

BOOK 738 PAGE 391

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

LOTS 261 THROUGH 305 INCLUSIVE

THIS DECLARATION, made on the date hereinafter set forth by FOUNTAIN HILLS JOINT VENTURE, a Nebraska joint venture composed of Equity Services, Inc., an Iowa corporation, and Creative Land Consultants, Inc., a Nebraska corporation, hereinafter referred to as the "Declarant",

W I T N E S S E T H :

WHEREAS, The Declarant is the Owner of the following described real property:

Lots 261 through 305, inclusive, of Fountain Hills, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and

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 easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These easements, 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 thereof, and they shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

A. "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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

B. "Properties" shall mean and refer that certain real property hereinbefore described.

C. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties.

D. "Declarant" shall mean and refer to FOUNTAIN HILLS JOINT VENTURE, a Nebraska Joint Venture, its successors and assigns.

E. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

ARTICLE II.
ARCHITECTURAL CONTROL

A. No dwelling, fence, other than fences constructed by Declarant, wall, driveway, patio, patio enclosure, deck, rock garden, swimming pool, television or radio antenna, satellite dishes, solar collecting panels or equipment, air conditioning equipment, wind-generating power equipment, or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without express written prior approval of the Declarant through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Declarant, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Similar designs, forms, plans, styles or motifs will be considered repetitive if they are not separated by at least three adjacent lots regardless of orientation. Superficial, cosmetic or minor architecture detail differences in like designs will not constitute a basis for approval. The Architectural Control Committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required of the applicant at the discretion of the Architectural Control Committee. Submittals for the approval shall be made in duplicate and the comments and actions of the Architectural Control Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or drawings:

1. Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks.
2. Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.
3. An architectural review fee of fifty dollars (\$50.00) per improvement plan per lot will be charged. Said fee is subject to adjustment or waiver if so determined by the Architectural Control Committee. Additional review fees will be required for resubmissions for the same lot or alterations or additions to previously reviewed submittals. If construction has commenced on any lot without Architectural Control Committee approval, the review fee will be one hundred dollars (\$100.00). The applicants name, address and telephone number shall appear on each set of plans submitted to the Architectural Control Committee. If applicant wishes that his plans be returned via the mail, he shall include with his submittal an additional two dollars (\$2.00) for postage and handling.

D. The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. Failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents and the fee required above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate to release such Lot from the provisions of these Covenants, Conditions and Restrictions.

ARTICLE III.

RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. The Lot shall be used only for single family residential dwelling purposes, and no Lot shall contain more than one (1) detached, single family dwelling.

B. No building shall be created, altered, placed or permitted to remain on any Lot other than the one (1) detached, single family dwelling referred to above, and said dwelling shall conform to the following requirements:

| | <u>TYPE OF DWELLING</u> | <u>MINIMUM AREA</u> | <u>LOCATION OF AREA</u> |
|----|---------------------------------------|---------------------|--|
| 1. | One-story house with attached garage | 1,300 sq. ft. | On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor) |
| 2. | One-story house with basement garage | 1,400 sq. ft. | On the main floor |
| 3. | One and one-half and two story houses | 1,800 sq. ft. | Total area above the basement level; minimum 1,000 sq. ft. on the main floor |
| 4. | Split entry (bi-level house) | 1,400 sq. ft. | On the main floor |
| 5. | Tri-level (split-level) house | 1,700 sq. ft. | Total area above grade |

C. For the purposes of these restrictions, two-story height shall, when the basement is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred percent (100%) above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have attached, enclosed, side-by-side, two (2) car garages which must contain a minimum area of four hundred (400) square feet.

D. All buildings shall be located at least thirty-five (35) feet from the front Lot line, at least seven (7) feet from the side Lot lines and at least twenty-five (25) feet from the rear Lot line. On corner Lots, either street side may be designated by the Owner as the front, and either nonstreet side as the rear, for purposes of determining compliance herewith, but buildings must be at least seventeen and one-half (17.5) feet from the other street side Lot line. For purposes of this restriction, eaves, open patios and steps shall not be considered part of the building.

E. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone even if a portion of those exposed foundations may be perpendicular, or nearly so, to the affronting street. Exposed portions of the foundation on the side of each dwelling facing the street, when said dwelling is located on a corner lot, are to be covered with clay-fired brick or stone. Exposed portions of the foundation on the sides or rear not facing a street of a dwelling located on a corner lot, and the exposed portion of the foundation on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted.

F. In the event that a fireplace is constructed as a part of a dwelling on any lot, except a corner Lot, and said fireplace and/or the enclosure for the fireplace flue, is constructed in such a manner so as to protrude beyond the outer perimeter of the front or side of the dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. If the fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer

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perimeter of the rear of the dwelling, the enclosure of the fireplace and flue may be constructed of, or finished with, the same material as is the dwelling at the point from which the fireplace and/or the flue protrudes.

Notwithstanding the foregoing, when any fireplace is constructed as a part of a dwelling on any corner Lot, and said fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with clay-fired brick or stone.

The parts of all pre-fabricated metal furnace flues that protrude from the roof of a dwelling must be painted and no furnace flue may protrude more than five (5) feet from the roof of the dwelling, as measured from the top cap of the flue to the point from which the flue emerges from the roof. In the event that a dwelling is constructed without a fireplace, the furnace flue must then be faced with clay-fired brick or stone above roof level. All furnace flues must be located on the rear side of the roof ridge.

G. No fences may be built forward of the rear-most wall of the house and, under no circumstances, closer to any adjoining street than the property line. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Architectural Control Committee referred to above. Wire or chain-link fences shall not be permitted. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

H. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on

said lot or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said Lots. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

I. No primary flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes or wood shingles.

J. Public sidewalks are the responsibility of, and shall be constructed by, the then Owner of a Lot prior to the time of completion of a dwelling and before occupancy thereof. The extent of sidewalks, location, construction details, materials and grades shall be in accordance with the regulations of the City of Omaha and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.

K. The Declarant has created a water drainage plan by grading the Properties 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 buildings or Lots.

L. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. 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

within the dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their owner and are not permitted to run loose outside the Lot of the Owner.

M. No incinerator or trashburner shall be permitted on any Lot. No garbage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage is required. No clothesline shall be permitted outside of any dwelling at any time. Any exterior air conditioning condensing units or heat pump units shall be placed in the rear yard of the dwelling and in no case closer than ten (10) feet to the neighboring property line. Detached accessory buildings are not permitted.

N. No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored or maintained outside of the garage. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles must be done in the garage. The

dedicated street right-of-way located between the pavement and the Lot line of any residential Lot shall not be used for the parking of any vehicle, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

O. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have not yet been installed shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant lots, where capital improvements have not yet been installed shall be allowed to reach more than a maximum height of twelve (12) inches.

P. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Q. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Further, home occupations, as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska, shall not be permitted to take place within any of the residential dwellings.

R. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

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S. Vegetable gardens and rock gardens shall be permitted only if maintained in the designated rear yard of any Lot, behind the dwelling on said Lot. Further, rock gardens must be approved by the Architectural Control Committee.

T. No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Architectural Control Committee.

U. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to any sign erected by the Declarant, or his agents, in the development of Fountain Hills.

V. All driveways shall be constructed of concrete, brick or asphaltic concrete.

W. None of said Lots shall be subdivided, split or in any manner combined with any other Lot, or portion of any other Lot, unless the resulting parcel shall contain at least as much area as the smallest of the Lots used in assembling the resulting parcel.

X. The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. All yards shall be sodded and the trees planted within one (1) year from the date the foundation for the residence on the Lot was completed.

EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, the City or County franchised cable television firm, and to Omaha Public Power District, their successors, and assign, 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 services and cable television under a 8-foot strip of land adjoining the rear boundary lines and a five foot strip of land adjoining the side boundary lines of said lots, and license being granted for the use and benefit of all present and future owners of said lots; provided, however, that said lot line easement is granted upon the specific condition that if any said utility companies fail to construct wires or conduits along any of the said lot lines within 36 months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within 60 days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementway, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

B. All telephone, cable television and electric power service lines from property line to dwelling shall be underground.

ARTICLE V.
GENERAL PROVISIONS

A. The Declarant, or its assigns, or any owner of a lot named herein shall have the right to enforce by 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 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.

