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## RESTRICTIVE COVENANTS

*Carol M. Mirona*  
REGISTER OF DEEDS covenants are to run with the land and shall be binding upon all present and  
DODGE COUNTY future owners of all or any part of the following described real estate so long as any of the  
original buildings initially constructed after the platting of Day Acres 2nd Addition or  
until amended, modified, revoked, or altered according to the terms of these Restrictive  
Covenants.

If the present or future owners 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 real estate to the prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

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 undersigned reserves the right to modify or waive these Covenants as to any lot or lots in cases where the undersigned deems it necessary or advisable in unusual circumstances or to prevent hardship. In the event of death or disability of either of the undersigned, the other may exercise these rights of modification or waiver unilaterally. The Fremont City Council must approve the modification or waiver before the same is effective.

Don Peterson & Associates Real Estate Inc., owners of the tract of land legally described as follows to wit:

Lots 1 through 28, Day Acres 2nd Addition, City of Fremont, Dodge County, Nebraska.

As owners and developers, the undersigned declare that the following Restrictive Covenants shall apply to all of the lots in Day Acres 2nd Addition and shall bind all present and future owners thereof:

WHEREAS separate Townhouse buildings are to be located on a pair of lots with one living unit and appurtenant improvements being located on one lot and the other living unit and appurtenant improvements thereto being located on the adjacent lot. The lot pairs are to be lots 1 & 2; 3 & 4; 5 & 6; 7 & 8; 9 & 10; 11 & 12; 13 & 14; 15 & 16; 17 & 18; 19 & 20; 21 & 22; 23 & 24; 25 & 26; 27 & 28, Day Acres 2nd Addition.

WHEREAS there is to be located on the property line between each of two above described lots, a wall common to both living units; and

WHEREAS there is a need to establish Covenants with regard to certain matters concerning the upkeep, maintenance and repair of the Townhouses and the above described lots.

NOW THEREFORE the following Restrictive Covenants and conditions shall apply to each townhouse and the lots upon which it is located:

#### ARTICLE I STRUCTURE

The "Townhouses" on the property hereinbefore described and which is the subject matter of these Covenants and consists of one residential structure containing two (2) living units.

#### ARTICLE II COMMON WALL

Located within each Townhouse described in Article I 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 Townhouse.

#### ARTICLE III REPAIR AND BUILDING OF PARTY WALL

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 their respective agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under them, the party wall shall be repaired or rebuilt at the owners' joint expense, with said expenses to be proportioned equally among the parties. Should the party wall be injured by any act of commission or omission by either owner, or their respective agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under them, the wall shall be repaired or rebuilt at owners' expense.

The owners' shall cooperate with each 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 wall.

#### ARTICLE IV 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, their 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 their living unit.

## ARTICLE V REPAIRS AND PAINTING

In the event the exterior of the entire Townhouse 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, 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 Townhouse, and all reasonable effort shall be made to keep the exterior of the entire Townhouse painted that same color.

The exterior of each living unit of the Townhouse shall be repainted in its entirety at least once every five (5) years. The first five (5) year period shall commence on the date the exterior of each living unit is last repainted. The owners shall acknowledge each repainting by a written document executed by each.

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 pays such cost, the owner paying the same shall have a lien for the amount so paid upon the real estate described above owned by the owner failing to pay such costs or his share thereof.

## ARTICLE VI ROOF REPLACEMENT AND REPAIR

In the event it is necessary to re-roof or repair the roof of the Townhouse, each of the parties will contribute to the cost of such re-roofing or roof repair. In the event the roof of one part of the Townhouse 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 of the Townhouse, 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 owners to the roof covering his living unit of said Townhouse shall be made using, whenever possible, the same style and kind of roofing material then existing on that portion of the roof of said Townhouse not then being roofed or repaired.

The roof (including sub-surface covering if in need of repair) of the Townhouse shall be replaced in its entirety at least every twenty (20) years. The first twenty (20) year period shall commence on the date of these Covenants. Each succeeding twenty (20) year period shall commence on the date that the roof was last replaced. The owners shall acknowledge the performance of this paragraph by written documents

executed by each owner unless both owners agree that the replacement of the roof is not necessary.

In the event it shall become the obligation of a owner to re-roof or make repairs to said roof at his cost or share in the cost thereof, and the other owners pays the same, then the owner paying said costs shall have a lien for the amounts so paid upon the real estate described above owned by the owner failing to pay for such costs or his share thereof.

#### ARTICLE VII DAMAGE TO OR DESTRUCTION OF TOWNHOUSE

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

If either owner fails to perform his 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 above described owner by the owner failing to perform his obligation under this ARTICLE to the extent of his share of the costs of such reconstruction.

#### ARTICLE VIII NEGLIGENCE OF AN OWNER

Not notwithstanding any other ARTICLE in these Covenants, if damage shall be caused to the Townhouse by reason of the fault or negligence of one of the owners, or their respective agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under them, that owner shall be fully responsible for causing such damage to be repaired and for the payment of the cost of such repairs.

