

82 - 803 T  
75. 565 T

BOOK 540 PAGE 315

DECLARATION

THIS DECLARATION, made on the date hereinafter set forth by Donald P. Polsky and Corinne N. Polsky, husband and wife, hereinafter collectively referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real estate, hereinafter referred to as the "Properties" in the County of Douglas, State of Nebraska, to-wit:

Lots 1 through 17, inclusive, in Perry's Park, an Addition to the City of Omaha, as surveyed, platted and recorded, and

WHEREAS, Declarant is desirous of providing easements, restrictions, covenants and conditions for the use of said Properties for the purpose of constructing and preserving a private clustered residential development.

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, which shall run with the said real estate as well as with any other property submitted hereunder and shall be binding on all parties having any right, title or interest in such Properties or any part thereof and their heirs, successors and assigns until January 1, 2010, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by written agreement of a two-thirds majority of the then owners of the lots it is agreed to change said covenants in whole or in part, said agreement to be executed and recorded in the manner provided by law for conveyance of real estate.

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to PERRY'S PARK ASSOCIATION, INC., its successors and assigns, a Nebraska non-profit corporation.

2. "Owner" shall mean and refer to the record owner or contract purchaser, whether one or more persons or entities

of any lot or any portion thereof, but excluding those having such interest merely as security for the payment of an obligation.

3. "Properties" shall mean and refer to the above real estate and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance thereof is:

✓ All of Lot 17, in Perry's Park, an Addition  
to the City of Omaha, as surveyed, platted  
and recorded.

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

6. "Improved Lot" shall mean and refer to any lot on the Properties exclusive of the Common Area upon which shall be erected a dwelling the construction of which shall be at least 80% complete according to the plans and specifications for construction of said dwelling. All other Lots, exclusive of the Common Area, which shall be vacant or upon which shall be erected a dwelling the construction of which shall be less than 80% complete according to the plans and specifications for construction of said dwelling, shall be defined and referred to herein as "Unimproved Lots."

7. "Declarant" shall mean and refer to Donald P. Polsky and Corinne N. Polsky, their heirs and assigns.

## ARTICLE II

### PROPERTY RIGHTS

1. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights and right to use of the Common Area by an owner for any period during which

any assessment against his Lot remains delinquent or for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

- (b) The right of the Association to dedicate or transfer all or any part of the Common Area 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 signed by two-thirds (2/3) vote of the members agreeing to such dedication or transfer has been recorded.

2. Every Owner may share his right of use and enjoyment to the Common Area and facilities with the members of his family, guests or lessees.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

1. Every Owner of a Lot within the Properties 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 by the Association.

2. The Association shall have two classes of voting membership:

- (a) "Resident Members" shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot or portion thereof owned. When more than one person holds an interest in any Lot or portion thereof, all such persons shall be members. In no event shall more than two votes be cast with respect to any Lot.
- (b) "Declarant Members" shall be the Declarant, their successors and assigns, who shall be entitled to eight (8) votes for each Lot owned. The Declarant membership shall cease and be

converted to Resident membership when the total votes outstanding in the Declarant membership are equal to the total votes outstanding in the Resident membership.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

1. The Declarant, for each fully improved Lot owned by them and each Owner of any Lot by acceptance of a deed from the Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular annual assessments or charges, and (2) Special assessments. The Regular and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be and constitute until paid a continuing charge against and lien upon such lot or property against which each such assessment is made. 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.

2. The assessments levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to promote and sustain their mutual interests and common benefit by acquiring, maintaining, operating and regulating the use of recreational facilities, equipment, structures and roadways and to provide for such services, including but not limited to, general exterior maintenance and repairs, landscaping and lawn service, snow removal, trash removal, security service, and other community services as shall be determined by the Board of Directors, as hereinafter provided.

