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PLANNING DEPARTMENT  
CITY OF OMAHA  
DOUGLAS COUNTY, NE

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RECEIVED

After filing return to:  
James R. Thele, Real Property Manager  
Omaha Planning Department  
Omaha/Douglas Civic Center, Suite 1111  
Omaha, NE 68183-1100

Amended by Doc No. 1537  
of 6/12/01. g

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
FONTENELLE VIEW**

THIS DECLARATION, made on the date hereinafter set forth by the CITY OF OMAHA, a municipal corporation, and HOLY NAME HOUSING CORPORATION, a Nebraska nonprofit corporation, hereinafter referred to as "Declarants";

WITNESSETH:

WHEREAS, Declarants are the owners of certain real property, which is more particularly described as follows:

Lots 1 - 41, inclusive, Fontenelle View Two, an addition to the City of Omaha, Nebraska, as surveyed, platted and recorded in Douglas County, Nebraska,

and,

WHEREAS, Declarants will convey the lots within such described property, subject to certain protective covenants and restrictions, as hereinafter set forth.

NOW, THEREFORE, Declarants hereby declare that all of the lots described above shall be held, sold, and conveyed subject to the following restrictions and covenants, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These covenants and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title, or interest in the described lots or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

USE RESTRICTIONS

A. All lots are hereby restricted to residential use and to structures and uses related to the convenience and enjoyment of such residential use, provided, however, that model homes constructed by Declarants or their successors or assigns for the purpose of displaying and selling home and lots, and for office purposes for such sales, will not be a violation of these covenants. No commercial enterprise or business use shall be permitted, except that home offices will be allowed

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so long as such offices are not open to the public and/or do not involve regular commercial deliveries or traffic.

B. No animals, livestock, fowl, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or household pets, which shall be limited to two (2) per lot may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

C. No advertising signs (except one "For Sale" sign per lot not exceeding four (4) square feet in area), billboards, unsightly objects or nuisances shall be erected, placed, or permitted to remain on any lot, nor shall any lots be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any other lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted in any building, or on any portion of any lot. Provided, further, however, the foregoing covenants shall not apply to any business activities, signs, and billboards, or the construction and maintenance of buildings, if any, of the Declarants, their agents and assigns during the construction and sale of residential structures on any of the lots. Nor shall this covenant apply to any permanent sign erected by Declarants, their agents or assigns for the purpose of identifying the subdivision or neighborhood.

D. No exterior television, ham radio, or other electronic radio antennae or satellite dish or any sort shall be placed, allowed, or maintained upon any lot or upon any lot, unless approved in writing by the hereinafter mentioned Architectural Committee.

E. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

F. No repair of automobiles will be permitted outside of garages on any lot at any time; nor will any vehicle that could be considered a nuisance under applicable City code be visibly stored, parked, or abandoned in the neighborhood. All motor vehicles parked in the open must be in operating condition.

G. No boat, camping trailer, snowmobile, auto-drawn trailer of any kind, mobile home, trucks of more than one ton capacity, motorcycle, grading or excavating equipment, or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or in any manner left exposed on any lot at any time. Recreational vehicles may be kept on the premises provided that are fully screened from view from any fronting street.

H. No field crops shall be grown upon any lot at any time.

I. No awnings or sun screens of any type shall be affixed to any building or structure located on any lot without the written consent of the Architectural Committee.

J. No clothesline or clothes hangers may be constructed or used unless:  
1) they are completely concealed within an enclosed patio; or 2) they are self-storing and of no more than 15 feet in length.

K. No incinerator or trash burner shall be permitted on any lot. No fuel tank shall be permitted to remain outside of any dwelling. Except on garbage pick-up days, no garbage or trash can shall be permitted outside of any dwelling unless fully screened from view (not visible from street or neighboring lots). 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. No garage door shall be permitted to remain open except when entry to and exit from the garage are required.

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

M. No unused building material, junk, or rubbish shall be left exposed on any lot at any time.

N. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or 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 been first approved in writing by the Architectural Committee.

