

57-229

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LOTS 1 THROUGH 148, INCLUSIVE,  
AVERY HILLS SUBDIVISION  
AS SURVEYED, PLATTED AND RECORDED  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made this 12<sup>th</sup> day of ~~March~~<sup>April</sup>, 1984, by  
MICHAEL McCORMACK, Trustee for M. M. VERVAECKE, DONALD M. VERVAECKE,  
W. C. JENSEN and BENSON FEED MILLS, INC.; M. M. VERVAECKE, DONALD M.  
VERVAECKE, W. C. JENSEN, MARLEE L. VERVAECKE and LUCILLE A. VERVAECKE,  
Individually, all of whom are hereinafter referred to as "Declarant".  
Except as relating to claims of ownership, Donald M. Vervaecke, who  
is the developer of Avery Hills, is also included in the use of the  
word "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of the following-  
described real property:

Lots 1 through 148, Inclusive, Avery Hills,  
a platted and recorded subdivision in Sarpy  
County, Nebraska.

WHEREAS, the Declarant will convey said lots, subject to  
certain protective covenants, conditions, restrictions, reservations,  
liens and charges as hereinafter set forth.

NOW, THEREFORE, the Declarant hereby declares that all of  
the lots described above shall be held, sold and conveyed subject to  
the following restrictions, covenants and conditions, all of which  
are for the purpose of enhancing and protecting the value, desirability

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and attractiveness of said lots. These covenants, restrictions and conditions shall run with said real property, and shall be binding upon all parties having or acquiring any right, title or interest in the above-described lots, or any part thereof, and they shall inure to the benefit of each owner thereof.

1. Approval of Plans and Specifications. No building or structure of any kind may be erected on, or moved onto, or have any alteration in the exterior design of the original construction; until plans and specifications have been submitted to, and approval thereof has been given in writing by Donald M. Vervaecke or his assigns. The building, structure or alteration hereinafter referred to shall be constructed in accordance with said plans and specifications, and any changes shall be approved in writing by Donald M. Vervaecke or his assigns. The plans and specifications submitted shall include:

- Plot Plans
- Grading Plans
- Construction Plans and Specifications
- Exterior Color and/or Materials

Donald M. Vervaecke shall consider such plans and specifications with regard to type, quality and use of exterior materials, exterior design, location of improvements upon the building plot, and proposed finished grade; provided that Donald M. Vervaecke and his designee specifically reserve the right to deny permission to construct any type of structure or improvement which it determines will not conform to the general character, plan and scheme for development of the subdivision. The

approval or disapproval of Donald M. Vervaecke or his designee as required in these covenants shall be in writing. Failure of Donald M. Vervaecke or his designee to give either written approval or disapproval of a submitted plan within thirty (30) days after submission of said plan by mailing such written approval or disapproval to the last known address of the applicant for approval as shown in the submitted plan shall operate to release such binding plan from the provisions of this paragraph.

2. No lot shall be used except for residential purposes.

3. With the exception of Lots 139 through 148, inclusive, no building shall be created, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling, and conforming to the following requirements:

<u>TYPE OF DWELLING</u>	<u>MINIMUM AREA</u>	<u>LOCATION OF MINIMUM AREA</u>
a. One story house with attached garage.	1100 square feet	On the main floor. (Garage must be at approximately the same level as the main floor.)
b. One and one-half story house.	800 square feet	On the main floor.
c. Two story house.	800 square feet	Minimum area on the main floor.
d. Split entry (Bi-Level) house.	1096 square feet	Total square feet.
e. Tri-Level (Split level) house.	1450 square feet	Total area above grade.

The maximum height of a dwelling shall be two stories. A basement is not considered a story if it is 100 percent above grade on one side and essentially below grade on the other three sides; if the basement is more exposed above grade, it is a story. Area means finished habitable space measured to the exterior of the enclosing walls, and does not include porches, breezeways, courtyards, patios, basements, garages or carports. Each dwelling shall have a two-car garage with a minimum inside space of 20 feet by 20 feet.

On Lots 139 through 148, inclusive, these lots may be used for the construction of duplexes. In the event that said lots are to be used as duplex lots, all Plot Plans, Grading Plans, Construction Plans and Specifications, Exterior Color and/or Materials, type of dwelling, height of dwelling, minimum area and location of minimum area shall be submitted to and approved by Donald M. Vervaecke or his assigns prior to commencing construction. Donald M. Vervaecke specifically reserves the right to deny permission to construct any type of duplex structure or improvement which it determines will not conform to the general character, plan and scheme for development of the subdivision. The approval or disapproval of Donald M. Vervaecke or his designee as required in these covenants shall be in writing. If Lots 139 through 148, inclusive, are used for single-family residential dwellings, all of the provisions of this paragraph 3 related to detached single-family dwellings shall apply.

