

CARRIAGE PARK NEIGHBORHOOD ASSOCIATION

PROTECTIVE COVENANTS

Duane Larson Construction Co.,
by President, by Secretary, Seal,

Inst. No. 72-22674
Date Nov 10 1972
Filed Nov 2 1972

Acknowledged Nov 10 1972 before Duane L Vanderbeek N P Lancaster Co
Nebr., Comm exprs Mch 1 1976, Seal.

KNOW ALL MEN BY THESE PRESENTS: That Duane Larson Construction Co., being the owner of the following described real estate, to-wit:

All of Carriage Park Addition in Lincoln, Lancaster County, Nebraska,
in order to establish a uniform plan for development and for an in consideration of
inducing the purchase of said property, do hereby create, adopt and establish the
following restrictions upon said real estate and property, to-wit:

I. No lot shall be used except for residential purposes. No building shall
be erected, altered, placed or permitted to remain on any lot other than single
family dwellings and townhouses according to the City of Lincoln zoning. No
dwelling unit may be more than three stories in height.

II. In any event, no building shall be located on any single family lot
nearer than 10 feet to the front lot line, no side yard required. No side, front or rear
yard required for townhouse lots.

For the purposes of this covenants, eaves, steps and open porches shall not be
considered as a part of a building, provided however, that this shall not be
construed to permit any portion of a building on a lot to encroach upon another lot.

IV. 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.

V. Dwellings constructed in another addition or location shall not be
moved to any lot within this addition.

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

VII. No animals, livestock, or poultry of any kind shall be raised, bred or
kept on any lot, except that dogs, cats, or other household pets may be kept, provided
they are not kept, bred or maintained for any commercial purpose.

VIII. These covenants are to run with the land and shall be binding on
all parties and all persons claiming under them for a period of twenty years from
the date these covenants are recorded, after which time said covenants shall be
automatically extended for successive periods of 10 years, unless an instrument
signed by a majority of the then owners of the lots has been recorded, agreeing to
change said covenants in whole or in part.

IX. Enforcement shall be by proceedings at law or in equity against any
person, or persons, violating or attempting to violate any covenant, either to restrain
violations or to recover damages.

X. Invalidation of any one of these covenants by judgment or court

order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

AFFIDAVIT OF POSSESSION

Duane Larson Construction Co.

Inst. No. 73-1534

by F Duane Larson
-to-

Filed Jan 26 1973

The Public

Subscribed and sworn to Jan 24 1973 before Duane L Vanderbeek N P
Lancast County, Nebraska, Comm exprs Mch 1 1976, Seal.

F. Duane Larson, President of Duane Larson Construction Co. (A Nebraska
Corp.) deposes and says that they are presently the owners of the real estate known
and described as:

All of Carriage Park, Lincoln, Lancaster County, Nebraska

Affiants further depose and say that they are in sole, undisputed and
exclusive possession thereof.

AMENDED PROTECTIVE COVENANTS

Duane Larson Construction Co.
by President by Secretary, Seal

Inst No. 73-8986

Date May 3 1973

Filed May
11 1973

Acknowledged May 3 1973 before Duane L Vanderbeek N P Lancaster Co Nebr. Comm
exprs Mch 1 1976, Seal.

KNOW ALL MEN BY THESE PRESENTS: WHEREAS, on November 10 1972,
Duane Larson Construction Co., A Corporation, being the owner of the following described real
estate, to wit:

All of Carriage Park Addition in Lincoln, Lancaster County, Nebraska, executed certain
Protective Covenants creating, adopting and establishing restrictions upon said real estate,
which Protective Covenants were recorded in the ()face of the Register of Deeds of
Lancaster County, Nebraska, as Instrument No 72-22674; and

WHEREAS, Duane Larson Construction Co., a Corporation, continues to be, on the
date hereof, the owner of said real estate and desires to amend said Protective Covenants.

NOW THEREFORE, Duane Larson Construction Co., a Corporation, does hereby
amend paragraph II of said Protective Covenants dated November 10 1972 to read as follows:

II. In any event, no building shall be located on any single family lot nearer than
seventeen feet to the front lot line. No side yard is required. No side front or rear yard is
required for townhouse lots.

For the purposes of these covenants, eave steps and open porches shall not be
considered as a part of a building, provided however, that this shall not be construed to permit
any portion of a building on a lot to encroach upon another lot.

F Duane Larson, Duane Larson
Construction Co, Applicant
-to-
City Council, City of Lincoln,
Lincoln, Nebraska

Inst. No. 73-20803
Filed Oct 22 1973

Recites as follows: "I, Duane Larson Construction Co., applicant under Special Permit No. 571, granted by Resolution No. A-60448, adopted by the City Council on Oct 15 1973, do hereby certify that I have thoroughly read said resolution, understand the contents thereof and do hereby accept without qualification all of the terms, conditions, and requirements therein.

