

MISC 17-484

PROTECTIVE COVENANTS
OF
BUCCANEER BAY

Buccaneer Bay is to be a unique area of natural endowments located along the Platte River in Cass County, Nebraska.

The developer, Buccaneer Bay, Inc., a Nebraska corporation (hereinafter called "the Developer"), is committed to creating a community within an area containing natural woodlands, meadows and lakes and to enhance, rather than diminish the native splendor of the area. The purpose of these Covenants is to require each owner to join in this commitment to some degree; to protect and preserve the environment; to further the common use and excellence of the community; and to provide each resident with the opportunity to renew the ancient, but sometimes forgotten, bond with nature.

In the foregoing spirit, the developer seeks to establish an entire community known as Buccaneer Bay, which is to be preserved and protected by the enactment of these Covenants.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, made this 24th day of July, 1975, by Buccaneer Bay, Inc., hereinafter referred to as "Declarant";

WHEREAS: Declarant is the owner of certain property in Cass County, State of Nebraska, known and designated as Buccaneer Bay, a subdivision of Cass County, Nebraska, and more particularly described as:

A tract of land located in Sections 32, 33 and 34, Township 13 North, Range 13 East of the 6th P.M., and Sections 4 and 5, Township 12 North, Range 13 East of the 6th P.M., Cass County, Nebraska, being more particularly described as follows:

Beginning at the SE Corner SW 1/4 SE 1/4 Section 33-13-13; thence S 89°54'54" W, 1320.58 ft. to the S 1/4 Corner Section 33-13-13; thence S 89°56'41" W, 705.61 ft. to the N 1/4 Corner Section 4-12-13; thence S 0°02'46" E, 577.50 ft.; thence N 89°54'40" W, 2660.32 ft.; thence S 0°07'02" W, 1929.60 ft. to the E 1/4 Corner Section 5-12-13; thence S 89°27'52" W, 438.15 ft.; thence N 0°0'0" E, 33.0 ft.; thence N 8°35'01" W, 131.61 ft.; thence N 24°10'35" W, 123.42 ft.; thence N 39°15'55" W, 123.42 ft.; thence N 54°21'15" W, 123.42 ft.; thence N 69°54'19"W, 130.93 ft.; thence N 85°27'22" W, 123.42 ft.; thence S 79°27'18" W, 123.42 ft.; thence S 65°48'36" W, 136.76 ft.; thence S 63°52'39" W, 375.0 ft.; thence S 75°49'02" W, 207.38 ft.; thence N 75°25'33" W, 231.41 ft.; thence N 43°38'44" W, 217.58 ft.; thence N 14°17'11" W, 200.33 ft.; thence N 6°30'00" W, 975.00 ft.; thence N 9°49'51" W, 153.09 ft.; thence N 81°52'22" W, 216.34 ft.; thence

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COMPARED

N 7°02'23" E, 140.00 ft.; thence N 82°57'37" W, 209.43 ft.; thence on a curve concave Easterly, having a radius of 741.73 ft., an arc distance of 68.24 ft.; thence N 10°14'58" E, 111.77 ft.; thence N 79°45'02" W, 110.53 ft.; thence N 1°26'59" E, 258.03 ft.; thence N 10°19'01" E, 75.07 ft.; thence N 21°18'20" E, 212.97 ft.; thence N 51°15'43" E, 215.11 ft.; thence S 79°42'21" E, 115.75 ft.; thence N 21°27'33" E, 12.57 ft.; thence N 51°13'01" W, 80.52 ft.; thence N 26°42'53" W, 338.27 ft.; thence N 9°12'07" E, 139.57 ft.; thence N 27°57'19" W, 67.50 ft.; thence N 19°49'52" E, 104.99 ft.; thence N 21°20'55" W, 96.98 ft.; thence N 1°31'27" E, 223.64 ft.; thence 4°55'02" E, 186.29 ft.; thence N 15°50'56" E, 592.86 ft.; thence N 41°05'06" E, 224.61 ft.; thence N 55°36'49" E, 294.57 ft.; thence N 53°10'00" E, 159.50 ft. to the West line of the SE 1/4 Section 32-13-13; thence N 0°00'00" E, along said West line 533.99 ft. to the Northerly right of way line of the Burlington Northern Railroad; thence continuing N 0°00'00" East to the thread of the stream of the Platte River; thence Easterly along said thread of the stream to the intersection of said thread of the stream of the Platte River and the thread of the stream of Four Mile Creek; thence Southerly along said thread of the stream of Four Mile Creek to the high bank line of the Platte River; thence S 62°47'53" W, 433.59 ft.; thence on a curve concave Southeasterly having a radius of 207.75 ft., an arc length of 259.83 ft.; thence S 8°51'45" E, 666.68 ft.; thence S 3°20'50" W, 799.98 ft.; thence S 19°01'30" W, 409.50 ft. to the North line of the SW 1/4 SW 1/4 Section 34-13-13; thence S 89°42'26" W, 1465.59 ft.; thence S 0°05'28" E, 1317.96 ft. to the point of beginning.