In the event that it shall become the obligation of the owner hereto to repair at his own expense, by reason of the fault or negligence of himself, or his agents, employees, permissive occupants, tenants, or invitees, or any person acting by, through or under them, and such repair, and the other owner causes such repair to be made or pays for the same, then the owner paying such amount shall have a lien for the amount so paid upon the real estate described above owner owned by the owner failing to make such repairs and failing to pay for the cost thereof.

## ARTICLE IX UTILITIES AND MAINTENANCE

Each owner shall be responsible for the cost of maintaining and keeping serviceable that part of utilities, including the sewer, serving his living unit only but only to the extent that such costs are not the responsibility of the utility furnishing such service.

## ARTICLE X LIENS

Any liens to which an owner may hereto be entitled on the property of the other owner 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 Register of Deeds in Dodge County, Nebraska, stating:

- a) The legal description of the property upon which the lien is claimed.
- b) The name(s) of the owner(s) of said property;
- c) The amount of the cost or expense unpaid and for which claim is made. 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 of 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, saving and excepting only such liens for taxes or other public charges as are by law made superior;
- d) 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 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 parties filing the lien without foreclosure or waiving the lien securing the same.
- e) 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 Register of Deeds of Dodge County, Nebraska, an Affidavit of Payment of costs or expenses, which affidavit shall (a) refer to and identify the Affidavit of Non-Payment of costs or expenses which created the lien which has been satisfied, (b) state the legal description of the property affected, and (c) state the names(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 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 XI USE OF THE PROPERTY

The owner will so use their respective properties above so described in such manner that they will not interfere with the other owner's use of his property and will not maintain or create a nuisance in their respective uses of their living units or on their part of the property, and they will not do anything which is contravention of any restrictive covenants which may have heretofore been placed upon said properties.

#### ARTICLE XII INSURANCE

Each owner shall obtain and keep in full force and effect, at his sole cost and expense, a policy of insurance insuring his property and the improvements located thereon (including but not limited to the party wall) against loss or damage by fire, windstorm, rainstorm, tornado, water damage occasioned by broken otherwise defective water pipes and appurtenances thereto, whether such water pipes and appurtenances are located or situated in or on either site of the Townhouse and other casualty of like nature. Said policy of insurance shall be in an amount never less than the balance due on any mortgage covering said property or ninety percent (90%) of the value of said property (including all improvements located thereon), whichever amount be the greater.

#### ARTICLE XIII AMENDMENTS

These Covenants can be amended, modified, revoked or altered only as set forth herein and only with the written consent of the owners of at least two-thirds (2/3) of the lots covered by these Covenants within the subdivision and the covenant of the Fremont City Council.

ARTICLE XIV  
BINDING AGREEMENT

This Agreement shall be enforceable only by an owner or owners against another owner. These Covenants shall run with the land and be binding upon the present and future owners of the subdivision, their heirs, legatees, devisees, successors in interest, assignees and representatives of the parties hereto.

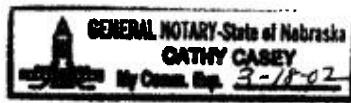
IN TESTIMONY WHEREOF, the parties hereto have thereunder signed their name(s) the day and year first written above.

Don Peterson & Associates

By *Donald A. Schenzel*  
COUNTY OF *Dodge*  
STATE OF *Nebraska*

Before me, a Notary Public, personally came Donald A. Schenzel, First Party, known to me to be the Vice President of Don Peterson & Associates, and the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said company.

WITNESS my hand and notarial seal this 18 day of August, 1998



*Cathy Casey*  
Notary Public

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*Carroll, et al.*  
REGISTERED LAND SURVEYORS  
DODGE COUNTY, NE

RESOLUTION NO. 97-199

Council member *Jim Maier* offers the following resolution and moves its adoption, seconded by Council member *Heidi Edwards*

WHEREAS, a Registered Land Surveyor has prepared a plat for approval by the Mayor and Council, which is submitted herewith showing said Day Acres 2nd Addition and its place of annexation to the City; and,

WHEREAS, the owners signed on this plat, desire to annex and make a part of the City of Fremont, Nebraska, said tract to be known as Day Acres 2nd Addition.

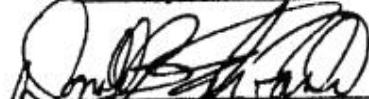
NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF FREMONT, NEBRASKA, AS FOLLOWS:

SECTION I. That the plat of Day Acres 2nd Addition, an addition to the City of Fremont, Nebraska, duly made out, acknowledged and certified, be and the same is hereby approved and accepted and ordered filed in the office of the Register of Deeds at Dodge County, Nebraska; and, hereinafter said addition shall be and remain a part of the City of Fremont, Nebraska, and shall be included within the corporate limits of said City and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and be subject to all the laws, ordinances, rules and regulations of said City.

SECTION II. That a variance be granted for insufficient depth on double frontage lots and for a street centerline curvature of less than 200 feet.

SECTION III. The dedication upon the plat is in all words and figures approved; and, the Mayor and City Clerk are hereby directed to register the approval of the Mayor and Council upon said plat by endorsements thereon.

PASSED AND APPROVED THIS 30th DAY OF September, 1997

  
DONALD B. EDWARDS, MAYOR

ATTEST:

  
Bonnie L. Pauk  
City Clerk

PLATREED.DOC  
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