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys (to include and chimney or appurtenances thereto that are above the roof line of the dwelling unit) shall be covered with brick, stone or siding and free of or without



exposed pipe or piping materials, unless other comparable materials are specifically approved by Declarant.

6. No advertising signs, billboard, 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", nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner or Owner of any lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted on any lot, excepting, however, this foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, its agents or assigns, during the construction and sale of the lots.

7. No exterior television, radio antenna, satellite viewing stations (discs) of any sort shall be permitted on any lot excepting only that a satellite dish no larger than eighteen inches (18") may be attached to the dwelling unit of that owner.

8. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of twenty four (24) hours shall be permitted on any lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any lot. No unused building materials, 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.

9. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this subparagraph 9 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 as may be required by the applicable zoning ordinances of the City/Village of Arlington or other appropriate governing body.

10. 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 clothes line shall be permitted outside of any dwelling at any time except one (1), retractable clothes line per lot.

11. 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 and the occupants thereof.

12. No fence shall be permitted to extend beyond the front line of a main residential structure unless written approval is first obtained from Declarant. No hedges or planted shrubs shall exceed two (2) feet in height and shall be no closer than twenty (20) feet from the front street curb of said lot. No fences or walls shall exceed a height of six (6) feet. All produce or vegetable gardens shall be maintained only in rear yards. Each owner of a dwelling unit shall plant and maintain at least one (1) tree of not less than two (2) inches in thickness diameter in the front of each dwelling unit.

13. Construction of any Improvement shall be completed within one (1) year from the date the foundation was commenced for such dwelling. No excavation dirt shall be spread across any lot in such a fashion as to materially change the contour of the lot.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick on the street side of each built upon lot, whether or not the lot is a corner lot or a double faced lot; said sidewalk shall be five (5) feet from the front curb and parallel to the front lot line. Such construction shall be at the owner's expense. The said sidewalk shall consist of portland cement and shall be placed in accordance with Village/City of Arlington (or other appropriate governing body) directions and shall be constructed by the owner of the lot prior to the time of completion of the main structure and before occupancy thereof, provided, however, this provision shall vary as needed to comply with the then current requirements of the Village/City of Arlington (or other appropriate governing body).

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any lot.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. 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. Vacant lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No structure of a temporary character, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside of the property to any lot unless the written approval of Declarant is first obtained. No storage buildings or sheds shall be permitted on any lot, all storage to be within the confines of the owner's dwelling unit and/or garage.

19. All waste property or debris resulting from construction or Improvements shall be removed from the site and delivered to a waste disposal site holding an appropriate government issue(d) license.

20. Any swimming pool plans must be first approved by Declarant, and any approved swimming pool must be extend more than one (1) foot above ground level further more, all pools shall be properly guarded/safe-guarded from uninvited guests or users, especially non-permitted minors/children.

21. No downspouts, storm or surface drains from any structure and/or Improvement on a lot shall be connected to sanitary sewers.

**ARTICLE XI  
REPAIRS AND PAINTING**

1. In the event the exterior of the entire Townhome shall require repainting, refinishing or repairing of any kind, each owner shall share equally in the cost of such repainting, refinishing or repairing, provided, that in the event the exterior of only one living unit (or a part thereof) shall require repainting, refinishing or repairing, the owner owning that unit shall be responsible for causing such repairing, repainting and refinishing to be made, and such owner shall bear the sole cost thereof; provided further, however, that all repairing, refinishing and repainting shall be effected in such manner that it will be uniform and consistent with and that it will not detract from the appearance of the Townhome, and all reasonable effort shall be made to keep the exterior of the entire Townhome painted that same color. The owner of a Villa shall be solely and separately responsible and liable for all of the costs and expense in any repainting, refinishing or repairs to said Villa.

2. Any paintable surface exterior of each living unit of the Townhome (as well as each Villa) shall be repainted in its entirety at least once every ten (10) years. The first ten (10) year period shall commence on the date the exterior of each living unit is last repainted. The Townhome owners shall acknowledge each repainting by a written document executed by each said owner.

3. In the event it shall become the obligation of an owner hereto to pay for or contribute to the cost of repainting, refinishing or repairing the exterior of the Townhouse (or a part thereof) and such owner fails to pay the same, and the other owner(s) pays such cost, the owner(s) paying the same shall have a lien for the amount so paid upon the real estate owned by the owner failing to pay such costs or that non-paying owner's share thereof.

**ARTICLE XII  
ROOF REPLACEMENT AND REPAIR**

1. In the event it is necessary to re-roof the roof of the Townhome, each of the parties will contribute to the cost of such reroofing or roof repair, with a Villa owner(s) to be solely responsible for any such roof repair to said Villa.

In the event the roof of one part of the Townhome shall be damaged and it is possible to repair such roof without completely re-roofing or without affecting the roof of the other living unit(s) of the Townhome, the owner who owns the living unit in need of re-roofing or roof repair shall be responsible for re-roofing such living unit and causing such repairs to be made, and said owner shall bear the entire cost thereof. Any re-roofing or roof repair made by one of the owner to the roof covering the living unit of said Townhome shall be made using, whenever possible, the same style and kind of roofing material then existing on that portion of the roof of said Townhome not then being (re-)roofed or repaired.

2. The roof (including sub-surface covering if in need of repair) of the Townhome (or any Villa) shall be replaced in its entirety at least every thirty (30) years. The first thirty (30) year period shall commence on the date of the completion of the first roof. Each succeeding thirty (30) year period shall commence on the date that the roof was last replaced. The owner(s) shall acknowledge the performance of this paragraph by written documents (executed by each Townhome owner thereof).

3. In the event it shall become the obligation of a Townhome owner(s) to re-roof or make repairs to said roof at said owner's cost or share in the cost thereof, and the other owner pays the same, then the, owner paying said costs shall have a lien for the amounts so paid upon the lot and/or applicable real estate owned by the owner failing to pay for such costs or share thereof.

#### ARTICLE XIII UTILITIES AND MAINTENANCE

All utility and/or service lines from each lot line to a dwelling or other improvement shall be underground. Each owner shall be responsible for the cost of maintaining and keeping serviceable that part of the utilities, including the sewer, serving said owner's living unit only, but only to the extent that such costs are not the responsibility of the utility company or entity furnishing such service.

#### ARTICLE XIV EXTERIOR FENCE

Declarant may, at its own expense, erect a fence along the north property line abutting to and parallel with Bell Street

in Arlington, Nebraska. Following construction of said fence, all further expenses associated with said fence shall be the sole responsibility of the abutting lot owner and each said lot owner must maintain the fence, shall not be allowed to alter the same and shall not be allowed to remove the same without the express, written permission and consent of Declarant.

**ARTICLE XV  
GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration and covenants either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant (or successors) 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.
2. The covenants, restrictions, easements and/or provisions of this Declaration shall run with and bind the lots for an initial term of twenty (20) years from the date of this Declaration and shall continue thereafter unless same be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots covered by this Declaration.
3. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.
4. These covenants, restrictions and conditions shall not apply to (i) lots retained by Declarant, (ii) any lots conveyed by Declarant with other restrictions, covenants or conditions as determined by Declarant prior to said conveyance, (iii) to any Improvements made to lots or land dedicated to the public for streets, walks, or park purposes (iv) lots being used for continued present agricultural use, (v) lots conveyed or dedicated by Declarant for its successors or assigns for use as a church, school or park or any other non-profit use or for such other use as Declarant may later declare.
5. The word owner shall include the plural, if appropriate, if there should be more than one party/person owning an interest in any said lot, Townhome and/or Villa.

