

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Meyer H. Feldman, Trustee, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the City of Omaha, Douglas County, Nebraska, which is more particularly described as:

Lots 1 through 23, inclusive, Grover Gallery, a Subdivision of the City of Omaha, Douglas County, Nebraska, as surveyed, platted and recorded.

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 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 properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Declarant has heretofore caused the organization of Grover Gallery Property Owners Association, Inc., which is a non-profit corporation organized under the laws of the State of Nebraska, formed for the purpose of providing for maintenance, preservation and architectural control of the dwelling amenities and common area within the above described property.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Grover Gallery Property Owners Association, Inc., 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

Section 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.

Section 6. "Declarant" shall mean and refer to Meyer H. Feldman, Trustee, his successors, assigns and legal representatives.

Section 7. "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 as "Unimproved Lots".

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(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 sixty (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, 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 two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By Laws, his right of enjoyment to the Common Area and facilities to the members

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

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 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 four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership.

ARTICLE IV

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 covenant and agree to pay to the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, 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. 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and recreational facilities.

(published by the Department of Labor, Washington, D.C.) for the preceding October over the prior year's October, 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 annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each group of members who are voting by person or 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 sent to all members not less than thirty (30) days nor more than sixty (60) 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 the 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 sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved lots as opposed to unimproved lots, the regular assessment for each unimproved lot will be equal to the equivalent of twenty-five percent (25%) of the regular assessment due for each improved lot

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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) 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. 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.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments 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 for any assessments thereafter becoming due or from the lien thereof.

Section 10. Insurance. The Association shall procure and maintain property insurance including hazard, fire and extended coverage, as well as liability insurance without prejudice to the right of each Owner to insure himself. Such insurance policies shall be written, and the proceeds thereof payable to the Association, as trustee for the Owners, mortgagees of record, Board, employees, and Managing Agent, if any. Such policies of insurance should contain, if possible, a standard anti-subrogation clause against individual Owners. The premiums for such insurance shall be a Common Area expense.

Each Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his building and on the contents thereof, as well as his decorations, furnishings and personal property therein and any personal property stored elsewhere on the Property. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Association as above provided, said

paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI

ARCHITECTURAL CONTROL

After the construction of the original structure on each Lot, 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, 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 topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. 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 VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

ARTICLE VIII

STAGED DEVELOPMENTS

Additional land adjacent to Grover Gallery, a Subdivision in Douglas County, Nebraska, may be annexed by the Declarant without the consent of the members within seven (7) years of the date of this instrument, provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE IX

GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Association.

Section 2. Building or Uses Other Than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within the Properties. Provided, however, the prohibition shall not apply:

(a) To any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the Properties; or

(b) To any portion of a building used by Declarant, its licensees or assigns, for a purpose

common area in the Properties. Automobiles shall be parked only in designated parking areas as published by the Committee in its Rules and Regulations. No external television or radio antenna shall hereafter be erected on or about any of the building sites or property within the Properties; PROVIDED that, with the written approval of the Committee, one or more master television antenna towers may be erected and/or cable television facilities installed, for the benefit and use of all or part of the residents of the Properties. No clothesline or clothes hangers shall be permitted outside of any dwelling at any time except one umbrella-type clothesline per lot.

Section 4. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on the Properties, nor shall any trash, ashes or other refuse be thrown, placed, dumped upon any vacant building site, nor shall anything ever be done which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 6. Bill Boards Prohibited. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent.

Section 7. Outbuildings Prohibited. No outbuildings or other attached or unattached structures appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Committee.

Section 8. Temporary Structure. No trailer, basement, tent, shack, trailer, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at any time as a residence. PROVIDED, however, nothing contained herein shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of the construction and sale of the Properties. Declarant or its assigns may also erect and maintain model homes for sales purposes and rental and lease purposes and may operate

grills will be subject to regulation, restriction or exclusion by the Association. Automobile parking will be subject to regulation and restriction by the Association.

Section 10. No automobile or vehicle repair will be permitted outside of garages on any Lot at any time. No automobiles in a state of disrepair shall be kept on the premises of any Lot for a period in excess of three (3) days.

ARTICLE X

EASEMENTS AND LICENSES

(a) A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone company and to Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities, and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service on, over, through, under and across a five foot (5') wide strip of land abutting all front and side boundary lot lines, and an eight foot (8') wide strip of land adjoining the rear boundary lines of all lots. Said licenses being granted for the use and benefit of all present and future owners of said Lots; PROVIDED, however, that said easements are granted upon the specific condition that if both said utility companies fail to construct wires or conduits along any of the said Lot lines within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed but hereafter removed without being replaced within sixty (60) days after their removal, then this easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

(b) All telephone and electric power service lines from property line to dwelling shall be underground.

