

2011-07298

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*Clay J. Rowling*

REGISTER OF DEEDS



COUNTER ah ah  
 VERIFY ah ah  
 PROOF ah  
 FEES \$ 113.50  
 CHECK# 15344  
 CHG            CASH 1.00  
 REFUND 50 CREDIT             
 SHORT            NCR             
*Stamped copy*

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions is made this 14 day of March, 2011 by SANITARY AND IMPROVEMENT DISTRICT NO. 138 OF SARPY COUNTY, NEBRASKA (herein "Declarant").

WITNESSETH THAT

WHEREAS, Declarant is a political subdivision of the State of Nebraska serving the Avery North Subdivision in Sarpy County, Nebraska; and

WHEREAS, Declarant is the owner of Lot 153 in Avery North, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and

WHEREAS, Declarant desires to impose certain limitations and restrictions on said Lot 153 for the benefit and protection of the residential lots contained within the Avery North Subdivision and legally described as follows:

Lots 1-139 and 154, in Avery North; Lots 1-18 and 21-26, in Avery North Replat I; and Lots 1 and 2, Avery North Replat II, subdivisions as surveyed, platted and recorded in Sarpy County, Nebraska (collectively "The Avery North Residential Lots").

NOW, THEREFORE, the Declarant declares that henceforth, Lot 153 of Avery North shall be held, sold and conveyed subject to the following limitations which shall run with the land and be binding in perpetuity on the owners of said Lot 153, Avery North and their successors and assigns.

1. The north thirty (30) feet in depth of said Lot 153, Avery North, together with the northern portion of Lot 153 connecting the balance of said lot to the right-of-way of Sycamore Street, all as shown cross-hatched on Exhibit "A" attached hereto, shall be maintained hereafter as a buffer area between the balance of Lot 153, Avery North and the single family residential lots in Avery North fronting on Sycamore Street. In the event the bufferyard requirement of the Bellevue Zoning Code is greater than thirty (30) feet, the greater number shall apply to the buffer area depth as set forth herein. No structure of any type or kind and no paving (other than the bike/pedestrian path as referenced in Section 2 hereof) shall be constructed within the said buffer area.

RETURN TO:

HILLMAN, FORMAN, NELSEN,  
CHILDERS & MC CORMACK  
7171 MERCY RD STE 650  
OMAHA, NE 68106-2670

2. No motorized vehicular traffic shall be permitted to traverse the buffer area of Lot 153, Avery North, referenced in Section 1 above. A bike/pedestrian path not exceeding ten (10) feet in width may traverse the buffer area so long as access thereto is partially controlled with a concrete-filled steel bollard not less than five (5) inches in diameter situated in the center of said path to limit unrestricted entry to the path to a width not greater than five (5) feet and by concrete-filled steel bollards not less than five (5) inches in diameter abutting both sides of the path, with signage at the point where the path abuts the south right-of-way line of Sycamore Street stating "no motorized vehicles permitted on path", with chain link fencing four (4) feet in height installed from the west edge of the said path to the northeast corner of Lot 139, Avery North and from the east edge of the path to the northwest corner of Lot 26, Avery North Replat, all as depicted on Exhibit "B" attached hereto.

3. Notwithstanding the prohibitions set forth in Sections 1 and 2 above with respect to paving upon and motorized vehicle traffic across the buffer area, such prohibitions shall be subject to removal or modification upon compliance by the then-owner of Lot 153, Avery North, with the following procedure:

