

48.454

DECLARATION OF
COVENANTS AND RESTRICTIONS

This Declaration, made this 18 day of
August, 1975, by Jess J. Moore, Jr., and Mary
Ann Moore, husband and wife, hereinafter referred to as
"Owners" and Jess J. Moore, Jr., hereinafter referred to
as "Developer";

W I T N E S S E T H:

WHEREAS, Jess J. Moore, Jr. and Mary Ann Moore
are the Owners of the real property described as:

Lots 1 thru 6 inclusive and lots 11 thru 71
inclusive, Fairview Heights, a subdivision
in Sarpy County, Nebraska,

WHEREAS, all of the above Owners and the Developer
desire to provide for the preservation of the values and
amenities in said community; and to this end, desire to sub-
ject the real property described above to the covenants,
restrictions, and easements hereinafter set forth, each and
all of which is and are for the benefit of said property
and each Owner thereof;

NOW, THEREFORE, Developer and Owners declare
that the real property described above shall be held, trans-
ferred, sold, conveyed and occupied subject to the covenants,
restrictions, easements, charges and liens (sometimes refer-
red to as "covenants" and "restrictions") hereinafter set forth.

FILED FOR RECORD 1-2-75 AT 3:40 P.M. IN BOOK 48 OF Misc Recd.
PAGE 454 Carl L. Hillebrand REGISTER OF DEEDS, SARPY COUNTY, NEB. 64-75

Rec # 47300

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ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

a. "The Properties" shall mean and refer to all such properties as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

b. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties.

c. "Main Dwelling" or "Dwelling" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupance as a residence by a single family.

d. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling situated upon The Properties, but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

e. "Developer" shall mean and refer to the person who developed the property, Jess J. Moore, Jr.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Sarpy County, State of Nebraska, and is more particularly described on Exhibit "A" which is attached hereto and made a part hereof, all of which real property shall hereinafter be referred to as "The Properties".

ARTICLE III

GENERAL PROVISIONS

Section 1. The Properties shall be used only for single family residence property, schools or churches.

Section 2. Except for such Lot or Lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit public purposes to the extent permitted by applicable zoning regulations and this Declaration, no single-family residence Lot, hereinafter will be occupied or used for other than single-family residential purposes and no Lot will be occupied or used for such residential purposes at a density greater than one single-family residence for each Lot.

Section 3. The structure or associated structures comprising a single-family residence as described in Section 2 above shall consist of a detached dwelling designed to accommodate a single person or one family group together with household servant or servants of not more than two and one-half stories in height which shall be constructed in compliance with the following restrictions:

- a. The ground floor area of every one-story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than One Thousand One Hundred (1,100) square feet of finished floor space on the main living area.

b. The ground floor enclosed area of every two-story or one and one-half story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than Nine Hundred (900) square feet and the first floor and other floors combined shall be not less than One Thousand Four Hundred (1,400) square feet of finished floor area.

c. The ground floor enclosed area of every split-level type of dwelling with the garage built under the dwelling, shall have combined ground floor area including the floor area above the garage, exclusive of open porches, open breezeways, basements and garages, of not less than Nine Hundred (900) square feet and the ground floor area and other floors combined shall be not less than One Thousand Four Hundred (1,400) square feet of finished floor area.

d. The average grade elevation at exterior walls shall not be more than forty-eight (48) inches above the finished floor of a habitable room.

e. Any dwelling, garage or building shall be constructed a minimum of seventy (70) feet from the front lot line.

f. All dwellings shall have attached or detached enclosed garages of not less than Four Hundred and Fifty (450) square feet. The enclosed garage shall have a minimum of two stalls with each stall being so structured as to allow ease of ingress and egress of a standard size automobile into each stall simultaneously. All garages must be constructed to conform to the general appearance, composition and design of the main building.

g. Any detached outbuilding, stable or building constructed must conform to the general appearance, composition and design of the main building or dwelling. No such outbuilding, stable or building shall be constructed between the front house line and the front property line.

h. No dwelling, garage or building shall be built, altered, constructed or maintained, on any Lot unless same shall conform to the restrictions and covenants of this Declaration and unless the Owner thereof shall have obtained the express written approval for such construction from the Developer or his legally designated representative. Any construction shall conform to the general appearance, exterior color or colors, harmony or external design and location in relation to surroundings and topography and other relevant architectural factors, location within Lot boundary lines, quality of construction, size, and suitability for residential purposes of such single-family residence.

i. Each dwelling shall have a minimum of 40% brick or stone facing on the front elevation. No form of concrete block shall be allowed for facing.

j. No fence of any type shall be constructed between the front house line and the front property line or along the front property line.

