

229

THIRD DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF ON THE GREEN

THIS THIRD DECLARATION, made on the date hereinafter set forth by GENESEE ESTATES, LTD., a Nebraska Limited Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property, which is more particularly described as:

Lots One hundred one (101) through One hundred eighty six (186), inclusive, in Corrective Plat On The Green-Plat II, a subdivision as surveyed, platted and recorded in Cass County, Nebraska, and,

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

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

ARTICLE I. DEFINITIONS

Section 1. "Association" shall mean and refer to ON THE GREEN HOMEOWNERS ASSOCIATION, A Nebraska non-profit 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 all or any part, parcel or portion of a platted 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 now or hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned or leased by the Association for the common use and enjoyment of the owners and/or members of the Association, subject to the limitations and restrictions hereinafter noted. The Common Area to be owned by the Association is described as follows:

Lots One hundred eighty-one (181) through one hundred eighty-six (186), inclusive, in Corrective Plat On The Green-Plat II, a subdivision in Cass County, Nebraska, as surveyed, platted and recorded.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat or map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to said GENESEE ESTATES, LTD., a Nebraska Limited Partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "By-Laws" shall mean the By-Laws of the Association as adopted by the Association and as may be from time to time amended.

Doc # 229
FILED FOR RECORD ~~8-20-1979~~ AT ~~3:00~~ P. M. IN BOOK ~~12~~ OF ~~Miss~~
PAGE ~~549~~ REGISTER OF DEEDS, CASS CO., NEBR.
Betty Philpot 4 25.25
COMPARED

ARTICLE II. PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner and/or Member of the Association shall have a right and easement of enjoyment in and to the Common Area, and in and to any clubhouse, swimming pool, tennis courts or other recreational facilities over which the Association may hereafter acquire jurisdiction, which said right and easement of enjoyment shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association from time to time to adopt rules and regulations governing the use of the Common Area, and the further right of the Association to charge reasonable admission and other fees for the use of any of said recreational facilities, whether situated upon the above-identified Common Area or elsewhere, and by contract to extend the right to use such recreational facilities to non-members of the Association upon payment of required fees and charges.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or non-profit corporation for use for purposes similar to those for which Association was created, and to any public authority or utility company for such purposes and subject to such conditions as may be agreed to by the Members and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-third (2/3) of the votes of the Class A membership and two-thirds (2/3) of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 30 days or more than 60 days in advance. Declarant shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the homeowner's use and reasonable access to the recreation facilities constructed on the Common Area nor with their right of ingress and egress to their homes.

(d) The right of the Association to limit the number of guests of Members on recreational facilities.

(e) The right of the Association, in accordance with its Articles and By-laws to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said Common Area and facilities; provided, that the rights of such mortgagee in said Common Area and facilities shall be subordinate to the rights of the members hereunder.

Section 2. Assignment. Any Owner may assign, in accordance with the By-laws his right of enjoyment to the Common Area and facilities to the members of his family, or contract purchasers who reside on the property.

ARTICLE III. MEMBERSHIP

Every Owner as defined in Article I, Section 2, under this Declaration shall be a Member of the Association. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Membership in the Association shall also include the owners of lots which are subject to assessment by the Association and are located in any subdivision, as surveyed, platted and recorded, whether same consist of additional platted lots in On The Green, a subdivision, or some other subdivision, or the owners of any part, parcel or portion of such platted lots, upon which a dwelling unit is or shall be constructed, and over which the Association shall have or be given jurisdiction by the Declarant.

The Association shall have two classes of voting membership:

ARTICLE IV. VOTING RIGHTS

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves, determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1985.

ARTICLE V. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and personal obligation of assessments.

The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to convenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established, adjusted and prorated where applicable, and collected as hereinafter provided. The annual and special assessment together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the following purposes:

(a) To promote the recreation, health, safety, and welfare of the residents in the Properties;

(b) For the improvement, maintenance and insurance of the Common Area, including pedestrian walkways and any and all recreational facilities situated thereon or on other recreational facilities made available by the Association for the use and enjoyment of its members, and the payment of any taxes and assessments levied or assessed against such Common Area by any governmental body or entity having lawful jurisdiction to do so.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum monthly assessment shall be FIFTEEN DOLLARS (\$15.00) per lot. (To determine MAXIMUM ANNUAL ASSESSMENT multiply monthly assessment by twelve).

