

(10)

Fee ☒ \$ 56.50
Index ☒
Compare ☐
Computer ☒

BOOK 243 PAGE 358

DECLARATION OF COVENANTS, 1106
CONDITIONS AND RESTRICTIONS

95 SEP -5 PM 3: 32

Carol Mirona
REGISTER OF DEEDS
DODGE COUNTY, NE

THIS DECLARATION is made on the date hereinafter set forth by SHACARI INC., a Nebraska corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the developer of the planned unit development called BELVEDERE TOWNHOMES and legally described as Lots 1-25 block 2 ; lots 1-4 & 6-19 block 1 ; Khanate subdivision, an addition to the City of Fremont, Nebraska as surveyed, platted and recorded in Dodge County, Nebraska.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to BELVEDERE TOWNHOMES Association, Inc., 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 a part of the Properties, including contract sellers, but excluding those having interest merely as security for the performance of an obligation.

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

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties.

Section 5. "Declarant" shall mean and refer to SHACARI INC.. it's successors and assigns if such successors or assigns should acquire more than one lot for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. 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 suspend the voting rights and right to use of the Common Area 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;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility, for such purposes and subject to such conditions as may be

agreed to by the members. No such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Association Easement and License. The Association and its agents, contractors and designees shall have an easement and license to enter upon any Lot at any time necessary in order to perform grounds maintenance as described in Section 3, Article IV herein.

Section 4. Utility Easements and Licenses. A perpetual license and easement is hereby reserved in favor of an granted to any utility company doing business in Dodge County, Nebraska, their successors, and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentality's and to extend wires for the carrying and transmission of electric current for light, heat, and power, for water mains and pipes to carry and transmit water, for natural gas transmission pipe lines and instrumentality's for the carrying and transporting of natural gas for heat and power service and for all television, telephone and telegraph and message service under a five foot strip of land adjoining the rear and side boundary lines of said Lots and Common Area, and license being granted for the use and benefit of all present and future owners of said Lots; provided, however, that said lot line easement is granted upon the specific condition that if said utility companies fail to construct wires, pipe lines, water mains or conduits along any of the said lot lines within 60 months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within 60 days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementway, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

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

Section 5. Encroachment. Each lot is hereby granted an easement over any adjoining Lot for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any dwelling thereon, or any other similar cause and any encroachment due to an overhang or projection of a dwelling, together with the right of maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a dwelling is partially or totally destroyed, and then repaired or rebuilt, the Owners of the adjoining Lot or Lots agree that minor unintentional encroachments over the adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE III

MEMBERSHIPS AND VOTING RIGHTS

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

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

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

1108

(a) when the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership, or

(b) on August 23 1998.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, 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 a charge on the land and shall be continuing lien upon the property against which each such assessment is made which may be foreclosed as a construction lien. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of unpaid assessments. 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. No Owner may make deductions or offsets against the said assessments for any claim against the Association; such claims must be assessed against the Association by independent, affirmative actions.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, security, and welfare of the residents in the Properties and for improvement and maintenance. Also, assessments may also be used to provide grounds maintenance for the Lots within the Properties as follows: fertilize and mow on a regular basis as may be appropriate the lawn and grass; maintain and repair the lawn sprinkler system (provided, however, the replacement of any parts or pipe shall be at the expense of the Lot Owner); and remove snow, as soon as may be practicable, from the private drives, driveways and walkways. The Association may contract for the performance by a third party of the foregoing.

The Association may maintain property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary for protecting the value and desirability of the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be eight hundred dollars (\$800.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be delivered either personally or by mail to all members not less than 30 days and not 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 percent (60%) of all 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 (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. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot 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 16 percent 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 in proceedings in the nature of a construction lien foreclosure. No owner may waive or otherwise escape liability for the assessments.

Section 9. Subordination of the Lien to Mortgages/Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. 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 assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot owner from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

COMMON SCHEME RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 1. Common Scheme Restrictions.