k. No dwelling shall exceed two and one-half (2-1/2) stories nor thirty-five (35) feet in height and no permitted structure shall exceed sixty-five (65) feet in height.

l. No structure may be constructed closer than fifty (50) feet to its rear property line. No structure shall be erected closer than thirty (30) feet to its side lot line.

m. Each dwelling constructed shall have a hard surface driveway of a minimum width of twelve (12) feet and said driveway shall be constructed of either asphalt or concrete. The driveway shall be installed at the time of the construction of the dwelling.

n. Provided the provisions of Article III Section 3(g) and (h) above are met, two (2) external buildings will be allowed. The maximum building size will be two (2) stories, matching the motif and design of the single-family unit and will not be larger than One Thousand Two Hundred (1200) square feet.

o. No substantial landscaping, exterior air conditioning equipment, antenna, ditch, fence, pool, tennis court, wall, or other structure or associated structures, in any location within public view, will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken on any Lot unless same shall conform to the restrictions and covenants of the Declaration and unless the Owner thereof shall have obtained express written approval from the Developer or its legally designated representative as to general appearance, composition, design, exterior color or colors, and suitability for residential purposes.

Section 4. After commencement thereof, all approved or permitted construction on any Lot will be as diligently as practicable prosecuted to completion and no approved or permitted construction will be maintained on any Lot in uncompleted or unfinished conditions for more than twelve (12) months after such approval is obtained.

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ARTICLE IV

COMMON SCHEME RESTRICTIONS

Section 1. The following restrictions are imposed upon The Properties for the benefit of each other Lot and may be enforced by an Owner or by the Trustee.

a. No garbage, refuse, rubbish or cuttings shall be deposited on any street or road and not on any Lot unless placed in a suitable container. Any such container must be stored or maintained in an enclosed structure or the garage so as not to be in public view. No exterior burner or incinerator for garbage, trash or other refuse shall be maintained on any Lot.

b. No building material of any kind or character shall be placed upon any Lot except in connection with construction approved per Article III of this Declaration. As soon as building materials are placed on any Lot in such connection, construction shall be promptly commenced and diligently prosecuted. Upon completion of the construction, debris must be removed from the area.

c. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

d. No driveway will be constructed or maintained in any way that will cause erosion or water damage to formal constructive roadways throughout the Fairview Heights subdivision.

e. Except during approved or permitted construction pursuant to Article III of this Declaration, no used or previously erected or temporary house, structure, house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot within The Properties for more than seven (7) days within any calendar year.

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f. With the exception of two chattels, whether they be boats, campers, tractors, trailers or a combination thereof, which may be left unenclosed, all other such chattels must be maintained in an enclosed structure. The two or fewer unenclosed chattels shall be stored to the rear of the lot and behind the residence.

g. No automobile, motor cycle, truck or other vehicle shall be repaired, dismantled, or stored on any Lot except in an enclosed structure.

h. No advertising sign or other poster shall be maintained on any Lot except that a sign belonging to a Declarant as Owner advertising his Lot for sale may be maintained provided that said sign is not larger than four (4) square feet.

i. With the exception of two horses per family and one dog and one cat of the customary household variety, no animals, livestock, birds, poultry or other creatures may be bred, kept or maintained on any Lot.

j. No excess or unused building material or materials will be kept, stored or otherwise maintained on any Lot in a location within public view, other than for use or uses connected and terminating with approved or permitted construction and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any Lot.

k. The Owner of each Lot shall keep said Lot or Lots free from weeds and debris.

ARTICLE V

EASEMENTS FOR PUBLIC UTILITIES

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to various public utility services, their successors and assigns over and upon

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and below a five (5) foot wide strip of land adjoining all side boundary lot lines for all lots listed on Exhibit "B" Paragraph 1, plus an eight (8) foot wide strip of land adjoining the rear boundary lot lines of all lots listed on Exhibit "B" Paragraph 2 and a sixteen (16) foot wide strip of land adjoining the rear boundary lot lines for all lots listed on Exhibit "B" Paragraph 3 to locate, erect, construct, maintain and use or for the erection, construction, maintenance and use of drains, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines, television antenna lines and other utilities, and give or grant easements on rights of way therefore over and upon any part of the land hereby restricted without the consent of the then record Owner or Owners of said land. No trees, shrubbery, structures, buildings, fences, pavements or similar improvements shall be grown, built, or maintained within the area of a utility easement or right of way which may damage or interfere with their use. Provided, however, that said side lot easements are granted upon the specific condition that if said utilities of gas, water, electricity, and telephone are not utilized within sixty (60) months of the date hereof, or if the poles, wires or conduits are constructed but hereafter removed without replacement within one (1) year after their removal, then the five (5) foot side lot easement shall automatically terminate and become void as to such unused or abandoned easement way.