- (a) The owner shall provide written notice of the proposal to remove or modify the prohibitions by certified mail, return receipt requested, to the record owners of all Avery North Residential Lots located south of Thurston Street who, according to the then-current records of the Sarpy County Assessor, are residents of their respective lots in Avery North and the Replats thereto, apprising said owners of such proposal and advising said owners that such restrictions shall be removed or modified as provided in said notice unless the owners of 51% or more of said lots located south of Thurston Street shall, within thirty (30) days of the date of mailing of such notice, submit to the owner of Lot 153 written objections to such proposal. Written objections may be filed by hand delivery to the address provided in the notice or by sending by United States Mail, postage prepaid, to the address specified in the notice. Any objections filed by mail service shall be considered filed with the owner of Lot 153 on the date of mailing as evidenced by the postmark appearing thereon.
- (b) If the requisite number of objections are timely filed with the owner of Lot 153, the subject restrictions shall continue in full force and effect, and the owner shall be prohibited from pursuing such matter within a period of two (2) years of the date of mailing of the aforesaid certified mail notices.
- (c) If the requisite number of objections are not timely filed with the owner of Lot 153, the restrictions shall be removed or modified to the extent provided in the notice upon the filing by the owner of Lot 153 with the Sarpy County Register of Deeds of an affidavit averring compliance with the provisions herein and averring that the owners entitled to object failed to meet the criteria set forth herein. Such affidavit shall set forth the identity of all owners filing written objections to the proposed changes, and a copy of such

affidavit shall be submitted by certified mail to each such objecting owner with fifteen (15) days of the date specified for filing objections.

4 In the event of construction of any type of structure on the balance of Lot 153, Avery North, south of the aforesaid buffer area, the owner shall plant and maintain coniferous trees with a minimum initial trunk diameter of two (2) inches, planted in two staggered rows ten (10) feet apart, with the trees being situated twenty-two and one-half (22.5) feet on center within the buffer area described in Section 1 above, all as shown on Exhibit "C" attached hereto.

5. No lighting fixtures shall be installed or maintained at any time on Lot 153, Avery North, which directly illuminate any portion of the residential lots in Avery North fronting on Sycamore Street.

6. The provisions of this Declaration may be enforced by the owner or owners of any of the Avery North Residential Lots located south of Thurston Street.

IN WITNESS WHEREOF, the Declarant has caused this declaration to be executed the date and year first above written at Bellevue, Nebraska.

SANITARY AND IMPROVEMENT DISTRICT NO. 138 OF SARPY COUNTY, NEBRASKA

ATTEST:

Frank Miratsky  
Frank Miratsky, Clerk

By: Mark Mireles  
Mark Mireles, Chairman

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SARPY     )