- (a) All Lots shall be used only for single-family, private dwelling purposes. In no event may any barn, shack, trailer, tent, shed or playhouse or temporary building be built.
- (b) The exterior materials for any dwelling shall consist of brick or natural stone, wood or stucco. All exposed foundations on the front shall be covered with stone, stucco or brick. All chimneys shall be brick. No building materials of any kind or character shall be placed upon any Lot except in connection with construction to be accomplished. As soon as building materials are placed on any Lot in such connection, construction shall be promptly commenced and diligently prosecuted.
- (c) No dwelling shall be more than two stories in height. Rear walkout basements are permitted. A dwelling portion of a dwelling which is more than one story in height shall have sufficient space on the second floor to accommodate at least two complete rooms (whether or not finished), whose combined cubic space is at least one-third (1/3rd) of the cubic space of the first floor of the dwelling, exclusive of garage, porches, patios and basements; and each such second story room shall have at least one window (with glass dimensions at least two feet (2') wide and three and one-half feet (3 1/2') high) on each of at least two sides of the dwelling.

- (d) Street lighting and the landscaping shall be consistent, aesthetically and otherwise, throughout the Properties. All exterior plantings shall be approved in advance of planting by the Association Board. Unusual structures and other improvements not consistent with these standards shall be prohibited.
- (e) No outside signs will be permitted except those of the developer advertising the sale of TOWNHOMES, security and for sale signs are permissible.
- (f) No statues, synthetic plants, sand boxes, playground equipment, aerial towers, exterior antennas, satellite dishes, outdoor speakers, basketball hoops or permanent flag poles will be permitted. All toys shall be stored out of public view when not in use.
- (g) Household pets within the Properties shall be subject to rules, regulations, restrictions, exclusions and special assessments as may be determined by the Association from time to time.
- (h) All garage doors shall be equipped with automatic door openers and must remain closed at all times except when cars are entering or exiting the garage space.
- (i) Except on the day or days when trash and rubbish is collected, no garbage cans or trash receptacles are to be permitted outside except for those as may be owned by the Association.
- (j) No hedge, fence, wall, steps, playground equipment, recreational facilities, parking area or other equipment or constructed facilities shall be constructed, placed or maintained forward of the front line of any residence, other than a cement driveway from the street to the garage and a cement sidewalk connecting the house, street and driveway. No clotheslines, drying areas, service yards, wood piles or storage areas shall be located as to be visible from a street or road.
- (k) Owners and tenants' vehicles must be parked within garages. Parking will be subject to regulation and restriction by the Association. No camper or boat may be parked outside more than seven (7) days in each calendar year. In no event shall any vehicle or camper, located in a public or private area, be used for occupancy.
- (l) Noise shall be subject to regulation and control by the Association. Noise emitting vehicles, toys and speakers shall not be permitted where they infringe upon the tranquillity of BELVEDERE. The Association shall be the sole authority on determining "appropriate" noise levels on an individual basis.

Section 2 Architectural Control. 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 be submitted to and approved in writing as to conformity with Section 1 of this Article VI and the harmony of external design and location in relation to the surrounding structures and topography by the directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party wall, and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. FHA/VA. As long as 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, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Indemnification of Officers and Directors. The Association shall indemnify any director, officer, employee or agent of the Association who is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is or was a director, officer, employee or agent of the Association, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action or proceeding if such person acted in good faith and in a manner he reasonably believed to be or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable

cause to believe his conduct was unlawful. The Association shall also indemnify any director, officer, employee or agent of the Association who is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Association against expenses, including attorney's fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The Association may, as a Common Expense, obtain officers and directors' liability insurance to fund this obligation.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 1st day of September 1995.

SHACARI INC.

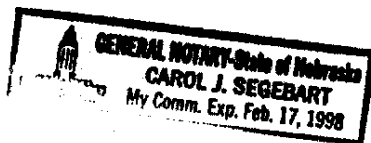
BY: Ansar U Khan
ANSAR U KHAN, PRESIDENT

STATE OF NEBRASKA

COUNTY OF Dodge

SS.

The foregoing instrument was acknowledged before me this 1st day of September, 1995,
BY: ANSAR U. KHAN, President of SHACARI INC. a Nebraska corporation, on behalf of SHACARI Inc.



Carol J Segebart
Notary Public