4. Exposed portions of the foundation on the front of each dwelling are to be covered with either siding, brick or stone, and exposed portions of the foundation on the sides and rear of each dwelling shall be either covered with brick or siding or shall be painted. Fireplace chimneys shall be covered with stone, wood, brick or stucco. Any material other than those listed must be approved by Donald M. Vervaecke.

5. Dwellings shall not be moved from outside of Avery Hills onto any lot.

6. No structure of any temporary character, trailer, basement, tent, shack, barn or other building shall be erected upon, or used, on any lot at any time as a residence, either temporarily or permanently.

7. The Declarant has created a water drainage plan by grading the property and installing improvements and easements for storm drainage in accordance with accepted engineering principles. No building shall be placed, nor any lot graded to interfere with such water drainage plan nor cause damage to the building or neighboring building or lots. No planting or other materials shall be placed or be permitted to remain or other activities undertaken which may damage or interfere with storm drainage, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels.

8. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or be permitted to remain on any lot except that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed structure have first been approved in writing by Donald M. Vervaecke. Dog runs shall be placed at the rear of the building. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets maintained within the dwellings may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the main dwelling except for the single dog house set out herein.

9. No incinerator or trash burner shall be permitted on any lot unless the same is incorporated into the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, container or fuel tank shall be permitted to remain outside of any dwelling, except for pickup purposes. During the period of construction, however, there may be occasions when it will be necessary to have temporary propane tanks until gas has been installed in the subdivision, and the temporary installation of these propane tanks is specifically allowed. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except when in actual use unless completely screened from view from every street and from all other lots in the subdivision.

All exterior air-conditioning condenser units shall be placed in the rear or side yard. Any access buildings must be placed to the rear of the back of the residence, must be on a concrete slab, and the size, design and material to be used for said detached dwelling must be approved by Donald M. Vervaecke as set out in Paragraph 1.

10. No boat, camping trailer, campers (if removed from the carrying vehicle), auto-drawn trailers of any kind, mobile home, snowmobile, truck, bus, motorcycle, grading or excavating equipment or other heavy machinery or equipment, van or aircraft shall be stored outside the garage or in any manner left exposed on any lot at any time forward of the rear line of the house. All storage of any of these items will be subject to written approval by Donald M. Vervaecke as set out in Paragraph 1. No automobile or other vehicle undergoing repair shall be left exposed on any lot at any time. This restriction shall not apply to trucks or commercial vehicles within the properties which are necessary for the construction of residential dwellings or maintenance of the same. Boats, campers or mobile homes may be parked on the property for a period not to exceed seven days without securing approval as set out above.

11. All lots shall be kept free from rubbish, debris, merchandise and building materials. In addition, vacant lots shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing; no vegetation on vacant lots shall be allowed to reach more than a maximum height of twenty-four inches.

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12. Except for the purpose of controlling erosion on vacant lots, no field crops shall be grown upon any lot at any time.

13. No noxious or offensive activity shall be carried on upon any lot, nor shall be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to odors, dust, glare, sound, lighting, smoke, vibration and radiation. Any exterior lighting installed on any lot shall either be indirect or of such controlled focus and intensity as not to disturb the residence of the adjacent property.

14. No sign, billboard or other structure advertising or the display of advertising material of any kind shall be erected, placed or permitted to remain on any lot except that real estate "For Sale" or "For Rent" signs shall be permitted temporarily in the yard of dwellings which are being offered for sale or rent.

15. Fences are permitted as long as they are no further forward than the front line of the home and do not exceed six (6) feet in height. Solid shrubbery is considered in the same category as a fence. Type of construction for fences will be subject to approval of Donald M. Vervaecke. All fences must be in compliance with the building codes of the City of Bellevue.

16. A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling.

17. No Home Occupations shall be permitted other than those enumerated under Home Occupations, Ltd., under Section 16-39 of the Bellevue City Code.



18. Gardens shall be permitted only if maintained in the rear yard of any lot, behind the dwelling on said lot.

19. Within six (6) months of the completion of the building on each lot, the owner shall cause to be planted in the front yard of each lot one tree of at least one and one-half (1½) inches in diameter. In addition, the owner shall sod all area in front of the dwelling within six (6) months of the date the building is completed.

20. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company and the Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair and renew cables, conduits and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph message service under easements as specified in the final plat or as modified by due process. An easement is also granted to the United States Postal Service to place "Cluster Mailboxes" between the street and the sidewalk on such lots as are determined by the United States Postal Service to be necessary. No permanent buildings shall be placed in perpetual easements, but the same may be used for gardens, shrubs, sidewalks, driveways, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

21. The following perpetual license and easements are hereby reserved in favor of and granted to Sanitary and Improvement District #127 of Sarpy County, Nebraska, its successors and assigns, to construct, operate, maintain, repair and use sanitary sewers and storm sewers,

which easements are specified in the final plat or as modified by due process, as follows:

1. Lot 79 - A sanitary sewer easement is hereby granted on the West 5 ft. of said lot.
2. Lot 78 - A sanitary sewer easement is hereby granted on the East 5 ft. of said lot.
3. Lots 77 & 78 - An irregular storm sewer easement is hereby granted over the rear of said lots as shown on the plat.
4. Lots 70 through 76 - A 22 ft. storm sewer easement is hereby granted on the rear, or West side, of said lots.
5. Lots 40 through 44, inclusive - A 20 ft. storm sewer easement is hereby granted on the rear, or West side, of said lots.
6. Lot 39 - A 20 ft. storm sewer easement is hereby granted on the rear, or West side of said lot; a 20 ft. sanitary sewer easement is hereby granted on the South 20 ft. of said lot, and a 5 ft. sanitary sewer easement is hereby granted along the lot line dividing lots 38 & 39.
7. Lot 38 - A 5 ft. sanitary sewer easement is granted along the lot line dividing lots 38 & 39.
8. Lot 142 - A 10 ft. storm sewer easement is granted along the North line of said lot.
9. Lot 143 - A 10 ft. storm sewer easement is hereby granted along the South lot line.
10. Lot 144 - A 5 ft. sanitary sewer easement is granted along the North line of said lot.
11. Lot 145 - A 5 ft. sanitary sewer easement is granted along the South lot line.
12. A 5 ft. storm sewer easement is claimed along the South line of Lot 41, and a 5 ft. storm sewer easement on the North line of Lot 40.
22. All telephone and electric power service from property line to dwelling shall be underground.

23. A perpetual license and right is hereby reserved unto and granted to Sanitary and Improvement District No. 114, Sarpy County, Nebraska, their respective employees and representatives, and their assigns, to enter upon any of the said real estate for purposes of inspecting sanitary sewers, sewer connections, maintenance and type of sewage being discharged into said sewers.

24. Notwithstanding any provisions herein contained to the contrary, it is expressly permissible for a builder of said building to maintain during the period of construction and sale of said buildings upon such portion of the premises as such builder may be reasonably required, convenient or incidental to the construction and sale of said buildings, including, but not limited to, a business office, a storage area, construction yards, signs, model units and sales office.

25. 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 restrictions, conditions, covenants and reservations, now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation of the same, or to recover damages or other dues for such violation. Failure by the Declarant 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.

26. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years

from the date this Declaration is recorded. This Declaration may be amended by the Declarant, 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 an instrument signed by the owners of not less than seventy-five percent (75%) of the lots covered by this Declaration.

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 12<sup>th</sup> day of April, 1984.

DECLARANTS

By

Michael McCormack  
Michael McCormack, Trustee

M. M. Vervaecke  
M. M. Vervaecke

Donald M. Vervaecke  
Donald M. Vervaecke

W. C. Jensen  
W. C. Jensen

M. M. Vervaecke Pres.  
Benton Feed Mills, Inc.

Marlee L. Vervaecke  
Marlee L. Vervaecke

Lucille A. Vervaecke  
Lucille A. Vervaecke

Donald M. Vervaecke  
Donald M. Vervaecke, Developer

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 19 day of April, 1984, before me, the undersigned, a Notary Public in and for said County, personally came Michael McCormack, M. M. Vervaecke, Donald M. Vervaecke, W. C. Jensen, Marlee L. Vervaecke, and Lucille A. Vervaecke, all of whom are personally known to me, and acknowledged the execution of the foregoing to be their voluntary act and deed.

GENERAL NOTARY - State of Nebraska  
BETTY B. TIEGLAND  
My Comm. Exp. Aug. 22, 1984

*Betty B. Tieglund*  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 12 day of April, 1984, before me, the undersigned, a Notary Public in and for said County, personally came M. M. Vervaecke, personally known to me to be the President of Benson Feed Mills, Inc., and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

GENERAL NOTARY - State of Nebraska  
BETTY B. TIEGLAND  
My Comm. Exp. Aug. 22, 1984

*Betty B. Tieglund*  
Notary Public

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*Carl of Hildale*  
REGISTER OF DEEDS