

Return to:
Robert C. Doyle
Walsh, Fuller, Kamp & Doyle
11440 W. Center Rd.
Omaha NE 68144

93-31717

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Western Hills, Inc., 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 County of Sarpy, State of Nebraska, which is more particularly described as:

Lots 1-29, inclusive, and Outlot "A", Western Hills Villas, as surveyed, platted and recorded in Sarpy County, Nebraska.

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 upon all properties 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.

ARTICLE I

Section 1. "Association" shall mean and refer to the Western Hills Villas 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 any lot as described in Section 4 of this Article I, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

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Section 4. "Lot" shall mean and refer to any lot of land shown upon any recorded subdivision map of the Properties except Outlot "A".

Section 5. "Common Area" shall mean and refer to Outlot "A" owned by the Association.

Section 6. "Declarant" shall mean and refer to Western Hills, Inc., its successors and assigns.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

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

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. 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:

(1) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(2) On January 1, 2000.

Section 3. Powers and Duties. The Association shall have such powers and duties as are specifically set forth herein and in its Articles of Incorporation and By-Laws as amended from time to time.

ARTICLE III
COVENANTS 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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association annual assessments or charges to be established and collected as hereinafter provided. The annual 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 maintain and improve the common area, including but not limited to lawn, shrubbery and tree care and snow removal, to install capital improvements in the common area, to provide insurance as hereinafter set forth and to promote the health, safety and welfare of the residents in the Properties.

Section 3. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of levying annual assessments 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 be cast, sixty (60%) percent of all the votes 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.

Section 4. Rate of Assessment. Annual assessments must be fixed, based on the status of each lot. All lots which have residential units completed as evidenced by a certificate of occupancy issued by the local governmental authority, will be assessed the full amount per unit as set by this Declaration. Lots without a residential unit or with a unit under construction, but without a certificate of occupancy, will be assessed on a lot basis at ten (10%) percent of the full amount. Model homes and unsold "spec" homes shall be assessed as lots with completed residential units. The assessments may be collected on a monthly basis.

Section 5. 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 issuance of the first certificate of occupancy. The first annual assessment shall be adjusted 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. 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 certificate signed by an officer of the Association setting forth whether the assessments on a specified lot has 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 6. Effect of Nonpayment 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 fourteen (14%) percent per annum or the maximum legal rate allowable in the State of Nebraska whichever is less. 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 for any reason.

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Section 7. Subordination of the Lien to Mortgages. T h e 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 8. Exterior Maintenance. The Owner of each lot shall be responsible for the exterior maintenance of the residential structure and other improvements (including lawns, shrubs, trees, etc.) constructed, placed or planted on such lot. In the event an Owner of any lot in the Properties shall fail to maintain his/her premises and the other improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, reconstruct, maintain and restore the lot and the exterior of the buildings and any other improvements thereon. The cost thereof shall be added to and become part of the assessment to which such lot is subject.

Section 9. Insurance. The Association shall provide general public liability insurance insuring the Association, members, owners and the Architectural Committee against claims for personal injury, death or property damage occurring in, upon, or about the common area in such reasonable amount as the Association may decide. Each Owner shall provide insurance with respect to the improvements of his/her/their lot in an amount equal to the full replacement value of said improvements or in an amount as may be required by any mortgageholder, whichever is higher, against loss by fire, lightening and other perils covered by standard extended coverage endorsement, and insurance against such other hazards and in amounts as are normally carried by owners of like units. Liability insurance associated with the owned units shall likewise

be the responsibility of each individual Owner.

ARTICLE IV
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the units 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 the party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes that 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 the 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 successor 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 an arbitrator, and such

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arbitrators shall choose one additional arbitrator, and the decision shall be made by a majority of the arbitrators.

ARTICLE V
ARCHITECTURAL CONTROL

No landscaping, painting, 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, colors 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 VI
RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and enjoyment to his individual lot, subject to the following restrictions:

(a) No noxious or offensive trade or activity shall be carried upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any building lot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such manner as to conceal them from view. Trailers and recreational vehicles shall not be continuously parked on driveways or side yards. No clothes lines shall be placed on

any lot. No basketball backboard shall be placed in or adjacent to any driveway.

(b) No fences shall be erected in front of the rear building line of the main residential structure and all weeds and grass shall be cut down to a maximum height of six inches above ground level. All lots shall be kept free of all types of trash and debris.

(c) No trailer, basement, tent, shack, garage, barn or other building 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 until all exterior construction is fully completed according to approved plans.

(d) No house trailer (single wide or double wide) or mobile home shall be allowed to be used as a residence for permanent or temporary use.

(e) No cattle, horses, sheep or poultry, hogs or any other livestock shall be maintained on any lot in Western Hills Villas. This paragraph shall not be construed, however, as a prohibition to the keeping of ordinary domestic pets which shall however be limited to two (2) per lot. No dog runs or dog kennels shall be permitted.

(f) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjoining lots.

(g) Except for approved chemical temporary toilets to be used only during construction, no outdoor toilets may be constructed or maintained on any lots.