Please note the attached exceptions, which are not a part of the Development area.

Exception No. 1:

A tract of land located in Government Lot 5 in the NW 1/4 of Sec. 33 T13N R13E of the 6th P.M. in Cass County, Nebraska, being more particularly described as follows:

Commencing at the SW corner of said NW 1/4 of Sec. 33; thence N 00°37'18" E, (assumed bearing) along the West line of said NW 1/4 of Sec. 33, a distance of 658.53 ft.; thence S 89°22'42" E, a distance of 289.10 ft. to a point on the Northeasterly R.O.W. line of the Burlington Northern Railroad, said point also being the Point of Beginning; thence N 20°34'37" E, a distance of 151.48 ft.; thence S 89°08'18" E, a distance of 213.50 ft.; thence S 09°29'29" W, a distance of 80.0 ft.; thence Southwesterly on a curve to the left with a radius of 100.0', a distance of 242.57 ft. said curve having a long chord which bears S 09°29'29" W, a distance of 187.32'; thence S 30°00'00" W, a distance of 40.0 ft. to a point on said Northeasterly R.O.W. line of the Burlington Northern Railroad; thence N 51°45'23" W, along said Northeasterly R.O.W. a distance of 258.00 ft. to a Point of Beginning.

Said tract of land contains an area of 1.00 acres more or less.

Exception No. 2:

A tract of land located in Government Lot 3 in the Northeast quarter of Sec. 33 T13N, R13E of the 6th P.M., in Cass County, Nebraska, being more particularly described as follows:

S 89°58'56" E, (assumed bearing) along the South line of said Sec. 33, a distance of 3961.17 ft. to the SE corner of the SW 1/4 of the SE 1/4 of said Sec. 33; thence N 00°00'04" E, along the East line of the West 1/2 of the East 1/2 of said Sec. 33, a distance of 3013.77 ft.; thence N

89°59'56"W, a distance of 40.0 ft. to the Point of Beginning; thence N 89°59'56"W, a distance of 256.00 ft.; thence N 27°24'10"E, a distance of 252.07 ft.; thence S 88°26'19"E, a distance of 140.05 ft.; thence S 00°00'04"W, a distance of 219.98 ft. to the Point of Beginning.

Said tract of land contains an area of 1.011 acres, more or less.

Exception No. 3:

A tract of land located in Government Lot 3 in the NE 1/4 of Sec. 33, T13 N, R13E of the 6th P.M. in Cass County, Nebraska, being more particularly described as follows:

Commencing at the SW corner of said Sec. 33; thence S 89°58'56"E, (assumed bearing) along the South line of said Sec. 33, a distance of 3961.17 ft. to the SE corner of the SW 1/4 of the SE 1/4 of said Sec. 33; thence N 00°00'04"E, along the East line of the West half of the East half of said Sec. 33, a distance of 3232.66 ft.; thence N 88°26'19"W, a distance of 40.04 ft.; to the Point of Beginning; thence continuing N 88°26'19"W, a distance of 140.05 ft.; thence N 00°00'04"E, a distance of 153.67 ft.; thence S 89°59'56"E, a distance of 140.00 ft.; thence S 00°00'04"W, a distance of 157.48 ft. to the Point of Beginning.

Said tract of land contains an area of 0.500 acres more or less.

Said real estate being further described as all those single family lots in Blocks 1 through 26, inclusive, all in the Buccaneer Bay Subdivision as surveyed, platted and recorded in the office of the Register of Deeds of Cass County, Nebraska at Plat Book 9, Page 7.

WHEREAS: Declarant desires to establish a general plan for the development of its property and to secure the enforcement of uniform restrictions and covenants upon the useage and development of the property within the subdivision; and

WHEREAS: Declarant desires to create a residential community containing parks, playgrounds, open spaces, lakes, a golf course and other common facilities for the benefit of the residents of the community;

NOW, THEREFORE, Declarant does hereby declare that Buccaneer Bay, a subdivision of Cass County, Nebraska, shall be held, transferred, sold, conveyed, and owned subject to these covenants, easements, restrictions, charges and liens hereinafter set forth collectively referred to as "Covenants", which shall run with the land and be binding upon the owners of all property of the subdivision until the year 2000 at which time these covenants shall be extended for successive terms of twenty-five (25) years each unless sooner terminated or altered in accordance with the terms and conditions contained herein.