3. Prior to the commencement of each calendar year, the board of directors of the Association shall adopt and fix in reasonable itemized detail an annual Budget for the anticipated financial requirements of the Association for such year, and shall thereupon levy an annual assessment upon each improved and unimproved Lot in such amounts as shall be sufficient to fund the Budget for the calendar year. In recognition that the greater portion of the expense will be attributable to maintenance and service rendered to improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot will be an amount equal to 25% of the regular assessment for

each improved Lot. The Budget and assessments shall be approved and ratified by the Directors at the annual meeting.

4. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon the Common Area or to defray any extraordinary general expenses not included within the annual Budget.

5. The regular annual assessments on all improved and unimproved Lots shall become due and payable on the first day of March in each calendar year. A prorated assessment for the balance of the calendar year shall become due as to all improved Lots on the first day of the month following the month in which construction of the dwelling on such Lots shall become at least 80% completed. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

6. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest from the due date at the rate of 9% per annum. The Association may bring an action at law against the Owner for collection of the delinquent assessment or may file a Certificate as to the amount of the delinquent assessment against such Lot in the office of the Register of Deeds of Douglas County, Nebraska, and thereafter shall be entitled to enforce said lien in the manner provided by law for foreclosure of mortgages on real estate. No Owner may waive or otherwise avoid liability for the assessment by non-use of the Common Area or abandonment of his Lot.

7. 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 extinguish the assessment lien.

8. In addition to the annual and special assessments provided above, the Association shall have the right to levy an individual special assessment against any Lot to cover the expense of exterior maintenance, including but not limited to, the painting, repair, replacement and care of roofs, building exteriors, walks, driveways, grass, shrubs, trees and

other improvements upon the Lot, in the event that the Owner thereof shall fail to make such repairs or replacements after due notice by the Board of Directors of the Association.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and typography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board ("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.

ARTICLE VI

PARTY WALLS

1. Each wall built as a dividing wall between duplexes constructed upon the Lots by Declarant or their assigns shall constitute a party wall to be used by the adjoining Owners as such (notwithstanding any error in the location of the wall). The general rules of law regarding party walls and liability for damage or repairs thereto shall apply.

2. If a party wall is destroyed or damaged by fire or other casualty, the adjoining Owners shall contribute to the cost of restoration thereof in proportion to their respective use of such wall.

ARTICLE VII

GENERAL RESTRICTIONS

In addition to such rules and regulations as may hereafter be adopted by the Association, the following general restrictions

shall be applicable to the Properties:

1. Lots 1 through 16, inclusive, shall be occupied or used solely for single family or duplex clustered residences and no other use of said Lots shall be permitted. Lot 17 shall be occupied or used solely for open landscape area, recreational purposes or roadway for the common benefit of the Owners as determined by the Association and for no other use.

2. No building or structure shall be occupied or used for any business, profession, trade or commercial purpose of any kind provided, however, such restriction shall not apply to any portion of a building or structure used by Declarant, its successors or assigns, for a manager's office or sales office or by the Association for its office.

3. No exterior surfaces, walks, driveways, grass, shrubs, trees and other improvements upon any Lot shall be maintained in a damaged, deteriorated, hazardous or unsightly condition.

4. No exterior roof mounted air conditioning equipment, exterior clothes line, flagpole, incinerator or other receptacle shall be maintained on any Lot.

5. After commencement construction on any Lot shall proceed as diligently as practicable to completion and no construction shall be maintained on any Lot in an unfinished condition for more than eighteen months.

6. No barn, shack, tent, trailer or other movable or temporary structure shall be maintained on any Lot.

7. No private driveway shall be constructed or maintained on any Lot except where designated in the plans and specifications.

8. No unsightly weeds or other vegetation shall be permitted and all grass, trees and shrubs shall be maintained in a neat and trim condition.

9. The Owner shall preserve and keep in good condition all existing trees as shall be designated by the Association.

10. No basketball hoop, slide, swing or other play or

recreational equipment or outdoor grills shall be installed or maintained on any Lot except in the manner and at the location specified by the Committee.