(h) As required by the City of Papillion, concrete sidewalks four (4') feet wide by four (4") inches thick shall be constructed for the Association. Said sidewalk shall be constructed, completed and paid for by the then Owner at the time of completion of the main residential structure and shall be located four (4') feet back of the curb line.

(i) As an aid to freer movement of vehicles at street intersections and in order to provide adequate protection for the safety of children, pedestrians, operators of vehicles and/or property, all fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures shall be so constructed, built and maintained so as to provide clear, unobstructed vision at corners of street intersections. Farm/vegetable gardens shall be low growth, no higher than 36".

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(j) Said lots shall be used only for residential purposes except such lots, or portions thereof, as may hereinafter be conveyed or dedicated for public, church, educational or charitable uses.

(k) No structure shall be erected, altered, placed or permitted to remain on any residential building lot other than dwellings not to exceed two and one-half (2 1/2) stories in height, a private garage, attached breezeways and other out buildings incidental to such residential uses. No external television, earth station, satellite dish or other antenna shall be permitted.

(l) Each dwelling shall contain at least one attached two car garage and driveway constructed of concrete, brick or asphaltic material which is a minimum of ten (10') feet wide with sufficient area to provide off-street parking for at least two automobiles.

(m) Prefabricated structures and structures moved from other locations shall not be permitted.

(n) No signs whatsoever, including but without limitation to commercial signs, political signs and similar signs visible from streets and neighboring property or roads shall be erected or maintained upon any lot except: such signs as shall be required by legal proceedings; residential identification signs of a combined total face area of three square feet (3') or less for each residence, during the time of construction of any residence or other improvements, job identification signs having a maximum face area of nine square feet (9') per sign and of a type usually employed by contractors, subcontractors and tradesmen; and not more than one "For Sale" or "For Rent" sign having a maximum face area of nine square feet (9'); and not more than two (2) signs of not more than thirty-two square feet (32') installed by, or with the permission of the Declarant advertising the Western Hills Villas.

Section 2. Utility Meters/Service Lines. Each lot shall have separate water, electrical, gas and/or other applicable utility meters for separate reading and separate utility service lines.

Section 3. Easement. There is hereby reserved in favor of the Association and its members and their employees, agents and invitees a non-exclusive easement to use free of charge all of the common area and its improvements from time to time. There is also reserved to the Association, its successors and assigns and its

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agents and employees a non-exclusive easement of ingress and egress over, under and across each and every lot for the purpose of maintaining, repairing, reconstructing or restoring any common area improvement or utility.

ARTICLE VII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce, by a 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 Association or by an 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 no way affect any other provision 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 automatically extend 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 (90%) percent of the entire membership, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the entire membership. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13 day of December, 1993.

DECLARANT: WESTERN HILLS, INC.

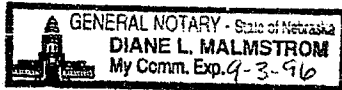
By: Byrl Johnston, President
(Title)

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STATE OF NEBRASKA)
) SS.
COUNTY OF SARPY)

On this 13th day of December, 1993, the foregoing instrument was acknowledged before me, a Notary Public, by Beryl L. Malmstrom, President on behalf of Western Hills, Inc., Declarant.

Diane L. Malmstrom
Notary Public



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Carol L. Malmstrom
REGISTRAR - NEFT1

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Verify	<u>7</u>
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Fee \$	<u>70.00</u>

94-20932

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTERN HILLS VILLAS, INC. IN SARPY COUNTY, NEBRASKA**

This Amendment to Declaration is made this 22 day of SEPTEMBER, 1994.

WITNESSETH:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions was filed December 14, 1993 in the office of the Register of Deeds of Sarpy County, Nebraska as Instrument No. 93-031717 against the following-described properties, to-wit:

Lots 1-29, inclusive, and Outlot "A", Western Hills Villas, as surveyed, platted and recorded in Sarpy County, Nebraska; and

WHEREAS, the undersigned is the successor declarant pursuant to Article I, Section VI thereof, and is the owner of Lots 1-29, inclusive, Western Hills Villas; and

WHEREAS, Article VII, Section 3 specifically provides that said Declaration may be amended during the first 20-year period by an instrument signed by not less than ninety (90%) percent of the entire membership; and

WHEREAS, the undersigned, successor declarant constitutes one hundred (100%) percent of the membership.

NOW, THEREFORE, the undersigned, as successor declarant, does hereby amend the above-stated Declaration of Covenants, Conditions and Restrictions in the following manner, to-wit:

1. The following shall be added to Article VI.

Section 4. Common Area Encroachments. The owner of each lot shall have the right to extend a cantilever portion of the building two (2) feet beyond the lot line into the "common area". Cantilever is defined as a main floor extension beyond the foundation wall. All foundation walls shall remain within the established lot line. The owner of each lot has the right to plant shrubs and trees and install walks five (5) feet beyond each side lot line into the "common area".

2. Article III, Section 2 is hereby amended by adding a comma following "tree care", and following the comma inserting "perimeter fence maintenance".

