

80 - 164 F +

BOOK 556 PAGE 127

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HARVEY OAKS
LOTS 246 THROUGH 266 AND LOT 279

THIS DECLARATION, made on the date hereinafter set forth by CLC-NISI JOINT VENTURE, a Joint Venture organized under and subject to the Uniform Partnership Act of Nebraska, composed of Nebraska Investment Services, Inc., a Nebraska corporation, and Creative Land Consultants, Inc., a Nebraska corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property:

Lots 246 through 266, inclusive, and Lot 279 in HARVEY OAKS, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and

WHEREAS, Declarant will convey the said Lots, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the HARVEY OAKS HOMES ASSOCIATION, a Nebraska non-profit 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 all or any part, parcel or portion of a platted Lot which is a part of the Properties, including contract buyers and 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.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and/or members of the Association, subject to the limitations and restrictions hereinafter noted. The Common Area to be owned by the Association at the time of the conveyance of the first Lot or any part, parcel, or portion thereof, is described as follows:

Lot 279 in HARVEY OAKS, a Subdivision, as surveyed, platted, and recorded, in Douglas County, Nebraska.

Section 5. "Lot" shall mean and refer to the above described property with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to CLC-NISI JOINT VENTURE, a Nebraska Joint Venture, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner and/or member of the Association, 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 rights 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, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, non-profit corporation to use for purposes similar to those for which the Association was formed, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or members of the Association and by persons holding mortgages or any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days or more than 60 days in advance. Declarant, or its assigns, shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the homeowner's use and reasonable access to the Common Area, nor with their right of ingress or egress to their homes.

(c) the right of the Association to limit the number of guests of Owners on recreational facilities.

(d) the right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage in said Common Area and facilities shall be subordinate to the rights of the owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment of the

Common Area and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant will convey a fee simple title to the Common Area described in Section 4, of Article I above, to the Association, free and clear of all encumbrances and liens, except easements, restrictions, covenants, and conditions then of record.

ARTICLE III

MEMBERSHIP

Every Owner as defined in Article I, Section 2, under this Declaration shall be a member of the Association. No Owner shall have more memberships than the number of Lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

Members shall be all Owners of the Lots 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 herein 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. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire to the Association as to the amount of any 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.

Section 2. Purpose of Assessments. The assessments levied by the Association on said Lots in HARVEY OAKS, a subdivision, shall be used for the following purposes:

- (a) To promote the recreation, health, safety, and welfare of the residents of the Properties.
- (b) For the improvement, maintenance, and insurance of the Common Area and the payment of any taxes and assessments levied or assessed against such Common Area by any governmental body or entity having lawful jurisdiction to do so.
- (c) For the construction of recreational facilities thereon.

Section 3. Maximum Annual Assessment. Until January 1 of the second year following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twenty five and No/100 (\$25.00) Dollars per Lot.

- (a) From and after January 1 of the second year following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the second year following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent by a vote of two-thirds (2/3) of the members

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

(c) The Board of Directors must 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 two-thirds (2/3) of the votes 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 delivered either personally or by mail to all members not less than 10 days nor more than 50 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 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 fifty percent (50%) of all of the votes. No such subsequent meeting shall be held more than 60 days following the preceeding 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 conveyance of the Common Area, EXCEPT THAT SUCH ASSESSMENTS

SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE DECLARANT UNTIL DECEMBER 31, 1980. 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. The annual assessments shall be and become a lien as of the date of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto immediately following the assessment date. 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 specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the due date at the rate of nine percent (9%) 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 mechanics lien foreclosure. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney's fees with respect to the action. 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. The mortgagee of the subject property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

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 or any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all Properties dedicated to and accepted by a local public authority;
- (b) the Common Area;
- (c) Lots owned by the Declarant until December 13, 1980.

ARTICLE VII

RESTRICTIONS

Section 1. No building shall be created, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed two stories in height, nor containing finished living areas, exclusive of porches, breezeways, carports, and garages of less than: 1,200 square feet on the ground floor for a one-story house, unless it has a basement garage, in which case 1,300 square feet shall be required on the ground floor; 1,200 square feet on the ground floor for a one and one-half story house; 1,800 square feet above basement level for a two-story house; 1,550 square feet of living area above ground for a bi-level, tri-level, or a split-level house; and 1,300 square feet of main floor living area for a split-entry house; nor less than 1,000 square feet in case of a two story structure, nor having a garage for less than two automobiles.

Section 2. No Lot shall be used except for residential purposes.

Section 3. 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.

Section 4. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be erected upon, or used, on any Lot any time as a residence, either temporarily or permanently.

Section 5. Dwellings shall not be moved from outside of HARVEY OAKS to any Lot within this subdivision.

Section 6. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations. No repair of automobiles will be permitted outside of garages on any Lot at any time.

Section 7. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, jeep, motorcycle, grading or excavating equipment or other heavy machinery or equipment, vehicle undergoing repair, van or aircraft shall be stored outside the garage or in any manner left exposed on any Lot at any time.

Section 8. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Section 9. No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the dwelling and not exposed to view from the outside of the dwelling. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except when in actual use unless completely screened from view from every street and from all other Lots in the subdivision. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothes line shall be permitted outside of any dwelling at any time except one umbrella-type clothes line per Lot. Any exterior air conditioning condenser unit shall be placed in the rear or side yard.

Section 10. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided they are not kept, bred or maintained for any com-

mercial purpose. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the main dwelling except for the single dog house permitted in Section 11.