-60-

DECLARATION OF AGREEMENT, COVENANTS

CONDITIONS AND RESTRICTIONS

Duane Larson Construction Company,
74-11190
A Nebraska Corporation, by President,
1974
Seal, Secretary, hereinafter called,
10 1974 "Developer"; Carriage Park Neighborhood Association Inc.,

Inst No.
Date July 8
Filed July

A Nebraska Non-Profit Corporation, by President, Seal, Secretary, hereinafter called, "Association"

-and-

Roy N Byrd and Katy J Byrd, Husband and wife, Philip G Brewer and Laura A Weber Brewer, also known as Laura A Weber, Husband and Wife, Carolyn J Richards and Dwight L Richards, wife and husband and Robert S Hall and Marie Hall, Husband and Wife, hereinafter called, "Current Owners"

Acknowledged July 8 1974 by Duane Larson Construction Company before Duane L Vanderbeek N P Lancaster County, Nebraska, Comm exprs Mch 1 1976, Seal.

Acknowledged July 8 1974 by Carriage Park Neighborhood Association, Inc., before Duane Vanderbeek N P Lancaster County, Nebraska, Comm exprs Mch 1 1976, Seal.

Acknowledged July 8 1974 by Roy N Byrd and Katy J Byrd, Husband and Wife, before Duane L Vanderbeek N P Lancaster County, Nebraska, Comm exprs Mch 1 1976, Seal.

Acknowledged July 8 1974 by Philip G Brewer and Laura A Weber before Duane L Vanderbeek N P Lancaster County Nebraska, Comm exprs Mch 1 1976, Seal.

Acknowledged July 8 1974 by Carolyn J Richards and Dwight L Richards, wife and husband, before Duane L Vanderbeek N P Lancaster County, Nebraska, Comm exprs Mch 1 1976, Seal.

Acknowledged July 8 1974 by Robert S Hall and Marie Hall, husband and wife, before Duane L Vanderbeek N P Lancaster County, Nebraska, Comm exprs Mch 1 1976, Seal.

WHEREAS, "Developer" and "Current Owners" are the owners of real estate in Lincoln, Lancaster County, Nebraska, more particularly described as follows:

All of Blocks 1, 2 and 3 and Outlots A through J inclusive of Carriage Park Addition to the City of Lincoln, Lancaster County, Nebraska, subject to all easements and restrictions visible and of record, and

WHEREAS, "Developer" has now or intends to record a plat (and/or community unit plan with plat) subdividing all or part of the above described real estate and,

WHEREAS, "Developer" has now or intends to improve, build upon, develop, sell, transfer, rent, lease and convey lots, improved and unimproved, already subdivided and above described or to be hereafter subdivided into lots and later more particularly described, and

WHEREAS, the "Declarant" and Current Owners" desire to establish covenants conditions and restrictions which provide for management of common properties, basic responsibilities of present and future owners, specific maintenance for "townhouse" units, maintenance and repair of common systems, assessments and other related matters.

NOW THEREFORE, in consideration of the conveyance of the "common property" by "Developer" to "Association" and of the mutual promises of the "Declarants" and "Current Owners" and the other mutual benefits herein recited, it is agreed that the following restrictions, covenants, terms and conditions shall be applicable to all of the lots on "the properties" as well as all structures and improvements thereon now and in the future and that such restrictions, covenants,

terms and conditions shall run with the land and shall be fully binding upon the "Developer" the "Association, the "Current Owners" and all present and future owners of all or any part of the lots on "the properties" as well as all structures and improvements thereon and shall be fully binding upon executors, administrators, heirs, grantees, successors, assigns or personal representatives of said "Developer" "Association" "Current Owners" and all other present or future owners. It is further understood and agreed that the said restrictions, covenants, terms and conditions shall remain in effect until modified

amended
herein after

-60-(Continued)

provided, and, each and every present owner or future buyer of all or any part of the lots and "the properties" described shall take title to same subject to the restrictions, covenants, terms and conditions of this Declaration and by

acceptance of a deed of conveyance or a contract interest in and to all or any part of said lots said owner or buyer shall signify his, her or its acceptance and ratification of this agreement and said restrictions, covenants, terms and conditions to the same extent as though he, she or it had signed this Declaration. The restrictions, covenants, terms and conditions shall be applicable to the "common properties" and the "Association".

ARTICLE I. DEFINITIONS

SECTION 1. The following words when used anywhere in this Declaration or any supplemental Declaration shall have the following meanings:

A. "Association" shall mean and refer to Carriage Park Neighborhood Association Inc., its successors and assigns.

B. "Declarant" or "Declarants" shall mean and refer to the "Developer" and the "Association" or their successors.

C. "Current Owners" shall mean and refer to Roy N Byrd and Katy J Byrd, husband and wife, owners of Lot 4, Block 1, Carriage Park Addition, as joint tenants, Philip G Brewer and Laura A Weber Brewer, husband and wife, Owners of Lot 12, Block 1, Carriage Park Addition, as joint tenants; Carolyn J Richards, owner of Lot 2, Block 3, Carriage Park Addition and Dwight L Richard her husband; and Robert S Hall and Marie Hall, Husband and Wife, owners of Lot 3, Carriage Park Addition, as joint tenants.

D. "The Properties" shall mean and refer to the real estate hereinabove described including the "common properties" as hereinafter defined and all additions to said real estate and common properties including all improvements thereon.