B. 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, 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 ninety percent (90%) of the lots covered by this Declaration.

C. Invalidation of any 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 8th day of May, 1935.

DECLARANT:

FOUNTAIN HILLS JOINT VENTURE,
a Nebraska Joint Venture

BY: Creative Land Consultants, inc.
a Nebraska corporation

BY:


Glenn L. Buck, President

BY: Equity Services, Inc.,
an Iowa corporation



BY: Ronald W. Nutt
Ronald W. Nutt, President

STATE OF IOWA)
) ss.
COUNTY OF WOODBURY)

On this 3rd day of May, 1985, before me the undersigned, a Notary Public in and for said County and State, personally came Ronald W. Nutt, known to me to be the President of Equity Services, Inc., an Iowa corporation, which corporation is a member of Fountain Hills Joint Venture, and acknowledged that he executed the same as his voluntary act and deed as such officer and the voluntary act and deed of such corporation as such member of said joint venture, and the voluntary act and deed of said Fountain Hills Joint Venture, and that the corporate seal of said corporation was thereto affixed by its authority.

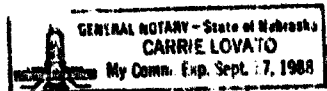
Witness my hand and official seal the day and year last above written.

Bernice Primm
Notary Public Bernice Primm

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 3rd day of May, 1985, before me the undersigned, a Notary Public in and for said County and State, personally came Glenn L. Buck, known to me to be the President of Creative Land Consultants, Inc., a Nebraska Corporation, which corporation is a member of Fountain Hills joint Venture, and acknowledged that he executed the act and deed of such corporation as such member of said joint venture, and the voluntary act and deed of said Fountain Hills Joint Venture, and that the corporate seal of said corporation was thereto affixed by its authority.

Witness my hand and official seal the day and year last above written.



Glenn L. Buck
Notary Public

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ASSIGNMENT

THIS ASSIGNMENT made this 7th day of August, 1987 by Equity Services, Inc., an Iowa corporation, the successor to all of the assets, by assignment and deeds, and all of the liabilities, by assumption, of the Fountain Hills Joint Venture, a Nebraska Joint Venture formerly composed of Equity Services, Inc., an Iowa corporation, and Creative Land Consultants, Inc., a Nebraska corporation, said Equity Services, Inc. hereinafter referred to as the "Assignor" and the Fountain Hills-Pacific Meadows Homeowners Association, a Nebraska non-profit corporation, hereinafter referred to as the "Assignee",

WHEREAS, a declaration of covenants, conditions and restrictions for Fountain Hills, I-A, Lots 1 through 134, inclusive, was filed in Book 600, Page 330, of the Register of Deeds' office of Douglas County, Nebraska (herein referred to as the "Phase I Lots"),

WHEREAS, a declaration of covenants, conditions and restrictions for Fountain Hills, Lots 187 through 260 was filed in Book 621, Page 276 of the Register of Deeds' office of Douglas County, Nebraska (herein referred to as the "Phase II Lots"),

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WHEREAS, a declaration of covenants, conditions and restrictions for Fountain Hills, Lots 261 through 305, inclusive, was filed in Book 738, Page 391 of the Register of Deeds' office of Douglas County, Nebraska (herein referred to as the "Phase III Lots"),

WHEREAS, the Assignor desires to assign its right to enforce certain restrictive covenants in the Phase I Lots, Phase II Lots, and Phase III Lots to the Assignee,

NOW, THEREFORE, in consideration of One and no/100 Dollars (\$1.00) and other valuable consideration, the Assignor hereby assigns to the Assignee its entire right, title, and interest to enforce the covenants, conditions and restrictions as outlined in Paragraph C-1 of the Phase I Lots, Paragraph C-I of the Phase II Lots, and Article V.A. of the Phase III Lots. Provided, however, the Assignor is not assigning its right of architectural approval or disapproval as outlined in said covenants, conditions and restrictions for the Phase I Lots, Phase II Lots, and Phase III Lots.

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GEORGE J. BUELEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

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