O. Only wood fencing or other type of fencing approved by the Architectural Committee shall be allowed.

## ARTICLE II

### ARCHITECTURAL CONTROL

A. The Architectural Committee shall originally consist of three persons appointed by Declarants. Said original members need not be residents of Fontenelle View Subdivision. Upon the resignation, for any reason, of one of the Committee Members, the remaining Members shall promptly appoint a replacement. Until such appointment has been made, the remaining Members shall exercise the Committee's authority. All future Members, other than the original three Members appointed by Declarants, must be property owners in the Fontenelle View Subdivision. The original Architectural Committee shall serve until at least twenty-one (21) lots have been originally occupied by the homeowners purchasing such lots within Fontenelle View Subdivision. At no time shall the Architectural Review Committee consist of more than five (5) members. Replacement members of the Architectural Review Committee shall be elected by a simple majority of total votes cast by property owners at a meeting called for such purpose. At such meetings, each lot shall be entitled to one corresponding vote. A quorum for such meetings shall be twenty-one (21) votes. Written proxies representing lots or votes shall be allowed.

B. The approval or disapproval of the Architectural Committee as required in these covenants shall be in writing. Written approval or disapproval must be signed by a majority of the

Committee Members and mailed or delivered to the Applicant's last known address. In case of disapproval, the Committee shall include a statement of the reasons for disapproval and shall indicate in a general way, the kind of plans and specifications which the Committee will approve for the subject property. Failure of the Committee to give either written approval or written 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 on the submitted plan, shall operate to release such building plot from the Architectural Committee control provisions of these restrictions in regard to said submitted plan.

C. Unless approved in writing by the Architectural Committee, no building shall be created, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling.

D. No building, fence, landscaping or other structure or improvement, including but not limited to playground equipment, storage sheds, antennae, rock gardens, fountains, statues, trees and shrubs, shall be planted, erected or maintained upon the premises, nor shall any exterior painting, resurfacing, addition to or change or alteration therein, be made until plans and specifications showing the nature, kind and shape, heights, materials, color of paint, and location of the same shall have been submitted to and approved in writing as to harmony of external design, color, and location in relation to surrounding structures and topography by the Architectural Committee.

E. The Architectural Committee shall have the right to disapprove any grading or landscaping plans which are not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the harmony thereof with the surroundings, the topography of the land, and the effect of the building or other structure of landscaping as planned on the outlook for the adjacent or neighboring property, and if it is in accordance with all of the provisions of this declaration.

### ARTICLE III

#### COMMON AREAS; MAINTENANCE; HOMEOWNERS ASSOCIATION

A. Establishment of Homeowners Association. For five (5) years following the date of recording of these Covenants, Declarants reserve the right, under terms and conditions within its sole discretion (except as otherwise specified herein) to establish a nonprofit corporation or organization to serve as a Homeowners Association for the Fontenelle View Two Subdivision. The primary purpose of the Homeowners Association will be to control and develop common areas established by Declarants and to thereafter maintain and improve same. The legal form of the Association shall be as determined by Declarants, but each lot within the Subdivision shall be entitled to one vote or one share (as the case may be) in connection with the governance of the Association. The

Association shall specifically have the right to make annual assessments against lots in the Subdivision to provide for the maintenance and upkeep of the common areas, provided that such assessments are made equally against each lot within the Subdivision. Unpaid assessments duly levied by the Association shall become liens upon the lots affected and shall be the personal obligations of any Owner of such lot at the time assessments are made. PROVIDED HOWEVER, that the lien of any assessments provided for herein shall always be subordinate and junior to the lien of any first mortgage or Deed of Trust now or hereafter placed against any Lot. PROVIDED FURTHER, that no such assessments shall be made or levied against the City of Omaha on any lots owned by it within the subdivision.

B. Establish of common areas. Declarants hereby establish a perpetual easement on, over and across an eight (8) foot wide strip of land within Fontenelle View Two Subdivision and abutting Ames Avenue, Forty-sixth (46<sup>th</sup>) Street, Fowler Avenue and Forty-fifth (45<sup>th</sup>) Street. Such easement shall overlay the utility easements granted in connection with the platting of the subdivision. Within such easement, Declarants or Homeowners Association shall have the right to erect a perimeter fence and to install and maintain such landscaping as Declarants or the Association sees fit.

C. Enforcement of Covenants. Any Homeowners Association established pursuant to the provisions of this Article III shall have the same Covenant enforcement rights under Article IV hereof as would Declarants or any owner of any lot.

