

AGREEMENT MODIFYING COVENANTS AND RESTRICTIONS

THIS AGREEMENT entered into this 2nd day of July, 1981, by and between DUCHESNE COLLEGE AND CONVENT OF THE SACRED HEART, a Nebraska corporation, referred to herein as "Duchesne," and THE OMAHA NATIONAL BANK, Trustee, referred to herein as "Trustee," and JOHN W. BUCHOLZ and JOAN P. BUCHOLZ, referred to herein as "Bucholzes."

W I T N E S S E T H:

WHEREAS, by deeds dated March 4, 1966 Trustee and Frederick H. Bucholz and Naomi T. Bucholz, conveyed certain property to Duchesne, subject to certain covenants and restrictions contained in said deeds which are recorded at Book 1280, Pages 445 et seq. and 437 et seq. of the Deed Records of Douglas County, Nebraska; and

WHEREAS, said covenants and restrictions were modified by agreements recorded at Book 485, Page 677 et seq. and Book 488, Page 669 et seq. of the Miscellaneous Records of the Register of Deeds Office of Douglas County, Nebraska; and

WHEREAS, a further Agreement of Modification was recorded in Book 509, Page 685 et seq. of Miscellaneous Records of Douglas County, Nebraska; and

WHEREAS, Trustee and Bucholzes are the "adjoining property owners" referred to in said covenants and restrictions, and are referred to herein as the adjoining property owners; and

WHEREAS, in accordance with the right so to do stated in said covenants and restrictions, said adjoining property owners and Duchesne desire to modify said covenants and restrictions as herein provided.

NOW, THEREFORE, IT IS AGREED as follows:

I.

The Agreement recorded in Book 509, Page 685 et seq. shall be amended, but only to the extent herein provided, to provide for and to permit development of Tracts hereinafter referred to as Tract A, Tract B and Tract C, in accordance with the terms hereof.

II.

Tract A, referred to herein, consists of a tract of 6.09 acres, more or less, described in Exhibit attached hereto designated Tract A. Tract B consists of a tract of 0.585 acres, more or less, described in Exhibit designated as Tract B. Tract C consists of a tract of 2.595 acres, more or less, described in Exhibit designated as Tract C.

III.

Tracts A and B, consisting of a total area of 6.675 acres, more or less, may be used for the erection and maintenance thereon of a condominium development, being condominium units for single residential use with no more than two single-family condominium units in any single structure. Said condominium development shall be of comparable quality and value with the existing condominium development known as Summit Condominium Regime, on a tract of land adjoining Tract A on the west.

IV.

Tract C, consisting of 2.595 acres, more or less, may be used for any use of the ninth residential district zoning under the Omaha Zoning Ordinances in effect on May 3, 1972, except that no structure or any portion thereof shall exceed 80 feet in height above the existing grade. The limitations contained in paragraph I "3 C" of the Agreement of May 3, 1972, pertaining to the 3.18 acre tract therein described shall apply to the use of Tract C, including limitations on retailing, prohibition on illuminated signs facing west and prohibition of hotel or motel use.

V.

All of the covenants, restrictions and limitations on use contained in the deeds and modifying agreements described in the recitals hereto are incorporated herein by this reference. Except as herein specifically changed, all of such covenants, restrictions and limitations shall apply to Tracts A, B and C, and, except as herein specifically changed, all of them shall remain in full force and effect, including, by way of illustration, but not in limitation, the following, which, for convenience, are referenced to the May 3, 1972 Agreement Modifying Covenants and Restrictions.

I-3-A. Tract C may be developed in accordance with the applicable restrictions prior to the development of Tracts A and B.

I-3-B. Tract A and Tract B may be developed in accordance with the condominium restrictions.

I-3-C. The Tract C restrictions on use shall be as follows:

- (1) Any use shall meet all of the requirements, other than the height requirement, but including the area and density requirement, of ninth resident district zoning under the Omaha Nebraska Zoning Ordinances in effect on the date hereof, and, as to height, no portion of any structure shall exceed 80 feet in height above the existing grade.
- (2) All retailing in the structures shall be internalized, that is, there shall be no outside ingress or egress for any retailing activity, and such internalized retailing activity shall be limited to pharmacies, restaurants, and to shops selling tobacco, confections and similar items which retailing shall be permissible without regard to the zoning required for same.
- (3) No illuminated signing shall face in a westerly direction.
- (4) No portion of any structure on Tract C shall be devoted to hotel or motel use.

