

DECLARATION
OF CONDITIONS AND RESTRICTIONS
OF
THE ABBEY HOME OWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by JOHN J. MALONEY, President of TOWER INVESTMENTS INCORPORATION, also known as THE ABBEY HOME OWNERS ASSOCIATION, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in the City of Omaha, County of Douglas, State of Nebraska, which is more particularly described as:

Lot One (1) through Sixty-Nine (69) inclusive, and outlots A,B,C,D,E, and F, outlots A through F incorporated in "The Abbey" Addition, the same being a replat of Lots Two Hundred Twenty-Nine (229) Two Hundred Thirty (230) Two Hundred Thirty-One (231) Two Hundred Thirty-Two (232) and Four Hundred Three (402) in the Candlewood Addition as surveyed, platted and recorded.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protection the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in

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the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to TOWER INVESTMENT INCORPORATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property including the improvements thereto owned by the Association for the common use and enjoyment of all of the owners.

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

Section 6. "Declarant" shall mean and refer to TOWER

INVESTMENT INCORPORATION, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarants for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner 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 charge reasonable admission and other fees for the use of any recreational facilities 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 to any public agency, authority, or utility for such purposes and subjects to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarants, 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 exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarants and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31st, 1989.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation

of Assessments. The Declarants, for each Lot owned within the Properties, hereby coveantns, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is 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 established and collected as hereinafter provided, and (c) the costs of any and all repairs of all public and private sewers and The Association shall assess to the homeowners the cost of repair to the public sewer and shall assess the benefitted homeowner for the cost of repair of the private sewer.

The annual assessments or charges as levied by THE ABBEY HOMEOWNERS ASSOCIATION, shall be used by said association as follows: (a) administrative expenses, both legal and audit services; (b) electricity for lighting and street light maintenance; (c) water maintenance; (d) snow removal; (e) the maintenance of private lawns and common entry and common lots; (f) private street and plaza area maintenance and repair; (g) fence maintenance; and for such other similar expenses that may be considered common area maintenance, as from time to time may be approved by said association.

Section 2. Purpose of Assessments. The assessments

BOOK 749 PAGE 361

sess-

- (a) when the total votes outstanding in the class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31st, 1989.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Lot owned 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 such deed, is 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 established and collected as hereinafter provided, and (c) the costs of any and all repairs of all public and private sewers and The Association shall assess to the homeowners the cost of repair to the public sewer and shall assess the benefitted homeowner for the cost of repair of the private sewer.

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Section 2. Purpose of Assessments. The assessments

levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be Seven Hundred Eighty and NO/100***** per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 7.5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above 7.5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in

whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Are, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on 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 convey-

BOOK 740 PAGE 364

ance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent 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. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate

to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lieu thereof.

BOOK 749 PAGE 385

ARTICLE V.

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not

BOOK 749 PAGE 286

be required, and this Article will be deemed to have been fully complied with.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than

BOOK 749 PAGE 287

seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of Two-Thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 23rd day of August, 1985.


JOHN J. MALONEY

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of THE ABBEY HOME OWNERS ASSOCIATION, a Nebraska corporation, and,

That the foregoing Declaration of Conditions and Restrictions of THE ABBEY HOME OWNERS ASSOCIATION as duly adopted at a meeting of the Board of Directors thereof, held on the 16th

BOOK 740 PAGE 268

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day of August, 1985.

BOOK **749** PAGE **369**

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 23rd day of August, 1985.

[Handwritten Signature]

SECRETARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 23rd day of August, 1985, before me, the undersigned, a Notary Public in and for said County, personally came JOHN J. MALONEY, President of TOWER INVESTMENTS INCORPORATED, to me personally known to be the President, and the identical person whose name is affixed to the above and foregoing Declaration of Conditions and Restrictions of THE ABBEY HOME OWNERS ASSOCIATION, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of said corporation, and that the corporate seal of the said corporation was thereto affixed by its authority.

WITNESS my hand and Notarial Seal at Omaha in said county the day and year last above written.

[Handwritten Signature]

NOTARY PUBLIC

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GEORGE J. DUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

Book 749
Page 357
of 22
Fee 102.50
Del 11/11
Index 11/11
Comped 1/11
N 88/357/24
Comped 1/11
MC 1/11