E. "Common Properties" shall mean and refer to those areas of land and structures and improvements thereon shown on the recorded subdivision plat showing "The Properties" and intended to be devoted to the common use and enjoyment of the owners "The Properties" and specifically, shall mean:

Outlots A and B; Outlots C, D, E and F, Block 1; Outlot G, Block 2, and Outlots H, I and J, Block 3, all in Carriage Park Addition to the City of Lincoln, Lancaster County, Nebraska.

subject, however, to all presently existing restrictions and easements visible of

record or to all existing restrictions and easements visible and of record at the time of annexation.

F. "Lot" shall mean and refer to any plot of land shown upon any present or future recorded subdivision plat or community unit or similar plan of "The Properties" with the exception of "Common Properties" as heretofore defined. The word "lots" when used in this Declaration shall simply refer to more than one "lot" as herein defined.

G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title of any lot included within "The Properties" including but not limited to "Current Owners" and contract seller but, notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee shall have acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

"Member" shall mean and refer to all those owners who

H. are members of the Association as provided in Article III, Section 1 hereof.

I. The term "Buyer" shall mean and refer to any person, partnership, corporation, firm, association or other legal entity who becomes an "Owner" whether by deed, contract, court order or other legal means of transfer of title or a title interest.

J. The term "Separate Living Unit" shall mean any room or group of rooms located within a structure and forming a single habitable residential dwelling unit with facilities that are used or intended to be used for living, sleeping, cooking and eating.

K. The term "Structure" shall mean anything constructed or erected upon land which is permanently located and attached to the ground or attached to something permanently located and attached to the ground.

L. The term "Zero Lot Line" structure shall mean a single structure designed and constructed as a "Separate Living Unit" for a single family and which may be constructed or erected up to or close to the boundary line or lines of the "lot" or "lots" upon which it is so situated.

-60-(Continued)

M. The term "Townhouse" structure shall mean a single structure designed and constructed to contain several "Separate Living Units" and which may be constructed upon or across one or more "lots".

N. The term "Common (Party) Wall" shall mean an original wall between "Separate Living Units" and generally established upon the dividing line between two or more "lots".

O. The terms "Common Roofs", "Common Fences", "Common Drives", "Common Walks", "Common Building Drains", "Common Water Systems and Elements", "Common Sewer Systems and Elements", "Common Utility Lines and Elements" and similar terms shall mean and include those improvements, facilities and structural parts which enhance, service or protect more than one "Separate Living Unit" with a common or continuous system of structural part not readily separable from or attributable to a specific "Separate Living Unit." The terms shall not include those improvements, facilities and structural parts totally within the usual living areas of a "Separate Living Unit", unless disrepair, plugging, breakage, stoppage or damage thereto interrupts, limits, directly affects, inhibits or renders unusable, in whole or in part, another or different "Separate Living Unit".

P. The term "exterior Wall" unless the context clearly indicates

otherwise, shall mean and be limited to the outside covering on the outside wall of any structure in the nature of siding, shingles, bricks or similar material and shall also include the outside covering, if any, of roof overhang and the outdoor surfaces of window frames.

Q. The term "Exterior.Roof" unless the context clearly indicates otherwise, shall mean and be limited to the outside roof coverings in the nature of shingles, roll roofing, flashings, and drainage strips affixed to plywood or sheeting or other permanent material and shall also include down spouts, eave troughs, and connections comprising the roof drainage system.

R. The term "Maintenance" shall mean and be limited to cleaning, scraping, painting, patching, minor repair and minor replacement, except in the case of "Exterior Roof" in which case it also includes total replacement of outside roof coverings, if necessary. The Term "Maintenance" specifically does not include window washing and such similar household tasks.

S. The Term "Easement" shall mean and include a perpetual easement, right of way, right of ingress and egress, right of entry, right of exposure, right of access and all other needed right and authority, which shall be a covenant running with the land and obligatory on the Association and all "Owners" and their heirs, executors, administrators, personal representatives, successors and assigns, necessary to carry out all the purposes, agreements, restrictions, covenants, terms and conditions of this Declaration. The term "Easement" when used herein shall automatically and without further specific language convey and grant unto the Association and each "Owner", their employees, licensees, agents, contractors, heirs, executors, administrators, personal representatives, successors and assigns, all right, benefits, authorities, grants and privileges set forth in this subsection.

T. The term "Public Easement" shall mean and include a right of use by the public.

U. The term "Notice" shall mean a written communication, either hand delivered or deposited in the United States Mail, addressed to the last known address of the person or entity being given the "Notice" and to which sufficient first class postage is attached. "Notice" shall be deemed to have been given when hand delivered or mailed. "Notice" mailed or handed to one joint tenant or co-tenant, or upon one partner, officer or director of a partnership, corporation or association shall be sufficient.

V. The term "Arbitration" shall mean a procedure whereby a dispute, after "Notice" shall be submitted to a quorum of the Board of Directors of the Association for decision. "Arbitration" shall be invoked as follows:

(a) "Notice" shall be given the President or Secretary of the Association of the existence of a dispute.

(b) Within five (5) days after "Notice", the President shall give "Notice" to the Board of Directors of the Association of the calling of a special meeting to be held not more than 10 and not less than 5 days after such "Notice" of said meeting.

(Continued)

-CO- (Continued)

(c) The Board shall convene and a majority of a quorum shall render its decision.

