



1014 286 MISC



14254 92 286-288

THIS PAGE INCLUDED FOR
INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

WESTWOOD ON THE GREEN TOWNHOMES

THIS DECLARATION, made on the date herinafter set forth by SCHWALB HOMES, INC. through its President, Natan Schwalb, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property legally described as:

Lots One (1) through Twelve (12) inclusive, in MONTCLAIR OF WESTWOOD SOUTH REPLAT, a Subdivision in Douglas County, Nebraska,

NOW, THEREFORE, Declarant hereby declares that all 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 protecting the value and desirability of, and which shall run with, the real property and be binding upon all the parties having any right, title or interest thereof, and upon their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple to any lot or part of a lot on which one residence, attached or unattached, is, or may be erected, as approved by the City of Omaha.

Section 2. "Properties" shall mean and refer to that certain real property herinbefore described and such additions thereto as may hereinafter be brought within the scope of this Declaration by the developer or its assigns or successors.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, or a portion of a legally platted lot upon which one residence attached or unattached is or may be erected. The Properties within this Declaration were zoned to allow a maximum of Twenty four (24) residential units by dividing each lot into two parcels. Each of said parcels shall mean and refer to as if it is a full lot.

Section 4. "Declarant" shall mean and refer to SCHWALB HOMES, INC., its successors, assigns and legal representative. Declarant shall also mean and refer to the developer of the Properties.

ARTICLE II

NON-EXISTENCE OF COMMON AREAS

Section 1. In order to minimize monthly assessments and other charges to property owners, to avoid costs of organization and other home owners associations related costs, the developer has not formed a Home Owner Association. Since there are no common areas, under state law, there is no requirement for a Home Owner Association to be formed.

Section 2. However in the interest of the property owners to better maintain their respective properties, Declarant covenants and agrees to enter into a "Maintenance Agreement" with any purchaser of a residence desiring such maintenance, the terms of which will be spelled out in said Agreement. Each Agreement will include the following basic provisions:

1. Complete lawn care.
2. Snow removal.
3. Maintenance of electrical wiring, plugs and switches.

MISC
14254 H

JUN 1 10 06 AM '92

GEORGE J. JUREWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

2014 N. Comp CJO FEE 21.00
 PG 286-288 DEL JN-MC
 OF MISC COMP CP FJB 61-26200-26241

Declaration of Covenants, Conditions and Restrictions
Page 2

4. Maintenance of plumbing fixtures: Water heater, toilets, faucets and pipes.
5. Maintenance of heating and cooling equipment.

Section 3. Any owner who has not entered into a "Maintenance Agreement" with developer assumes the obligation to properly maintain the exterior of said owner's property including lawn care. Any adjoining property owner may initiate arbitration, as set forth in this Declaration, in the event such adjoining property owner deems maintenance of exterior not adequately maintained or otherwise not substantially kept up as other properties covered herein.

Section 4. Notwithstanding the provisions of this Section or any other in this Declaration, the owners of the properties may at anytime they so desire organize and create a Homeowner Association, except that such Association may not be created without developer's written approval as long as developer holds title to any lot included herein.

ARTICLE III

ARCHITECTURAL CONTROL

After the construction of the original structure on each lot, 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, light materials, and locations of 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 developer. Such right of approval by the developer shall remain until developer will have sold all the Properties. Thereafter, property owners shall be limited by (a) other provisions of this Declaration, (b) City zoning and building ordinances (c) Provisions set forth by the original owner of this Subdivision, namely "Restrictive Covenants MONTCLAIR OF WESTWOOD SOUTH REPLAT" filed in 1992.

ARTICLE IV

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as part of the original cost of the homes upon the Properties placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance-Party Walls, Roofs and Painting. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. (A) Partial replacement: Any Owner may undertake necessary repair on such Owner's roof without consent of Owner of adjoining roof. (B) Total replacement: If total replacement is deemed necessary by both parties, a written agreement shall be entered into by the respective parties and each owner shall bear the proportionate cost of such total replacement. Color of roof shingles in any unit which adjoins another unit by way of a common wall, as referred to in Article IV Section 1., shall remain same unless mutually agreed otherwise by the two owners of the adjoining units. Also any painting of eaves, garage doors, windows, siding, trim, etc. shall always be matched as close as

Declaration of Covenants, Conditions and Restrictions
Page 3

possible to original color unless mutually agreed otherwise by the two adjoining owners.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other Owner thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right of Contribution-Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising, between two lot Owners, concerning a party wall or under any provision of this Declaration of Covenants, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision shall be done by a majority of all arbitrators.

ARTICLE V


GENERAL PROVISIONS

Section 1. Enforcement. Any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration. Failure 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 judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

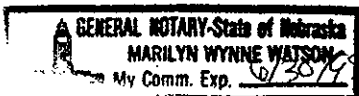
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of Twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of Ten (10) years. This Declaration may be amended during the first Twenty (20) year period by an instrument signed by not less than Twelve (12) Lot Owners, (on the basis of 24 residential units.) However, any proposed Amendment within the Twenty (20) year term is permitted (A) if developer has sold all Twenty Four (24) units or, (B) in the event Developer has not sold all Twenty Four (24) units, then Amendments may be permitted upon the Twelve (12) property owners securing the consent and written approval of Developer.

IN WITNESS WHEREOF, the undersigned being President of SCHWALB HOMES, INC., and authorized to execute this instrument, has caused this instrument to be executed as the Declarant on this 29th day of May, 1992.


 Natan Schwalb, Pres.
 SCHWALB HOMES, INC.

STATE OF NEBRASKA)
)
) ss
 COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me as the voluntary act and deed of NATAN SCHWALB, President, SCHWALB HOMES, INC. this 29th day of May, 1992.


 GENERAL NOTARY-State of Nebraska
 MARILYN WYNNE WATSON
 My Comm. Exp. 6/30/92


 Notary Public