

DECLARATION OF
RESTRICTIVE AND PROTECTIVE
COVENANTS

This Declaration is made on the date last hereinafter written by FINDLEY LTD., a Nebraska general partnership, by JAMES E. FINDLEY, K. SCOTT FINDLEY and THOMAS L. FINDLEY, being all of the general partners thereof, hereinafter referred to as "Declarants".

W I T N E S S E T H:

WHEREAS, Declarants are the owners of certain property situated in Douglas County, Nebraska, more particularly described as follows, to-wit:

The East 130 feet of the North 1/2 of Lot One (1), Mayfield, an Addition to the City of Omaha, as surveyed, platted and recorded.

NOW, THEREFORE, Declarants hereby declare that all of the property described above shall be known as "WESTERN ROW", a development, and any and all thereof shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, assigns and grantees, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to the WESTERN ROW HOMEOWNERS' ASSOCIATION, INC., a Nebraska corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Community Space" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The community space to be owned by the Association at the time of the conveyance of the first lot is described as follows:

The East thirty-five (35) feet of the East one hundred thirty (130) feet of the North One-Half (1/2) of Lot One (1), Mayfield, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 5. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot, shown upon any recorded map or plat of the properties, upon which a living unit is or is proposed to be built, with the exception of the community space.

Section 6. "Design Committee" shall mean and refer to the committee for control and those members as designated in accordance with the By-Laws of the Association.

Section 7. "Western Row Design Criteria Document" shall mean and refer to that document in effect, and as amended from time to time, setting forth the design criteria as developed by the Design Committee.

ARTICLE II.

PROPERTY RIGHTS

Every owner shall have a right and easement of enjoyment in and to the community space which shall be appurtenant to and shall pass with the title to every lot, subject to the right of the Association to dedicate or transfer all or any part of the community space to any public agency, authority or utility for such purposes, and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by three-fourths (3/4) of the members has been recorded.

Any owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment of the community space and facilities to the members of his family or his tenants who reside on the property.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS

Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Every lot shall be entitled to one (1) vote.

ARTICLE IV.

COVENANT FOR ASSESSMENTS

The Association, from time to time, may improve the community space with capital improvements. The community space grounds and improvements may be maintained by a part-time employee hired by the Association. A monthly assessment for this upkeep and maintenance, as well as a further assessment for necessary insurance, utility fees, and other related costs, will be charged to each owner.

All expenses or capital improvements common to the properties and community space shall be borne equally by the owners of each lot, and the assessments therefor shall be determined by the Association as described in the By-Laws of the Association.

The monthly and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the community space and exterior maintenance, as more specifically set forth in these "Restrictive and Protective Covenants", as well as for such other purposes common to the properties, including defense of lawsuits and enforcement of these "Restrictive and Protective Covenants" and the Articles of Incorporation and By-Laws of the Association.

The Declarants, for each lot owned within the properties, hereby covenant, and each owner of every lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) the monthly or regular assessments or charges made by the Association; and (2) the special assessments or charges for capital improvements and expenses for common purposes which are made by the Association.

The monthly or regular and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien on the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of the property at the time when the assessment became due.

Any assessment not paid within fifteen (15) days after the sending of notice therefor shall bear simple interest at the maximum lawful interest rate then provided by the laws of the State of Nebraska and as such may be amended from time to time thereafter. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any court in Douglas County, Nebraska having jurisdiction of suits for the enforcement of such liens. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the community space or abandonment of his lot.

The lien of the assessments provided for herein shall be subordinate to any lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

ARTICLE V.

RESIDENTIAL USE - SINGLE FAMILY

All lots shall be used exclusively for single family purposes, and for accessory structures incident to residential use.

The community space shall serve solely as support space to the lots, and thus shall provide vehicular access, guest parking, and recreation spaces.

ARTICLE VI.

ARCHITECTURAL DESIGN

All homes in WESTERN ROW shall be the product of a close architectural design relationship between each owner and a designer approved by the Design Committee. Owner participation in the design of his own living unit is integral to the whole WESTERN ROW concept and it is the responsibility of the designers involved to create a home responsive to the Western.Row Design Criteria and to the owner's needs and personality.

ARTICLE VII.

IMPROVEMENTS AND ALTERATIONS

No improvement, structural addition, excavation or other work shall be done without first obtaining approval from the Design Committee. Plans shall be submitted to the Design Committee at both the "preliminary" stage and the "working drawing" stage. The Design Committee shall not unreasonably deny approval of any plans or specifications, including final plans and specifications, that incorporate harmony of external design and location as described in detail in the Western Row Design Criteria document. The Design Committee shall, within fifteen (15) days after submission to it of final plans and specifications, either approve or disapprove of the plans and specifications for building. Written approval shall be made by the issuance of a "certificate of approval" or in the event of disapproval, a written statement of specific grounds for disapproval shall be made. Final plans and specifications may be resubmitted if they are disapproved. Disapproval, and the time wasted by such, can be avoided by close

consultation with members of the Design Committee during formation of the property improvement idea.