(d) Failure of a quorum shall cause the meeting to be adjourned one full day and such members of the Board as are present at the re-convened meeting shall decide the issue. Provided, however, a party to a dispute shall not vote on any matter concerning him or her.

W. The Term "Person" shall mean individual.

X. The Term "Entity" shall mean and include partnership, corporation, firm, association or other body capable of holding title or ownership to property or

conducting business.

Y. The Term "Declaration" shall mean this document.

Z. The term "Undeveloped Lot" shall mean any lot upon which either a "townhouse" structure or a "zero lot line" structure has not been commenced but such lot may have been improved with streets, sewers, waterlines, utilities, driveways, walkways and such similar construction.

ARTICLE II. ADDITIONS

SECTION 1. Additions to "The Properties". Additional land may become subject to this Declaration in the following manner:

A. Annexation of additional property or merger or consolidation of the Association with another Association shall require the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose at which a quorum is present. Both "comm properties" and other properties may be annexed.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 1. Membership. Developer, while a record owner of an interest in a lot or lots, and every person or entity, including Developer, who is a record owner of an interest in any lot which is or at any time may be subject, by this Declaration or other covenants of record, to assessments by the Association, including contract buyers and sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the ownership of any lot which is or may be subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

SECTION 2. Voting Rights. The Association shall have three classes of voting membership. Such classes shall be Class A-1, Class A-2, and Class B.

CLASS A-1; CLASS A-2. Class A-1 and Class A-2 members shall be all those record owners as defined in Article III, Section 1, but shall not include the Developer while Class B memberships exist but after such time may include the Developer. Class A-1 and Class A-2 members shall be entitled to one vote for each lot owned. When more than one person or entity owns an interest in any lot all such persons or entities shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast per each lot. Class A-1 members shall be owners of lots upon which are located "zero lot line" structures. Class A-2 members shall be owners of lots upon which are located "townhouse" structures.

Class B.

The Class B Member shall be the Developer. The Class B Member shall be entitled to three votes for each lot in which it holds the interest required for membership by Article III, Section 1, whether or not such "Lots" are presently subject to or paying assessments of any kind, provided that the Class B membership shall cease and be converted into Class A membership on the basis of one vote for each lot owned by the Developer, whether developed or undeveloped, on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A-1 and Class A-2 memberships equal the total votes outstanding in the Class B membership, or,

(2) On January 1 1978.

Nothing in this section shall be construed to limit Developer to one membership with 3 votes, it being understood that Developer shall have 3 votes for each lot owned while Class B memberships are in existence notwithstanding the fact that Developer pays no assessments on such lots.

(Continued)

6() (Continued)

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 1. Title to Common Properties. The Developer hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the "Common Properties" to the Association free and clear of all encumbrances and liens, subject, however, to all easements and restrictions of record at time of conveyance. Such conveyance shall be made on or prior to January 1 1974.

SECTION 2. Public Easement. There shall be a "public easement" over and across the walkways and driveways established upon the "Common Properties"

SECTION 3. Members' Easements and Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

(a) The right of the Association to limit the number of guests of members;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 30 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 Properties to any public agency, authority or utility for any purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds of the votes of the Class A-1 and Class A-2 memberships and two thirds of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer and unless notice of the proposed action is sent to every member not less than 30 days nor more than 50 days in advance.

(d) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Properties.

ARTICLE V.

COVENANT FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal obligation of Assessments. The Developer for each lot owned by it within "the properties" hereby covenants, and each owner of any lot, by signature hereon or acceptance a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, are deemed to covenant and agree to pay to the Association all assessments, monthly or special, together with such interest thereon and costs of collection thereof as hereinafter provided, 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, monthly or special, together with such interest thereon and cost of collection thereof as hereinafter provided shall also be the personal obligation of the person or persons

who owned such property at the time when the assessment fell due. Provided, however, "undeveloped Lots" of any class owned by Developer shall not be subject to any monthly or special assessment at any time nor shall the "Common Properties" or any parcels thereof be subject to any monthly or special assessments at any time. All lots of every description, except "Common Property" when conveyed by Developer or when construction of either a "Townhouse" structure or "zero lot line" structure has commenced shall be subject to appropriate assessments.

SECTION 2. Purposes of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, welfare and comfort of the owners of and residents in "the properties" including, but not limited to:

(1) Construction, establishment, planning, designing, re-construction, repair, replacement, restoration, maintenance and servicing of common property and all structures and improvements thereon, including all costs of labor, fees, commissions, equipment and materials.

(2) Management, management fees, insurance, taxes, supervision, care, custody, and control of common property and all structures and improvements thereon, including water service, sewer use, lawn, garden and shrubbery care, snow removal from sidewalks, walks, streets and drives on common property and including all labor, fees, commissions, equipment and materials. (Continued)

-60-(Continued)

(3) Construction, re-construction, repair, replacement, restoration, maintenance, and servicing of common drives, common walkways, common fences, common (party) walls, common building drains, common water systems and elements, common sewer system and elements, common utility lines and elements and other common systems, improvements and facilities on, in or about "the properties" or the separate living units if required by this Declaration or assumed under any collateral or residual rights or responsibilities set forth in this Declaration and payment of water service to and sewer use by the separate living units in the "townhouse" structure.

