

BOOK 644 PAGE 565

SOUTHBY COMMON

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

HARRIS, FELDMAN, STUMPF & PAVEL
Suite 530 Univac Building
7100 West Center Road
Omaha, Nebraska 68106
Telephone: (402) 397-1200

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - Definitions	1
Section 1. Association	1
Section 2. Owner	1
Section 3. Property	2
Section 4. Common Area	2
Section 5. Lot	2
Section 6. Declarant	2
Section 7. Improved Lot	2
Section 8. Cluster	2
Section 9. Clustered Residence	3
Section 10. Building	3
Section 11. By Laws	3
Section 12. Declaration	3
Section 13. Common Expenses	3
ARTICLE II - Property Rights	3
Section 1. Owners' Easements of Enjoyment	3
Section 2. Delegation of Use	4
ARTICLE III - The Association	4
Section 1. Existence of Association	4
Section 2. Management of Property	4
Section 3. Board's Determination Binding	5
Section 4. Non-Liability of the Directors, Committee Members and Officers	5
ARTICLE IV - Membership and Voting Rights	5
Section 1. Membership Appurtenant To Lots	5
Section 2. Classes of Members	5

	<u>Page</u>
ARTICLE V - Covenant for Maintenance Assessments	6
Section 1. Creation of the Lien and Personal Obligation of Assessments.	6
Section 2. Purpose of Assessments	6
Section 3. Maximum Annual Assessment.	7
Section 4. Special Assessments for Capital Improvements	7
Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4.	7
Section 6. Uniform Rate of Assessment	8
Section 7. Determination and Payment of Annual Assessments; Due Dates.	8
Section 8. Effect of Non-Payment of Assessments; Remedies of the Association.	8
Section 9. Subordination of Assessment Lien to Mortgages.	8
 ARTICLE VI - Maintenance, Repairs and Replacements	 9
Section 1. Common Area.	9
Section 2. Building Exteriors	9
Section 3. Interior Maintenance	9
 ARTICLE VII - Architectural Control.	 10
Section 1. Approval of Plans.	10
Section 2. Water Sprinklers and Exterior Lighting	10
Section 3. Minimum Size	11
Section 4. Noise Attenuation.	11
 ARTICLE VIII - Party Walls	 13
Section 1. General Rules of Law To Apply.	13
Section 2. Sharing of Repair and Maintenance.	13
Section 3. Destruction by Fire or Other Casualty	13
Section 4. Weatherproofing	13
Section 5. Right to Contribution Runs with Land	13
Section 6. Arbitration.	13

	<u>Page</u>
ARTICLE IX - Insurance.	14
ARTICLE X - Damage and Destruction.	15
ARTICLE XI - Encroachment	15
ARTICLE XII - Staged Developments	16
ARTICLE XIII - Common Scheme Restrictions	16
Section 1. Garbage.	16
Section 2. Aerial Towers and Signs.	16
Section 3. Height Restrictions.	16
Section 4. Other Improvements	17
Section 5. Building Materials	17
Section 6. Storage Areas.	17
Section 7. Exterior Lighting.	17
Section 8. Temporary Buildings.	17
Section 9. Location of Vehicles	17
Section 10. Noise Restriction.	18
Section 11. Miscellaneous Provisions	18
ARTICLE XIV - Easements and Licenses.	19
ARTICLE XV - General Provisions	19
Section 1. Enforcement.	19
Section 2. Severability	20
Section 3. Amendment.	20
Section 4. Association's Maintenance Of Not Built-Upon Property.	20
Section 5. FHA/VA Approval.	20
Acknowledgment.	21

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by WESCO PROPERTIES, INC., a Nebraska corporation, and M.C.M., INC., a Nebraska corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the City of Omaha, Douglas County, Nebraska, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

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

Declarant has heretofore caused the organization of Southby Common Homeowners Association, Inc., which is a non-profit corporation organized under the laws of the State of Nebraska, formed for the purpose of providing for maintenance, preservation and architectural control of the dwelling amenities and common area within the above described property.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Southby Common Homeowners Association, Inc., a Nebraska Nonprofit corporation, 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. "Property" 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 the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot, as described in Exhibit "B" attached hereto and incorporated herein by this reference.