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ARTICLE VI

DURATION

Section 1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns from the date this Declaration is recorded through December 31, 1994, after which time said covenants shall be automatically extended for a successive period of ten (10) years unless an instrument terminating these covenants and restrictions signed by the then Owners of two-thirds of the Lots has been recorded prior to the commencement of any ten year period.

ARTICLE VII

AMENDMENTS

Section 1. These covenants and restrictions may be amended during the first nineteen (19) years from the date of the recordation of this Declaration, by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

ARTICLE VIII

ENFORCEMENT

Section 1. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Developer or any Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. However, nothing herein contained in this Declaration shall in any way be construed as imposing upon the Developer or Owner any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein.

ARTICLE IX
SEVERABILITY

Section 1. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. The invalidity of any one of these covenants or restrictions, or inapplicability hereof as to any lot encompassed within these covenants, by judgment or Court order shall in no way effect the validity of the covenants and restrictions remaining or their applicability as to the lots remaining subject hereto.

ARTICLE X
ASSIGNMENT

Section 1. The rights, powers and responsibilities of the Developer as outlined and contained in this Declaration may be assigned and delegated by the Developer to an Architectural Control Committee of three or more representatives appointed by the Developer.

Section 2. If the Developer assigns and delegates its duties under this Declaration to an Architectural Committee, then the Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within The Properties conform to and harmonize with existing surroundings and structures pursuant to this Declaration.

Section 3. The Developer or the Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Trustee or the Architectural Control Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with.

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Section 4. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

Section 5. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 6. The Developer or the Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within The Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

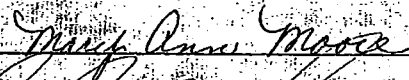
ARTICLE XI

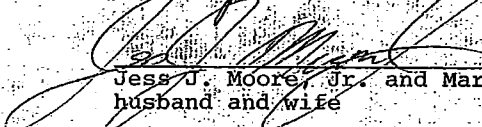
MODIFICATION

Section 1. The Developer or its assignee, the Architectural Control Committee, shall have the right by an express written permit for the purpose of avoiding undue hardship to waive partly or wholly the application to any Lot or any covenant or easement granted to it.

IN WITNESS WHEREOF, the undersigned, being the Developer and Owners of real estate described herein, have executed these covenants the day and year first above written.

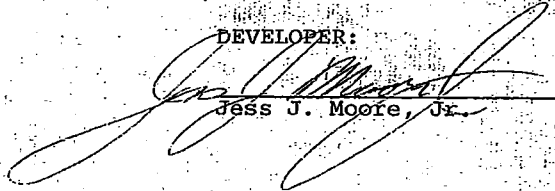
OWNERS:





Jess J. Moore, Jr. and Mary Ann Moore,
husband and wife

DEVELOPER:



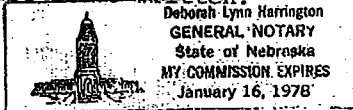
Jess J. Moore, Jr.

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STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 18 day of August, 1975, before me, the undersigned, a Notary Public, duly commissioned and qualified in said county, personally came JESS J. MOORE, JR. and MARY ANN MOORE, husband and wife to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the same to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

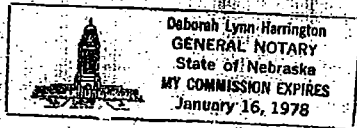


Deborah Lynn Harrington
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 18 day of August, 1975, before me, the undersigned, a Notary Public, duly commissioned and qualified in said county, personally came JESS J. MOORE, JR., Developer to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.



Deborah Lynn Harrington
Notary Public

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EXHIBIT "A"

Lots 1 thru 6, inclusive, and lots 11 thru 71, inclusive, Fairview Heights, a subdivision in Sarpy County, Nebraska.