(4) Exterior roof maintenance and exterior wall maintenance of "townhouse" structures if required by this Declaration.

(5) Snow removal from all drives and walkways located on "Common Properties".

(6) Lawn and yard work on "Common Properties".

(7) Repair, restoration, and maintenance of entrance monument and public street islands.

SECTION 3. Type and Nature of Assessments. There may be four types of Assessments.

(1) "Common Properties" assessments to be paid by all "owners."

(2) "Townhouse" assessments to be paid by the owners of all lots upon which is located, in whole or in part, a townhouse structure or a "Separate living unit" within a townhouse structure.

(3) "Capital improvements" assessments.

(4) "Special" assessments.

As indicated heretofore, each owner agrees to and shall pay all assessments as are applicable to him, her or it, in the amounts and under the terms and conditions and with the attendant obligations, as the same may be determined, established, assessed, levied and set forth in this Declaration.

SECTION 4. Basis and Maximum of Monthly Assessments.

A. "Common Properties" assessments shall be paid by the owners of all lots including both townhouse and zero lot line lots and shall be in the maximum amount of \$15.00 per month per lot for all lots and shall begin on the first day of the month subsequent to conveyance of the lot or lots to "owner" by "Developer". Common properties assessments shall be due and owing on the first day of each and every month thereafter unless a less frequent payment interval is established by Association. Common properties assessments shall be used exclusively by Association for establishment, improvements, construction, planning, designing, re-construction, repair, replacement, restoration, maintenance, operation, management, supervision, care, custody and control of the Association and the "Common Properties". Such use of funds may include, but need not be limited to, direction and management of the Association, management fees, insurance, taxes, water service to common proper lawn and garden care on common property, maintenance of street islands and entrance marker to development and shall further include all labor, fees, cost commissions, fixtures, equipment and materials for any purpose set forth above but such funds shall specifically not be used for snow removal from walkways and driveways on "common property" designed and constructed specifically to serve only "townhouse" structures. **Common properties assessments shall be increased pursuant to Section 4, Subsection F, and may be increased by vote of the members of all classes in existence at the time of the vote pursuant to Section 4, Subsection G.**

B. "Townhouse" assessments shall be paid by the owners of each lot upon which is situated, in whole or in part, a separate living unit in the townhouse structures only and shall be in the maximum amount of \$15.00 per month per lot and shall begin on the first day of the month subsequent to conveyance of the separate living unit and the lot or portion thereof upon which such unit is situated to "owner" by Developer (each lot is basically designed to accommodate a separate living unit). The "Townhouse" assessment shall be in addition to the "common properties" assessment. Townhouse assessments shall be used exclusively for exterior wall maintenance and exterior roof maintenance of "townhouse" structures, snow removal from walkways and driveways specifically servicing "townhouse" structures, water service to and sewer use by each separate living unit, in "townhouse" structures, construction, re-construction, repair, and maintenance of walkways and driveways specifically servicing "townhouse" structures, and for re-construction, replacement, repair, maintenance, and

(Continued)

-60- (Continued)

servicing of the common drains, common water systems and elements, common utility systems and elements, and the common sewer systems and elements of the "townhouse" structures. Townhouse assessments, shall increase pursuant to Section 4, Subsection F and may be increased by vote of the members of Glass. A-2 pursuant to Section 4 Subsection G.

C. The Association may levy in any assessment year a capital improvements assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or re-construction,

unexpected repair or replacement of a described capital improvement upon the "common properties" including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose at which a quorum is present.

D. Special assessments may be levied against specific owners as follows:

(1) In the event that the "townhouse" assessments are insufficient, in the judgment of the Board of Directors of the Association, to pay the cost of repeated and unexpected construction, re-construction, maintenance, replacement, repair, restoration, and servicing of the common building drain, common water system and elements, common sewer system and elements and common utility lines and elements or of repeated exterior wall and exterior roof maintenance of a specific "townhouse" structure or are insufficient to pay the cost of repeated and unexpectedly large common water bills and/or sewer use taxes or fees, the Board of Directors of the Association may levy a special assessment against all lots serviced or supplied by such facility or facilities sufficient to pay such costs and expenses. Such costs and expenses shall be borne equally by the owner or owners of each lot so serviced or supplied, and the assessment shall be levied accordingly.

(2) In the event that an owner or owners using or being serviced by a common (party) wall, common roof, common walkway, common drive or other common service facility or improvement, other than on common property, shall fail, omit, refuse or be unable to fulfill his, her, its or their duties, obligations and requirements under the terms of this Declaration and in the further event that it is necessary for the Association to invoke, use, or carry out any responsibility, duty, function, power or authority it may have upon such failure by owner or owners, Association may levy a special assessment or assessments sufficient to pay all costs and expenses incurred of every description, including, but not limited to, court costs and attorney fees. Such special assessment or assessments shall be levied against the owner or owners of each lot or lots in the proportion of use by each owner in the judgment of the Directors of the Association, of said common facilities or improvements. In the event such costs and expenses occur as the result of the negligence or misuse of one or more owners, such costs and expenses may be levied against him, her it or them only.

