

BK 1363 PG 157-162



MISC 2000 17482

RICHARD N. TANECH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

00 DEC 26 PM 2:22

RECEIVED

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

IN RE CANDLEWOOD HOME)
OWNERS ASSOCIATION, INC.,)CANDLEWOOD HOME OWNERS)
ASSOCIATION, INC.,)

Plaintiff,)

vs.)

JOSEPH ADDISON, a home owner)
within the Candlewood subdivision; on)
his own behalf and on behalf of all other)
owners of property within the)
Candlewood subdivision,)

Defendants.)

DOC. 993 PAGE 562

FEE 236.00 FB _____
BKP _____ C/O _____ COMP _____
DEL _____ SCAN _____ FV _____ORDER OF DECLARATORY
JUDGMENT NUNC PRO TUNCFILED
JOURNAL CLERK

DEC 29 2000

CLERK DISTRICT COURT

NOW on this 17th day of November, 2000, the above captioned matter comes before the Court for trial pursuant to notice.

Evidence was adduced, and arguments are made. The Court, being well and duly advised in the premises, finds and orders as follows:

1. Plaintiff is a Nebraska not-for-profit corporation. It acts as a home owners association which includes all of the residential lot owners of the Candlewood subdivision and part of the residential lot owners in the Candlewood II subdivision in west Omaha. The legal description of those lots is as follows:

Lots 1 through 84, inclusive, Lots 86 through 112, inclusive, Lots 115 through 228, inclusive, and Lots 233 through 400, inclusive, in Candlewood Addition, a subdivision in Douglas County, Nebraska, and

Lots 1 and 2, Candlewood Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, commonly known as 12212 Rose Lane and 12205 Charles Street, and

Lots 60 through 71, inclusive, and Lots 73 and 74 and that portion of Lot 78 located within the Northwest Quarter of the Northeast Quarter of Section 18, Township 15 North, Range 12 East of the 6th P.M., all of the preceding lots being in Candlewood II, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and

Lots 1 and 2, Candlewood II, Replat 2, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded in Douglas County, Nebraska, commonly known as 1925 North 123rd and 1927 North 123rd Streets.

Plaintiff is the fee simple title owner of the property commonly referred to as Lake Candlewood, an impounded lake created by the Candlewood Dam, and the amenities incident thereto, as well as additional common areas in the Candlewood subdivision.

2. This is a class action pursuant to Neb. Rev. Stat. § 25-319. The class consists of all owners of residential lots in the Candlewood subdivision in Douglas County, Nebraska, as well as a limited number of residential lot owners in Candlewood II, a subdivision in Douglas County, Nebraska, as described in Paragraph 1 hereof. Appropriate notice to all class members was given pursuant to prior Order of this Court. The interests of all absent class members have been adequately represented and protected.

3. Required membership in the Plaintiff Home Owners Association of all lot owners in the Candlewood subdivision was created pursuant to a Declaration filed with the Douglas County Register of Deeds on or about May 30, 1972 beginning at Book 510, Page 401 and extended by a Declaration filed with the Register of Deeds on or about June 4, 1979 beginning at Book 615, Page 338 (hereafter collectively "the Declaration"). The Declaration states that the requirement for membership in the Home Owners Association shall exist through December 30, 2000, or for such longer or other period as may be otherwise fixed. The Plaintiff Home Owners Association was

given the right pursuant to the Declaration to promote and sustain the social welfare and otherwise provide for the health, pleasure, recreation, safety and other interests of the subdivision.

4. The subdivision was recently annexed by the City of Omaha, however, Lake Candlewood and the other common areas continue to be the property of the Home Owners Association.

5. The Home Owners Association also has By-Laws (hereafter "By-Laws"). The Declaration and By-Laws each make reference to the other and are intrinsically connected in their operation. The By-Laws reference the Declaration and state that the covenants contained therein shall run with and bind the land for a term of twenty (20) years from the date of the Declaration, at which time it shall be automatically extended for successive periods of ten (10) years. The Declaration itself does not contain a similar extension provision, but contains other language which establishes the relationship of the By-Laws to the Declaration. The language which provides that the existence of the Home Owners Association may be "for such longer or other period as may be otherwise fixed" can only realistically refer to the By-Laws.

6. The attorney who drafted the Declaration and the By-Laws and one of the developers involved in the development of the subdivision and the creation of the structure for the Home Owners Association have stated that their intention was to provide for the continuity of the Home Owners Association by automatic ten (10) year extensions. This intention is reflected in the language of the respective documents when they are read together, as they must be.