Section 5. "Lot" shall refer to any portion of the Property which has been designated by Declarant for use by an Owner as the location for a Building or a portion of a Building which will serve as a single family residence. Lots shall be formed only from that portion of the Property which has not been designated as Common Area in this Declaration.

Section 6. "Declarant" shall be defined as WESCO Properties, Inc. and M.C.M., Inc., or their successors, assigns and legal representatives, to whom the rights of the Declarant hereunder are specifically assigned in writing by the Declarant.

Section 7. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specifications for construction of said dwelling. All other lots, exclusive of the Common Area, which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots".

Section 8. "Cluster" shall mean and refer to a group of residential building lots as shown on the Southby Common Planned Unit Development plans approved by the City of Omaha, which Lots are arranged so as to have the buildings constructed thereon face a common courtyard or cul-de-sac.

Section 9. "Clustered Residence" shall be a single family residence built upon a Lot having a common structural element with an adjoining Clustered Residence.

Section 10. "Building" shall refer to any structural improvement located on one or more Lots forming part of the Property.

Section 11. "By Laws" mean the by laws of the Association as amended from time to time.

Section 12. "Declaration" means this instrument as amended from time to time.

Section 13. "Common Expenses" shall mean and include all expenses of administration and management, insurance, maintenance, operation, repair or replacement of, and additions to the Property; expenses agreed upon as a Common Expense by the Association; and expenses declared to be Common Expenses by this Declaration or by the By Laws. Common Expenses shall be payable by the Association from assessments made against the Lots as provided herein.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' 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 facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) 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 subject 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 (2/3) 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

THE ASSOCIATION

Section 1. Existence of Association. There has been formed an Association having the name Southby Common Homeowners Association, a Nebraska non-profit corporation, which Association shall be the governing body for all the Owners for the maintenance, repair, replacement, administration and operation of the Property, as provided in this Declaration and the By Laws. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the By Laws. The fiscal year of the Association shall be determined by the Board of Directors and may be changed from time to time as the Board of Directors deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners in accordance with the provisions of this Declaration and the By Laws.

Section 2. Management of Property. The Board of Directors shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board of Directors subject to the provisions of this Declaration. The Board of Directors shall also have the authority (but shall not be obligated) to engage, supervise and control such employees as the Board of Directors deems advisable for the purposes described herein. The cost of such services shall be considered to be a Common Expense. No member shall personally contract on behalf of or otherwise bind the Association.

Section 3. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or By Laws, such dispute or disagreement shall be submitted to the Board of Directors. The determination of such dispute or disagreement by the Board of Directors shall be binding on each and all such Owners, subject to the right of Owners to seek other remedies provided by law after such determination by the Board of Directors.

Section 4. Non-Liability of the Directors, Committee Members and Officers. The members of the Board of Directors, committee members and officers of the Association shall not be personally liable to the Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever except as such acts or omissions are found by a court of competent jurisdiction to constitute gross negligence or fraud. The Association shall indemnify and hold harmless each of the Directors, committee members and officers and their respective heirs, executors, administrators, successors and assigns in accordance with the provisions of the By Laws. The provisions of this Section shall run to and be for the benefit of any such director, officer or committee member notwithstanding the fact that such person may be serving as an accommodation or on behalf of the Declarant.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Appurtenant to Lots. 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. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, 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 members. The vote for such Lot 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 Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- (3) The annual and special assessments, and the insurance premiums as provided in Article IX hereof, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien until paid upon the property against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when it fell due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them.

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 and recreational facilities.