E. Any meeting of the Board of Directors of Association duly and legally called pursuant to the Charter and By Laws of the Association shall have authority to make, levy or impose either kind of special assessment. The Board of Directors of the Association shall have full authority to establish the terms and conditions of payment of special assessments if the terms and conditions are not specifically established in this Declaration.

F. From and after January 1 of the year immediately following the conveyance of the first lot to any owner, the maximum monthly assessment exclusive of water and sewer expense may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any of the Consumer Price Index (published by the Department of Labor, Washington D. C.) for the preceding month of July and for any monthly assessment used

to pay for water service and sewer use, in conformance with any rise in the cost of water service and sewer use fee or tax.

G. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum monthly assessment may be increased above that established by the Consumer Price Index formula by vote of the members for the next succeeding year, provided that any such change shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose at which a quorum is present.

H. After consideration of current maintenance costs and future needs of the Association, the Board of Directors = the monthly assessments

(
,
0
,
2

,
-
/

60- (Continued)

I. All assessments except special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis or any other less frequent basis authorized by the directors

J. A quorum for any membership action under this declaration shall, at the first meeting called, consist of the presence at the meeting of members or of proxies entitled to cast 60% of all of the votes of each class of membership. Notice of the date and purpose of the meeting shall be given in writing not less than 30 nor more than 50 days in advance of the meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement,

and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

K. .Fixing Monthly Assessments. The Board of Directors shall fix the amount of the monthly assessments against each lot at least 30 days in advance of each annual assessment period. Written notice of the monthly assessments shall be sent to every owner subject thereof. The annual assessment period shall be established by the Board of Directors. The due date of monthly assessments may be altered by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

L. Nothing contained in this Declaration of Agreement, Covenants, Conditions and Restrictions shall be construed in any way to subject any "undeveloped lots" owned by developer or any "common property" or parcel thereof to assessments of any kind.

SECTION 5. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, The Lien, Remedies of Association. • If any assessments, monthly or special, are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, administrators, executors, personal representative successors and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If any assessment, monthly or special, is not paid within thirty dayseafter the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 8%per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property.

SECTION 6. Subordination of the Lien to Mortgages. The Lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

SECTION 7. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b)

all common property as defined in Article I, Section 1 hereof; (c) all undeveloped "lots" owned by Developer; and (d) all properties dedicated to and accepted by the City of Lincoln.

ARTICLE VI.

FURTHER DUTIES OF OWNERS.

SECTION 1. Fundamental Responsibility of Owners. The basic and fundamental responsibility for the construction, reconstruction, repair, replacement, restoration, maintenance and servicing of all common building drains, common water systems and elements. common se,/er

4

/ ro"

7 1

-60- (Continued)

and elements, and common utility lines and elements shall be the joint and several obligation of all the owners of said lots, or any part thereof, servie thereby notwithstanding any obligations of Association to said owner or owners of townhouses as set forth in this Declaration. Any owner or owners of any lot serviced by a common system line or element, may take the initiative in causing said work to be accomplished by looking to the Association and/or other owner or owners to fulfill their duties, obligations and responsibilities as created and imposed by law or this Declaration. In the event that an owner or owners fail to take said initiative within a reasonable time, the Association may do so even though not otherwise required or obligated to do so under this Declaration. The cost of all construction, reconstruction, repair, replacement, restoration, maintenance and servicing of said common drains, systems, lines and elements shall be borne equally by the owner or owners of each lot serviced thereby, directly or by and through an assessment paid Association as required herein, irrespective of the location of that part of said drain, system, line or element requiring such construction, reconstruction, repair, replacement, maintenance or servicing. The owner or owners of each separate lot hereby grants an easement unto all other owners of, said lot or lots and Association for the purposes set forth in this action. In the event that any owner or the Association shall take the initiative and make the repairs under this section, he, she or it and his, her or their contractors, subcontractors or materialmen shall have the right to look to the subcontractors or materialmen shall have the right to look to the other owners for their required share or shares and shall have a lien against the real estate as a matter of contract and/or a lien against the real estate as set forth in Sections 52-101 to 114 inclusive, R.R.S. Neb. 1943 (as amended), if applicable. In the event Association shall accomplish such work, special assessments may be levied and assessed by the Association to pay for such costs as provided herein. The Association shall also have and may use any additional or alternative remedies as provided at law or in equity or by this declaration to recover said costs.

SECTION 2. Common Elements. To the extent not inconsistent with the provisions of this declaration, the general rules of law regarding common

(party) walls, common fences, common roofs, common walkways and common driveways and liability for property damaged due to negligence or misuse shall apply.

SECTION 3. All other duties and responsibilities of construction, re-construction, repair, restoration, replacement, maintenance and servicing not specifically discussed or agreed upon in this Declaration, shall be borne by the owner or owners of each separate lot. The owner or owners of each separate lot hereby grant unto the owners of all other lots such easements as are reasonably necessary to carry out the duties and responsibilities of this section.

SECTION 4. Deterioration, Damage or Destruction. In the event of Deterioration, damage to or destruction of any common (party) wall, common fence, common roof, common walkway or common driveway from any cause, other than the negligence or misuse of any "owner" thereof, "owners" serviced by same shall at joint expense in proportion to their respective use, repair and rebuild said common (party) wall, common fence, common roof, common walkway or common driveway and each party, his, her or its heirs, devisees successors and assigns, shall have the right to the full use of said common (party) wall, common fence, common roof, common walkway or common driveway so repaired or rebuilt.