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be delivered either personally or by mail to all members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. ~~If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.~~

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area, to the Association, except that as to any lots (s) upon which a dwelling unit has not been substantially completed, such annual assessments as to such lot (s) only shall be adjusted and reduced to twenty-five percent (25%) of the total amount thereof until a dwelling unit thereon is substantially completed. The first annual assessment shall be adjusted and prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. The annual assessments shall be and become a lien as of the date of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto immediately following the assessment date. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessment - Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a mechanic's lien foreclosure. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot. The mortgagee of the subject property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure to the mortgagee.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability of any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

ARTICLE VI. ARCHITECTURAL CONTROL

A. No building, fence, landscaping or other structure or improvement, including statues, trees, shrubs, shall be commenced, erected or maintained upon the Properties, nor shall any exterior painting, resurfacing, addition to or change or alteration therein, be made until the plans and specifications showing the nature, kinds, shape, heights, materials, color paint, and location of same shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board.

B. The Board, or its designated committee, shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Board's or committee's option, for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Board or committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration.

C. The Board or committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Board or committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Board or its said committee shall be final.

D. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Board or its said committee by virtue of his membership thereon, or discharge of his duties required thereby, shall be responsible in any way for any defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without the prior written approval of the Board or its said committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Neither the members of the Board or its said committee shall be entitled to any compensation for services performed pursuant to this covenant.

E. Any owners who may be unsatisfied with the decision of the architectural control board may appeal its decision to the Declarant which shall have the power to affirm, modify or reverse the decision of the said Board. Said appeal shall be made within thirty (30) days of the final decision of the Board, and be made in writing and served upon the Declarant, wherein said Declarant shall provide a forum and date for a hearing on the appeal by the owner and give notice of the same together with notice to the Board as to the date and time of said hearing. Said hearing shall be had within sixty (60) days from the date of the final decision of the Board. The right to appeal as established in this paragraph shall expire and terminate upon the happening of either of the events, whichever occurs earlier, as set out in these covenants at ARTICLE IV (a) or (b).

ARTICLE VII. USE RESTRICTIONS

A. The use of the Common Area shall be subject to the restrictions set forth in Article II, Section 1, and to those restrictions hereinafter set forth.

B. No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.

C. No Owner shall place any structure whatsoever upon the Common Area nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.

D. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

E. All lots shall be used only for residential dwellings for residential use and structures and uses related to the convenience and enjoyment of such residential use, including but not limited to park and recreational facilities, such as tennis courts and swimming pools, together with schools and churches, but excluding commercial activities, except such commercial activities as are expressly approved hereinafter in Paragraphs H and N of this Article VII.

F. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Household pets within the Properties and Common Area will be subject to such regulation, restrictions, exclusion and special assessment as may be determined by the Association from time to time. Included within such regulations, but not by way of limitation thereof, shall be a prohibition against dogs, cats, and other household animals being allowed to run at large within the Properties and Common Area, and a requirement that same at all times be on a leash or other immediate control of their owner. It shall be the duty of the Association to keep the common property free from litter and feces caused by and left by pets. The owners of any pets known to be at large shall be properly assessed by the Association for the cleanup expenses incurred.

G. 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 for not more than one dog shall be permitted provided the construction plans and specifications and the location of the proposed structure have been first approved in writing by the Board or its said committee.

H. No advertising signs (except one "For Rent" or "For Sale" sign per lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any lot or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Declarant, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

I. No trailer, basement, tent, shack, garage, barn or other buildings erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. Once construction of a dwelling has been commenced, outside framing of same must be completed within six(6) months thereafter, and said dwelling must be fully completed within one (1) year after commencement of construction thereof. No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real property.