D. Merger of Architectural Committee. Should Declarants establish a Homeowners Association as provided for in this Article, then the Architectural Committee described in Article II hereof shall cease to exist as an independent body and the functions of the Architectural Committee shall be then assumed by the Homeowners Association. The Association shall thereafter exercise architectural control as described in Article II hereof.

## ARTICLE IV

### GENERAL PROVISIONS

A. Enforcement. Declarants or any owner 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 along with reasonable attorneys' fees and court costs incurred by the party seeking to enforce these covenants. Failure by Declarants 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 hereafter.

B. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and all owners thereof, present and future, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for

successive periods of ten (10) years each, unless modified or changed by written approval of the owners of fifty-one percent (51%) or more of the lots subject hereto. During the initial twenty-five (25) year term, this Declaration may be amended by written instrument signed by the owners of not less than seventy-five percent (75%) of the lots. Any amendments must be recorded in the office of the Register of Deeds of Douglas County, Nebraska.

C. Severability. If any portion of this Declaration shall be invalid, illegal, or inoperative for any reason, the remaining portions hereof shall remain in full force and effect.

EXECUTED this 14<sup>th</sup> day of June 2001.

THE CITY OF OMAHA, a Municipal Corporation

Buster Brown  
Attest, City Clerk

By: Mike Fahey  
Mayor

Approved as to form: [Signature] 6/15/01  
Assistant City Attorney

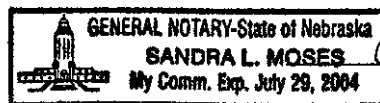
HOLY NAME HOUSING CORPORATION, a  
Nebraska Nonprofit Corporation

By: [Signature]  
Sr. Marilyn Ross

STATE OF NEBRASKA     )  
  ) ss:  
COUNTY OF DOUGLAS    )

On this 14<sup>th</sup> day of June, 2001, before me, the undersigned, a Notary Public in and for said county and state personally came Mike Fahey Mayor and Buster Brown, City Clerk of the City of Omaha, a municipal corporation, to me personally known to be the Mayor and City Clerk and who executed the above Declaration, and acknowledged the execution thereof to be their voluntary act and deed and that of the City of Omaha, a municipal corporation, and that the Corporate Seal of the City of Omaha was thereto affixed by its authority.

WITNESS my hand and notarial seal at Omaha in said county the day and year last above written.

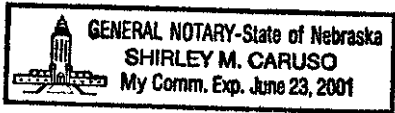


[Signature]  
Notary Public

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

On this 6<sup>th</sup> day of April, 2001, before me, the undersigned, a Notary Public in and for said county, personally came Sr. Marilyn Ross, President of Holy Name Housing Corporation, to me known to be the President and identical person whose name is affixed to the above Declaration, and acknowledged the execution thereof to be her voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at Omaha in said county the day and year last above written.



Shirley M. Caruso  
Notary Public



COMES NOW, the HOLY NAME HOUSING CORPORATION, a Nebraska Nonprofit Corporation, on this 31<sup>st</sup> day of July, 2001, and acknowledges acceptance of the Declaration of Covenants, Conditions, and Restrictions for Fontenelle View, which it originally executed on April 6, 2001 and which were amended by the City Council of the City of Omaha on the 12<sup>th</sup> day of June, 2001 by Document No. 1537, and which were subsequently approved by the City Council of the City of Omaha on June 12, 2001, by Ordinance No. 35608.

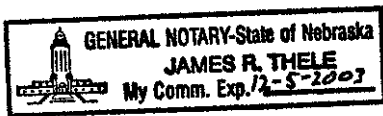
HOLY NAME HOUSING CORPORATION, a  
Nebraska Nonprofit Corporation

By: *St. Marilyn Ross*  
Sr. Marilyn Ross

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS )

On this 31<sup>st</sup> day of July, 2001, before me, the undersigned, a Notary Public in and for said county, personally came St. Marilyn Ross, President of Holy Name Housing Corporation, to me known to be the President and identical person whose name is affixed to the above Declaration, and acknowledged the execution thereof to be her voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at Omaha in said county the day and year last above written.



*James R. Thele*  
Notary Public