
DECLARATION OF COVENANTS AND RESTRICTIONS

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CERTIFICATE OF REGISTRATION OF
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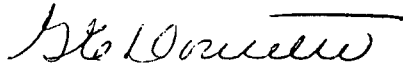
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Book 1072 Page 34





Registrar

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DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION made the 15th day of June, 2000, by Covehead Development Inc., H. Wade MacLauchlan, Peter Hyndman, L. Frederick Laflamme and Mary Katharine Laflamme, hereinafter called the "Owners";

WITNESSETH THAT:

WHEREAS the Owners are the owners of the real property described in Schedule "A" annexed hereto;

AND WHEREAS Covehead Development Inc. intends to develop the real property as a summer cottage subdivision and desire to subject the real property to the covenants, restrictions, easements and charges hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof;

AND WHEREAS Covehead Development Inc. intends to incorporate under the *Companies Act*, R.S.P.E.I. 1988, Part II, as a non-profit corporation, the MacMillan Point Homeowners Association Incorporated, for the purposes of exercising the functions aforesaid;

NOW, THEREFORE, the Owners declare that the real property further described in Schedule "A" annexed hereto shall be held, transferred, sold, conveyed and occupied, subject to the covenants, restrictions, easements and charges (hereinafter further referred to as "covenants" and "restrictions") hereinafter set forth.

ARTICLE I

Definitions:

1. The following words when used in this Declaration or any supplemental Declaration, unless the context shall so prohibit, shall have the following meanings:

- (a) "Association" shall mean and refer to the "MacMillan Point Homeowners Association Incorporated";
- (b) "the properties" shall mean and refer to all such existing properties as are subject to this Declaration;
- (c) "lot" shall mean and refer to any plot or parcel of land shown upon the approved subdivision plan(s) of the properties, with the exception of the common properties as heretofore defined;
- (d) "owners" shall mean and refer to the registered owners, whether one or more persons or entities, of the fee simple title to any lot situated upon the properties but, notwithstanding any applicable theory of mortgage shall not mean or refer to the mortgage unless and until

such mortgagee has acquired title pursuant to power of sale or any like

proceeding;

- (e) "member" shall mean and refer to all those owners who are members of the Association as provided herein.

ARTICLE II

Property Subject to this Declaration:

1. Existing Property

The property subject to this Declaration which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located on Lot or Township Number 33, in Queens County, in the Province of Prince Edward Island, and is more particularly outlined and shown on a plan of survey being lands of Covehead Development Inc. prepared by Locus Surveys Ltd. on the 18th day of September, 1998, under Drawing No. 95202-S, being a plan of survey showing Lots 1A to 30A. Said lots being approved by the Department of Community Affairs on the 28th day of September, 1998, under Case #17803E "for Summer Cottage Use Only", which said plan supersedes lots 1-3 and 77-83, and blocks A-N as shown on plan #1460D, approved April 21, 1970.

ARTICLE III

Membership and Voting Rights in the Association:

1. Membership

Every person or entity who is a registered owner of any lot in the subdivision shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for performance of any obligation shall not be a member.

2. Voting Rights

Each member shall be entitled to one vote for each lot in which he holds an interest required for membership herein. Where more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot.

ARTICLE IV

Property Rights:

1. Members Easements' or Enjoyment

Subject to the provisions herein, every member shall have a right and easement of enjoyment in and to the area of the buffer zone immediately adjacent to their lot.

2. Title to Roadways and "Buffer Zone"

Covehead Development Inc. shall convey the legal title to the roadways to the Association. Covehead Development Inc. may convey the legal title to the Buffer Zone to the Association. Covehead Development Inc. hereby covenants for itself, its successors and assigns, that it shall convey leasehold and freehold title to the roadways and Buffer Zone to the Association, free and clear of all encumbrances, save as herein provided.

3. Extent of Members' Easements

The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its articles and by-laws, to borrow money for the purpose of improving the roadways and Buffer Zone, and in aid thereof, to mortgage said properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by members until the mortgage debt is satisfied, whereupon the possession of the said properties shall be returned to the Association, and all rights of the members hereunder shall be fully restored;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;
- (c) The right of the Association, as provided in its articles and by-laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (d) the right of the Association to charge reasonable admission, maintenance, or other fees, where applicable, for the use of the roadways; and
- (e) the right of the Association to dedicate or transfer all or part of the roadways to any person, agency, authority or utility for such purposes and subject to such conditions as may be deemed admissible, provided that a dedication or transfer shall not be effected unless an instrument signed by the members entitled to cast two-thirds (2/3) of the votes has been recorded agreeing to such dedication, transfer, purpose and condition, and provided written

notice of the proposed agreement and action thereunder is sent to every member at least ninety (90) days in advance of any action taken.