ARTICLE I.

Definitions

Section 1. "Association" shall mean and refer to the Buccaneer

Bay Homeowner's Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by Sanitary and Improvement District No. 5 of Cass County, Nebraska, for the common use and enjoyment of the owners. The common area to be owned by Sanitary and Improvement District No. 5 of Cass County, Nebraska includes all areas hereinbefore described, exclusive of all lots shown on the recorded subdivision plat of the properties.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the properties with the exception of the common area.

Section 6. "Declarant" shall mean and refer to Buccaneer Bay, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II.

Property Rights

Section 1. Severability of Covenants. These Covenants are severable and the invalidation of one shall not invalidate any other covenant, term or condition herein contained.

Section 2. Owner's Legal Remedies. If there shall be a violation or threatened or attempted violation of any covenant, it shall be lawful for any person or persons owning real properties situated within ~~Buccaneer Bay~~ to prosecute under proceedings at law or in equity against all persons violating or attempting to violate these covenants to secure an injunction against or recover damages from such persons or person violating these Covenants. Nothing herein, however,

shall require either the Declarant or any Homeowner's Association created by the Declarant to undertake to enforce these Covenants.

Section 3. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreation facility situated upon the common area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Sanitary and Improvement District No. 5 of Cass County, Nebraska, to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by its Trustees.

Section 4. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facility to the members of his family, his tenants or contract purchasers who reside on the property.

Section 5. Restrictions. Every owner shall have full rights of ownership and enjoyment to his individual lot, subject to the following restrictions:

(a) No noxious or offensive trade or activity shall be carried upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any building plot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such a manner as to conceal them from view.

(b) No trailer, basement, tent, shack, garage, barn or other building erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence until all exterior construction is fully completed according to approved plans.

(c) No house trailer (single wide or double wide) or mobile home shall be allowed to be used as a residence for permanent or temporary use except that this paragraph shall not be construed so as to prohibit new factory-built modular housing having a minimum of twelve-inch eaves, and exterior of wood, stone or brick and placed on a permanent concrete block or poured concrete foundation.

(d) No cattle, horses, sheep or poultry, hogs or any other livestock shall be kept or maintained on any lot in Buccaneer Bay. This paragraph shall not be construed, however, as a prohibition with the keeping of ordinary domestic pets.

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

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

(g) In addition to the easements shown on the final plat, a perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, Omaha Public Power District, their successors and assigns, Sanitary and Improvement District No. 5 of Cass County, Nebraska, its successors and assigns, and Cass County, Nebraska, to erect, operate, maintain, repair and renew utility lines, poles and other instrumentalities for the delivery of utilities throughout the addition over, under and upon a five (5) foot strip of land adjoining the rear and side boundary lines of said lots in Buccaneer Bay; said license and easement being granted for the use and benefit of all present and future owners of lots in said addition. Within the easement areas, no structures or plantings other than grass or other suitable ground cover shall be maintained.

(h) The following covenants shall only apply to those areas designated as single-family lots, the same being legally described as lots in the legally recorded subdivision map of Buccaneer Bay as recorded in the office of the Register of Deeds of Cass County, Nebraska:

- i. As an aid to freer movement of vehicles at street intersections and in order to provide adequate protection for the safety of children, pedestrians, operators of vehicles and/or property, all fences, walls, gateways, ornamental structures, hedge, shrubbery and other fixtures shall be so constructed, built and maintained so as to provide clear, unobstructed vision at corners of street intersections.
- ii. Said lots shall be used only for residential purposes except such lots, or portions thereof, as may hereinafter be conveyed or dedicated for public, church, educational or charitable uses.
- iii. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than dwellings not to exceed two and one-half stories in height, a private garage, attached breezeways and other out buildings incidental to such residential uses.
- iv. Each dwelling shall contain at least one attached, detached or basement single car garage and driveway constructed of concrete, brick or asphaltic material which is a minimum of ten feet wide with sufficient area to provide off-street parking for at least two automobiles.
- v. Prior to construction, plans and specifications, including a site plan and building elevations, shall be submitted, in duplicate, to the Architectural Committee for approval. Such approval shall be within the sole discretion of the Architectural Committee and shall relate to the quality of the materials used; the harmony of the design and site plan with the development and environment; and the location of the buildings with respect to the topography of the lot. Alteration of the exterior of any building (other than ordinary maintenance) shall likewise require the approval of the Architectural Committee.
- vi. No signs whatsoever, including but without limitation to commercial signs, political signs and similar signs visible from streets and neighboring property or roads shall be erected or maintained upon any lot except: Such signs shall be required by legal proceedings; Residential identification signs of a combined total face area of 2 square feet or less for each residence; During the time of construction of any residence or other improvements, job identification signs having a maximum face area of 2 square feet per sign and of a type usually employed by contractors, subcontractors, and tradesmen; and not more than one "For Sale" or "For Rent" sign having a maximum face area of 2 square feet.

