

Spence Escrow
1905 Harney
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DECLARATION

Boys Town Property

Parts of South Half of Northwest Quarter, Southwest Quarter, and Southeast
Quarter of Section 13 and Part of Section 24, Township 15
North, Range 11 East of the Sixth Principal Meridian in Douglas County, Nebraska

This DECLARATION made December 21, 1994, by

FATHER FLANAGAN'S BOYS' HOME, a tax exempt Nebraska nonprofit
corporation with its registered office in Village of Boys Town, Douglas
County, Nebraska, herein otherwise called "Declarant",

WITNESSETH: THAT,

Whereas Declarant now solely owns all of or certain part or parts of Section
13 and of Section 24, Township 15 North, Range 11 East of the Sixth Principal Meridian
in Douglas County Nebraska, Nebraska, located within the municipal limits of the
Village of Boys Town, Douglas County, Nebraska, as hereafter more particularly described, herein
otherwise called "Boys Town Property", now occupies and uses all thereof for effectuation of
its public charitable mission, and intends by execution, acknowledgment, and recordation of this
Declaration to establish a scheme of conditions and other terms appropriate, convenient, or
necessary to preserve and promote continued occupation, ownership and use of the Boys Town
Property without potential incompatibility with effectuation of such mission;

Now, Therefore, in consideration of the matters herein recited and the acceptance hereafter by
any one or more grantees of any one or more conveyances by Declarant of any one or more
parts of the Boys Town Property subject to this Declaration, Declarant does hereby

DECLARE as follows, to wit:

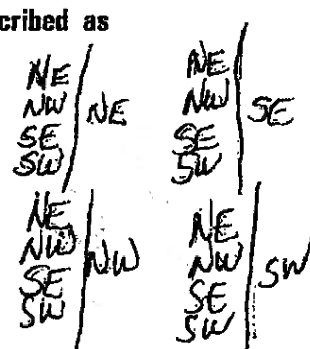
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1. Involved Boys Town Property: All improved and unimproved Boys Town Property involved in this Declaration is and will be acquired, conveyed, devised, inherited, leased, and otherwise transferred and is and will be occupied and used subject to all and each of the conditions and other terms set out in this Declaration; and the following described and listed constituent components do and will collectively constitute the entirety of the involved Boys Town Property so subjected to this Declaration:

a. Boys Town Home Campus: Those part or parts of the involved Boys Town Property now occupied by Declarant as a National Historic Monument facility and used by Declarant for its agricultural training, child welfare, and associated charitable purposes, herein otherwise called "Boys Town Home Campus", more particularly described as follows:

All of Section 24, except those parts thereof conveyed or taken for purposes of public right of way, Township 15 North, Range 11 East of the Sixth Principal Meridian in Douglas County, Nebraska,



is and will be so subjected to and benefitted by this Declaration solely as a dominant estate.

b. First National Business Park: Those part or parts of the involved Boys Town Property now occupied by Declarant and used by it for its agricultural training, child welfare, and associated charitable purposes and deemed potentially suitable for commercial office building and associated public purposes, herein otherwise called "First National Business Park", more particularly described as follows:

Part of Southwest Quarter of Section 13, Township 15 North, Range 11

East of the Sixth Principal Meridian in Douglas County, Nebraska, as described by metes and bounds in the hereto attached Exhibit "A", is and will be so subjected to and benefitted or burdened by this Declaration as a dominant estate or a subservient estate.

c. Residential Property: Those part or parts of the involved Boys Town Property now occupied by Declarant and used by it for its agricultural training, child welfare, and associated charitable purposes and deemed potentially suitable for individual residential and associated private purposes, herein otherwise called "Residential Property", more particularly described as follows:

Part of Northeast Quarter, part of Southwest Quarter, and part of Southeast Quarter of Section 13, Township 15, North, Range 11 East of the Sixth Principal Meridian, in Douglas County, Nebraska, as described by metes and bounds in the hereto attached Exhibit "B",

SE 1/4 SE 1/4
SW 1/4 SE 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SE 1/4 SW 1/4
SW 1/4 SW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SE 1/4 NE 1/4
SW 1/4 NW 1/4

is and will be so subjected to and benefitted or burdened by this Declaration as a dominant estate or a subservient estate.