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 initially be determined by the Declarant.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased by not more than the greater of either: 1) Five percent (5%); or 2) the percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding August over the prior year's August, 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 annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each group of members who are voting by person or 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, repair or replacement of a capital improvement upon the Common Area, 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; and PROVIDED further, however, that the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, shall not require such vote.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 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 thirty (30) days nor more than sixty (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, subsequent meetings may be called until a quorum is present, 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 sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except as specifically provided in Articles VI, IX and X and elsewhere in this Declaration, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on whatever basis is deemed to be reasonable by the Board of Directors, but in no event less often than annually.

Section 7. Determination and Payment of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of each month following the conveyance 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. 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 Non-Payment 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 maximum legal rate of interest. 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 escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of Assessment 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 any such lien(s). However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such charges or 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 charges or assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

MAINTENANCE, REPAIRS AND REPLACEMENTS

Section 1. Common Area. Maintenance, repairs to and replacements within the Common Area shall be the responsibility of and shall be furnished by the Association. The cost of such maintenance, repairs and replacements shall be part of the Common Expenses of the Association, subject to the By Laws, rules and regulations thereof.

Section 2. Building Exteriors. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The portion of the expense of exterior maintenance which cannot be reasonably allocated to individual Lots shall be considered a Common Expense of the Association.

Section 3. Interior Maintenance. Each Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within the Building located on his Lot.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. Approval of Plans. No landscaping shrubbery, trees, gardens, building, fence, wall, awnings, patio cover, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change (including change of color) 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 exterior design, color and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design, color and/or location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Water Sprinklers and Exterior Lighting. At the time of construction of the original residential Building on any Lot, the following items shall be included in the plans and specifications to be approved as provided in this Article and shall be constructed, at the expense of the Owner of such Lot, in conjunction with the construction of said primary residential Building:

(a) An underground water sprinkler system to serve the common area in and around the cul-de-sac in which such Lot is located; and

(b) Driveway or other similar lighting to illuminate the driveway for such Lot and to act in conjunction with similar lighting on adjacent Lots in the nature of street lights for the cul-de-sac in which such Lot is located.

The sprinkler system shall be independently metered in each cul-de-sac with the water bills to be paid by the Association as a Common Expense. The lighting described herein shall be connected to the energy system for the Cluster Residence served thereby and the bills therefor shall be paid by the Owner of such Cluster Residence. The Association will be responsible for the maintenance of said sprinkler systems and lighting.

Section 3. Minimum Size. For one-story structures, the ground floor enclosed living area of the main residential structure, exclusive of open breezeways, basements and garages, shall not be less than 1,000 square feet minimum size. For two-story structures, the ground floor enclosed living area of the main residential structure, exclusive of open breezeways, basements and garages, shall not be less than 900 square feet with a total living area of both stories not less than 1,500 square feet.

Section 4. Noise Attenuation. All original construction plans submitted to the Architectural Control Committee as hereinbefore provided shall comply with reasonable noise attenuation requirements. The Cluster Residences which are built upon the lots in each cluster closest to the Interstate Highway shall be constructed in a manner intended to reduce the sound decibel level therein and shall conform to the following standards:

(a). All brick veneer, masonry blocks and stucco exterior walls shall be constructed airtight, and all joints shall be grouted or calked airtight. Siding with sheathing and soundboard of one-half inch thickness as manufactured by Celo-tex Corp., or a comparable product, shall also be installed.

(b). Caulking or mortar shall be employed at the penetration of exterior walls by pipes, ducts or conduits.

(c). Window and/or through-the-wall ventilation units shall not be used.

(d). Through-the-wall door mail boxes shall not be used.

(e). Exterior stud walls shall be at least 3 1/2" in nominal depth and shall be finished as follows:

i. The outside shall be siding-on-sheathing, stucco, brick veneer, or similar building materials.

ii. Interior surface of the exterior walls shall be of gypsum board or plaster at least 1/2" in thickness installed on the studs.

iii. Continuous composition board, plywood or

gypsum board sheathing at least 1/2" thick shall cover the exterior side of the wall studs behind wood or metal siding. Wood shake shingles are acceptable in lieu of siding sheathing panels and shall be butted tightly.

iv. Insulation material at least 3 1/2" thick (or material having an R-Factor of 11) shall be installed continuously throughout the cavity space behind exterior sheathing and between wall studs.

v. Two mil polyethylene shall be installed between the wall studs and the gypsum board or plaster.