B. The Association and the Declarant reserve the right to grant such further easements and licenses under, upon or over said lots as may be necessary or required by utility companies or by any sanitary and improvement district furnishing gas, water, telephone, electrical and television or other utility services, or paved driveways and roadways to said Properties or the Common Area above described.

A. The Association and its agents, contractors and designees shall have an easement and license to go upon any lot at all times necessary in order to accomplish changes, replacements or repairs to sewers, gas lines, telephone lines, electrical lines, meters, vents and other utilities in order to maintain service to or prevent injury or damage to any persons or dwellings or property located within the Properties or the Common Area above described.

ARTICLE VIII. EASEMENTS AND LICENSES

(3) Notwithstanding the provisions of this Paragraph 0 of this Article VII, the restrictive provisions for lot area, side yards, and front yards shall automatically be amended as to any lot for which the Board of Adjustment of the City of Plattsmouth, Nebraska, shall determine and permit a lesser area or distance.

(2) The following lot minimums shall apply: Minimum area of building plot: 7,500 square feet. Minimum front yard: 25 feet from street curb.

(1) The following minimums shall be required for finished living areas exclusive of open porches, breezeways and garages; 1,200 square feet on the ground floor for a one-story house; 1,300 square feet total for bi-level, tri-level, split-entry; 1½ story or taller house, but the foundation walls must enclose an inside ground area of not less than 850 square feet.

0. The following building restrictions for single family dwelling shall apply to said lots:

N. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for a builder of said buildings, upon receipt of prior written permission from the Association, to maintain during the period of construction and sale of said building upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonable required, convenient or incidental to the construction and sale of residential dwelling units, including, but without limitation, a business office, a storage area, construction yards, signs, model units and sales office.

M. No incinerator or trash burner shall be permitted on any lot. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any dwelling. 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.

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

K. 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.

J. No repair of automobiles will be permitted outside of garage on any lot at any time, and no junk cars or car bodies, no unlicensed motor vehicles of any kind, and no boats, trucks or trailers, mobile homes, campers or recreational vehicles, whether licensed or unlicensed, shall be stored, parked, kept or maintained in any yards or on any driveways or streets. All of said residential lots shall provide off-street parking spaces for a minimum of two cars per single family dwelling; such off-street parking spaces may be either in garages or otherwise. All curb cuts must be made with clean-cutting cement saws in such manner that the curb will be left smooth; all street pavement cuts for installation and repair of utilities shall be similarly made and such cuts shall be promptly repaired.

C. Declarant's Easements. Anything to the contrary herein notwithstanding, Declarant hereby reserves an easement and right of way over all Common Area, and over all lots prior to a sale and conveyance thereof by Declarant for Declarant's sole use for the purpose of constructing improvements, utilities and other matters including the right to erect temporary buildings to store any and all materials.

ARTICLE IX. GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violations. Failure by the Association 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety percent (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots. Any amendment must be recorded. Provided, however, that the Association shall have the right by an express written permit for the purpose of avoiding undue hardship to waive partly or wholly the application to any Lot of any covenant or easement granted to the Association.

Section 4. Annexation. Commencing four (4) years after the date of this instrument additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members; PROVIDED, however, that additional land owned by the Declarant on date hereof, and located generally in the area North of the present boundaries of the City of Plattsmouth in Cass County, Nebraska, may be annexed to the Property by the Declarant without the consent of members within ten (10) years of the date of this instrument.

Section 5. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration; annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

EXECUTED this 18 day of September, 1979.

GENESEE ESTATES, LTD., Declarant

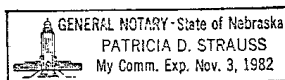
By: QUADRO, INCORPORATED
General Partner

By: Ronald J. Averett
President

STATE OF NEBRASKA)
)ss
COUNTY OF CASS)

On this 18th day of September, 1979, before me, the undersigned Notary Public, duly commissioned and qualified in and for said county, personally came Ronald J. Averett, to me known to be the President of Quadro, Incorporated, and the identical person whose name is subscribed to the foregoing instrument and he acknowledged the execution thereof to be his voluntary act and deed as such officer.

Witness my hand and Notarial Seal the day and year last above written.



Patricia D. Strauss
Notary Public