

FILED
FT. SMITH DIST.

BILL OF ASSURANCE

81 JUN 16 PM 7 13 LOTS 1236 THROUGH 1267 OF

FIANNA HEIGHTS ADDITION TO THE CITY OF FORT SMITH

CIR. CLERK SEB. CO.

ARKANSAS

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FT. SMITH DIST.
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CIR. CLERK SEB. CO.

KNOW ALL MEN BY THESE PRESENTS:

That the following declarations as to limitations, restrictions, and uses to which property known as Fianna Heights, Lots 1236 through 1267, an Addition to the City of Fort Smith, Arkansas are to apply to those residential lots, numbered 1236 through 1267 as set forth on the plat of the property being filed contemporaneously with this Bill of Assurance.

That the undersigned, FIANNA HILLS DEVELOPMENT CORPORATION, an Arkansas corporation, (herein referred to as the "Developer" or the "Owner"), is the owner and developer of the property situated in the Fort Smith District of Sebastian County, Arkansas, and described above, said property being known as Fianna Heights, Lots 1236 through 1267, an Addition to the City of Fort Smith, Arkansas, and the said FIANNA HILLS DEVELOPMENT CORPORATION, as owner and developer, does hereby make the following declarations as to limitations, restrictions and uses to which said property may be put, hereby specifying that said declarations shall constitute covenants running with the land for the period of time hereinafter set forth, as provided by law, and shall be binding upon all purchasers of Lots 1236 through 1237, in Fianna Heights Addition to the City of Fort Smith, Arkansas, and upon such purchasers' heirs, personal representatives, successors and assigns, and all persons claiming under them; and that said declarations are for the benefit of and are limitations upon all future owners of said lots in said addition; that this Bill of Assurance has been designated as such in order to provide for an orderly development of said addition and for the purpose of keeping said addition desirable, uniform and suitable for the architectural design and uses herein specified.

This Bill of Assurance shall be binding upon all lot owners and all persons claiming under them until January 1, 2001, at which time said covenant shall be automatically extended for an additional ten (10) years, unless by a vote of the majority of the then owners of Lots 1236 through 1267 in Fianna Heights, included in said addition, it is agreed to change said covenants in whole or in part.

If the parties hereto or their assigns, shall violate or attempt to violate any of the covenants herein contained, it shall be

lawful for any other person or persons owning real property situated in said addition, or the developer. FIANNA HILLS DEVELOPMENT CORPORATION,) prosecute any proceedings at law or in equity against the parties or person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or recover damages or other dues for such violations. Any right reserved hereunder to the developer may also be exercised by any other owner of the aforementioned lots situated in said addition, either singularly or collectively. Invalidation of any one of these covenants by a court order or otherwise shall in no way affect any of the other provisions which shall remain in full force and effect.

1. The undersigned does hereby dedicate for public use all of the streets as shown on the plat filed concurrently herewith as part of Fianna Heights Addition, and does hereby guarantee the title to all of the land covered by said streets. The developer further dedicates to the public, for public use forever, the easements and rights of way as designated on the plat of Fianna Heights Addition for the several purposes of constructing, maintaining, operating, repairing, and replacing any and all public utilities including the storm and sanitary sewer, if any, telephone lines, electric power lines, transformers, gas lines, water lines, and television cable lines, together with all fittings and equipment for each of such facilities and any other appurtenances thereto, with the right of ingress and egress upon said easements and rights of way for the uses and purposes aforesaid, together with similar rights on each and all of the streets shown on any such plat; provided, however, that the undersigned developer hereby reserves the right to construct, maintain, operate, lay and relay water lines and sewer lines together with the right of ingress and egress for such construction, maintenance, operation, laying and relaying over, across and along all of the public streets, alleys and easements shown on said plat, and/or sewer services to the area included in said plat and to any other areas. Said utility easements are for the use and benefit of the developer as well as the public utilities, their agents and employees. The rights and privileges and authority herein reserved includes the right to cut down and keep trimmed all trees, hedges and shrubs that may, in the judgment of the developer, or of said public utilities, interfere with or endanger such utilities. Nothing contained in this Article shall be interpreted as requiring the developer to construct or maintain sewer lines on any portion of Fianna Heights Addition.

