

Discovery

No. : Northland Mortgage Company : DECLARATION OF COVENANTS
Misc. 577 : By James D. Burchell, Asst. Vice-Pres. : Dated February 25, 1977
Page 192 : to : Filed February 28, 1977
: Whom It May Concern :

THIS DECLARATION, made on the date hereinafter set forth by NORTHLAND MORTGAGE COMPANY, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property near the City of Omaha, County of Douglas, State of Nebraska, which real property is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Declarant hereby declares that all the real property described on Exhibit "A" 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 The Discovery Homeowners 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 a part of the Properties, including contract sellers, 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 the real property (including the improvements thereto) legally described as follows:

Lots 144, 145, 146, 147 and 148 in Discovery, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska with the

exception of those portions of Lot 145 and Lot 146 which are included in Discovery Replat, being a replat of Lots 33 through 36, inclusive, Lots 50 through 61, inclusive, Lots 99 through 103, inclusive, Lots 123 through 127, inclusive, and part of Lots 145 and 146, Discovery, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 25, 26, 27 and 28 in said Discovery Replat.

It is understood that the Common Area is located between and around the Properties and is being held and owned by Sanitary and Improvement District No. 252 of Douglas County, Nebraska, for public use and recreation.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Northland Mortgage Company, 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. Owners' Easements of Enjoyment. Every owner shall have a right in common with the general public to the use and enjoyment of the Common Area.

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 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 be 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:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1981.

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 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. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seventy-
Five Dollars (\$ 75.00) 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 (2/3) 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. 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 thirty (30) days nor more than sixty (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 sixty (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 whatever basis is deemed to be reasonable by the Board of Directors, but in no event less often than annually.

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 first sale of a Lot to an Owner. 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, or part thereof, not paid within thirty (30) days after the due date shall also bear a penalty assessment equal to one-third (1/3) of the amount of the unpaid assessment. 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 became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assess-

ments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Approval of Plans. 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 Board of Directors of the Association, or by an architectural committee 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.

Section 2. Minimum Size. For one story structures, the ground floor enclosed living area of the main residential structure, exclusive of open breezeways, basements and garages shall not be less than 900 square feet minimum size. For two story structures, the ground floor enclosed living area of the main residential structure, exclusive of open breezeways, basements and garages shall not be less than 700 square feet with a total living area of both stories not less than 1,200 square feet total minimum size. For each single family dwelling there also must be a private garage for at least one car with each stall to be a minimum size of 10 feet by 21 feet.

ARTICLE VI

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon each Lot in the Properties for the benefit of each other Lot, and may be enforced by any Owner.

Section 1. Garbage. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or the Common Area, and not on any Lot unless placed in a suitable container suitably located so that

the same is not visible from any street or road.

Section 2. Building Materials. 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.

Section 3. Storage Areas. No clothes lines, drying areas, service yards, wood piles or storage areas shall be located as to be visible from a street or road.

Section 4. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

Section 5. Animals. No animals or poultry shall be kept on any residential lands within the Properties except ordinary household pets belonging to the household.

Section 6. Temporary Buildings. No used or previously erected or temporary house, structure, house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot within the Properties except during construction. Only signs advertising the sale or rental of a Lot and which are reasonable in size shall be allowed in the Properties.

Section 7. Location of Vehicles. Boats, trailers, trucks, pickups or commercial vehicles shall be parked and maintained in such manner as not to be visible from any street or road; however, this restriction shall not restrict trucks or commercial vehicles making pickups or deliveries to or in the Properties nor shall this restriction restrict trucks or commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the Common Area.

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 not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. 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.

Section 5. FHA/VA Approval. 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, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

No witness.

Acknowledged February 25, 1977 by James D. Burchell, the Asst. Vice President of Northland Mortgage Company, who acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company, before Mary Lou Garrity, Notary Public with general seal, Douglas County, Nebraska. Commission expires October 3, 1979.

Exhibit "A"

Lots 1 through 32, inclusive; Lots 37 through 49, inclusive; Lots 62 through 98, inclusive; Lots 104 through 122, inclusive; and Lots 128 through 142, inclusive, all in Discovery, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska

and

Lots 1 through 24, inclusive, in Discovery Replat, being a replat of Lots 33 through 36, inclusive; Lots 50 through 61, inclusive; Lots 99 through 103, inclusive; Lots 123 through 127, inclusive; and part of Lots 145 and 146, Discovery, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.