7. To the extent the continuity of, and automatic membership in, the Home Owners Association is threatened, the subdivision would be left in a state of disarray with regard to ownership of the lake and other matters necessary to the efficient operation and existence of the subdivision. Among other things, Lake Candlewood acts as the storm sewer system for the subdivision.

8. It is a cardinal principle of construction that instruments made in reference to and as part of a transaction should be considered and construed together. Baker's Supermarkets, Inc. v. Feldman, 233 Neb. 684, 502 N.W.2d 428 (1993),

4

Properties Inv. Group v. Applied Communications, Inc., 242 Neb. 464, 495 N.W.2d 483 (1993). The extension provision regarding the duration of the requirement for membership in the Candlewood Home Owners Association contained in the By-Laws was intended to be and is equally applicable to the Declaration.

9. The best and most logical interpretation of those portions of the Declaration and the By-Laws dealing with the duration of that part of the Declaration related to the Home Owners Association, and the requirement for membership in the Home Owners Association, is that such provisions were intended to and do extend automatically for successive ten (10) year periods after the expiration of the initial twenty (20) year period after the filing of the Declaration.

The Court, in light of these Findings, Orders, Adjudges and Decrees as follows:

A. The Court has jurisdiction over the subject matter of this action and over the person of the named Defendant, as well as all members of the class.

B. This case may properly proceed as a class action. The Defendant class is comprised of all owners of property within the Lake Candlewood subdivision and part of the owners of property within the Candlewood II subdivision as set forth in Paragraph 1 above. Appropriate notice was given to all class members pursuant to the Order of this Court. The interests of all absent class members were adequately represented and protected.

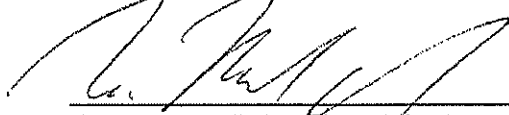
C. Plaintiff's evidence establishes the necessity for continuation of, and automatic membership in, the Plaintiff Home Owners Association for purposes of ownership of Lake Candlewood and otherwise for the benefit of the subdivision. The evidence further establishes that the Declaration and By-Laws were intended to be read together.

D. The Candlewood Home Owners Association, Inc. is a corporation with perpetual existence. Under the terminology contained in the By-Laws, the initial term for all terms and provisions of the Declaration relating to the Home Owners Association, including but not limited to the lien upon lots for the payment of dues and required membership of individual Candlewood lots in the Home Owners Association, was twenty (20) years from the date of filing the Declaration. Thereafter, all such

terms and provisions continue automatically for successive ten (10) year periods. This provision for automatic extensions conforms to the language of the Declaration as clarified in the By-Laws, all as stated herein. Costs are taxed to the Plaintiff.

IT IS SO ORDERED.

BY THE COURT:



Honorable W. Mark Ashford
Douglas County District Court Judge

12-29-00

THE STATE OF NEBRASKA,)
) SS
COUNTY OF DOUGLAS.)

I, RUDY J. TESAR, Clerk of the District Court, Fourth Judicial District of Nebraska, within and for said County, do hereby certify that the above and foregoing is a true and correct copy of the ORDER OF DECLARATORY JUDGEMENT NUNC PRO TUNC filed and entered on the 29th day of December, 2000, and designated as Docket 993 Number 562.

in a cause in said Court wherein CANDLEWOOD HOMOWNERS ASSOC., PLAINTIFF

and JOSEPH ADDISON, ETAL, DEFENDANTS

as the same appears fully upon the records and in the files of said Court now in my charge remaining as Clerk aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the seal of said Court
at Omaha, Nebraska, this 29TH day
of DECEMBER ,A.D. 2000

IMPRINTED SEAL
REGISTER OF DEEDS

RUDY J. TESAR

CLERK

BY Helen Klumank
DEPUTY

79-736T

DECLARATION

2024 510 401

CANDLEWOOD ADDITION
a subdivision in Douglas County, Nebraska
as surveyed, platted and recorded

THIS DECLARATION, made this 24th day of May,
1972, by the undersigned, E. G. MILLER REALTY CO., INC., TRUSTEE,

WITNESSETH: THAT,

WHEREAS, the undersigned E. G. MILLER REALTY CO., INC.,
TRUSTEE, is the owner of the following described premises,
to-wit: Lots One (1) through Four Hundred Three (403), inclusive,
in Candlewood Addition, a Subdivision in Douglas County, Nebraska,
as surveyed, platted and recorded, and

WHEREAS, the undersigned has heretofore agreed, pursuant
to an Indenture executed September 30, 1971, that of the foregoing
described real estate all that portion legally described as:
Lots 1 through 84, inclusive, Lots 86 through 228, inclusive,
and Lots 233 through 400, inclusive, in Candlewood Addition,
a Subdivision in Douglas County, Nebraska, as surveyed, platted
and recorded, will be subject to conditions and other terms
appropriate, convenient, or necessary to preserve and promote
its private residential character in conformity to and coordination
with the general scheme of development and use expressed in
said Indenture, and