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EXHIBIT "B"

PARAGRAPH 1. - A FIVE (5) FOOT WIDE EASEMENT ON ALL SIDE BOUNDARY LOT LINES FOR ALL LOTS INCLUDING:

Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24,
25, 26, 27, 28, 29, 30, 31, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42,
43, 44, 45, 46, 47, 48, 49, 50, 51,
52, 53, 54, 55, 56, 57, 58, 59, 60,
61, 62, 63, 64, 65, 66, 67, 68, 69,
70 and 71

PARAGRAPH 2. - AN EIGHT (8) FOOT WIDE STRIP OF LAND ADJOINING THE REAR BOUNDARY LOT LINES FOR ALL LOTS INCLUDING:

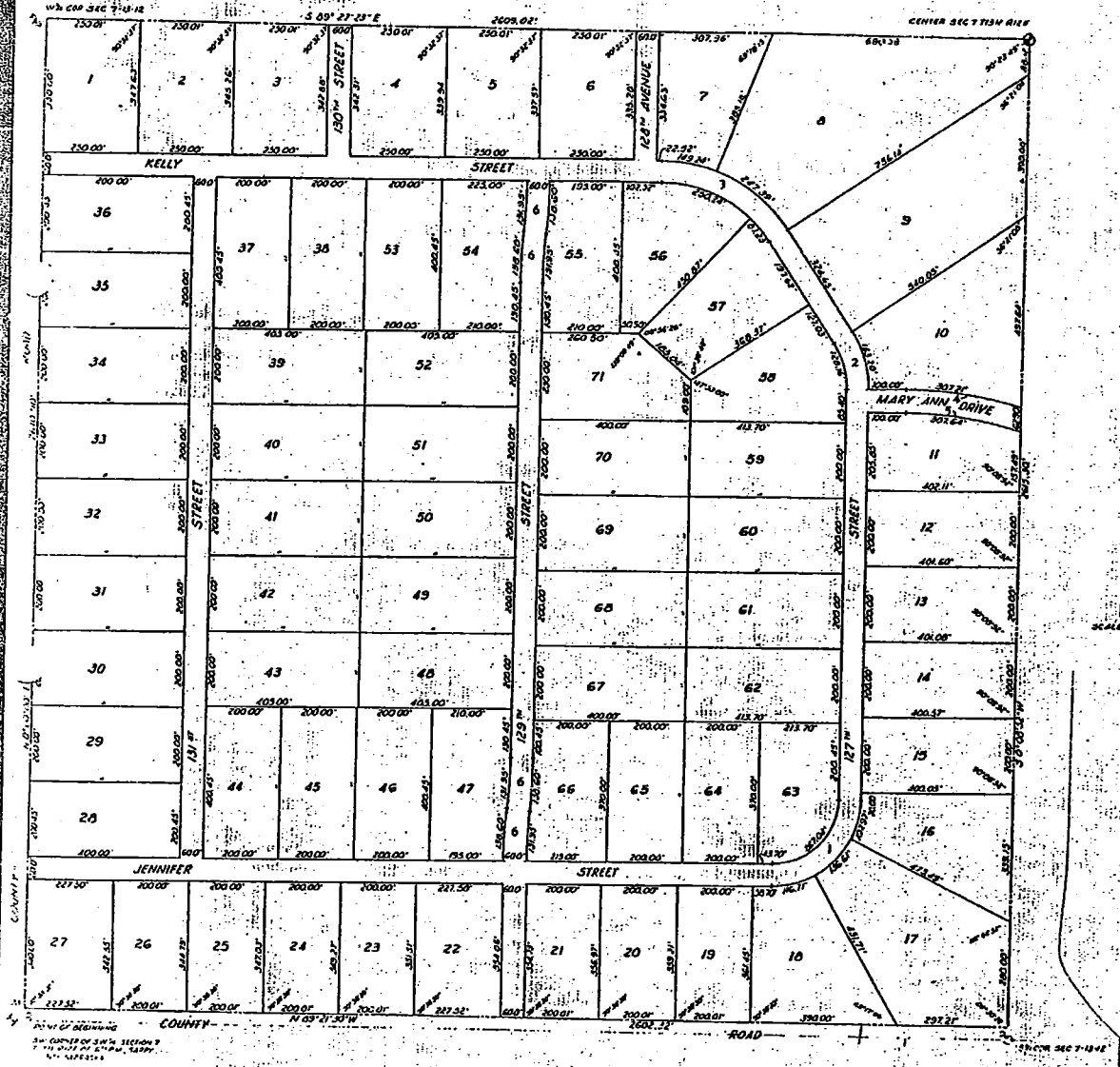
Lots 37, 38, 39, 40, 41, 42, 43, 44, 45,
46, 47, 48, 49, 50, 51, 52, 53, 54,
55, 56, 57, 58, 59, 60, 61, 62, 63,
64, 65, 66, 67, 68, 69, 70 and 71

PARAGRAPH 3. - A SIXTEEN (16) FOOT WIDE STRIP OF LAND ADJOINING THE REAR BOUNDARY LOT LINES FOR ALL LOTS INCLUDING:

Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14,
15, 16 and 17

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FAIRVIEW HEIGHTS



BY ORDER OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA
CALIFORNIA