2. All supply of electric service shall be located underground in the easement ways reserved for general utility services, as shown on the plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in said easement ways. Underground service cables to all houses which may be located on all those lots covered by these restrictions may run from the nearest service pedestal or transformer to the point of use as determined by the location and construction of such house upon said lot;

provided, that upon the installation of such a service cable to a particular house, the supplier of electric service shall thereafter be deemed to have a definite, permanent, effective, and exclusive right of way easement on said lot, covering a five foot strip extending 2.5 feet on each side of such service cable, extending from the service pedestal or transformer to the service entrance of said house. The supplier of electric service, through its proper agents and employees, shall at all times, have right of access to all such easement ways shown on said plat, or provided for in this deed of dedication for the purpose of installing, maintaining, removing or replacing any portion of said underground electric facilities so installed by it. This right shall apply to all suppliers of public utilities and quasi-public utilities, as for example, television cables. The owner of each lot shall be responsible for the protection of the underground facilities located on his property and shall prevent the alteration of grade or any construction activity which may interfere with said electric facilities. Repairs or costs of relocation required by the violation of this covenant, shall be paid for by the owner of the lot. In connection with gas meters and gas lines to the structures to be built upon the lots covered by these restrictions, all yard lines will be plastic pipe of size and material approved by the Gas Company. An approved tracer wire will be installed in the trench with the plastic pipe and attached to the meter rise per the Gas Company's specifications. Meter set assemblies will be furnished the plumber to be installed within five feet of the front corner of the structure. No yard line will be installed under concrete or asphalt unless installed in a casing approved by the Gas Company. The casing will have to be sealed with jute or similar materials and properly vented at one end, at least six inches above the ground. The yard line and inlet meter riser will be tested at not less than 90 PSIG air or nitrogen for 24 hours, approval and acceptance of same to be by Gas Company personnel. Further, in connection with the gas line, the meter setting shall not be isolated from the front property line by a fence requiring entrance by a gate. Shrubbery will be limited so as not to interfere with the meter reading and normal maintenance of said meter.

3. In order to keep beautiful and pleasing the overall visual effect of the development, all plans and specifications must be submitted to an Architectural Coordination Committee for its approval prior to the start of construction. Said committee will consist of a representative of Fianna Hills Development Corporation and representatives of the individual lot owners in the Fianna Hills Addition, and, if elected, the Fianna Heights Addition, the latter group being duly elected by said lot owners throughout the Fianna Hills and Fianna Heights Additions, and the group elected by said individual lot owners to consist of a majority of said committee at any one time. Said committee will not have such wide discretion as to act arbitrarily or capriciously or unreasonably, but its actions will be limited to the approval or disapproval of plans, and the consideration of such other matters as may be directed to it for consideration pursuant to

this Bill of Assurance. Plans submitted must meet the requirements of this Bill of Assurance and be in architectural conformity with the existing construction. Said conformity shall include landscaping and other external appearances. The committee will adopt by-laws explaining the mechanics of its operation and providing for a maximum time within which plans must be acted on, and if not acted on in that time, the same will be considered as automatically approved. In order to preserve the natural beauty of the land, approval must be given by the committee before trees, five inches or more in diameter, and located outside the building line, are removed.

4. The lots in this addition shall be used for single family residences only, except that duplexes will be permitted with the consent of the Architectural Coordination Committee.

5. All single family residences must have either a private garage or a carport for not less than two cars. Constructions of all carports must be in keeping with the design of the remainder of the dwelling. Any detached structure to be built on a lot, such as a covered entertainment area, shall conform to the basic styling of the dwelling thereon, and the plans for such structures must be submitted to the Architectural Coordination Committee for approval. Carports will not be permitted unless they are placed where they will not be between the residence and any street adjoining the property or unless they are in keeping with the architectural design of the residence and are approved by the Architectural Coordination Committee.

6. Except as provided for in Article 15, pertaining to the keeping and maintaining of horses, no outbuilding or tent or shack or garage or barn or any vehicle capable of use as living quarters, either permanently or temporarily, may be erected on or moved onto any lot in the addition by the owner, except construction trailers during the period of construction. No structure of any temporary character may be permitted on any lot. No residence previously used shall be moved onto any lot in this addition.

7. No building or part thereof, except open porches and terraces shall be constructed or maintained on any lot nearer to the front property line than the building lines shown on any plat recorded in connection with this addition.

8. All exposed foundations shall be of brick or stone. No concrete block foundation will be exposed unless approved by the Architectural Coordination Committee. All fences must be of ornamental design unless excepted by the Architectural Coordination Committee. Unless excepted by the Architectural Coordination Committee no fences consisting of wire or metal posts will be allowed.. The design and construction of all swimming pools must be approved by the Architectural Coordination Committee.