WHEREAS, the Declarant being the owner of all that portion
of the foregoing described real estate legally described as:
Lots 85, 229, 230, 231, 232, 401, 402 and 403 in Candlewood
Addition, a Subdivision in Douglas County, Nebraska, which
lots have been zoned for multi-family Residential District
and Commercial District uses, and in order to insure that
the use made of said lots is in conformity and harmony with
the general scheme of development planned by Declarant to
protect the value and desirability of all the above described
property, Declarant desires to subject said lots to the following
covenants contained in Section II hereof only;

NOW, THEREFORE, in consideration of the matters herein
recited Declarant does hereby

DECLARE as follows, to-wit:

I

SINGLE-FAMILY RESIDENCE PROPERTY

1. All single-family residence property involved in this Declaration, is and will be acquired, conveyed, devised, inherited, sold, or otherwise transferred and is and will be occupied and used subject to all and each of the conditions and other terms set out in this Section I of this Declaration; and the following does and will constitute the single-family residence property so subject to this Declaration:

a. Lots 1 through 84, inclusive, Lots 86 through 228, inclusive, Lots 233 through 400, inclusive, in Candlewood Addition, a subdivision in Douglas County, Nebraska will be subjected to this Declaration,

b. Declarant will retain the right at any time or from time to time through December 31, 2000, to subject additional real property owned by it in Douglas County, Nebraska, and comprised of one or more subdivisions or units suitable for individual private residential purposes, hereafter called "lot" or "lots", and any other owners will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Candlewood Homes Association, a Nebraska nonprofit corporation, hereafter called "Association", also to subject additional real property owned by them in Douglas County, Nebraska, and comprised of one or more lots, to this Declaration by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written Supplementary Declaration describing such property and extending to each of such lots all of the conditions and other terms set out in this Declaration with only such complementary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the different character of such property but not inconsistent with the private residential character of the single-family residence property.

2. The single-family residence property of Candlewood is and will be through December 21, 2000, subject to all and each of the following conditions and other terms, hereafter called "covenants";

a. Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit public purposes to the extent permitted by applicable zoning regulations, no single-family residence lot, hereinafter will be occupied or used for other than single-family residential purposes; and no lot will be occupied or used for such residential purposes; and no lot will be occupied or used for such residential purposes at a density greater than one single-family residence for each lot or for each part thereof of an area not less than Seven Thousand Five Hundred (7,500) square feet.

b. The structure or associated structures comprising a single-family residence will consist of a detached dwelling designed to accommodate a single person or one family group together with household servant or servants of not more than two and one-half stories in height which shall be constructed in compliance with the following restrictions:

(1) The ground floor area of every one-story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than One Thousand Six Hundred (1,600) square feet.

(2) The ground floor enclosed area of every two-story or one and one-half story dwelling exclusive of open porches, open breezeways, basements and garages, shall be not less than Nine Hundred (900) square feet and the first floor and other floors combined shall be not less than One Thousand Nine Hundred (1,900) square feet of floor area.

(3) The ground floor enclosed area of every split-level type of dwelling with the garage built under the dwelling, shall have combined ground floor area including

the floor area above the garage, exclusive of open porches, open breezeways, basements and garages, of not less than Nine Hundred (900) square feet and the ground floor area and other floors combined shall be not less than One Thousand Seven Hundred (1,700) square feet.

c. No single-family residence will be altered, built, constructed, or otherwise maintained on any lot without an express written Approval executed by Association through its Architectural Control Committee or its permission by implied approval secured in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, as to general appearance, exterior color or colors, harmony of external design and location in relation to surroundings and topography and other relevant architectural factors, location within lot boundary lines, quality of construction, size, and suitability for residential purposes of such single-family residence; and no exterior air conditioning equipment, antenna, ditch, fence, flag pole, pool, tennis court, wall, or other structure or associated structures and no trees or other substantial landscaping in any location within public view will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken on any lot without such approval by Association so secured as to general appearance, composition, design, exterior color or colors, and suitability for residential purposes. The roof of all dwellings or any other structure shall be covered by shake, wooden shingle or tile roofing materials, and no roof shall be covered with asphalt composition material. All exposed foundations facing the front and side yards of each lot not adjoining Lake Candlewood shall be faced with brick, stone or wood, and all exposed foundations on each lot adjoining said lake shall be faced with brick, stone or wood. The chimney of all dwellings shall be faced with brick or stone. All dwellings shall have attached enclosed garages which must be capable of accommodating at least two standard size automobiles.

