

130

RECEIVED

DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR A PART OF DIAMOND HEAD, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA

NOV 21 PM 3:23

RECORDED

THIS DECLARATION, made on the date hereinafter set forth, is made by
DIAMOND HEAD DEVELOPMENT COMPANY, a Nebraska corporation ("Declarant").

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within
Douglas County, Nebraska, and described as follows:

Lots 6, 7, 24 through 75, inclusive, and 80 through 162,
inclusive, in Diamond Head, a subdivision, as surveyed,
platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and
individually as each "Lot".

The Declarant desires to provide for the preservation, protection and
enhancement of the values and amenities of such community and for the main-
tenance of the character, value, desirability, attractiveness and residential
integrity of the Lots.

NOW, THEREFORE, the Declarant hereby declares that each and all of the
Lots shall be held, sold and conveyed subject to the following restrictions,
covenants, conditions and easements, all of which are for the purpose of
enhancing and protecting the value, desirability and attractiveness of the
Lots. These restrictions, covenants, conditions and easements shall run with
such real estate and shall be binding upon all parties having or acquiring any
right, title or interest in each Lot, or any part thereof, as is more fully
described herein. The Lots, and each Lot is and shall be subject to all and
each of the following conditions and other terms:

ARTICLE I.
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for residential purposes except
for such Lots or parts thereof as may hereafter or previously have been
conveyed or dedicated by Declarant, for use as a school or park.

2. The ground floor finished and enclosed living area of main residen-
tial structures, exclusive of porches, breezeways, basements and garages,
shall be not less than the following minimum sizes:

(a) 1,500 square feet for a one-story dwelling.

(b) 1,800 total above-basement finished square footage, for a
1½-story dwelling.

869 N 92-461 etc C/O FEB 98.50
218-223 N 92-401 DEL 1/4 MC WC
COMP dw FIB MC-090.30

19529 F misc

(c) 2,000 total above-basement finished square footage, for a 2-story dwelling.

(d) 1,500 square feet for a split-level dwelling. [On split-level or split-entry dwellings, the ground floor shall be deemed to include all finished living areas except such areas as are constructed on top of other finished living areas.]

(e) 1,700 total above-basement finished square footage, for a tri-level dwelling.

For each dwelling there must be erected a private garage for not less than two (2) cars, nor more than four (4) cars (each car stall to be a minimum size of ten feet by twenty-one feet).

3. For a period of ten (10) years after the filing of this Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, rock garden, swimming pool, tennis court, dog house, tree house, antenna, satellite receiving station ("disc"), flag pole, solar heating or cooling device, tool shed, wind mill, wind generating equipment, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

(a) An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall reflect the type of structure, quality and use of exterior materials, exterior design, exterior color or colors, and location of structure proposed for such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

(b) Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a developed residential community with homes constructed of high quality materials. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(c) Written notice of any refusal to approve a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of refusal is not mailed within such period, the proposed Improvement shall be deemed approved by Declarant.

(d) The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Declarant to protect the values,

character and residential quality of all Lots. However, no Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

4. The exposed front foundation wall as well as any foundation wall facing a street of all main residential structures must be constructed of or faced with brick or simulated brick or stone or stucco. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, asphalt or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, stone or siding.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no retail business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

6. No exposed exterior television, broadcasting or radio antenna of any sort shall be permitted on any Lot.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) except that during the months of May through September vehicles may be parked in the driveway only. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, airplanes, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this restriction shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction.

9. No outside trash or garbage pile, burner, receptacle or incinerator shall be placed or permitted on any lot. No garden lawn or maintenance of any dwelling or suitable storage facility, except when in actual use, shall be maintained free of trash and debris. No clothes line

type clothes line per residence. No more than two (2) cords and only in the rear yard on a flat.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of a main residential structure thereof.

Declarant. No hedges or mass planted shrubs shall be planted (10) feet in front of the front building line. All produce or vegetable gardens shall be maintained only in rear yards.

11. A dwelling on which construction has begun shall be completed within one (1) year from the date the foundation was commenced for such dwelling.

12. A sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each built upon Lot and upon the street side of each built upon corner Lot. The sidewalk shall be placed four feet from the street curb line and shall be constructed by the owner of occupancy thereof.

13. 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 constructed for one (1) dog shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or their assigns, if required by this Declaration. Dog runs and dog houses shall only be allowed at the rear of the building, concealed from public view.

14. Any exterior air conditioning condensor unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of eight (8) inches.

15. No structure of a temporary character, trailer, basement, tent, outbuilding or shack, shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structures, dwellings, or modular housing improvements shall be moved from outside Diamond Head to any Lot.

16. At the time of initial occupancy of the main dwelling, the then owner shall plant, and there shall thereafter be maintained in a growing state by the then owners, at least two deciduous tree with a minimum trunk diameter

of one and one-half inches; such tree to be located in the front yard at least ten feet from the front lot line.

17. No residence shall be constructed less than thirty feet (30') from the front property line.

ARTICLE II.
NOTICE OF POTENTIAL TELEPHONE FACILITIES CHARGE

In the event that ninety percent (90%) of the Lots within the Diamond Head Subdivision are not improved within five (5) years from the date that Northwestern Bell Telephone Company shall have completed its distribution system and filed notice of such completion ("Five Year Term") then such unimproved Lot shall be subject to a charge of Four Hundred Fifty Dollars (\$450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority.

Should such charge be implemented by Northwestern Bell Telephone Company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (i) expiration of the Five Year Term, (ii) more than ten percent (10%) of the Lots remain unimproved, and (iii) each owner of record is to send a written statement for Four Hundred Fifty and no/100 Dollars (\$450.00) per unimproved Lot owned.

ARTICLE III.
GENERAL PROVISIONS

1. The Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of 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.

2. 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. This Declaration may be amended by Declarant or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of four (4) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. Invalidity 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.

DIAMOND HEAD DEVELOPMENT COMPANY, a
Nebraska corporation.

By Michael F. Rogers

STATE OF NEBRASKA } ss:
COUNTY OF DOUGLAS }

The foregoing instrument was acknowledged before me this 25 day of
October, 1988, by Michael F. Rogers, President
of DIAMOND HEAD DEVELOPMENT COMPANY, a Nebraska corporation, on behalf of the
corporation.

Walt Slobotsky
Notary Public