d. Retained Property: Those part or parts of the involved Boys Town Property now occupied by Declarant and used by it for its agricultural training, child welfare, and associated charitable purposes and deemed potentially suitable for commercial office building and associated public purposes, herein otherwise called "Retained Property", more particularly described as follows:

Part of Southwest Quarter and part of Southeast Quarter of Section 13, Township 15 North, Range 11 East of the Sixth Principal Meridian,

in Douglas County, Nebraska, as described by metes and bounds in the
hereto attached Exhibit "C",

is and will be so subjected to and benefitted or burdened by this Declaration
as a dominant estate or a subservient estate.

2. **Covenants:** The involved Boys Town Property is and will be through December 21, 2014,
subject to all and each of the following described conditions and other terms, herein otherwise
called "covenants":

a. **Residential Property Restrictions:** Except for such lot or lots or other similar
subdivided part or parts 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, no lot or other similar subdivided part of the
Residential Property component of the involved Boys Town Property will be occupied or
used for other than single-family residential purposes; and no such lot or other
subdivided part of the Residential Property component of the involved Boys town
Property will be occupied or used for such residential purposes at a density greater than
one single-family residence for each such lot or other similar subdivided part.

b. **First National Business Park Restrictions:** Except for such lot or lots or other similar
subdivided part or parts 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, no lot or other similar subdivided part of the
First National Business Park component of the involved Boys Town Property will be
occupied or used for other than primarily office and restaurant purposes inclusive of

a commercial bank facility and ancillary purposes together with private club facilities, retail uses incidental to such office usage, and service businesses commonly found within office buildings of the first class provided primarily for the convenience of and patronage by employees, owners, tenants, and other occupants or users inclusive, without limitation thereto, of employee cafeterias, restaurants, and other dining facilities, barber and beauty shops, copy centers, snack shops, news stands, exercise or recreation centers, and other ancillary facilities supplementary to or supportive of such office usage; and neither the entirety of nor any such lot or other subdivided part of the First National Business Park component of the involved Boys Town Property will be occupied or used for such office and related purposes in nonconformity with or violation of any of the following described further restrictions:

- (1) Building Height Limitation: No building or other structure will exceed one hundred feet in elevation or height as measured from finished grade.
- (2) Aggregate Density Limitation: The combined gross floor area of all office buildings and restaurants will in the aggregate exceed one million four hundred thousand square feet if and only to the extent that such excess, if any, does not or will not by consumption or exhaustion of applicable limitations or quotas, by actual or potential generation of traffic limitations, or by operation of applicable zoning regulations or through any other direct or indirect cause or connection preclude for the Retained Property component of the involved Boys Town Property a combined gross area of all office buildings and restaurants thereon in an aggregate of not less than one million one hundred thirty thousand square

feet.

(3) Sales and Services Limitation: Beer, liquor, wine, or other alcoholic beverages will be given or sold for consumption only by bottle, can, or drink only on the premises of any permitted restaurant operation and not elsewhere or otherwise; no cigarettes, cigars, or other tobacco products will be given or sold; and no gambling or gaming activities of any nature will be conducted, operated, or permitted.

(4) Restaurant Limitation: No more than three approved free-standing full-service public restaurants located on sites at or in close proximity to the boundaries of the First National Business Park component of the involved Boys Town Property will be built, conducted, operated, or permitted; and each such restaurant will be and remain subject to approval or disapproval by Declarant with respect to general or specific compatibility with its occupation and use of the Boys Town Home Campus component of the involved Boys Town Property as set out in Paragraph 3d of this Declaration.

c. Retained Property: Except for such lot or lots or other similar subdivided part or parts 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, no lot or other similar subdivided part of the Retained Property component of the Boys Town Property will be occupied or used for other than primarily office and restaurant purposes together with private club facilities, retail uses incidental to such office usage, and service businesses commonly found within office buildings of the first

class provided primarily for the convenience of and patronage by employees, owners, tenants, and other occupants or users inclusive, without limitation thereto, of employee cafeterias, restaurants, and other dining facilities, barber and beauty shops, copy centers, snack shops, news stands, exercise or recreation centers and other ancillary facilities supplementary to or supportive of such office usage; and neither the entirety of nor any such lot or other subdivided part of the Retained Property component of the involved Boys Town Property will be occupied or used for such office and related purposes in nonconformity with or violation of any of the following described further restrictions:

- (1) Building Height Limitation: No building or other structure will exceed one hundred feet in elevation or height as measured from finished grade.
- (2) Aggregate Density Limitation: The combined gross floor area of all office buildings and restaurants will in the aggregate exceed one million one hundred thirty thousand square feet if and only to the extent that such excess, if any, does not or will not by consumption or exhaustion of applicable limitations or quotas, by actual or potential generation of traffic limitations, or by operation of applicable zoning regulations or through any other direct or indirect cause or connection preclude for the First National Business Park component of the involved Boys Town Property a combined gross area of all office buildings and restaurants thereon in an aggregate of not less than one million six hundred ninety thousand square feet.
- (3) Sales and Services Limitation: Beer, liquor, wine, or other alcoholic

beverages will be given or sold for consumption only by bottle, can, or drink only on the premises of any permitted restaurant operation and not elsewhere or otherwise; no cigarettes, cigars, or other tobacco products will be given or sold; and no gambling or gaming activities of any nature will be conducted, operated, or permitted.

(4) Restaurant Limitation: No more than three approved free-standing full service public restaurants located on sites at or in close proximity to the boundaries of the Retained Property component of the involved Boys Town Property will be built, conducted, operated, or permitted; and each such restaurant will be and remain subject to approval or disapproval by Declarant with respect to general or specific compatibility with its occupation and use of the Boys Town Home Campus component of the involved Boys Town Property as set out in Paragraph 3d of this Declaration.

3. Enforcement: The several covenants and the conditions and other terms set out in this Declaration are and will be subject to the following described enforcement:

a. Dominant and Subservient Estates: With respect to the allocation of the benefits of enjoyment and burdens of enforcement of the covenants set out in this Declaration, the following described components of the involved Boys Town Property will be and serve as described as dominant and subservient estates:

(1) Residential Property: All and each part of the Residential Property component of the Involved Boys Town Property will both have and enjoy all of the benefits, privileges, and rights as a dominant estate and also have and

incur all of the burdens, liabilities, and obligations as a subservient estate with respect to the covenants set out in Paragraph 2a of this Declaration.

(2) Boys Town Home Campus: All and each part of the Boys Town Home Campus component of the involved Boys Town Property will have and enjoy all the benefits, privileges, and rights of a dominant estate and none of the burdens, liabilities, or obligations as a subservient estate; and all and each part of each of the Residential Property, the First National Business Park, and the Retained Property components of the involved Boys Town Property will have and incur all of the burdens, liabilities, and obligations of a subservient estate with respect to the covenants set out respectively in Paragraphs 2a, 2b, and 2c of this Declaration.

(3) First National Business Park: All and each part of the First National Business Park component of the Involved Boys Town Property will both have and enjoy all of the benefits, privileges, and rights as a dominate estate and also have and incur all of the burdens, liabilities, and obligations as a subservient estate with respect to the covenants set out in Paragraph 2b of this Declaration; and all and each part of the First National Business Park component of the involved Boys Town property will have and enjoy all of the benefits, privileges, and rights of a dominant estate, and all and each part of the Retained Property component of the involved Boys Town Property will have and incur all of the burdens, liabilities, and obligations of a subservient estate, with respect to the covenants set out in paragraph 2c of this

Declaration.

(4) Retained Property: All and each part of the Retained Property component of the Involved Boys Town Property will both have and enjoy all of the benefits, privileges, and rights as a dominant estate and also have and incur all of the burdens, liabilities, and obligations as a subservient estate with respect to the covenants set out in Paragraph 2c of this Declaration; and all and each part of the Retained Property component of the involved Boys Town Property will have and enjoy all of the benefits, privileges, and rights of a dominant estate, and all and each part of the First National Business Park component of the involved Boys Town Property will have and incur all of the burdens, liabilities, and obligations of a subservient estate, with respect to the covenants set out in Paragraph 2b of this Declaration.