d. After commencement thereof all approved or permitted construction on any lot will be as diligently as practicable prosecuted to completion as soon as practicable, and no approved or permitted construction will be maintained on any lot in uncompleted or unfinished condition for more than eighteen (18) months.

e. No exterior burner, incinerator, or other receptacle for garbage, trash, or other refuse will be maintained above ground level on any lot; and no barn, shack, tent, trailer, or other movable or temporary structure will be maintained on any lot other than for temporary use or uses appropriate, convenient, or necessary for residential purposes for not more than seven (7) days within any calendar year or for use or uses connected with contemporaneous with approved or permitted construction. Public concrete sidewalks, four feet wide and four inches thick, shall be installed by the then owner in front of each improved lot and on the side street of each improved corner lot prior to completion of construction of the dwelling on each lot.

f. No driveway will be constructed or maintained on any lot and connected to or with an adjoining public street through its curb other than by a curb cut effected with a clean-cutting cement saw leaving a smooth and unpatched curb cut and by a construction design leaving a smooth and unpatched union along a line or lines outside the path of water flow along said curb and surfaced, from the line of any intersected public sidewalk nearest such lot to such union, only with concrete cement of quality similar to that used for such sidewalk and street and otherwise surfaced with asphalt, brick, concrete, laid stone, or other construction material so as to avoid and prevent erosion of or water damage to such curb, curb cut, sidewalk, or street, and no such driveway will be so constructed or maintained and connected across or over an adjoining intersection so as to avoid and prevent erosion of, water damage to, cracks in, or similar damage to such sidewalk.

g. 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 of undesirable contagion or proliferation, or detract from a neat and trim appearance. On lots adjoining Lake Candlewood, grass shall be seeded or sodded and maintained to the water frontage; that is, the point where the lot meets the edge of the lake; and, no paving, sand or other material shall be installed on any said lot on or in the proximate vicinity of said water frontage; provided, however, that the Architectural Committee may approve plans for placement of rocks along the water frontage to check erosion if the same shall be attractive in appearance and in harmony with relation to the surroundings.

h. No advertising sign or other poster other than a sign of an area of not more than four square feet advertising such lot for sale or a sign or signs belonging to Declarant as owner of such lot will be maintained on any lot.

i. No excess or unused building material or materials will be kept, stored or otherwise maintained on any lot in a location within public view, other than for use or uses connected and coterminous with approved or permitted construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any lot.

j. No boat, camper, trailer, or similar chattel will be maintained on any lot, other than in an enclosed structure, for more than seven days within any calendar year; and no automobile, motorcycle, truck, or other vehicle will be repaired, torn down, or stored on any lot, other than in an enclosed structure.

k. No birds, livestock, poultry, or animals other than domesticated noncommercial pets in no more than reasonable quantity will be bred, kept, or otherwise maintained on any lot.

1. No boat dock, boat house, float, boat ramp, raft, bouy or other structure shall be erected or placed upon any lot in the properties or placed in any water adjoining said lot, and no fence or wall shall be built or maintained along the rear lot line of any lot adjoining Lake Candlewood.

m. No motor boats, or power boats shall be permitted on Lot 303; that is, Lake Candlewood.

3. Association: The single-family residence property is and will be through December 30, 2000 or for such longer or other period as may otherwise be fixed included in membership in Association subject to all and each of the following conditions and other terms:

a. Association will have the right, in general, without any part of its net earnings inuring to the private benefit of its members, to promote and sustain their social welfare, and otherwise provide for their health, pleasure, recreation, safety, and other nonprofitable interests by acquiring, maintaining, operating, contributing to the acquisition, maintenance or operation of or otherwise making available for use any one or more area entrances or entry structures, boat docks, golf courses, lakes, parks, swimming pools, tennis courts, and any other recreational equipment, facilities, grounds, or structures, by providing weed and other actual or potential nuisance abatement or control, security service, other community services, by exercising architectural control and securing compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, by fixing and collecting or abating dues or other charges for financing its operations, by delegating by contract or otherwise to any other Nebraska nonprofit corporation general responsibility for administration and executive management of its affairs, and by undertaking any one or more other activities appropriate, convenient, or necessary to promote or sustain any such interest, to acquire by purchase or otherwise, hold for investment or otherwise, or dispose of for profit or otherwise any interest in or species

of personal or real property wherever located, and to engage in any other venture for the mutual nonprofitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as amended.

b. Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit or public purposes to the extent permitted by applicable zoning regulations, every single-family residence lot will be automatically included in membership in Association as a benefit or burden running with and charge upon the ownership of each such lot; and the owners of any other lots will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Association thereafter to include any such lot in membership in Association as a benefit or burden running with and charge upon the ownership of such lot.

c. Dues or other charges for each lot included in membership fixed by Association in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, will each constitute until abated or paid a lien upon and charge against such lot in favor of Association; but not such dues or charges shall constitute a lien until and unless a written notice of such lien is filed by the Association on such lot with the Register of Deeds of Douglas County, Nebraska, and no such lien upon any such lot will at any time be superior to any earlier or later established lien upon such lot for security for a home improvement or purchase money loan or the unpaid balance of a purchase contract for such lot.

d. The obligations and privileges or membership in Association will in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, extend to contract purchasers and owners of all lots included in membership and appertain to and be coterminous with the duration of the interest for membership for a period or from period to period; but each member will be and remain personally liable to Association until abatement or payment for all dues or other charges fixed by it at any time or from time to time throughout the duration of such interest or membership.

e. Association will have the right in the manner set out in its Articles of Association or its By-Laws, as from time to time amended, to divide the membership into classes, to deny or limit voting rights of members of any membership class, and to deny access to or use of facilities or services, suspend the membership or privileges of, or otherwise discipline any member for failure to pay dues or charges or for other conduct detrimental to its affairs or otherwise improper.

4. Enforcement: The covenants, easements, conditions, and other terms set out in this Declaration for single-family residence property are and will be subject to the following enforcement:

a. Association and every contract purchaser or owner of any lot will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement as to any lot of any covenants or any easement granted to it and to fix a reasonable charge for such action as a lien upon and charge against such lot in favor of Association.

b. Every grantee, assign thereof, or successor thereto will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement of any easement granted to such grantee.

II

MULTI-FAMILY RESIDENTIAL PROPERTY

AND COMMERCIAL PROPERTY

All multi-family residential property and commercial property involved in this Declaration and legally described as: Lots 85, 229, 230, 231, 232, 401, 402 and 403 in Candlewood Addition, a subdivision in Douglas County, Nebraska, is and will be through December 31, 1980, acquired, conveyed, devised, inherited, sold or otherwise transferred and is and will be occupied and used subject to the restriction that no construction shall be commenced upon any said multi-family residential lot or lots or any said commercial lot or lots until the plans

BOOK 510 PAGE 410

therefore shall first have been submitted to and approved in writing by Declarant.

III

EXTENSION, MODIFICATION, TERMINATION

The conditions and other terms of Section I and/or Section II of this Declaration are and will be subject to the following provisions for extension, modification or termination:

a. Declarant will have the right by an express written permit for the purpose of avoiding undue hardship to waive partly or wholly the application to any lot of any covenant or easement granted to it;

b. Any grantee, assignee thereof, or successor thereto will have the right by an express written termination to terminate any easement granted to said grantee.

IN WITNESS WHEREOF, Declarant has executed this Declaration at Omaha, Douglas County, Nebraska.

E. G. MILLER REALTY CO., INC.,
TRUSTEE

By Bruce N. Miller, President

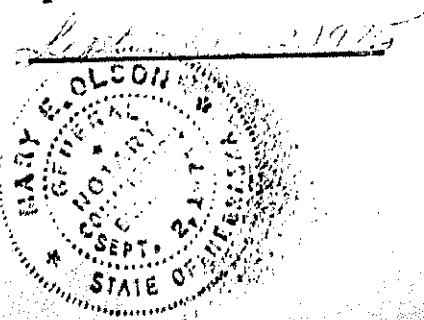
STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS.

Before me a notary public qualified for said county, personally came Bruce N. Miller, President of E. G. MILLER REALTY CO., INC., TRUSTEE, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of E. G. MILLER REALTY CO., INC., TRUSTEE.

WITNESS my hand and notarial seal this 20 day of May, 1972.

Mary E. Olson
Notary Public

My Commission Expires:



15
ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA
1302
1972 MAY 12 20 M. C. HAROLD OSTLER, REGISTER OF DEEDS
30 MAY 1972

DECLARATION

A Portion of CANDLEWOOD II, a Subdivision, as Surveyed,
Platted and Recorded, Douglas County, Nebraska.