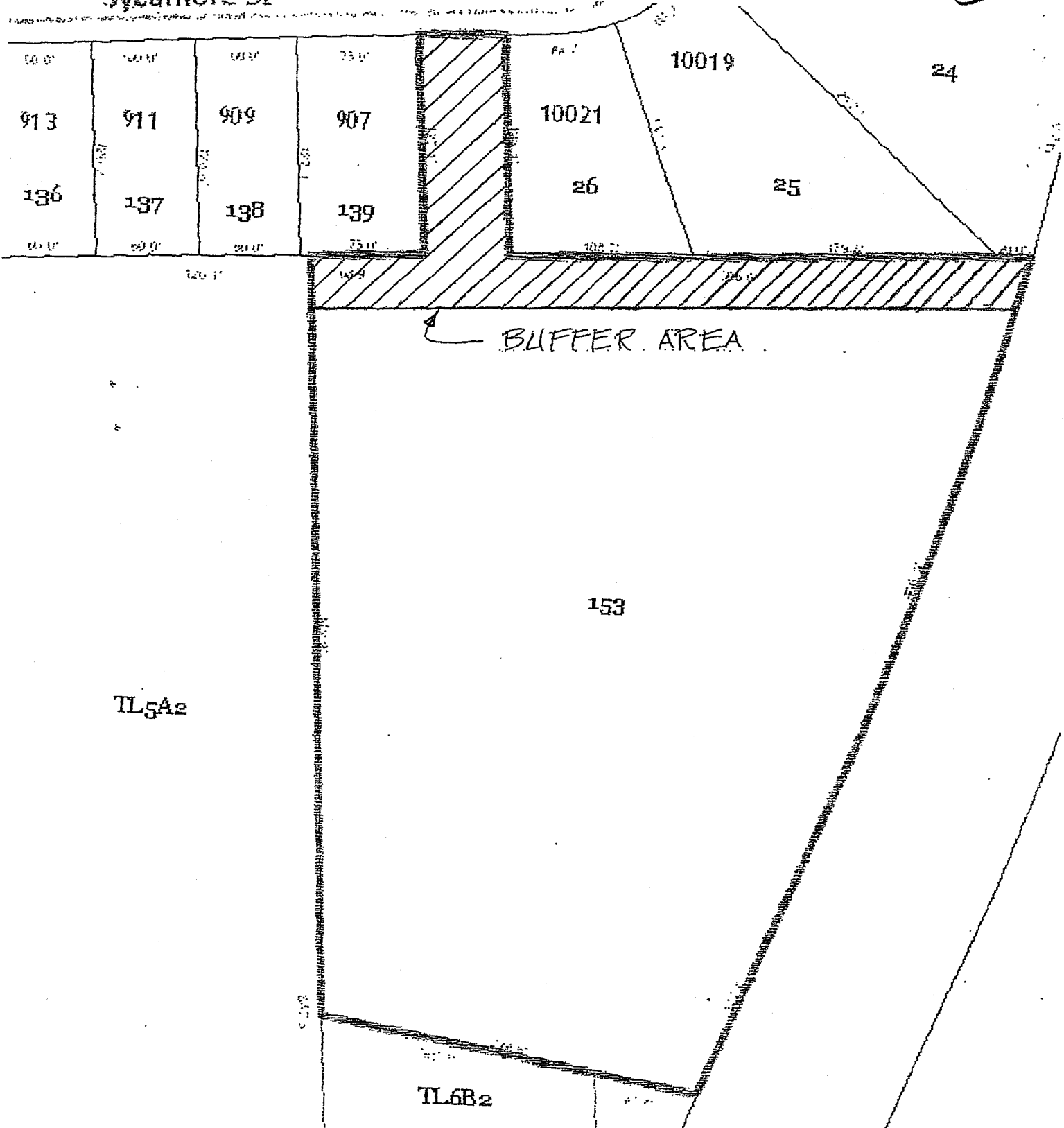
The foregoing Declaration was acknowledged before me this 14 day of March, 2011 by Mark Mireles and Frank Miratsky, the Chairman and Clerk respectively of Sanitary and Improvement District No. 138 of Sarpy County, Nebraska.



Larry R. Forman  
Notary Public  
My Commission Expires 3/21/12

Sycamore St

C



SYCAMORE ST.