(f). All window glass shall be of the double glass with intervening air space insulated type.

(g). All operable windows shall be airtight when closed.

(h). Glass or fixed-sash windows shall be sealed in an airtight manner with a non-hardening sealant or a soft elastomer gasket or glazing tape, and the perimeter of the window frames shall be sealed airtight to the exterior wall construction.

(i). All exterior side-hinged doors shall be of solid-core wood or insulated hollow metal at least 1 3/4" thick and shall be fully weather stripped and sealed airtight to the exterior construction.

(j). Exterior sliding doors shall be weatherstripped with an efficient airtight gasket system.

(k). Glass and doors shall be sealed with an airtight, nonhardening sealant or in a soft elastomer gasket or glazing tape.

(l). Glass fiber or mineral wool insulation shall be provided above the ceiling between joist with batt type or blown insulation having a minimum R-Factor of 30.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Cluster Residences upon the Properties and 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 and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. 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.

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 Owners 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 Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

Section 5. Right to 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 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, or breach thereof, the matter shall be settled by arbitration in accordance with the rules of the American Arbitration Association; and judgment upon the award rendered by the Arbitrator(s) may be entered in the District Court in and for Douglas County, Nebraska.

ARTICLE IX

INSURANCE

The Association shall procure and maintain for each Clustered Residence for the benefit of all owners or contract purchasers and all of the mortgagees thereof according to their respective interests therein, one or more policies of "All Risk" insurance against the perils of fire, lightning, malicious mischief and vandalism, with extended coverage equal to at least ninety percent (90%) of the full insurable replacement cost of all of the Clustered Residences, and in such amounts as the Board of Directors of the Association may, from time to time, deem advisable. Insurable replacement cost shall be deemed the cost of restoring said Buildings or any part thereof to substantially the same condition in which they existed prior to damage or destruction.

The values of each Clustered Residence will vary and the insurance premiums attributable to each will likewise vary. The insurance premium directly related to and benefiting each Clustered Residence will be billed separately, and if unpaid for sixty (60) days will be assessed as a special assessment against the Clustered Residence Lot. Within sixty (60) days prior to the renewal of any such insurance policy, the Association will notify the Owner of each affected property in writing as to the amount of insurance being purchased for such property and the premium therefor. If the Owner of an affected Clustered Residence shall desire a modification of the proposed insurance, he may notify the Board of Directors of the Association in writing during such thirty-day period and the Board of Directors shall give due consideration to the proposed modification, provided that any modification made by the Board of Directors shall not adversely affect any other insurance coverage obtained by the Association on the Buildings on the Property. If the Owner has not notified the Board of Directors of any requested modification during said thirty-day period, said Owner will be deemed to have consented to the insurance as proposed by the Board of Directors.

Each Owner shall be responsible for obtaining such insurance as he may desire on the contents, decorations, furnishings and personal property in his Clustered Residence, and any personal property stored elsewhere on the Property. In addition, all Owners shall be entitled to procure and maintain any additional insurance over and above the coverage carried by the Association.

The Association shall obtain comprehensive public

liability insurance, workmens' compensation insurance and other insurance in such amounts as its Board of Directors deem desirable, insuring the Owners, mortgagees of record, if any, the Association, its officers, directors, Board and employees and the Managing Agent, if any, from liability in connection with the Common Area. The premiums for such insurance shall be a Common Expense of the Association.