11. No fences or enclosures of any type or nature whatsoever shall be constructed, erected, placed or maintained on or about any Lot within the Properties except such fences or enclosures as may be authorized by the Committee. No truck, trailer, camper, boat, equipment, machinery or inoperable motor vehicle shall ever be parked, located or otherwise maintained on any Lot or roadway in the Properties. Automobiles shall be parked only in designated parking areas as published by the Committee in its Rules and Regulations.

12. No animals, livestock or poultry of any kind shall be raised or kept on any Lot other than household pets, which shall be limited to two per household. All pets shall be leashed when outside of the home. No such pet will be kept, bred or maintained for commercial purposes.

13. No noxious or offensive activity shall be carried on the Properties, nor shall any trash, ashes, or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

14. No billboards, advertising or other signs shall be constructed or placed on any Lot except "for sale" or other signs erected by Declarant.

15. No outbuilding or other attached structure appurtenant to a residence may be erected on any Lot without the consent in writing of the Committee.

#### ARTICLE VIII

##### EASEMENT

1. The Association and its agents, contractors and designees shall have an easement and license over, upon, on and across any Lot necessary to perform the maintenance and repairs hereinbefore provided.

2. 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 utilities furnishing gas, water, telephone, electrical and television or other utility services to said Properties or the Common Area.

#### ARTICLE IX

##### SPECIAL REQUIREMENTS

1. No building shall be erected on Lots 4, 8, 12 and 16 within 45 feet of the west lot line of Pipers Oak Park Addition adjoining on the east.
2. No building or other structure may be constructed upon any lot which shall exceed thirty (30) feet in height to the ridge line of the roof.
3. No fences or enclosures of any type or nature whatsoever shall be constructed, erected, placed or maintained along the east line of Perry's Park Addition or within the common area abutting thereto.
4. There shall be no substantial change of grade or disturbance of the trees and shrubs presently within the common area abutting the east line of Perry's Park Addition.
5. There shall be sufficient landscaping provided in the common area to the east of the two cul de sacs so as to screen automobile headlights from shining upon the residences located in Pipers Oak Park Addition, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. A double row of Evergreen trees will be used for ample screening of headlights comprising (a) Norway or Scotch Pines or similar species of a minimum height of 5 to 6 feet and (b) Juniper or other similar dense species of a minimum height of 3½ to 4 feet to be located in the east row.
6. The Declarant and the Owners of Lots 1 through 6, inclusive, in Pipers Oak Park Addition, shall designate by mutual agreement those existing trees located in Perry's Park Addition to be preserved and maintained as provided in Article VII-9 hereof.

#### ARTICLE X

##### GENERAL PROVISIONS

1. The Declarant, the Association, any Owner, or the Owners

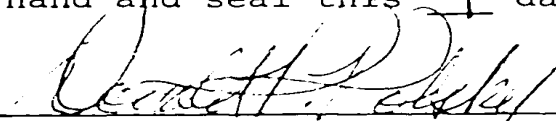
of Lots 1 through 6, inclusive, in Pipers Oak Park Addition, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. In enforcing the provisions hereof, the successful party shall also be entitled to recover attorney fees and court costs.

2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

3. The covenants and restrictions of this Declaration shall run with the land and be binding upon the Owners thereof. This Declaration may be modified, altered or amended, except as to Articles VII-1 and IX, at any time during the initial and succeeding terms hereof by a written instrument executed by not less than 80% of the Owners and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

4. Additional real estate adjacent to the above-described Properties in Perry's Park may be annexed by the Declarant or their successors and assigns without the consent of the Association or the other Owners within ten (10) years from the date of this instrument by executing and recording a written Supplementary Declaration describing such property and declaring such lots so annexed to be subject to all of the conditions and terms set out in this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set their hand and seal this 9 day of July, 1974.