9. No obnoxious or offensive trade or activity shall be carried on or upon any lot subject to these restrictions, nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the surface of the lots covered by these restrictions. 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, and horses may be kept and maintained provided the requirements of Article 15 below are met by the owner keeping and maintaining said horse(s).

10. No sign of any kind shall be displayed to the public view on any lot except one professional sign advertising the property for sale or rent, or signs used by a builder or agent to advertise the property during the construction and sale.

11. No lot will be used for the storage of materials for a period greater than 30 days prior to the start of construction and thereupon construction for single family dwellings shall be completed within 12 months from the date construction began. Construction of duplexes, if permitted by the Architectural Coordination Committee, shall be completed within 14 months of the date construction begins. No lot shall be used or maintained as a dumping ground, and no trash, garbage or other waste shall be kept except in sanitary containers. All lots shall be maintained in a neat and orderly condition at all times.

12. Any assent, expressed or implied, by any party hereto to any breach of any covenant herein contained, shall operate as such only in the specific instance and cannot be construed as an assent or waiver of any such covenant or agreement generally or any subsequent breach thereof.

13. Notwithstanding anything contained herein to the contrary, this Bill of Assurance shall be applicable and pertain to and be for the benefit of owners of the land described herein, which consists of a description of residential lots located within Fianna Heights Addition to the City of Fort Smith, Arkansas, and for the benefit of the developer, FIANNA HILLS DEVELOPMENT CORPORATION. This Bill of Assurance shall not be applicable to any other land, except that additional property may be subjected to this Bill of Assurance if the owners of said property so elect and so adopt, in whole or in part, this Bill of Assurance as a matter of record.

14. There shall be no automobile repairs or parking of dead or junk automobiles, trucks or motorcycles as same are customarily defined on either the front, side or rear of any residential site, nor shall there be any repair work permitted on said vehicles on any of the lots so that said vehicles under repair may be readily

seen by occupants and owners of neighboring residences, except for those emergency repairs which would be only occasionally required as the result of unexpected malfunctions. It is the specific intention of this covenant to prohibit the practice of keeping and maintaining automobiles, trucks or motorcycles or any other vehicle which is constantly or periodically being repaired or modified and which is kept in plain view of other neighboring residences.

15. Horses may be kept and maintained on lots that exceed 1 acre provided the owner shall be required to construct: (1) a fence of sufficient height and design and enclosing a sufficient area to assure confinement of the horse(s), and (2) a stable or other such building as to adequately shelter the horse(s). The fence and the shelter shall be of such design and construction as to be in architectural conformity with the surrounding neighborhood, and the plans and specifications for the construction of same shall be submitted to and approved by the Architectural Coordination Committee prior to the commencement of construction.

16. The developer will not install sewer lines throughout any portion of Fianna Heights Addition, except that a trunk line or other such main line may be constructed and installed at the option of the developer to service other portions of the development, or if the developer determines that such trunk line is needed for any purpose. Waste disposal shall be accomplished by means of individual septic tanks or septic tanks coupled with grinder pumps or similar individual pumping system located as necessary on the individual lots. All septic tanks must be designed, installed and maintained in accordance with the laws of the State of Arkansas, the ordinances of the City of Fort Smith, and the rules and regulations of the State Health Department, the County and City Health Department, and any and all federal, state and local laws and regulations which apply or may apply in the future to said installation. The cost of installation, service and responsibility of installation and continued maintenance and service of said septic tank shall be borne by the individual lot owners in the Fianna Heights Addition.

EXECUTED at Fort Smith, Arkansas, this 15th day of JUNE 1981.

FIANNA HILLS DEVELOPMENT
CORPORATION

ATTEST:

Robert C. [Signature]
Secretary

By [Signature]

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

On this 15th day of June, 1981, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ and _____, to me personally well known, who stated that they were the President and Secretary of the within named Fianna Hills Development Coporation, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 15th day of June, 1981.

Seal

Pamela W. Joyce
Notary Public

My Commission Expires:
10/1/84

CERTIFICATE OF RECORD

STATE OF ARKANSAS }
County of Sebastian } ss. Fort Smith District

I, Nancy Brewer, Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 16th day of June, A. D. 1981, at 2:13 o'clock P.M., and the same is now duly recorded with acknowledgment and certificate thereon, Micro-Film Reel No. 422, Page 862.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 16th day of June, A. D. 1981.

By Margaret Nardin Deputy Clerk

