

DECLARATION OF RESTRICTIONS AND COVENANTS

This declaration made on the date hereinafter set forth by John L. Maginn, and Opocensky Brothers, a Nebraska partnership, hereinafter referred to as "Declarant".

WITNESSETH:

Whereas, Declarant owns certain real property which is legally described as follows:

The South 230 feet of the East 231.83 feet of the Southeast Quarter of the Southwest Quarter of Section 9, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, and

Whereas, Declarant is engaged in the process of platting the subject property into Lots 1, 2, 3, 4 and 5 with Lots 1 through 4, being collectively referred as the "lots" and individually as each lot. Lot 5 is common ground and is designated as such in the plat, and

Whereas, Declarant desires to provide for the preservation of the values and amenities of such lots and for the maintenance of the character and residential integrity of the surrounding neighborhood, and

Whereas, Declarant desires to place certain restrictions and covenants on the development use and occupancy of the subject property which shall be binding on Declarant and all future owners of any and all part of the subject property, their grantees, heirs and assigns and which restrictions and covenants shall also be for the benefit of the abutting property owners on the North property line of the subject tract and the abutting property owners on the West property line of the subject property, and the adjoining landowners to the East and to the South.

NOW, THEREFORE, Declarant does hereby declare covenant and agree that the subject property shall be held, used, sold and conveyed subject to the following restrictions, conditions, and covenants hereinafter collectively called covenants, to-wit:

1. That these covenants shall apply to the lots in the subject property as are hereinafter designated and shall run with the land as to such lots in the subject property, and shall be binding upon all parties presently having or acquiring in the future any right, title or interest in the said lots commencing from the effective date hereof, as hereinafter stated and continuing until December 31, 1999.
2. These covenants shall inure to the benefit of the present and future owners of each of such lots and likewise for the benefit of any and all persons and entities who may now own or who may hereafter own the lots or tracts identified herein, which are adjacent to and contiguous to the North property line of the subject property, legally described as Lot 1 Duckworth's First Addition, the West property line of the subject property, legally described as Lots 4 and 5, Duckworth's First Addition, and the adjoining landowners on the East and South. Any owner person or entity specifically identified in this declaration for whose benefit such restrictions and covenants are declared and enunciated, is hereby given the right to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions and/or covenants, and either to prevent him or them from so doing or to recover damages or other claims for such violation. Failure by any owner to enforce any restriction or covenant hereinafter set forth shall in no event be deemed a waiver of the right to do so thereafter.
3. These covenants shall be recorded by the Planning Director of the City of Omaha at Declarant's expense in the Office of the Registrar of Deeds for Douglas County, Nebraska, promptly after (a) the final approval by the City of Omaha and recording of said office of the Registrar of Deeds of Declarant's final plat of the subject property as Maginn's addition and after the effective date of the ordinance rezoning the lots in said Maginn's addition as hereinafter noted.
4. The use and occupancy of the subject property shall be restricted as follows:
 - (a) provided that Lots 1 to 5 inclusive in said Maginn's addition are rezoned by the City of Omaha from R2 Second Residence District to R4 Cluster Subdivision as defined by the zoning ordinances of the City of Omaha, the use and occupancy thereof shall be limited to those uses which are permitted by said 4th Residence District, Cluster Subdivision; and provided that units 1 and 2 to be constructed on Lots 1 and 2 shall be considered one-building unit, and units 3 and 4 to be constructed on Lots 3 and 4 shall be considered one-building unit and that each building unit shall have a combined total square footage exclusive of garages, patios, basements, and unenclosed areas, of not less than 2,000 sq. ft. on the main floors.

(b) provided further that a maximum of four units can be constructed on units 1, 2, 3, and 4, the slope of the roof shall not exceed six (6) foot in heighth for every 12 feet in horizontal measurement; that earth-tone shingles shall be used on the roofs; that roof overhangs shall be at least twenty-four inches; that exterior materials shall be of brick and wood; so that no concrete block is showing; that no outbuildings can be constructed; that on each unit, there shall be an attached enclosed two-car private garage, and that no cyclone or chain-link fences shall be constructed;

(c) provided that the style of the units shall be what is designated in the architectural trade as the Prairie Home design of Frank Lloyd Wright as depicted in the elevation attached as Exhibit "A" and incorporated herein by reference.

(d) provided that the minimum setbacks shall be as follows:

| <u>Unit</u> | <u>Front Yard</u> | <u>Side Yard</u> | <u>Rear Yard</u> | <u>Height</u> |
|-------------|-------------------|------------------|------------------|-----------------------------------|
| 1. | 59 Ft. | 10 Ft. | 25 Ft. | 2 stories, not to exceed 25 Ft. * |
| 2. | 70 Ft. | -0- | 35 Ft. | 2 stories, not to exceed 25 Ft. |
| 3. | 70 Ft. | -0- | 25 Ft. | 2 stories, not to exceed 25 Ft. |
| 4. | 35 Ft. | 17.5 Ft. | 35 Ft. | 2 stories, not to exceed 25 Ft. |

(e) provided that Lots 1 to 4 inclusive in said Maginn's addition shall provide for a green space of ten (10) feet in which shall be planted at one time (as weather and planting season permits), but not later than six (6) months after occupancy of the first unit, on the western boundary of the subject property, at least three Scotch pine or Austrian pine trees, for each lot, said trees to be four to five feet in height at the time of planting within this green space.

5. These covenants shall become effective on, but not prior to, the date of recording hereof in the Register of Deeds Office by the City Planning Director as provided in Paragraph 3 above.
6. These covenants shall not be affected by and shall remain in full force and effect notwithstanding invalidation of any one by judgment or court order except as to such restriction or covenant so invalidated.

*Garage to be located on East side not to exceed 15 Ft. from ground to ridge pole

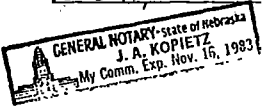
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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Restrictions and Covenants on this 11th day of Dec, 1981.

John L. Maginn
JOHN L. MAGINN

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on Dec 11, 1981, by John L. Maginn



J. A. Kopletz
NOTARY PUBLIC

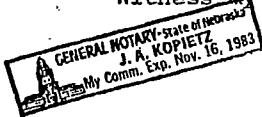
OPOCENSKY BROTHERS, a Nebraska Partnership,

Fred Opocensky
General Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Before me, a notary public qualified in said county, personally came Fred Opocensky, General Partner of Opocensky Brothers, a Nebraska Partnership, known to me to be the General Partner and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said partnership and that its corporate seal was thereto affixed by its authority.

Witness my hand and notarial seal on Dec 11, 1981.



J. A. Kopletz
NOTARY PUBLIC

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C. L. HARRIS & SONS
REGISTERED
DOUGLAS COUNTY, NEBR.

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