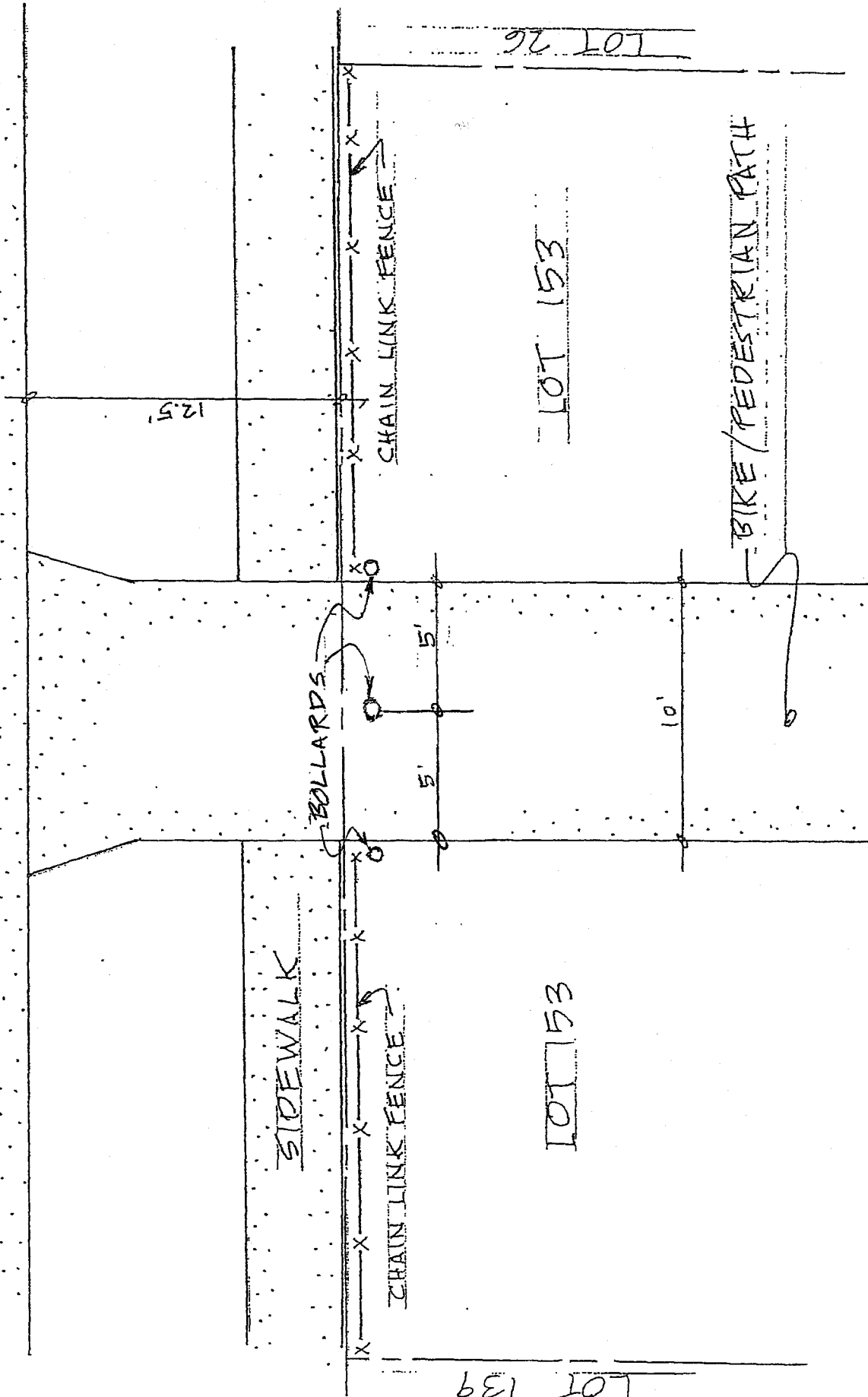
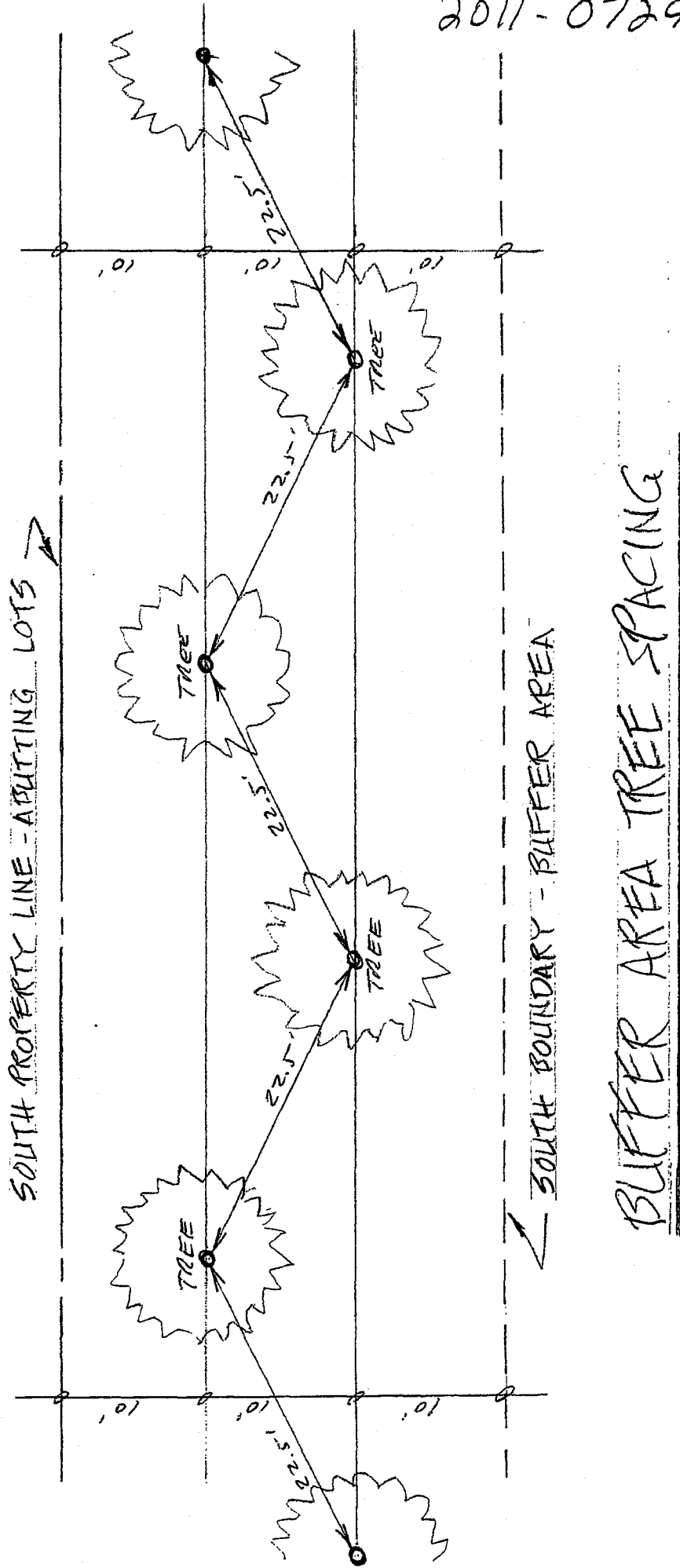