(c) A four foot (4') wide strip of common ground shall abut each side of all roads within the subdivision, as surveyed, platted and recorded.


Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise 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 not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Douglas County, Nebraska.

Section 4. After the original construction, including any fences or walls, any area lying outside the residential structure, fence or wall, although not Common Area, shall be kept maintained and used as Common Area.


Section 6. 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this 3rd day of June, 1980.


MEYER H. FELDMAN, Trustee,
Declarant

STATE OF NEBRASKA)
) ss.
County of Douglas)

The foregoing instrument was acknowledged before me this 3rd day of June, 1980, by Meyer H. Feldman, Trustee.


Notary Public

AMENDMENT TO DECLARATION
OF
GROVER GALLERY

This Amendment to Declaration is made on March 17, 1985, by the owners as of the date hereof in excess of Ninety Percent (90%) of all the lots contained in the following described real estate, to-wit:

Lots 1 through 23, inclusive, Grover Gallery, a subdivision of the City of Omaha, Douglas County, Nebraska, as surveyed, platted and recorded.

W I T N E S S E T H:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions covering the above-described real estate was executed on June 30, 1980, and filed at Page 725 through Page 734, inclusive, of Book 637 of the Miscellaneous Records in the office of the Register of Deeds of Douglas County, Nebraska; and

WHEREAS, said Declaration provides for Amendment of the Declaration by instrument signed by the owners of Ninety Percent (90%) or more of the lots; and

WHEREAS, the undersigned are the owners of more than Ninety Percent (90%) of the lots subject to said Declaration, and it is the desire of the undersigned to make certain amendments, additions and clarifications to said Declaration.

NOW, THEREFORE, in consideration of the foregoing preambles, the undersigned declare that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of and in addition to the easements, restrictions, covenants and conditions contained in said Declaration to the extent and only to the extent that the same are inconsistent therewith:

1. Article IV, Section 3 is hereby amended to read as follows:

"Section 3. Maximum Annual Assessment. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessment may be increased by the greater of: (a) Five Percent (5%) of the annual assessment for the immediately preceding year, or (b) the percentage increase in the Consumer Price Index - Wage Earner for the immediately preceding September over September of the immediately prior year."

2. Article IV, Section 4 is hereby amended to read as follows:

"Section 4. Special Assessment for Capital Improvements

"Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any annual assessment not paid within Ten (10) days after the due date shall be delinquent and shall be subject to a \$10.00 service charge. Any special assessment not paid within ten (10) days after the due date shall bear interest from the date of delinquency at the rate of Twelve Percent (12%) 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. 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."

5. Article XI, Section 3 is hereby amended to read as follows:

"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 by an instrument signed by not less than Seventy-five Percent (75%) of the lot Owners. Any amendment must be recorded with the Register of Deeds in and for Douglas County, Nebraska."

Executed the day and year first above written.

Legal Description of Lots
Owned: (All in Grover Gallery)

Signature of
Owners

13

Charles W. Melch

2

John H. Paul Roberts

11

Charlotta Schneiderwind

4

Paul R. Prunty

5

Estyann A. Ryan

6

Richard A. Puck

7

Ron Septer, Suzanne Septer

8

9

Linda J. Madal

10 Lot

John S. Pettit, Ann W. Pettit

11

Imajin R. Speck

12

Joan R. Fluckiger

STATE OF Nebraska
COUNTY OF Douglas


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SS.

On this 27 day of February, 1986, before me, the undersigned, a Notary Public in and for said County, personally came James D. Bryant and Joanne Huldan Bryant, personally known to me to be the identical persons whose names are affixed to the above amendment to Declaration, and acknowledged the execution of the same to be their voluntary act and deed.

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

Jean M. Schutz
NOTARY PUBLIC

 JAN. M. SCHUTZ
GENERAL NOTARY-STATE OF NEBR.
My Comm. Exp. Mar. 10, 1989

BK 771 Del VF N 87-13 Fee \$56.50
PG 54 Indx 1111 87-13 etc MC BC
OF Murphy Comp 111 Comp 111

RECEIVED
1986 APR 16 PM 4:02
GEORGE J. DWALENICKZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

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