Before final approval is given by the Design Committee, a specific completion date for the proposed property improvement must also be incorporated by the owner in his construction document package.

ARTICLE VIII.

MAINTENANCE

The land contained within each lot and all improvements on said lot shall at all times be maintained by the owner (owner can delegate to a lessee) in good condition and repair. Whether or not a living unit is in "good condition and repair" will be determined by a majority vote of the Association after a visit by the voting members to the site of the unit being considered.

Failure to comply with the individual maintenance obligations will generate action by the Association against the party remiss in his maintenance obligations.

If, after sixty (60) days from the date of written warning from the Association in the case of fixed construction maintenance needs on a lot, or after fifteen (15) days in the case of living landscape maintenance needs on such lot, the owner has not taken corrective action, the Association can hire such maintenance to be done, and then specially assess the property owner immediately thereafter. Such assessment shall be the personal obligation of the owner of the lot, and a lien against the lot and subject to such legal action and subordination, as is specified above in Article IV.

ARTICLE IX.

CONFLICTS OF USE

No commercial activity of any kind shall be permitted nor shall any continuing annoyance or nuisance be permitted, Definition of a "commercial activity" and continuing "annoyance" or "nuisance" shall be determined by the majority vote of members of the Association.

Once the Association determines that an annoyance or nuisance exists, it shall notify the property owner, who shall cause the annoyance or nuisance to abate, immediately. Failure to abate the annoyance or nuisance shall subject the property owner to a fine of \$100.00, plus liability for any additional consequential damages which are caused. Failure to pay said fine within fifteen (15) days after receipt by the owner shall subject the owner to a lawsuit therefor, or the fine can be specially assessed. Such assessment shall be the personal obligation of the owner of the lot involved, and a lien against said lot and subject to such legal action and subordination, as specified above in Article IV.

Nothing contained herein shall be construed to in any way limit the Association, or any of its members, or any other persons, jointly or severally, from any legal or equitable rights or remedies otherwise provided by law.

ARTICLE X.

SPECIAL USE

Due to the common ownership and use of the community space, and for the convenience of all, gatherings of people within the community space shall require notice to and approval by the Association or its designated representative.

ARTICLE XI.

RESALE OR RENTAL

All efforts should be exerted to maintain owner-occupied living units in WESTERN ROW. This will insure the continual degree of care and concern for each unit desired by all members in the development. It may from time to time become necessary for an owner to rent his living unit. If an owner desires to rent or give possession to another occupant or tenant, he shall first inform the Association of his desire.

All tenants or other occupants shall be required to sign a document acknowledging receipt of a copy of these "Restrictive and Protective Covenants", and further acknowledging that they have read all said covenants, understand them, and that they agree to be bound by all of the rights and liabilities of them.

The Association shall have and retain at all times the right to evict a tenant or other occupant of a living unit (other than the owner thereof) for cause, as set forth in these "Restrictive and Protective Covenants"; provided, however, the Association shall adhere to all procedural requirements set forth herein, and shall in no event institute eviction proceedings for a period of thirty (30) days after sending the original notice to the tenant or occupant of the cause therefor.

For all purposes, notice to the tenant or occupant shall be notice to the owner of such living unit. For all purposes, the acts or failures to act of any tenant or occupant shall be considered that of the owner of the living unit.

When resale of a lot becomes necessary, a first right to purchase the lot shall be first given to the Association. The submission and enforcement of this first right of purchase shall be as follows:

- (1) The owner of the lot shall give written notice of intent to sell his lot, together with the name and address and the terms of any bona fide offer for the purchase thereof, to the Association, in writing, by certified United States mail, postage prepaid, return receipt requested, addressed to the address of the President of the Association, on file with the Secretary of the Association. This notice can be personally delivered, but a receipt therefor shall be obtained.
- (2) The Association shall have fourteen (14) days after the date of receipt of said notice in which to exercise its first right of purchase. The Association may assign its rights hereunder to others. The Association, or its assigns, shall purchase such lot on the terms of any bona fide offer previously received by the owner, or upon such other terms as shall be mutually agreed to by the parties. The Association shall send notice of its decision to the owner of the lot, addressed to the return address specified in the original notice received. Such notice must be sent by certified United States mail, postage prepaid, return receipt requested, or personally

delivered and a receipt for such delivery obtained.