3. Article VI, Section I, Subparagraph (a) is hereby amended by deleting therefrom the fourth sentence thereof, and inserting therein the following:



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Trailers and/or recreational vehicles can be parked on driveways for a maximum of a two (2) week period. No vehicles or trailers shall be parked on sides or rear of a lot without improved building enclosure approved by the "architectural committee".

IN WITNESS WHEREOF, the undersigned, being the successor declarant herein, has hereunto set its hand and seal this 22 day of SEPTEMBER, 1994.

By: Samuel T. Caniglia Pres.
VILLAS, INC.
SAMUEL T. CANIGLIA, PRESIDENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on SEPTEMBER 22, 1994 by SAMUEL T. CANIGLIA, the PRESIDENT of SAID Villas, Inc.

SHIRLEY A. GAGLIOLA
Notary Public - Nebraska
DOUGLAS COUNTY
My Commission Expires
MAY 10, 1997

Shirley A. Gagliola
Notary Public

Proof	<u>Y</u>
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Fee	<u>\$ 25.00</u>

NOTARY PUBLIC
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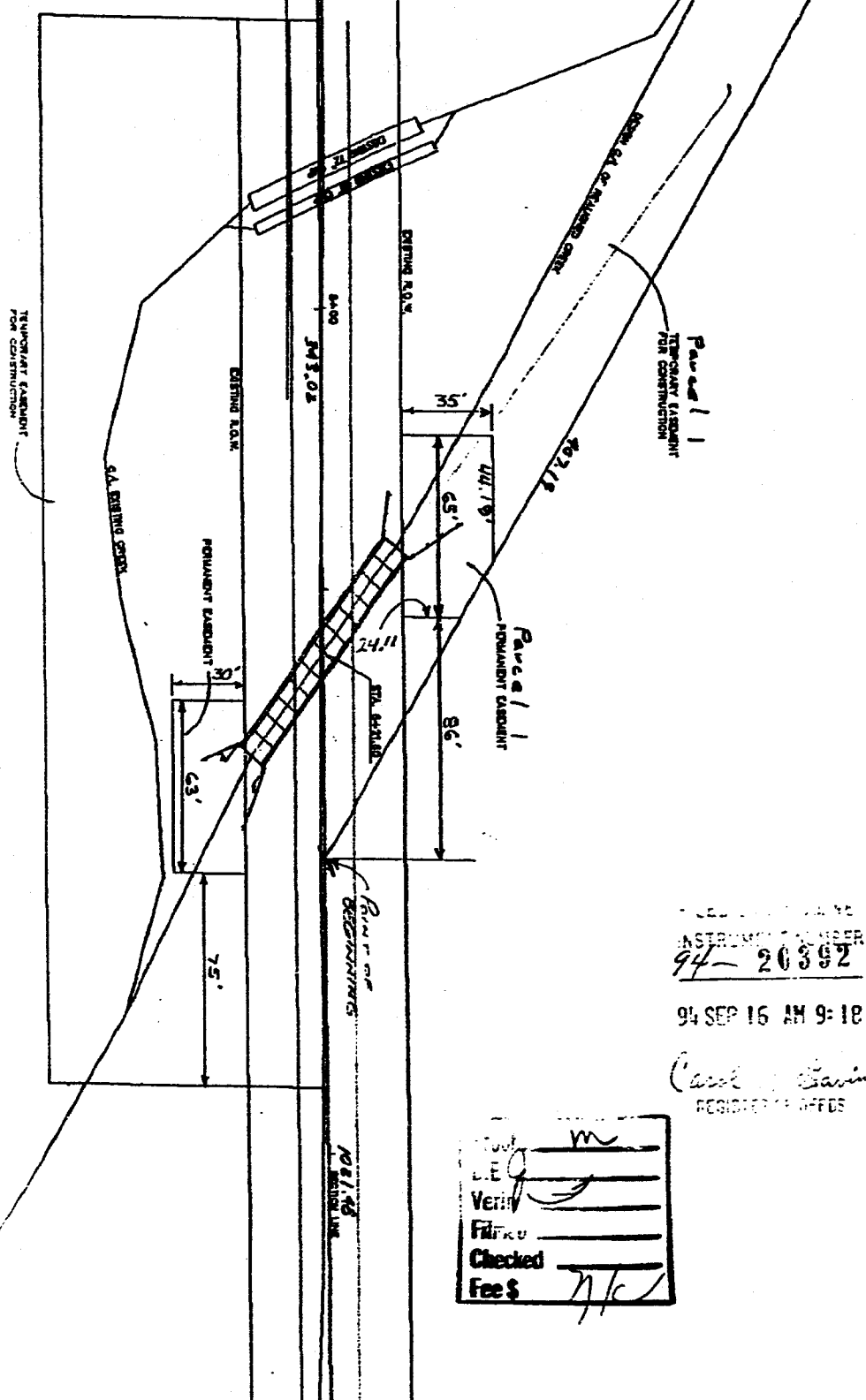
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Samuel T. Caniglia
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Carol Davis
REGISTERED SURVEYOR

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