I-3-D. The condominium restrictions on use, covering Tracts A and B shall be as follows:

- (1) The condominium units shall be for single family residential use, and there shall be no more than two individual family condominium units in any single structure and not more than 58 family units in the entire condominium tract, including those units already constructed.

The individual family condominium units shall have an inside ground level, i.e. first floor, useful living area, excluding porches, patios, terraces and garages of not less than 1,500 square feet.

- (2) Not applicable to Tracts A and B.
- (3) Not applicable to Tracts A and B.
- (4) There shall be no retailing and no illuminated signing on the condominium tract.
- (5) All exterior lighting on the condominium tract shall be directed basically downward and shall be installed and shielded so that the light generating element is not visible beyond the west boundary line of the tract. Street and parking area lighting shall be by carriage lamp poles and fixtures or similarly attractive poles and fixtures and shall not exceed 20 feet in height. All other exterior lighting, including pedestrian way lighting, in the condominium tract shall be by mushroom type fixtures not exceeding 30 inches in height.
- (6) All TV and FM antennas shall be constructed on the inside of the structures on the condominium tract and no towers or antennas of any kind shall be constructed on the outside of any structure or on the grounds of the condominium tract, with the exception of aesthetically attractive flagpoles not exceeding 30 feet in height.
- (7) All electrical power, telephone and other utility lines within the condominium tract shall be underground. All rooftop plumbing, heating, air conditioning and similar equipment shall be screened or enclosed so as not to be visible on the property owned by the adjoining property owners, and all outside trash receptacles and plumbing, heating and air conditioning and similar apparatus not covered by the foregoing shall be enclosed or screened in such a manner that it is not visible from the west property line of the tract. There shall be no outside incineration of waste on the condominium tract.
- (8) Not applicable to Tracts A and B.
- (9) No portion of any structure on the condominium tract shall have an overall height in excess of 35 feet above the surrounding grade.
- (10) Paragraphs I-3-D(10) and (11) of the Agreement Modifying Covenants and Restrictions dated May 3, 1972 shall not be applicable, and in place thereof the following shall apply. The development of Tracts A and B shall be in accord with the site lay-out plan and elevation plan, copies of which are attached hereto as Exhibits "D" and "E" respectively. Changes may be made therein without the consent of the adjoining land owners if the number of family units in the entire condominium tract does not exceed 58 and if, as changed, the units are of comparable quality and value to the Summit Condominium Regime adjoining Tract A on the west and the elevations are not substantially changed.

IN WITNESS WHEREOF, the parties have signed this Agreement the date first above written.

ATTEST:

DUCHESNE COLLEGE AND CONVENT OF THE SACRED HEART, a Nebraska corporation

C. Haggerty
Secretary

BY Shirley Miller
Vice - President

THE OMAHA NATIONAL BANK, Trustee

BY Stanley Paul, V.P.
Vice President

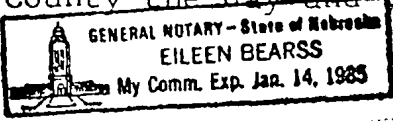
John W. Bucholz
John W. Bucholz

Joan P. Bucholz
Joan P. Bucholz

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 6 day of August 1981, before me, the undersigned, a Notary Public in and for said County, personally came Sister Shirley Miller ^{Via} President of Duchesne College and Convent of the Sacred Heart, a Nebraska corporation, to me personally known to be the identical person whose name is affixed to the above Agreement and acknowledged the execution thereof to be her voluntary act and deed 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, Nebraska, in said County the day and year last above written.



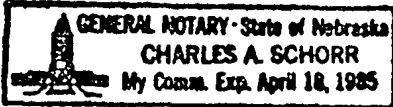
Eileen Bearss
Notary Public

My Commission expires Jan. 14, 1985.

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 2nd day of July, 1981, before me, the undersigned, a Notary Public in and for said County, personally came Stanley A. Traub, to me known to be a Vice President of The Omaha National Bank and the identical person whose name is affixed to the foregoing instrument, and he acknowledged the same to be his voluntary act and deed as such Vice President and the voluntary act and deed of the Trustee.

Witness my hand and notarial seal at Omaha, Nebraska in said County the day and year last above written.



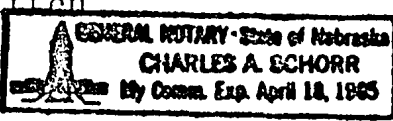
Charles A. Schorr
Notary Public

My Commission expires April 18, 1985.

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 5th day of July, 1981, before me, the undersigned, a Notary Public, duly commissioned, qualified for and residing in said County, personally came JOHN W. BUCHOLZ and JOAN P. BUCHOLZ, to me know to be the identical persons whose names are affixed to the foregoing instrument and they acknowledged the same to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.