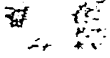
  
\_\_\_\_\_  
Donald P. Polsky

  
\_\_\_\_\_  
Corinne N. Polsky

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

Before me, a Notary Public qualified for said County, personally appeared DONALD P. POLSKY and CORINNE N. POLSKY, known to me to be the identical persons who executed the foregoing Declaration, and acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal this 27th day of July, 1974.



William H. Coates  
Notary Public

My Commission Expires:



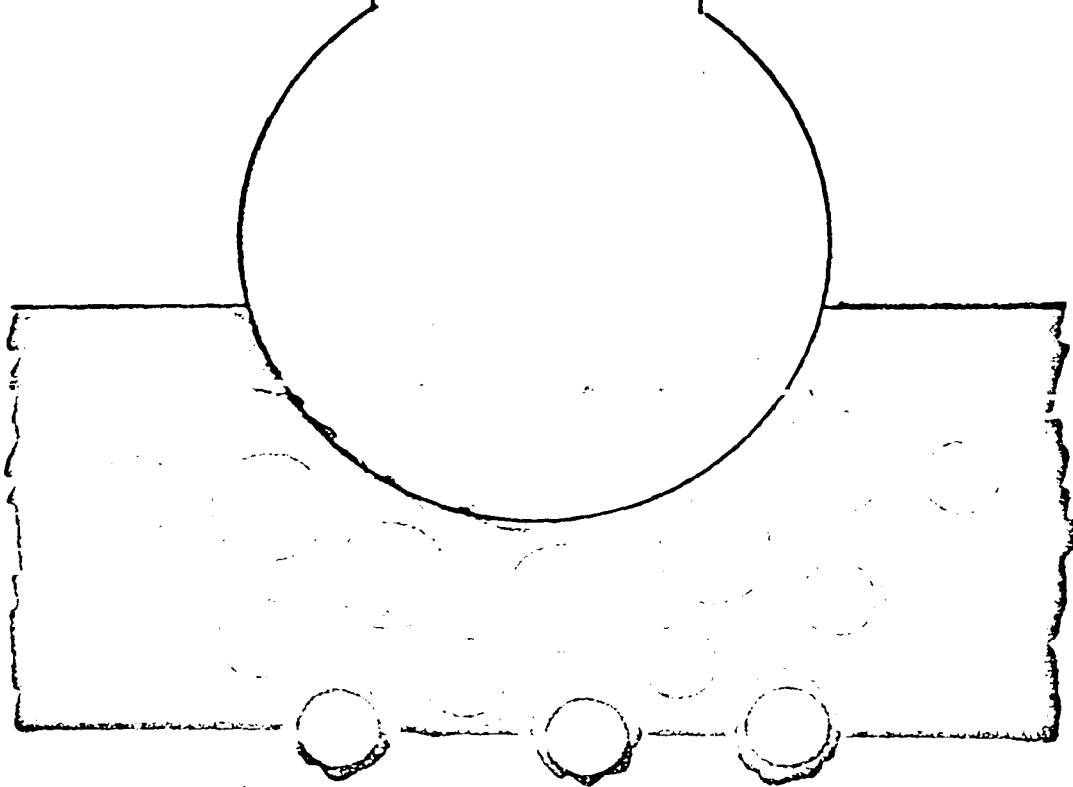
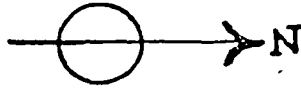
WILLIAM H. COATES  
Notary Public, State of Neb.  
My Commission Expires  
May 2, 1976

○ = Norway or Scotch Pine  
MIN. HGT. 6'

○ = Juniper or similar dense  
Evergreen  
MIN. HGT. 4'

cul de sac  
Landscape  
Plan

Perry's  
Park



PIPER  
PARK

PERRY'S  
PARK



← CUL DE SAC

10'-12' →

37

EXHIBIT "A"

ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA

8 DAY OF Aug 1924 AT 4:07 P.M. G. HAROLD OSTLER, REGISTER OF DEEDS

41.75