THIS DECLARATION, made this 8th day of MAY,
1979, by the undersigned, BOARD OF TRUSTEES FOR THE BRUCE N.
MILLER REAL PROPERTY ARRANGEMENT and THE UNITED STATES NATIONAL
BANK OF OMAHA,

WITNESSETH: That,

WHEREAS, the undersigned, BOARD OF TRUSTEES FOR THE
BRUCE N. MILLER REAL PROPERTY ARRANGEMENT and THE UNITED STATES
NATIONAL BANK OF OMAHA, are the owners, with each owning an
undivided one-half interest, of the following described real
estate:

Lots Fifty-nine (59) through Seventy-one (71),
both inclusive, and Lots Seventy-three (73)
and Seventy-four (74), and that portion of Lot
Seventy-eight (78) located within the North-
west Quarter (NW1/4) of the Northeast Quarter
(NE1/4) of Section Eighteen (18), Township
Fifteen (15) North, Range Twelve (12), East of
the 6th P.M., all of the preceding lots being
in Candlewood II, a subdivision, as surveyed,
platted, and recorded, Douglas County, Nebraska;

WHEREAS, all of the above-described real estate has
been zoned "R-6 Cluster", and, therefore, is available for single-
family or two-family use; and

WHEREAS, the undersigned, being the owners of all of
the above-described real estate, in order to establish a uniform
plan for the development thereof, do hereby declare as follows:

1. All of the above-described real estate involved in
this Declaration is and will be acquired, conveyed, devised,
inherited, sold, or otherwise transferred and is and will be
occupied and used subject to all and each of the conditions and
other terms set forth in this Declaration. The following does
and will constitute the real property subject to this Declara-
tion:

(a) Lots Fifty-nine (59) through Seventy-one
(71), both inclusive, and Lots Seventy-three (73)
and Seventy-four (74), and that portion of Lot
Seventy-eight (78) located within the Northwest
Quarter (NW1/4) of the Northeast Quarter (NE1/4)
of Section Eighteen (18), Township Fifteen (15)
North, Range Twelve (12), East of the 6th P.M.,
all of the preceding lots being in Candlewood
II, a subdivision as surveyed, platted, and re-
corded, Douglas County, Nebraska.

(b) Declarants will retain the right at any time or from time to time through December 31, 2000, to subject additional real property owned by them in Douglas County, Nebraska, and comprised of one or more subdivisions or units suitable for private residential purposes, hereafter called "lot" or "lots," and any other owners will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Candlewood Homes Association, a Nebraska nonprofit corporation, hereafter called "Association", also to subject additional real property owned by them in Douglas County, Nebraska, and comprised of one or more lots, to this Declaration by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written supplementary declaration describing such property and extending to each of such lots all of the conditions and other terms set out in this Declaration with only such complementary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the different character of such property but not inconsistent with the private residential character of the property.

2. The above-described residential property of Candlewood II is and will be through December 31, 2000, subject to all and each of the following conditions and other terms hereafter called "covenants":

(a) Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit public purposes to the extent permitted by applicable zoning regulations, none of the above-described real property, hereinafter will be occupied or used for other than single-family or two-family residential purposes; and no lot will be occupied or used for such residential purposes at a density greater than one single-family or one two-family residence for each lot or for each part thereof of an area not less than Seven Thousand Five Hundred (7,500) square feet.

(b) The structure or associated structures comprising a single-family or two-family residence will consist of a detached dwelling designed to accommodate a single person or one family group per dwelling or one-family group per unit with respect to a duplex, together with household servant or servants, of not more than two and one-half stories in height and which shall be constructed in compliance with the following restrictions:

(1) The enclosed floor area of every single-family one-story single floor level dwelling, exclusive of open porches, open breeze-ways, basements and garages, shall be not less than One-Thousand Five Hundred (1,500) square feet.

(2) The ground floor enclosed area of every single-family two-story or one and one-half story dwelling, exclusive of open porches, open breeze-ways, basements and garages, shall be not less than Nine Hundred (900) square feet and the first floor and other floors combined shall have an aggregate floor area of not less than One Thousand Nine Hundred (1,900) square feet.

(3) The enclosed floor area of every single-family split-level style of dwelling with the garage built under a portion of the building shall have an aggregate floor area, including the floor level above the garage, of not less than One Thousand Six Hundred (1,600) square feet, exclusive of open porches, open breeze-ways, garages and basements, regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(4) The enclosed floor area of every single-family split-entry style of dwelling, where the entrance level is not a primary level of the dwelling and the garage is built under a portion of the dwelling, shall have an aggregate main floor area of not less than One Thousand Six Hundred (1,600) square feet (One Thousand Five Hundred (1,500) square feet if the garage is not below a portion of the dwelling), exclusive of open porches, open breeze-ways, garages and basements, regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(5) The enclosed floor area of every two-family (duplex) style of dwelling shall have an aggregate floor area of not less than Nine Hundred Fifty (950) square feet per living unit, exclusive of open porches, open breeze-ways, garages and basements, regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(c) Although the above-described real property is zoned "R-6 Cluster," the set-back requirements shall be the same as those provided for and required of property zoned "R-6".