(i) Dwellings constructed on single-family lots shall conform to the following minimum dwelling sizes (which is defined as the enclosed living area of main residential structures exclusive of porches, open breezeways, unfinished basements and garages):

- i. In the area designed as Area A on Exhibit "A" attached hereto, 900 square feet.
- ii. In the area designated as Area B on Exhibit "A" attached hereto, 1,000 square feet.
- iii. In the area designated as Area C on Exhibit "A" attached hereto, 1,100 square feet.

ARTICLE III.

Membership and Voting Rights

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

Section 2. The Association shall have two classes of voting membership:

CLASS A: Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds such interest or interests in any unit, all such persons shall be members, and the vote for such units shall be exercised as they, among themselves, determine and designate to the Association, but in no event shall more than one vote be cast with respect to any such unit, and in the absence of such determination and designation of who is to exercise the vote; the eldest of such persons shall be deemed the person so designated.

CLASS B: Class B members shall be the Declarant, its successors and assigns, and shall be entitled to three (3) votes for each lot owned, provided however, that when the total votes outstanding in the Class A membership and the described property, included by declaration hereinabove, shall equal the total votes outstanding in the Class B membership in such property, the Class B membership shall thereafter be entitled to one (1) vote for each of its remaining units in such property, and its Class B membership for each of its remaining units in such property, and its Class B membership shall cease and be converted to Class A membership, provided further, that from and after two (2) years from the time such property is by declaration included within said covenants and restrictions, its Class B membership shall be automatically converted to Class A membership for each of its remaining units and such portion notwithstanding any other provisions of this Article.

ARTICLE IV.

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each lot owned within the properties,

hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements by the Association, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be in charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. As long as the Declarant maintains a controlling interest in the Association by virtue of its voting rights, the maximum annual assessment shall not exceed \$200.00 per lot annually. As soon as the Declarant no longer maintains controlling interest in the Association, the maximum annual assessment may be increased each year by a vote of two-thirds (2/3) of the membership of the Association voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual assessment at an amount not in excess of the established maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that, any such assessment shall have the assent of two-thirds (2/3) of the votes

of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the incorporation of the Association with the Secretary of State of the State of Nebraska. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year subsequent to the closing of each lot. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six per cent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V.

Architectural Control

Section 1. The developer shall form an "Architectural Committee" which, at inception shall be five (5) persons selected by the Developer. Upon the sale and transfer of lots in the subdivision to others, the Homeowner's Association shall be entitled to select an increasing number of members of the Architectural Committee in accordance with the following formula:

<u>Percentage of Lots Sold</u>	<u>No. Members Selected By Homeowner's Assn.</u>	<u>No. of Members Selected by the Developer</u>
20%	1	4
50%	2	3
80%	3	2
90%	4	1
100%	5	0

Section 2. No building, fence, wall, or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change or alteration therein be made

until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. In the event said Architectural Committee fails to approve, disapprove, or suspend approval or disapproval of such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided however, said Architectural Committee is allowed to suspend approval or disapproval only once, and for a period not to exceed an additional thirty (30) days.

ARTICLE VI.

General Provisions

Section 1. Amendments. This Declaration may be amended until the year 2000 by an instrument signed by not less than ninety per cent (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy five per cent (75%) of the lot owners. Any amendment must be recorded.

Section 2. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 24th day of July, 1975.

BUCCANEER BAY, INC., Declarant,

By: *Sterling R. Flott*
Sterling R. Flott, President

ATTEST:

Jerome Holm
~~Jerome Holm, Secretary~~
ASSISTANT SECRETARY



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Now on this 24 day of July, 1974, before me a Notary Public in and for said county and state, personally came S. R. FLOTT, President, and JEROME HEINRICHS, Secretary, of Buccaneer Bay, Inc., and they executed the foregoing instrument and acknowledged same to be their voluntary act and deed, and the voluntary act and deed of the said corporation.



BARBARA L. DROPHY
General Notary - State of Neb.
My Commission Expires
June 24, 1978

Barbara L. Drophy
Notary Public