ARTICLE IV

Covenants for Maintenance Assessments:

1. Creation of the Lien and Person Obligations of Assessment

The Owner, for each lot owned by it within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other covenant, shall be deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges;
- (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, 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 assessments, together with such interest thereon and cost of obligation thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

2. Purpose of Assessments

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the properties, and in particular, for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the roadways, and of the homes situated upon the properties, including but not limited to the payment of taxes, insurance, repair, replacement, additions to the common properties, and for the cost of labour, equipment, materials, management and supervision related thereto.

3. Basis of Annual Assessments

The annual assessment shall be established from time to time by the Association in accordance with the constitution and by-laws.

4. Special Assessments for Capital Improvements

In addition to annual assessments authorized by section 3 hereof, the Association may levy in an 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, unexpected repair or replacement of a described capital improvement upon the roadways, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who vote at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

5. Quorum for any Action Authorized Under Section 4

The quorum required for any action authorized by section 4 shall be as follows:

The presence at the meeting 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 forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meetings.

6. Date of Commencement of Annual Assessment: Due Dates

The annual assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year, and shall become due and payable on the day fixed for commencement. The assessments for any year after the first year shall become due and payable on the first day of September of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessments provided for in section 3 hereof shall be the same proportionate amount of the annual assessment as the remaining number of months in that year, bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

7. Duties of the Board of Directors

The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, provide a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association, and shall be open to

inspection to any owner.

Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall, upon demand at any time, furnish to any owner liable for said assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment to be stated to have been paid.

8. Effect of Non-Payment of Assessment

The personal obligation, the lien, remedies of the Association: if the assessments are not paid on the date when due (being the dates specified in section 6), then such assessment shall become delinquent, and shall, together with such interest thereof and cost of collection thereof as hereinafter provided hereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, successors, personal representatives and assigns. The personal obligation of the owner to pay such assessment, however, shall remain his personal obligation for the statutory period, and shall not pass to his successors in titles unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the other personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the legal action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be taxed by the court, together with the costs of the action.

9. Subordination of the Lien to Mortgages

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties, subject to assessment provided, however, that such subordination shall apply to the assessments which have become due and payable prior to the sale or transfer of such property, pursuant to a decree of foreclosure or a power of sale. Such sale or transfer shall not relieve such property from liability for any assessments hereafter becoming due, nor from the lien, or any such subsequent assessment.

10. Exempt Property

The following property subject to this declaration shall be exempted from

the assessments, charge and lien created herein:

- (a) all roadways and buffer zones; and
- (b) all properties exempted from taxation by the laws of the Province of Prince Edward Island upon the terms and to the extent of such legal exemption.

ARTICLE VI

Restrictive Covenants

1. Cottage or Residence

- (a) The lands shall be used for private, single dwelling residential purposes only, and only one cottage or residence may be erected on any one lot.
- (b) No building other than a site-built detached single dwelling, with or without attached garage or other utility/accessory structure, shall be constructed on the lands.
- (c) No dwelling shall have a habitable floor area of less than 1500 square feet or greater than 4000 square feet. Habitable floor area shall be taken as the outside measurements of the main walls of the dwelling, excluding attached garages or verandas. Habitable floor area does not include an attic, or a finished or unfinished basement.
- (d) No building shall have a maximum height in excess of 30 feet above the median grade of the lands (excluding flus, antennae, receivers or similar attached structures extending to a height of not more than 10 feet above the height of the building).
- (e) No building shall be constructed or erected on the lands unless the plans, specifications and siting plan showing the nature, location, material and height of any proposed structure have been submitted to the Grantor and its approval in writing obtained.
- (f) The exterior of any dwelling shall be finished with new exterior siding, or other conventional new siding material, and construction of any dwelling shall be completed within a period of six months from date of commencement of construction.

2. Conditions and Maintenance of Land

- (a) The Grantee will not permit the surface of the lands to be in a condition which will interfere with the enjoyment of the adjoining lands. The Grantee will not permit the condition of the surface of the lands or any part thereof to be below the standard of the general appearance of the surrounding lands.
- (b) The Grantee agrees that for so long as the lands remain undeveloped, it

shall provide minimum maintenance to its lands by periodically cutting the vegetation on its lands.