Exhibit "B"

A



BUFFER AREA TREE SPACING

Exhibit "C"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LOTS 1 THROUGH 147, INCLUSIVE,  
AND LOTS 149 THROUGH 153, INCLUSIVE,  
AVERY NORTE SUBDIVISION  
AS SURVEYED, PLATTED AND RECORDED  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made this 20<sup>th</sup> day of May, 1988, by  
LESLIE J. HASSEL and LORRAINE L. HASSEL, hereinafter referred to  
collectively as Hassel; AVERY, INC., and W. C. JENSEN, Trustee,  
all of whom, collectively, are referred to throughout these  
Declarations as "Declarant".

The Lots in Avery North Subdivision covered by these  
Declarations are owned as follows:

- A. Leslie J. Hassel and Lorraine L. Hassel own  
Lots 2 through 40, inclusive.
- B. Avery, Inc. owns Lots 1, 41 through 43,  
inclusive, 58 through 125, inclusive, and  
Lots 143 and 144.
- C. W. C. Jensen, Trustee owns Lots 145 through  
147, inclusive, 149 through 153, inclusive,  
50 through 57, inclusive, 126 through 132,  
inclusive and 135 through 142, inclusive.

WITNESSETH:

Whenever the term "Declarant" is used in these  
Declarations, Declarant shall be deemed to be the individual  
declarant who owns the particular lot as set out above.

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

NOW, THEREFORE, the Declarant hereby declares that all  
of the lots described above shall be held, sold and conveyed  
subject to the following restrictions, covenants and conditions,

FILED FOR RECORD 5-20-88 AT 4:40 PM DISTRICT # 88-06503

*Boyd* REGISTER OF DEEDS, SARPY COUNTY, NE

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88-06503

all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These covenants, restrictions and conditions shall run with said real property, and shall be binding upon all parties having or acquiring any right, title or interest in the above-described lots, or any part hereof, and they shall inure to the benefit of each owner thereof.