b. Enforcement Action: Every contract purchaser or owner of all or any part or parts of any component of the involved Boys Town Property designated as a dominant estate with respect to any covenant set out in this Declaration will be entitled at any time or from time to time to institute and pursue against all and any contract purchasers or owners of all or any part or parts of such component or of any other component of the involved Boys Town Property designated as a subservient estate with respect to such covenant any equitable or legal action appropriate, convenient, or necessary to secure compliance with or other enforcement of such covenant.

c. Nonopposition to Zoning Modification for Retained Property: If or to the extent to which such modification or modifications are not incompatible with the covenants set

out in Paragraph 2c of this Declaration, no contract purchaser or owner of all or any part or parts of the First National Business Park or the Residential Property components of the involved Boys Town Property will be authorized, empowered, or otherwise entitled to contest or oppose and every such contract purchaser or owner will be prohibited from contesting or opposing by any administrative, equitable, legal, or other action or procedure any amendment, change, or other modification by City of Omaha or by Village of Boys Town with respect to zoning regulations applicable to all or any part or parts of the Retained Property component of the involved Boys Town Property.

d. Restaurant Operation Review: Construction, occupation, operation, and use of each free-standing restaurant within the First National Business Park and the Retained Property components of the involved Boys Town Property as set out in Paragraphs 2b(4) and 2c(4) of this Declaration will be subject to the following process for approval or disapproval by Declarant:

(1) Notice of Proposed Restaurant Operation: Before any such restaurant operation is initiated or any such previously approved restaurant operation is substantially changed or otherwise significantly modified, the person or persons therewith concerned or involved will serve upon Declarant an express written description of such restaurant operation as so proposed to be initiated or to be changed or modified.

(2) Response to Notice: Within fifteen business days after its receipt of such description, Declarant will respond thereto with an approval or with an

objection based upon one or more reasonable grounds of general or specific Incompatibility with effectuation of its public charitable mission and will serve upon the author or each of the authors of such description an express written notice of such approval or an express written description of such objection.

(3) Further Action: If Declarant fails to respond to any such description within fifteen business days of its receipt thereof or if Declarant responds to any such description with an approval, such restaurant operation may be initiated or changed or modified in conformity with such description; but if Declarant responds to such notice of description with an objection, such restaurant operation will not be so initiated or changed.

4. Extension, Modification, and Termination: The several covenants and the conditions and other terms set out in this Declaration are and will be subject to the following provisions for extension, modification, and termination:

a. Waiver by Declarant: Declarant will have and retain the right, after ten days after delivery of express written notice thereof to all then current contract purchasers and owners of all of the First National Business Park and the Retained Property components of the involved Boys Town Property, if it then remains the sole owner of all or any part or parts of the involved Boys Town Property, by execution, acknowledgment, and recordation with the office of the Register of Deeds of Douglas County, Nebraska, of an instrument of content and form appropriate, convenient, or necessary to describe and effect such waiver, for the purpose of avoidance of undue hardship to waive partly or wholly the application to any lot or lots or other similar

'subdivided part or parts of the Residential Property, the First National Business Park, or the Retained Property components of the involved Boys Town Property as a subservient estate with respect thereto all or any part or parts of the covenants set out in Paragraph 2 of this Declaration.

b. Action by Declarant and Majority of Owners: Declarant, together with a majority in number of the then current contract purchasers and owners of all of the First National Business Park and also together with a majority in number of the then current contract purchasers and owners of the Retained Property components of the involved Boys Town Property, will have and retain the right at any time or from time to time by execution, acknowledgment, and recordation with of the office the Register of Deeds of Douglas County, Nebraska of a supplementary declaration of content and form appropriate, convenient, or necessary to describe and effect such action, to extend or terminate all or any part or parts of this Declaration with respect to all of the involved Boys Town Property or to modify all or any part or parts of this Declaration with respect to the First National Business Park or the Retained Property components of the involved Boys Town Property.

5. Partial Invalidity and Severability: Invalidity in entirety or in particularity of application of any separate part or parts of this Declaration will not invalidate any other part or parts thereof to which validity may be accorded practicably and reasonably in the absence of such invalid part or parts or affect any other particular and valid application to which such part or parts may practicably and reasonably be put; and as appropriate, convenient, or necessary for the validity of this Declaration