Section 11. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot except that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed structure have been first approved in writing by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, as stipulated hereinafter.

Section 12. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any Lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent.

Section 13. Exposed portions of the foundation on the front of each dwelling are to be covered with either siding or brick and exposed portions of the foundation on the sides and rear of each dwelling shall be either covered with brick or siding or shall be painted.

Section 14. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

Section 15. Public sidewalks shall be constructed of concrete four feet wide by four inches thick, in front of each built-upon Lot and along the street side of each built-upon corner Lot. The sidewalks shall be placed five feet back of the street curb line and shall be constructed by the then Owner of the Lot prior to time of completion of the main structure and before occupancy or use thereof; provided, however, this provision shall be varied to the extent required to comply with any subsequent requirements of the City of Omaha.

Section 16. The use of the Common Area shall be subject to the restrictions set forth in Article II, Section 1, and to those restrictions hereinafter set forth.

Section 17. No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.

Section 18. No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all members.

Section 19. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, driveway, patio, patio enclosure, rock garden, swimming pool, dog house, tree house, television antenna, radio antenna, flag pole or other external improvement above or below the surface of the ground shall be erected, placed, altered, or permitted to remain on any building plot, nor shall any grading, excavation or tree removal be commenced, until the construction plans and specifications, a site grading plan and a plot plan showing the location of the structure or improvement have been approved in writing by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, which shall consider such plans and specifications with regard to type, quality and use of exterior materials, exterior design, location of improvements upon the building plot, and proposed finished grades; provided that Declarant and its designee specifically reserve the right to deny permission to construct any type of structure or improvement which it determines will not conform to its master plan for development of the subdivision.

Section 2. The approval or disapproval of the undersigned Declarant or its designee as required in these covenants shall be in writing. Failure of Declarant or its designee to give either written approval or disapproval of a submitted plan within thirty

() days after submission of said plan, by mailing such written approval or disapproval to the last known address of the applicant for approval as shown on the submitted plan, shall operate to release such building plot from the provisions of this paragraph.

ARTICLE IX

EASEMENTS AND LICENSES

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company and to Omaha Public Power District, their successors, and assigns, to erect and operate, maintain, repair and renew cables, conduits, and other instrumentalities, and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service under a 5-foot strip of land adjoining the rear and side boundary lines of said Lots, said license being granted for the use and benefit of all present and future owners of Lots in said subdivision; provided, however, that said side Lot line easement is granted upon the specific condition that if both said utility companies fail to construct wires or conduits along any of the said Lot lines within 36 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 side Lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementways, 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.

Section 2. All telephone and electric power service lines from property line to dwelling shall be underground.

ARTICLE X

GENERAL PROVISIONS

Section 1. Two Story Height. For the purposes of these restrictions, two-story height as hereinbefore mentioned in Article VII, Section 1, shall, when the basement wall is exposed, be measured

from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s).

Section 2. Enforcement. The Declarant or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure by the Declarant 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 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration.

Section 4. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 29 day of September, 1975.



DECLARANT:

CLC-NISI JOINT VENTURE, a joint venture organized under and subject to the Uniform Partnership Law of Nebraska

CREATIVE LAND CONSULTANTS, INC., a Nebraska corporation,

By [Signature]
President

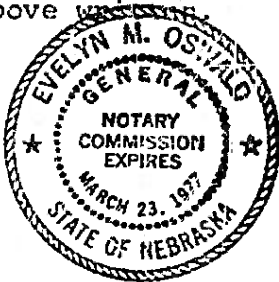
NEBRASKA INVESTMENT SERVICES, INC., a Nebraska corporation,

By [Signature]
President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 29 day of September, 1975, before me the undersigned, a Notary Public in and for said county and state, personally came C. E. Westphal, known to me to be the President of Nebraska Investment Services, Inc., a Nebraska corporation, which corporation is a member of CLC-NISI Joint Venture, a joint venture organized under and subject to the Uniform Partnership Act of Nebraska, and acknowledged that he executed the same as his voluntary act and deed as such officer and the voluntary act and deed of such corporation as such member of said joint venture, and the voluntary act and deed of said CLC-NISI Joint Venture, and that the corporate seal of said corporation was thereto affixed by its authority.

Witness my hand and official seal the day and year last above written.

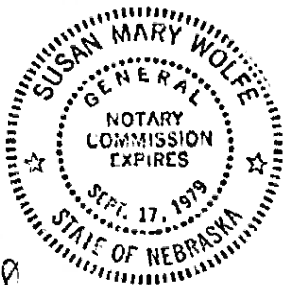


Evelyn M. Oswald
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 29 day of September, 1975, before me the undersigned, a Notary Public in and for said county and state, personally came Glenn L. Buck, known to me to be the President of Creative Land Consultants, Inc. a Nebraska corporation, which corporation is a member of CLC-NISI Joint Venture, a joint venture organized under and subject to the Uniform Partnership Act of Nebraska, and acknowledged that he executed the same as his voluntary act and deed as such officer and the voluntary act and deed of such corporation as such member of said joint venture, and the voluntary act and deed of said CLC-NISI Joint Venture, and that the corporate seal of said corporation was thereto affixed by its authority.

Witness my hand and official seal the day and year last above written.



Susan Mary Wolfe
Notary Public

38

47.50

ENTERED IN NUBREN INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRAS.
3 DAY OF Oct 1975 AT 2:56 P.M. G. HAROLD OSTLER, REGISTER OF DEEDS