1. Approval of Plans and Specifications. No building or structure of any kind may be erected on, or moved onto, or have any alteration in the exterior design of the original construction; until plans and specifications have been submitted to, and approval thereof has been given in writing by Declarant owning the particular lot involved. The building, structure or alteration hereinafter referred to shall be constructed in accordance with said plans and specifications, and any changes shall be approved in writing by Declarant or his or its assigns. The plans and specifications submitted shall include:

- Plot Plans
- Grading Plans
- Construction Plans and Specifications
- Exterior Color and/or Materials

Declarant shall consider such plans and specifications with regard to type, quality and use of exterior materials, exterior design, location of improvements upon the building plot, and proposed finished grade; provided that Declarant and his or its designee specifically reserve the right to deny permission to construct any type of structure or improvement which Declarant determines will not conform to the general character, plan and scheme for development of the subdivision. The approval or



disapproval of Declarant or his or its designee as required in these covenants shall be in writing. Failure of Declarant or his or its designee to give either written approval or disapproval of a submitted plan within thirty (30) days after submission of said plan by mailing such written approval or disapproval to the last known address of the applicant for approval as shown in the submitted plan shall operate to release such binding plan from the provisions of this paragraph.

2. No lot shall be used except for residential purposes.

3. No building shall be created, altered, placed or permitted to remain on any lot which shall not meet the minimum requirements as set forth below:

- A. On single family residences the building must have a minimum of 900 square feet above ground level.
- B. On multi-family lots the building must have a minimum of 450 square feet above ground level for each unit.

4. Dwellings shall not be moved from outside of Avery North onto any lot.

5. No structure of any temporary character, trailer, basement, tent, shack, barn or other building shall be erected upon, or used, on any lot at any time as a residence, either temporarily or permanently.

6. The Declarant has created a water drainage plan by grading the property and installing improvements and easements for storm drainage in accordance with accepted engineering principles. No building shall be placed, nor any lot graded to

interfere with such water drainage plan nor cause damage to the building or neighboring building or lots. No planting or other materials shall be placed or be permitted to remain, or other activities undertaken, which may damage or interfere with storm drainage, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels.

7. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or be permitted to remain on any lot except that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed structure have first been approved in writing by Declarant who owns the particular lot involved. Dog runs shall be placed at the rear of the building. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets maintained with the dwelling may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the main dwelling except for the single dog house set out herein.

8. No incinerator or trash burner shall be permitted on any lot unless the same is incorporated into the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, container or fuel tank shall be permitted to remain outside of any dwelling, except for pickup purposes. During the period of construction, however, there may be

occasions when it will be necessary to have temporary propane tanks until gas has been installed in the subdivision, and the temporary installation of these propane tanks is specifically allowed. 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 unless completely screened from view from every street and from all other lots in the subdivision. All exterior air-conditioning condenser units shall be placed in the rear or side yard. Any access buildings must be placed at the rear of the back of the residence, must be on a concrete slab, and the size, design and material to be used for said detached dwelling must be approved by Declarant.

9. No boat, camping trailer, campers (if removed from the carrying vehicle), auto-drawn trailers of any kind, mobile or motor home, snowmobile, truck, bus, grading or excavating equipment or other heavy machinery or equipment, or aircraft shall be stored outside the garage or in any manner left exposed on any lot at any time. No automobile or other vehicle undergoing repair shall be left exposed on any lot at any time. This restriction shall not apply to trucks or commercial vehicles within the properties which are necessary for the construction of residential dwellings or maintenance of the same. Boats, campers, or mobile or motor homes may be parked on the property for a period not to exceed seven days without securing approval as set out above.

10. All lots shall be kept free from rubbish, debris, merchandise and building materials. In addition, vacant lots shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing.

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

12. No noxious or offensive activity shall be carried on upon any lot, nor shall be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to odors, dust, glare, sound lighting, smoke, vibration and radiation. Any exterior lighting installed on any lot shall either be indirect or of such controlled focus and intensity as not to disturb the residence of the adjacent property.

13. No sign, billboard or other structure advertising or the display of advertising material of any kind shall be erected, placed or permitted to remain on any lot except that real estate "For Sale" or "For Rent" signs shall be permitted temporarily in the yard of dwellings which are being offered for sale or rent. Declarant, his or its assignees, may place a sign on a lot advertising the subdivision.