ARTICLE X

DAMAGE AND DESTRUCTION

In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the damage to the affected Clustered Residence, shall be applied to such reconstruction. Reconstruction, as used in this Article, means restoring the Clustered Residence and the Building to substantially the same condition in which they existed prior to the fire, casualty or other disaster with the Building and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Managing Agent or the Board of Directors. If insurance proceeds are insufficient to repair or reconstruct the damage or destruction, such damage or destruction shall be promptly repaired and restored by the Managing Agent or Board of Directors, using proceeds of insurance available for that purpose; and the Owners of the Clustered Residences shall be liable for any deficiency in repairing the damage to their respective Clustered Residences. Such deficiency shall be a lien against such Clustered Residence, enforceable in the same manner as provided in Article V hereof.

ARTICLE XI

ENCROACHMENT

Each Lot and the Common Area are hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Buildings or any part thereof, or any other similar cause, and any encroachment due to building overhang or projection, together with the right of maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any

way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Clustered Residence is partially or totally destroyed, and then repaired or rebuilt, the Owners of the adjoining Lot or Lots agree that minor unintentional encroachments over the adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE XII

STAGED DEVELOPMENTS

Additional land adjacent to Southby Common, a PUD in the City of Omaha, Douglas County, Nebraska, may be annexed by the Declarant without the consent of the members within seven (7) years of the date of this instrument, provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE XIII

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon each Lot in the Property for the benefit of each other Lot, and may be enforced by any Owner:

Section 1. Garbage. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or any other Common Area, and not on any Lot unless placed in a suitable container suitably located so that the same is not visible from any street or road, except on scheduled pick up days.

Section 2. Aerial Towers and Signs. No aerial towers of any kind shall be erected or maintained on any Lot or on any improvement thereon, and no sign shall be placed or maintained on any Lot, Clustered Residence or Common Area without the prior written consent of the Board of Directors.

Section 3. Height Restrictions. No Building shall

be more than two stories in height. In addition, rear walk-out basements will be permitted. A dwelling portion of a Building which is more than one story in height shall have sufficient space on the second floor to accommodate at least two complete rooms (whether or not finished), whose combined cubic space is at least one-third (1/3) of the cubic space of the first floor of the dwelling, exclusive of garage, porches, patios and basements; and each such second story room shall have at least one window (with glass dimensions at least two feet (2') wide and three and one-half feet (3 1/2') high) on each of at least two sides of the dwelling.

Section 4. Other Improvements. No hedge, fence, wall, steps, playground equipment, recreational facilities, parking area or other equipment or constructed facilities shall be constructed, placed or maintained forward of the front line of any Clustered Residence, other than a cement driveway from the street to the garage and a cement sidewalk connecting the house, street and driveway, without the prior written consent of the Board of Directors.

Section 5. Building Materials. No building materials of any kind or character shall be placed upon any Lot except in connection with construction to be accomplished. As soon as building materials are placed on any Lot in such connection, construction shall be promptly commenced and diligently prosecuted.

Section 6. Storage Areas. No clotheslines, drying areas, service yards, wood piles or storage areas shall be located as to be visible from a street or road.

Section 7. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the neighboring properties.

Section 8. Temporary Buildings. No used or previously erected or temporary house, structure, house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot within the Property except during construction.

Section 9. Location of Vehicles. Boats, trailers, motorcycles, recreational vehicles, trucks, pickups and or commercial vehicles shall be parked in garages at all times; however, this restriction shall not restrict trucks or commercial vehicles making pickups or deliveries to or in the

Property, nor shall this restriction restrict trucks or commercial vehicles within the Property which are necessary for the construction of residential dwellings or maintenance of the Common Area.

Section 10. Noise Restriction. No sound equipment or other source of sound or noise shall be allowed to be used on any Lot in such a manner as to disturb the enjoyment of neighboring Lots or to otherwise cause a nuisance.

Section 11. Miscellaneous Provisions. The following are additional restrictions:

(a) The Lots shall not be improved, used or occupied other than for a private one-family residence.

(b) No animals, poultry or fowl of any kind, except inside household domestic pets and one dog or one cat, (neither of which shall weigh more than twenty (20) pounds at maturity) shall be kept on any of the Lots or Clustered Residences.