Charles A. Schorr
Notary Public

My Commission expires April 18, 1985.

EXHIBIT "A"

LEGAL DESCRIPTION

A portion of that certain 15.84 acre tract conveyed to The Villas Corporation by Duchesne College & Convent of the Sacred Heart under Corporation Warranty Deed, dated April 29, 1972, and recorded May 9, 1972, in Book 1454 at Page 515 of Deed Records of Douglas County, Nebraska, said portion being described as follows (references in the following description to "property line" refer to the property lines of the said 15.84 acre tract), to-wit:

Beginning at a point 305 feet North and 468.6 feet West of the East One-Quarter corner of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska; thence North, parallel to the East line of the Northeast Quarter of said Section 16, a distance of 683.90 feet to a point on the South line of Lot 8, Meadowbrook Addition; thence North 89°55'00" West along the South line of Lots 8, 7, 6 and 5, said Meadowbrook Addition, a distance of 360 feet; thence South, parallel to the East line of the Northeast Quarter of Section 16, a distance of 521.81 feet; thence left 12°29' in a southeasterly direction, a distance of 262 feet; thence left 77°30' and parallel to the South property line a distance of 213.3 feet; thence left 90°01' and parallel to the East property line, a distance of 93 feet; thence right 90°01' and parallel to the South property line, a distance of 90 feet to the point of beginning; except a parcel thereof, more particularly described as follows:

Beginning at a point 212 feet North and 558.6 feet West of the East Quarter-Corner of said Section 16; thence, N89°59'W a distance of 213.3 feet; thence, N12°29'W a distance of 92.19 feet; thence S89°59'E a distance of 89.93 feet; thence, S0°E a distance of 70 feet; thence S89°59'E a distance of 143.3 feet; thence S0°E a distance of 20 feet to the point of beginning. In this description the East line of said Section 16, Township 15 North, Range 12 East is assumed to lie in a true North-South direction;

Together with an additional parcel described as follows:

Beginning at a point 180 feet North and 558.6 feet East of the East Quarter Corner of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska; thence Northerly and parallel to the present East property line of The Summit Condominium Property Regime a distance of 125 feet; thence Easterly and parallel to the present South property line of said Regime, a distance of 90 feet; thence Southerly along the present East property line of said Regime a distance of 125 feet; thence Westerly along the present South line of said Regime, a distance of 90 feet to the point of beginning;

Together with all of Seller's right, title and interest in and to that certain 100 foot perpetual easement for ingress and egress to the property herein being conveyed, which was originally granted by Duchesne College & Convent of the Sacred Heart for the benefit of all persons having an interest in the 15.84 acre tract, by an instrument dated April 29, 1972 and recorded May 9, 1972 in Miscellaneous Records, Book 509 at Page 699; and

All of Seller's right, title and interest in and to certain permanent easements over and right to use the property described as Parcel E for purposes of ingress and egress and for installation, use, maintenance and relocation of utilities, and right of ingress and egress over a portion of Parcels C & D, all as granted to trustees in Warranty Deed, dated May 20, 1978, recorded in Book 1598 of Deeds at Page 518, Register of Deeds, Douglas County, Nebraska.

Tract A

LEGAL DESCRIPTION OF PROPERTY:

A part of the East $\frac{1}{2}$ of section 16 - Township 15 North, Range 12 East of the 6th P.M. more particularly described as follows:

Commencing at the East $\frac{1}{4}$ corner of said Section 16-15-12; Thence North $0^{\circ}-00'-00''$ East along the East line of said Section 16-15-12 a distance of 370.00 feet; Thence North $89^{\circ}-58'-29''$ W a distance of 388.40 feet to the True point of beginning; Thence continuing North $89^{\circ}-58'-29''$ W a distance of 80.00 feet; Thence North $00^{\circ}-04'-51''$ East a distance of 318.81 feet to the South line of Meadowbrook Addition to the City of Omaha; Thence South $89^{\circ}-52'-05''$ East along said South line of Meadowbrook Addition a distance of 80.00 feet; Thence South $00^{\circ}-04'-51''$ West a distance of 318.66 feet to the True point of beginning. Containing 25,498.80 square feet or 0.585 acres more or less.

Note: In the above description, the East line of Section 16-15-12 is assumed to lie in a true North and South direction.