14. Fences are permitted as long as they are no further forward than the front line of the home and do not exceed six (6) feet in height. Solid shrubbery is considered in the same category as a fence. Type of construction for fences

will be subject to approval of Declarant. All fences must be in compliance with the building codes of the City of Bellevue.

15. A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling.

16. No Home Occupations shall be permitted other than those enumerated under the Bellevue City Code.

17. Gardens shall be permitted only if maintained in the rear yard of any lot, behind the dwelling on said lot.

18. Within six (6) months of the completion of the building on each lot, the owner shall cause to be planted in the front yard of each lot one tree of at least one and one-half (1 1/2") inches in diameter. In addition, the owner shall sod all area in front of the dwelling within six (6) months of the date the building is completed.

19. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, Metropolitan Utilities District and the 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, gas and power cable TV and for all telephone and telegraph message service under easements as specified in the final plat or as modified by due process. An easement is also granted to the United States Postal Service to place "Cluster Mailboxes" between the street and the sidewalk on such lots as are determined by the United

States Postal Service to be necessary. No permanent buildings shall be placed in perpetual easements, but the same may be used for gardens, shrubs, sidewalks, driveways, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

20. A perpetual license and easement is hereby reserved in favor of and granted to Sanitary and Improvement District No. 138 of Sarpy County, Nebraska, its successors and assigns, to construct, operate, maintain, repair and use Sanitary and Storm Sewers as defined on the Plat prepared by Design Engineering & Associates, Inc., approved by the City of Bellevue, and filed with the Register of Deeds of Sarpy County, Nebraska.

21. All telephone and electric power service from property line to dwelling shall be underground.

22. Notwithstanding any provisions herein contained to the contrary, it is expressly permissible for a builder of said building to maintain during the period of construction and sale of said buildings upon such portion of the premises as such builder may be reasonably required, convenient or incidental to the construction and sale of said buildings, including, but not limited to, a business office, a storage area, construction yards, signs, model units and sales office.

23. The Declarant or any owner of a lot named herein shall have the right to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants and reservations, now or hereinafter imposed by the provisions of

this Declaration either to prevent or restrain any violation of the same, or to recover damages or other dues for such violation. Failure by the Declarant 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.

24. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended by the Declarant owning the particular lot involved or any person, firm, corporation, partnership or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots covered by this Declaration.

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 20 day of May, 1988.

DECLARANTS:

  
\_\_\_\_\_  
LESLIE J. HASSEL

  
\_\_\_\_\_  
LORRAINE L. HASSEL

AVERY, INC.

By: Donald M Vervaecke  
President

W. C. Jensen  
W. C. JENSEN, Trustee

STATE OF NEBRASKA )  
                                  ) ss:  
COUNTY OF DOUGLAS)

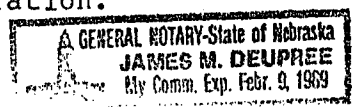
Before me, a Notary Public, on the 20<sup>th</sup> day of May, 1988 personally appeared Leslie J. Hassel and Lorraine L. Hassel, known to me to be the identical persons who executed the above Declarations, and acknowledged the execution thereof to be their voluntary act and deed.



Michael McComb  
Notary Public

STATE OF NEBRASKA )  
                                  ) ss:  
COUNTY OF DOUGLAS)

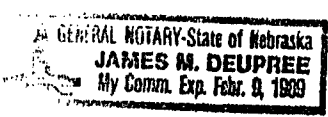
Before me, a Notary Public, on the 20 day of May, 1988 personally appeared Donald M. Vervaecke, known to me to be the President of Avery, Inc., who executed the above Declarations, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.



James M. Deupree  
Notary Public

STATE OF NEBRASKA )  
                                  ) ss:  
COUNTY OF DOUGLAS)

Before me, a Notary Public, on the 20 day of May, 1988 personally appeared W. C. Jensen, Trustee, known to me to be the identical person who executed the above Declarations, and acknowledged the execution thereof to be his voluntary act and deed.



James M. Deupree  
Notary Public