- (c) The Grantee agrees that, following development, the lands shall be landscaped and vegetation cut regularly.
- (d) The Grantee agrees (in the case of Lots 9A to 29A) to maintain the 60-foot buffer zone adjacent to the lands between the lands and the top of the bank in its natural state and as a non-developable area. No buildings or structures may be located in the buffer zone. The Grantee agrees to cut vegetation, trim or thin out trees, and otherwise maintain the tidy appearance of the buffer zone. If the Grantee installs stairs to gain access to the beach, effective measures shall be taken to ensure against erosion or unnecessary removal of vegetation. Title in the buffer area shall remain with the Grantor and/or a Homeowners Association Incorporated on behalf of the Grantor. The Grantee acknowledges that use of the "buffer zone" is subject to regulations under the *Planning Act*, R.S.P.E.I. (1988) Cap. P-8, and/or the *Environmental Protection Act*, R.S.P.E.I. (1988) Cap. E-9, and that the Grantee must comply with these regulations. In the event of a conflict between these regulations and these covenants, the regulations shall prevail.
- (e) If the Grantee fails to provide the minimum maintenance stipulated in clauses (b), (c) and (d), the Grantor following two weeks' written notice to the Grantee, may enter upon the Grantee's lands or upon the 60 foot buffer and cut the vegetation. The costs of such shall be paid by the Grantee to the Grantor and the costs constitute a debt due from the Grantee to the Grantor and a lien upon the lands of the Grantee.
- (f) No building waste or other building materials shall be dumped or stored on the lands, except when such is being used for construction or erection of a building or addition to a building. No soil, sand, gravel, fill or other material shall be stored on the lands, except when such materials are being used for the purposes of levelling or landscaping, and no wood shall be stored on the lands except wood for home heating purposes which shall be piled in small neatly stacked piles not exceeding four (4) feet in height. No other materials not associated with the normal operation of a residential dwelling shall be dumped or stored on the lands.
- (g) No truck or other vehicle over one ton shall be placed, located, kept or maintained on the lands.

- (h) No boat, motor vehicle, trailer or camper with living, sleeping or eating accommodations shall be placed, located, kept or maintained on the lands for a period longer than 14 days, and in any case for not longer than a total of 30 days in any one calendar year.
- (i) No major repairs to any motor vehicle, boat or trailer shall be effected upon the lands, except within a wholly enclosed garage.
- (j) No fence, gate, wall, post or other structure shall be constructed or erected on the lands unless the plans, specifications and siting plan showing the nature, location, material and height of any proposed structure has been submitted to the Grantor and its approval in writing obtained. No such fence shall be greater than four (4) feet in height.
- (k) No hedge shall be permitted to exceed four (4) feet in height.

3. Use of lands

- (a) The lands and any dwelling erected or to be erected thereon shall not be used for any commercial purpose, or for the practice of any trade, employment, profession or service of public resort; nor for any sport (other than games as are usually played in connection with the occupants of a private residence); nor as a hotel, apartment house, or public accommodation; nor shall anything be done or permitted upon any of the lands or buildings erected thereon which shall be a nuisance to the occupants of neighbouring lands or buildings.
- (b) No signs, billboards, placards, notices or other advertising or informational material of any kind, except of the size and type ordinarily employed by real estate agents offering the lands for sale or rent, shall be placed on the lands, dwelling or other structure on the lands without the express written approval of the Grantor.
- (c) No horses, cattle, hogs, sheep, poultry or other stock or animals or birds other than household pets normally permitted in private homes shall be kept upon the said lands and no breeding of pets shall be carried on upon said lands. No kennels shall be permitted upon the lands.

ARTICLE VII

General Provisions:

1. Duration

The covenants and restrictions of this Declaration shall run with and bind the land, and shall enure to the benefit of and be enforceable by the Owner , or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

2. Notice

Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as an owner on the records of the Real Property Tax Assessment Office at the time of such mailing.

3. Enforcement

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any obligation created by these covenants, and failure by the Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

4. 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.

ARTICLE VIII

The Association shall have complete and irrevocable responsibility for the day-to-day affairs of the subdivision including, but not necessarily limited to buffer areas, roads, easements, right-of-ways, and common areas.

SIGNED, SEALED & DELIVERED
in the presence of:

[Signature]

) COVEHEAD DEVELOPMENT
) INC.

)

)

) Per: [Signature]

)

) Per: [Signature]

SIGNED, SEALED & DELIVERED
in the presence of:

[Signature]

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) [Signature]
) H. WADE MacLAUCHLAN

SIGNED, SEALED & DELIVERED
in the presence of:

[Signature]

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) [Signature]
) PETER HYNDMAN

SIGNED, SEALED & DELIVERED
in the presence of:

Constance

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)
) L. FREDERICK LaFLAMME
)
) MARY KATHERINE LaFLAMME
)
)