EXHIBIT "A"

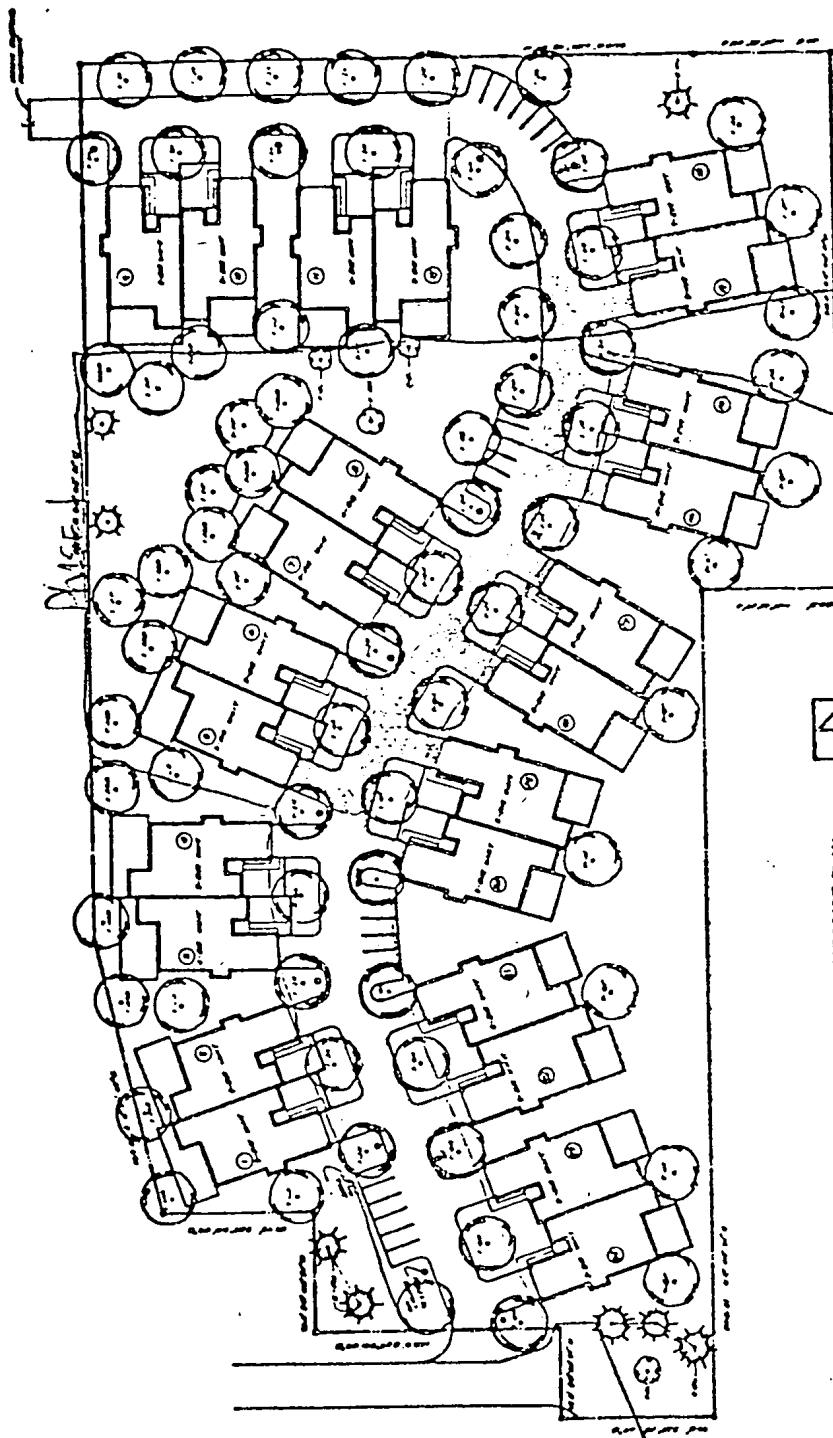
That tract of real estate bounded and described as follows: Beginning at a point 670.0 feet North and 33.0 feet West of the East One-Quarter corner of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, thence left, in a Westerly direction, along a straight line, a distance of 435.6 feet, thence right, in a Northerly direction, parallel to the East line of said Section 16, a distance of 318.9 feet to the South line of Meadowbrook Addition to the City of Omaha, Douglas County, Nebraska, thence right in an Easterly direction, along the South line of said Meadowbrook Addition, a distance of 435.6 feet to a point 33.0 feet Westerly of the East line of said Section 16, thence, right, in a Southerly direction parallel to and 33.0 feet Westerly of the East line of said Section 16, a distance of 318.0 feet to the point of beginning.