(d) No single-family or two-family residence will be altered, built, constructed, or otherwise maintained on any lot without an express written approval executed by Association through its Architectural Control Committee or its permission by implied approval secured in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, as to general appearance, exterior color or colors, harmony or external design and location in relation to surroundings and topography and other relevant architectural factors, location within lot boundary lines, quality of construction, size, and suitability for residential purposes of such single-family or two-family residence; and no exterior air-conditioning equipment, antenna, ditch, fence, flag pole, pool, tennis court, wall, or other structure or associated structures, and no trees or other substantial landscaping in any location within public view will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken on any lot without such approval by Association so secured as to general appearance, composition, design, exterior color or colors, and suitability for residential purposes. The roof of all dwellings or any other structures shall be covered by shakes, wooden shingles, or tile roofing materials, and no roof shall be covered with asphalt composition material. All exposed foundations facing the front and side yards of each lot shall be faced with clay-fired brick or stone. Foundation areas as prescribed above may be faced with an approved siding material, provided that the area, regardless of size below the siding and above the finished grade level, shall be faced with clay-fired brick or stone. The chimney(s) of all dwellings

shall be faced with clay-fired brick or stone, except that dwellings with multiple flues or chimneys will be allowed one field painted, prefabricated metal flue exposed on the rear side of the dwelling near the roof ridge, provided that no portion of said exposed flue exceeds five feet in height. All single-family dwellings shall have attached enclosed garages which must be capable of accommodating at least two standard size automobiles. Two-family dwellings shall have attached enclosed garages which must be capable of accommodating at least one standard size automobile per living unit.

(e) After commencement thereof, all approved or permitted construction on any lot will be as diligently as practicable prosecuted to completion and no approved or permitted construction will be maintained on any lot in uncompleted or unfinished condition for more than eighteen (18) months.

(f) No exterior burner, incinerator or other receptacle for garbage, trash, or other refuse will be maintained above ground level on any lot; and no barn, shack, tent, trailer, or other moveable or temporary structure will be maintained on any lot other than for temporary use or uses appropriate, convenient or necessary for residential purposes for not more than seven (7) days within any calendar year or for use or uses connected with approved or permitted construction. Public concrete sidewalks, four feet wide and four inches thick, shall be installed by the owner in front of each improved lot and on the side street of each improved corner lot prior to completion of construction of the dwelling on each lot.

(g) No driveway will be constructed or maintained on any lot and connected to or with any adjoining public streets through its curb other than by a curb cut effected with a clean cutting cement saw leaving a smooth and unpatched curb cut and by a construction design leaving a smooth and unpatched union along a line or lines outside the path of water flow along said curb and surfaced from the line of any intersected public sidewalk nearest such lot to such union, only with concrete cement of quality similar to that used for such sidewalk and street and otherwise surfaced with asphalt, brick, concrete, laid stone, or other construction materials so as to avoid and prevent erosion of or water damage to such curb, curb cut, sidewalk, or street, and such driveway will be so constructed or maintained and connected across or over an adjoining intersection so as to avoid and prevent erosion of, water damage to, cracks in, or similar damage to such sidewalk.

(h) No grass, weeds, or other vegetation will be grown or otherwise permitted to commence or to continue and no dangerous, diseased, or otherwise objectionable shrubs or trees will be maintained on any lots so as to constitute an actual or potential public nuisance, create a hazard of undesirable contagion or proliferation, or detract from a neat and trim appearance.

(i) No advertising sign or other poster other than a sign of an area of not more than four square feet advertising such lot for sale or a sign or signs belonging to Declarant as owner of such lot will be maintained on any lot.

(j) No excess or unused building material or materials will be kept, stored, or otherwise maintained on any lot in a location within public view, other than for use or uses connected with approved or permitted construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any lot.

(k) No boat, camper, trailer, or similar chattel will be maintained on any lot, other than in an enclosed structure, for more than seven (7) days within any calendar year; and no automobile, motorcycle, truck, or other vehicle will be repaired, torn down, or stored on any lot, other than in an enclosed structure.

(l) No birds, livestock, poultry or animals other than domesticated non-commercial pets and no more than reasonable quantity will be bred, kept, or otherwise maintained on any lot.

(m) All fences built, altered, or added to any residence shall be subject to the applicable code restrictions of the City of Omaha, and shall be constructed of wood, decorative metal, or other natural material complimentary to the design of the area. No open mesh metal, barbed wire, electrified or chain link fabric type fence will be allowed.