- (3) In the event said owner does not receive actual notice of the decision of the Association by midnight of the fourteenth (14th) day following the date of receipt of such actual notice by the Association, then, for all purposes, all interested parties may proceed as if the Association waived its first right of purchase.
- (4) It shall not be necessary for any bona fide purchaser relying upon the compliance with the foregoing procedures to inquire into or obtain waivers from the individual members or directors or officers of the Association, and written notice of the waiver or election not to exercise such first right of purchase by the Association, or the passage of fourteen (14) days next after the date upon which such original notice was sent by the owner, whichever shall first occur, shall for all purposes fully protect any bona fide purchaser, without actual notice of any defect.

ARTICLE XII.

FENCES, SHEDS, LEISURE TIME STRUCTURES AND OTHER ACCESSORY STRUCTURES

All construction on the individual lots must be reviewed and approved by the Design Committee.

No accessory structure erected on a lot shall at any time be used as a residence, either temporarily or permanently.

ARTICLE XIII.

TRAILERS, BOATS AND CAMPERS

The keeping of a trailer, truck, camper, or boat is permitted only if it is totally screened from neighboring property, either on the private yard side of a lot, or within an enclosed garage and only if the chosen screening method and parking location is approved by the Design Committee. However, due to the compact nature of the individual lots, it is felt that undue restrictions will be placed on ground level floor space by the keeping of such large items on the property, and a better solution would be to find parking space for such vehicles on other properties in the city, or elsewhere. No such vehicle parked on said real estate

shall at any time be used as a residence, either temporarily or permanently. Occasional guest visitors in truck campers or trailers could be accommodated for a short period of time on WESTERN ROW community space, if approved by the Association.

ARTICLE XIV.

VEHICLE REPAIR AND EXTERIOR HOBBIES OR CRAFTS

No trailer, vehicle, boat, or handicraft shall be constructed or repaired if such work is visible from neighboring property, or if offensive sounds penetrate into neighboring living units.

ARTICLE XV.

GARBAGE

All garbage and trash shall be kept in covered containers so located that they are not visible from neighboring property. Screening devices are encouraged and must be reviewed by the Design Committee.

ARTICLE XVI.

CLOTHES DRYING

Outside clothes drying facilities shall be located only in fenced service yards so as not to be visible from neighboring property.

ARTICLE XVII.

SERVICE YARD

Each residence shall contain a fenced service yard enclosing all above ground garbage and trash containers, clothes lines, maintenance, and other service facilities.

ARTICLE XVIII.

PERSONAL PROPERTY SET IN YARD

Any items of personal property set within a private lot shall be subject to review by the Association, at its discretion.

ARTICLE XIX.

EXTERIOR MECHANICAL EQUIPMENT

All mechanical equipment located outside of the living unit, including solar collection devices, must be adequately located and screened so that no harmful visual or noise problems are created.

The Design Committee must review and approve the location and the proposed screening methods for any and all exterior mechanical equipment.

ARTICLE XX.

PLANT WASTE

The maintenance of plant waste materials is permitted only in established compost piles, screened from the view from neighboring property.

ARTICLE XXI.

PETS AND ANIMALS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot or on the community space, except a reasonable number of dogs and cats or other household pets, and the same shall not be raised, kept, bred or maintained for any commercial purpose.

Any household animal kept outside of a living unit must be screened from the view from neighboring property. Since animals can be the source of unpleasant sounds, smells and views, it will be left to the authority of the Association to establish a "reasonable number" of pets allowed per living unit, and to enforce compliance with any action necessary to correct violations of the annoyances of sight, sound and smell.

ARTICLE XXII.

TREES

No living trees over four inches (4") in diameter may be removed without the permission of the Design Committee, except those trees which are necessary for the construction of a residence, in which case approval shall be deemed to have been granted as a result of the individual home design and certificate of approval given by the Design Committee.

ARTICLE XXIII.

SIGNS

No signs shall be permitted except residential identification signs up to two (2) square feet in area. All signs must be submitted to the Design Committee for approval prior to fabrication. General signing guidelines shall be established by the Design Committee, such as type, style, shape, colors, etc.

ARTICLE XXIV.

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PARKING

At least two (2) automobile parking spaces shall be provided on each lot. At least one (1) of these parking spaces must be provided in the form of a fully enclosed garage attached directly to the house. All other permanent vehicles parked on the property must be screened from the view from neighboring property and from the community space. Under certain conditions, overflow guest parking will be allowed in certain areas of the community space. This must be arranged with and approved by the Association prior to the event. At no time shall access to or from garages or streets be blocked by such parked vehicles.

ARTICLE XXV.

VEHICULAR CIRCULATION

The Association has the right to post traffic flow restriction and modifier signs within the community space if deemed necessary for the safety of the residents. The graphics of any such signage must be approved by the Design Committee.

ARTICLE XXVI.