(c) No other material than dirt, rock and gravel shall be used as fill on these Lots, and the general grade and slope of the Lots shall not be altered or changed substantially without prior written permission from the Board of Directors.

(d) Any swimming pools shall be maintained in such a manner so as not to be a nuisance.

(e) Garage doors shall be closed at all times except upon entering or leaving the garage and each garage shall be equipped with an automatic garage door opener which can be operated from a vehicle outside of the garage.

(f) Trash burners shall be kept only within the limited area within which the dwelling may be constructed, and shall be properly screened and hidden from view. Trash shall not be burned on any Lot, street, walk or Common Area without the prior consent of the Board of Directors.

(g) No Owner shall order, authorize or permit tearing up, cutting or other destruction of streets or curbing without prior written permission of the Board of Directors.

(h) No member shall utilize or build upon any portion of the property owned by the Association.

ARTICLE XIV

EASEMENTS AND LICENSES

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, Metropolitan Utilities District, and to Omaha Public Power District, their successors and assigns, to erect operate, maintain, repair, and renew cables, conduits, wires, poles, pipelines, hydrants, and other instrumentalities, and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and the transmission of gas and water on, over, through, under, and across Outlots "A" "B", and "C"; said licenses being granted for the use and benefit of all present and future owners of said Lots. No permanent buildings shall be placed in perpetual easementways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

Section 2. All telephone and electric power service lines from property line to dwelling shall be underground.

ARTICLE XV

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, or by the Articles of Incorporation, By Laws or Rules and Regulations promulgated by the Association, as amended from time to time. Failure by the Association or by any Owner to enforce any breach of the above shall in no event be deemed a waiver of the right to do so as to any subsequent breach.

RE-SCD20
12.2.0

BOOK 644 PAGE 588

Section 2. Severability. Invalidation of any one of these covenants or restrictions or any of the documents referred to in Section 1 above, by judgment or court order shall in no wise 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 seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Douglas County, Nebraska.

Section 4. Association's Maintenance of Not-Built Upon Property. Any part of the Property on which Buildings are not built or to be built upon, in accordance with the Southby Common P.U.D., shall be used and maintained by the Association as Common Areas.

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 caused this instrument to be executed on this 30 day of December, 1980.

M.C.M., INC.,
Declarant

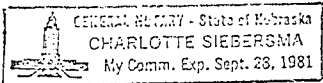
WESCO PROPERTIES, INC., Trustee
Declarant

By Edward E. Wilcozewski
Edward E. Wilcozewski
President

By LeGrande N. McGregor
LeGrande N. McGregor
Executive Vice President

STATE OF NEBRASKA)
)
County of Douglas) ss.

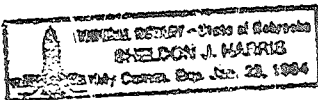
The foregoing instrument was acknowledged before me
this 30th day of December, 1980, by
LeGrande N. McGregor, Executive Vice President of Wesco
Properties, Inc., on behalf of the corporation.



Charlotte Siebersma
Notary Public

STATE OF NEBRASKA)
)
County of Douglas) ss.

The foregoing instrument was acknowledged before me
this 30th day of December, 1980, by
Edward E. Wilczewski, President of M.C.M., Inc., on
behalf of the corporation.



Sheldon J. Harris
Notary Public

EXHIBIT "A"

✓ ✓
Lots 1 through 14, inclusive, together with outlots A, B, and C,
located in Southby Common, as surveyed, platted and recorded, in
Douglas County, Nebraska.

EXHIBIT "B"

✓ ✓ ✓
Outlots A, B, and C, located in Southby Common, as surveyed, platted
and recorded in Douglas County, Nebraska.

RECEIVED
1981 JAN -7 PM 2:13
C. HAROLD OSTLER
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

BOOK 644
PAGE 589
SS. Harris

INDEXED
CORDED
7925

87-273
87-273

22 Mail