If any "owner's" negligence or misuse shall cause damage to or destruction of said common (party) wall, common fence, common roof, common walkway or common driveway, such negligent "owner" shall bear the entire cost of repair or re-construction. If any "owner" shall neglect or refuse to participate or pay his share, or all of said cost in case of negligence or misuse, the other "owner" or "owners" serviced by same may have such common (Party) wall, common fence, common roof, common walkway or common driveway repaired, re-constructed, replaced, maintained or restored and said owner or owners and their contractors, subcontractors and materialmen shall be entitled to a lien against the real estate as a matter of contract or a lien against the real estate as set forth in Sections 52-101 to 114 inclusive R.R.S. Neb (as amended) if applicable, on the premises of the "owner" so failing to pay, for the amount of such default in "owner's" share of cost. Such cost shall be in proportion to the use of said common (party) wall, common fence, common roof, common walkway or common driveway (without reimbursement

-60- (Continued)

however, to the right of any such "owner" to call for a larger contribution from the others under any rule or law regarding liability for negligence

or misuse). The right of any "owner" to contribution from any other "owner" or "owners" under this section shall be appurtenant to the land and shall pass to such "owner's" successors in title. All construction, re-construction, restoration, repair, service and maintenance of any common (party) wall, common fence, common roof, common walkway or common driveway under this section shall be subject to the architectural control of Association as hereinafter provided. In the event of dispute among the owners as to the necessity or cost of maintenance, restoration, repair or re-construction of any common (party) wall, common fence, common roof, common walkway or common driveway the issue shall be presented to the Board of Directors of Association for arbitration and decision. In the event that the owners fail or refuse to maintain, restore, repair or re-construct a common (party) wall, common fence, common roof, common walkway or common driveway, the Association may do so and charge the cost thereof to the various owners in proportion to their use thereof. Special assessments may be levied and assessed to pay for same as provided herein. The Association shall also have and may use any additional or alternative remedies as provided at law or in equity or by this Declaration to recover said costs and the Association, its contractors, subcontractors and materialmen shall also be entitled to the liens referred to in this Section. The owner or owners of each separate lot hereby grants unto all other owners using such common (party) wall, common fence, common roof, common walkway or common driveway and Association an easement for the use of common (party) wall, common fence, common roof, common walkway or common driveway and an easement for the purposes set forth in this Article.

ARTICLE VII.

ARCHITECTURAL CONTROL

SECTION 1. Architectural Board. After the original construction of any structure or improvement by Developer, no building, fence, wall or other structure shall be constructed, re-constructed, repaired, restored, replaced, serviced, maintained, or decorated upon the property, nor shall any exterior additions to or changes in alterations be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall be submitted to and approved in writing as to the harmony of external design, shape, color and location in relation to the surrounding structures and topography by the directors of the Association, or by an architectural committee composed of three or more representatives appointed by the Board. In the event that the Board of Directors, or its designated committee, fails to approve or disapprove such design, shape, color and location within thirty (30) days after such plans and specifications have been submitted to it in writing, approval will not be required, and this Article will be deemed to have been fully satisfied. Provided, however, matters strictly in the nature of interior decoration are excluded from the requirements of this section.

ARTICLE VIII.

DUTIES OF ASSOCIATION.

SECTION 1. General Provisions. It shall be the general obligation and duty of the Association to properly maintain and repair all "common property" and the walks, drives, open drainage areas, parking areas, parking islands and all other

structures and improvements located upon the "common property" or on public property in accordance with reasonable standards as generally required by the City of Lincoln, Lancaster County, Nebraska, and nothing in this Declaration shall be construed as any limitation upon

the authority of the City of Lincoln, Lancaster County, Nebraska, to enter upon said property and perform necessary maintenance should the Association fail to do so and to assess the "property" with the cost thereof.

SECTION 2. Further Obligations. In consideration of the conveyance of the "common property" and in further consideration of the assessments, monthly and special, to be paid by owners, to Association, Association agrees

(Continued)

(Continued)

(a) Remove snow as reasonably required from the walkways and driveways of the "common property" and from the common lawns and common driveways serving, going to and reaching the "townhouse" structures and the separate living units therein.

(b) Perform care for the lawn, shrubs, flowers, trees etc on the "common property".

(c) Perform maintenance as defined in Article I, Section 1, Subsection R of this Declaration, on the exterior walls, as defined in Article I, Section 1 Subsection P of this Declaration, and the exterior roofs as defined in Article I, Section 1, Subsection Q of this Declaration of the "townhouse" structures

(d) Perform all construction, re-construction, repair, restoration, replacement, maintenance and servicing as is reasonably necessary on the common building drains, common water systems and elements, common sewer systems and elements, common walkways, common fences and common driveways of the "townhouse" structures and pay for water service to and sewer use by the separate living units in the "townhouse" structures.

(e) Maintain street islands and entrance marker. .