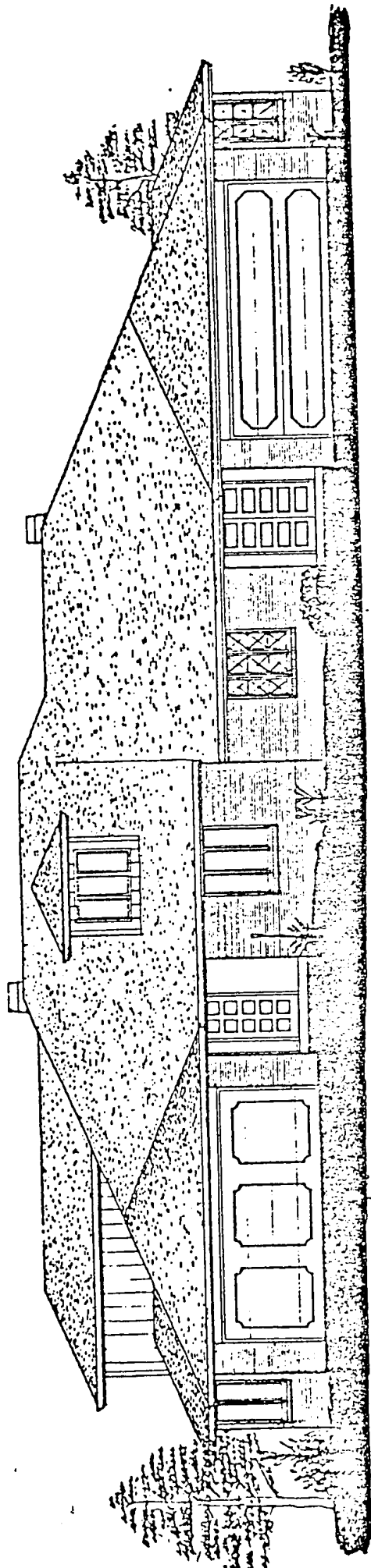
(Excepting therefrom an 80 foot strip on the West, being described in Tract B of this Agreement)

Tract C

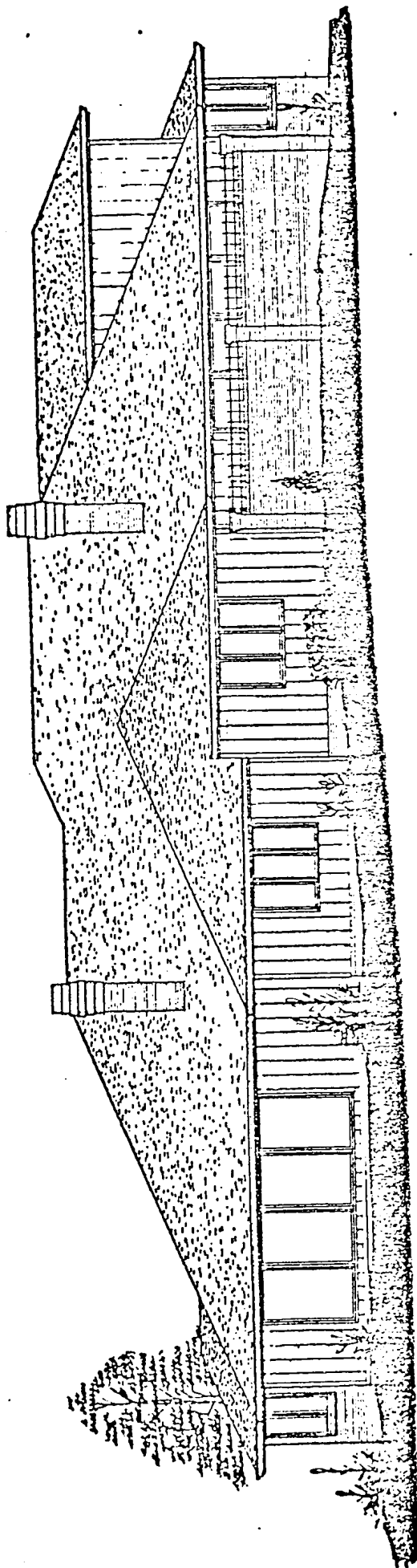
EXHIBIT "D"

BOOK 658 PAGE 112





FRONT ELEVATION



REAR ELEVATION

10 April

RECEIVED
1981 AUG 25 AM 9:21
C. HAROLD OSTLER
REGISTER OF DEEDS
DOUGLAS COUNTY, WIS.

BOOK 658

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