UTILITIES

Public utilities of water, sewer, electricity and gas are available in the streets adjacent to the development and will be utilized by all living units. All utilities up to each residence will be located underground.

ARTICLE XXVII.

EXTERIOR LIGHTING

The light source of any exterior lighting fixture shall be screened from the view from neighboring property and of a low-intensity incandescent variety. All exterior light fixture types and locations must be approved by the Design Committee.

ARTICLE XXVIII.

ANTENNAS

There shall be no antenna installed which is visible from neighboring property.

ARTICLE XXIX.

BOOK 631 PAGE 210

BREACH OF THE COVENANTS

Violations of these covenants may be charged by either the Design Committee or the Association. In the event a charge is made, the owner (or his agent in the case of a tenant or other occupant) shall be given written notice of the violation. If the violation is a construction or construction maintenance violation, the owner shall have sixty (60) days to remedy the defect. If the violation is a living landscape maintenance need, the owner shall have fifteen (15) days to remedy the problem. These specific sixty (60) and fifteen (15) day periods of correction shall only apply to defects having to do with fences, construction, improvements, buildings, and house or yard maintenance, and shall not apply to day-to-day rules regarding use of the premises. If the violation is of any other type, such as an annoyance or nuisance, the defect shall be remedied immediately upon notice, or as soon thereafter as is reasonably practicable. In all situations, the determination by the Association shall be controlling and conclusive as to the nature or type of the defect, and the appropriate period to remedy the defect. If, in the sole determination of the Association, the owner is not remedying the defect in an appropriate way and time, the Association is hereby authorized to take any action at law or equity necessary, which action can include injunctive relief and damages, and the actual out-of-pocket costs, including reasonable attorney's fees, for all such actions shall be the personal obligation of, and borne and paid by the owner, and may be specially assessed by the Association, and will thereafter constitute a lien against the lot and subject to such legal action and subordination as specified above in Article IV.

Nothing in this Article XXIX. shall be construed to limit, in any way, any legal or equitable rights or remedies otherwise granted by these "Restrictive and Protective Covenants" or otherwise available at law or in equity, to any person or other entity.

Failure of the Design Committee, or the Association, or any other individual or entity to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

ARTICLE XXX.

THE COVENANT PERIOD

These covenants shall run with the land and be binding upon all persons affected for a period of twenty (20) years from the date hereof. At the expiration of such period they shall be automatically extended for successive periods of ten (10) years unless they are changed, in whole or in part, by written agreement among the then owners of the majority of the lots, executed and recorded in the manner provided by law.

ARTICLE XXXI.

INVALIDATION OF A COVENANT

Each of the provisions hereof is severable and separable, and the invalidation of any provision by judgment or court order shall not affect any other provision and unaffected provisions shall remain in full force and effect.

ARTICLE XXXII.

OBLIGATION

Nothing contained herein shall in any way be construed as imposing on any person any liability, obligation or requirement for enforcement of these covenants and restrictions.

ARTICLE XXXIII.

AMENDMENT OF COVENANTS

These "Restrictive and Protective Covenants" may from time to time be altered, waived, amended, supplemented or revoked by the three-fourths (3/4) vote of the members of the Association.

ARTICLE XXXIV.

MASCULINE TO INCLUDE FEMININE
SINGULAR TO INCLUDE PLURAL

Whenever the masculine noun or pronoun is used herein, it is to be interpreted to include the feminine or neuter, and vice versa, if necessary to effectuate and give reasonable interpreta-

tion to the provisions of this instrument, and whenever a singular noun or pronoun is used, it is to be considered as including the plural, and vice versa, if necessary to effectuate and give reasonable interpretation to the provisions of this instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument at Omaha, Nebraska, this 4th day of April, 1980.

FINDLEY LTD., a Nebraska Partnership

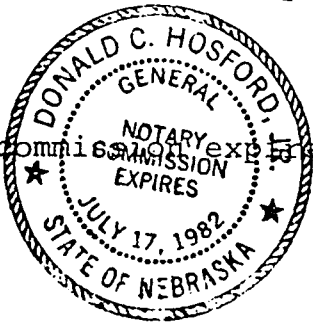
By: James E. Findley
JAMES E. FINDLEY, Partner
By: K. Scott Findley
K. SCOTT FINDLEY, Partner
By: Thomas L. Findley
THOMAS L. FINDLEY, Partner

State of Nebraska)
) ss.
County of Douglas)

The foregoing instrument was acknowledged before me this 4th day of April, 1980 by JAMES E. FINDLEY, K. SCOTT FINDLEY and THOMAS L. FINDLEY, all of the partners, on behalf of FINDLEY LTD., a partnership.

Donald C. Hosford
Notary Public

My Commission expires: July 17, 1982



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