(f) Administer, manage, supervise, care, control, insure, water, construct, paint, re-construct, repair, restore, maintain and service the "common" property either directly or indirectly, and to do any and all things necessary, itself or by and through a professional management company.

SECTION 3. Easements. The owner or owners of each separate lot hereby grants unto the Association all easements necessary for Association to carry out the obligations, duties or rights described in this Article or elsewhere in the Declaration.

ARTICLE IX.

GENERAL PROVISIONS.

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Association or the owner of any lot subject to his declaration, their respective legal representatives, heirs, successors and assigns for a period of twenty years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years. The covenants and restrictions of this Declaration may be amended during the first twenty year period by an instrument signed by the

Association and by not less than 90% of the lot owners, and thereafter by an instrument signed by the Association and not less than 75% of the lot owners. Any amendment must be properly recorded.

SECTION 2. FHA/VA Approval, In the event that the lands described herein or as annexed and added as allowed herein are developed in accordance with Federal Housing Administration and/or Veterans Administration statutes rule or regulations and 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 or dedication of Common Properties after the initial conveyance or dedication and amendment of this Declaration of Covenants.

SECTION 3. Notices. Any Notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid to the last known address of the person who appears: as member or owner on the records of Association at the time of such mailing.

SECTION 4. Enforcement. The Association, the City of Lincoln, or any owner shall have the right to enforce the purposes, covenants, restrictions, terms and conditions of this Declaration. Enforcement shall be by any proceeding at law or in equity against any person, persons or entity violating or attempting to violate any purpose, covenant, term, restriction or condition either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the Association or any owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so hereafter.

SECTION 5. Appeal. Nothing in this Declaration shall be construed in such a way as to limit a right of appeal to a court of competent jurisdiction.

SECTION 6. 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.

AMENDMENT TO PROTECTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, on November 10th, 1972, Duane Larson Construction Co., a corporation, being the owner of all of Carriage Park Addition in Lincoln, Lancaster County, Nebraska, did execute certain Protective Covenants, creating, adopting and establishing restrictions upon the real estate located within Carriage Park, Lincoln, Lancaster County, Nebraska, which said Protective Covenants were recorded in the office of the Register of Deeds of Lancaster County," Nebraska as Instrument No. 72-22674; and

WHEREAS, said Protective Covenants were thereafter amended by

the said Duane Larson Construction Co., which said Amendment was filed for record in the office of the Register of Deeds of Lancaster County, Nebraska on May 11th, 1973 as Instrument No. 73-8986; and

WHEREAS, the said Duane Larson Construction Co. and the Carriage Park Neighborhood Association, Inc., a Nebraska non-profit corporation, and various owners of lots within Carriage Park Addition to the City of Lincoln, Lancaster County, Nebraska, did enter into a Declaration of Agreement, Covenants and Restrictions under date of July 8th, 1974 and filed for record in the office of the Register of Deeds of Lancaster County, Nebraska on July 10th, 1974 as Instrument No. 74-11190; and

WHEREAS, the undersigned, being all of the owners of the real estate within Carriage Park Addition to Lincoln, Lancaster County, Nebraska, now intend to modify and amend the Protective Covenants and Restrictions heretofore adopted, all in accordance with Article IX of the Declaration of Agreement, Covenants, Conditions and Restrictions which have been placed upon all of the property within
, Carriage Park Addition.

NOW, THEREFORE, in consideration of the mutual promises of the Declarants and Current Owners, and other mutual benefits to all of
the property owners within Carriage Park Addition to Lincoln, Lancaster County, Nebraska, as well as all of the future owners of all or any part of the lots, structures and improvements thereon, agree that

said restrictions, covenants, terms and conditions shall be modified
to include an additional protective covenant to read as follows:

No boat, trailer, tractor, semi-trailer, motor home, camping trailer, fifth wheel, motor vehicle licensed as a recreational camping or travel trailer, or a motor vehicle that would be subject to vehicle licensing laws of the State of Nebraska requiring a license in excess of a four ton capacity shall be stored or parked upon any lot within Carriage Park Addition in Lincoln, Lancaster County, Nebraska, except within an existing enclosed structure, for a period of time to exceed fourteen (14) days per year.

For the purpose of these covenants, it is not intended to prohibit the occasional overnight parking of boats, trailers, or vehicles set forth herein, but is intended to prohibit the storage of said vehicle or trailer for a period of time that exceed 14 days per year.

It is further intended that the restrictions set forth herein shall not only apply to the lots platted within Carriage Park Addition, but to also include the dedicated streets and outlots within Carriage Park Addition.

Dated this _ day of _____, 1982.

CARRIAGE PARK NEIGHBORHOOD
ASSOCIATION, INC., A Corporation

By

President

STATE OF NEBRASKA)

ss.

Lancaster County)

On this _ day of _____, 1982, before me, the undersigned, a Notary Public in and for said County, personally appeared

_____, President of Carriage Park Neighborhood Association, Inc., a corporation, to me personally known to be the identical person whose name is affixed to the above instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

STATE OF NEBRASKA)

ss.

Lancaster County)

On this _ day of _____, 1982, before me, the undersigned, a Notary Public in and for said County, personally appeared _____

_____, to me known to be the identical persons whose signatures are affixed to the foregoing instrument, and they acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public