3. The single-family or two-family residence property described above is and will be through December 31, 2000, or for such longer or other period as may otherwise be fixed, included in membership in Association, subject to all and each of the following conditions and other terms:

(a) Association will have the right, in general, without any part of its net earnings inuring to the private benefit of its members, to promote and sustain their social welfare, and otherwise provide for their health, pleasure, recreation, safety, and other nonprofitable interest by acquiring, maintaining, operating, contributing to the acquisition, maintenance or operation of or otherwise making available for use any one or more area entrances or entry structures, boat docks, golf courses, lakes, parks, swimming pools, tennis courts, and other recreational equipment, facilities, grounds or structures, by providing weed and other actual or potential nuisance abatement or control, security service, other community services, by exercising architectural control and securing compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, by fixing and collecting or abating dues or other charges for financing its operations, by delegating, by contract or otherwise, to any other Nebraska nonprofit corporation general responsibility for administration and executive management of its affairs, and by undertaking any one or more other activities appropriate, convenient, or necessary to promote or sustain any such interest, to acquire by purchase or otherwise, hold for investment or otherwise, or dispose of for profit or otherwise any interest in or species of personal or real property wherever located, and to engage in any other venture for the mutual non-profitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as amended.

(b) Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious or other non-profit or public purposes to the extent permitted by applicable zoning regulations, every single-family or two-family residence lot subject to this Declaration will be automatically included in membership in the Association as a benefit or burden running with and charged upon the ownership of each such lot; and the owners of any other lots will have the right at any time or from time to time but only upon the receipt of an express written acceptance executed by Association thereafter to include any such lot in membership in the Association as a benefit or a burden running with and charged upon the ownership of such lot.

(c) Dues or other charges for each lot included in membership fixed by Association in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, will constitute until abated or paid, a lien upon and charge against such lot in favor of Association; but no such dues or charges shall constitute a lien until and unless a written notice of such lien is filed by Association on such lot with the Register of Deeds of Douglas County, Nebraska, and no such lien upon any such lot will at any time be superior to any earlier or later established lien upon such lot for security for a home improvement or purchase money loan or the unpaid balance of a purchase contract for such lot.

(d) The obligations and privileges of membership in Association will, in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, extend to contract purchasers and owners of all lots included in membership and appertain to and be coterminous with the duration of the interest for membership for a period or from period to period, but each member will be and remain personally liable to Association until abatement or payment for all dues or other charges fixed by it at any time or from time to time throughout the duration of such interest or membership.

4. Association will have the right in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, to divide the membership into classes, to deny or limit voting rights of members of any membership class, and to deny access to or use of facilities or services, suspend the membership or privileges of, or otherwise discipline any member for failure to pay dues or charges or for other conduct detrimental to its affairs or otherwise improper.

5. The covenants, easements, conditions, and other terms set out in this Declaration for single-family or two-family residence property are and will be subject to the following enforcement:

(a) Association and every contract purchaser or owner of any lot will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement as to any lot of any covenant or an easement granted to it and to fix a reasonable charge for such actions as a lien upon and charged against such lot in favor of Association.

(b) Every grantee, assignee thereof, or successor thereto, will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement of any easement granted to such grantee.

6. A perpetual license and easement has been granted to Omaha Public Power District and Northwestern Bell Telephone Company, their successors and assigns, as provided in the recorded plat of Candlewood II.

IN WITNESS WHEREOF, the undersigned have executed this Declaration at Omaha, Douglas County, Nebraska, the date and year above first written.

BOARD OF TRUSTEES FOR THE
BRUCE N. MILLER REAL PROPERTY
ARRANGEMENT

By: Richard K. Flory
Richard K. Flory, Trustee

By: Donald D. Siebler
Donald D. Siebler, Trustee

THE UNITED STATES NATIONAL BANK
OF OMAHA,

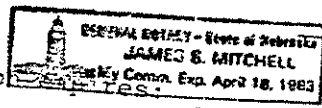
By: [Signature]
Its [Signature]

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.:

Before me, a Notary Public qualified for said county, personally came Richard K. Flory and Donald D. Siebler, as Trustees and on behalf of the Board of Trustees for the Bruce N. Miller Real Property Arrangement, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed and the voluntary and authorized act and deed of Board of Trustees for the Bruce N. Miller Real Property Arrangement.

WITNESS my hand and notarial seal this 8th day of MAY, 1979.

My commission [Signature]
Notary Public



STATE OF NEBRASKA)

) ss.:

BOOK 615 PAGE 345

COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said county, personally came N. Harry Nelson of The United States National Bank of Omaha, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary and authorized act and deed of The United States National Bank of Omaha.

WITNESS my hand and notarial seal this 7 day of August, 1979.

[Signature]
Notary Public

My commission expires: 8-16-80

