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PAGE 337 Carl & Hilda REGISTER OF DEEDS, SARPY COUNTY, NEB. 67.75

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE TOWN, SARPY COUNTY, NEBRASKA

THIS DECLARATION, made this 27th day of July, 1975, by the WEST BELLEVUE COMPANY, INC., a Nebraska Corporation, and MIKE HOGAN CONSTRUCTION CO., a Nebraska Corporation, herein-after referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarants are the owners of certain property, located in Sarpy County, Nebraska, which is more particularly described as:

Lots One (1) through One Hundred Thirty-Nine (139), inclusive, THE TOWN, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska; and,

WHEREAS, Declarants desire to create thereon a residential community with permanent open spaces and other community recreation facilities for the benefit of the said community and further to protect and preserve the integrity and concept of the area; and,

WHEREAS, Declarants desire to provide for the preservation of the values and amenities in said community and for the maintenance of said recreational area, open spaces and other common facilities, and to this end, desire to subject said real estate to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, Declarants have deemed it desirable for efficient preservation of the values and amenities in said community, to create an agency through which should be delegated and assigned the powers of maintaining and administering the common properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarants have incorporated The Town Homeowners Association under the laws of the State of Nebraska as a nonprofit corporation, the purpose of which shall be to exercise the function aforesaid;

NOW, THEREFORE, Declarants declare that the real property as hereinbefore described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or in any

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supplemental declaration (unless the contents shall prohibit it) shall have the following meanings:

Section 1: "Association" shall mean and refer to The Town Homeowners Association, 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 all or any part, parcel or portion of a platted 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 now or hereafter be brought within the jurisdiction of the Association.

Section 4: "Common Area" shall mean all real property owned or leased by the Association for the common use and enjoyment of the owners and/or members of the Association, subject to the limitations and restrictions hereinafter noted. Prior to the conveyance of the first lot, the Association shall lease from Sanitary and Improvement District No. 86 of Sarpy County, Nebraska, (hereinafter referred to as "District") under a twenty-five (25) year lease and maintenance contract the following-described real property owned by the District, to-wit:

Lots One Hundred Thirty-Seven (137), One Hundred Thirty-Eight (138) and One Hundred Thirty-Nine (139), in THE TOWN, a Subdivision in Sarpy County, Nebraska.

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

Section 6: "Declarants" shall mean and refer collectively to the WEST BELLEVUE COMPANY, INC., a Nebraska Corporation, and MIKE HOGAN CONSTRUCTION CO., a Nebraska Corporation, their successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from the Declarants for the purpose of development.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1: Owners' Easements of Enjoyment. Every Owner and/or member of the Association shall have a right and easement of enjoyment in and to the Common Area and related facilities over which the Association has jurisdiction, located in The Town, a subdivision; said right and easement of enjoyment 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 of said recreational facilities, and by contract to extend the right to use such recreational facilities to nonmembers of the Association upon payment of required fees and charges;

(b) The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessments against his lot remains unpaid; and for a period not to exceed 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 or interest in the Common Area to any public agency or nonprofit corporation for use for purposes similar to those for which the Association was created, and to any public authority or utility company for such purposes and subject to such conditions as may be agreed to by the Owners and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to each Owner not less than 30 days or more than 60 days in advance. Declarants shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the homeowner's use and reasonable access to any recreational facilities which might be constructed on the Common Area nor with their right of ingress and egress to their homes;

(d) The right of the Association to limit the number of guests of Owners on recreational facilities;

(e) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities.

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 exclusively to the members of his family, his tenants or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP

Every Owner as defined in Article I, Section 2, under this Declaration shall be a member of the Association. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

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 among themselves 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 31, 1985.

ARTICLE V

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 covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, except those exempt under Section 10 of this Article, 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. The annual and special assessments, together with interest, costs and a reasonable attorney fee, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes:

- (a) To promote the recreation, health, safety and welfare of the residents in the Properties.

(b) For the improvement, maintenance and insurance of the Common Area or any other recreational facilities made available thereon by the Association for the use and enjoyment of its members, and the payment of any taxes and assessments levied or assessed against such Common Area by any governmental body or entity having lawful jurisdiction to do so.

(c) For maintenance and repair, including snow removal, on all pedestrian walkways in the Common Area; and for maintenance and repair of all lights in said Common Area and nondedicated pedestrian ways, traffic ways or easements.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Fifteen Dollars (\$15.00) per lot. (To determine Maximum Annual Assessment, multiply monthly assessment by twelve.)

(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 five per cent (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 five per cent (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 shall levy and 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 Area, including fixtures and personal property related thereto, or related facilities, over which the Association has jurisdiction, located in The Town, a subdivision, 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 Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be delivered either personally or by mail to all members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all votes of each class of membership shall constitute a quorum. If the required

quorum is not present, another meeting shall 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. Special assessments shall be fixed at a uniform rate as to all lots, except those exempt under Section 10 of this Article. Annual assessments shall be fixed at a uniform rate for all lots owned by Class A members and all Lots owned by the Class B member(s) upon which a living unit shall have been completely constructed and occupied and for which a certificate of occupancy shall have been issued.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each lot, on the first day of the first month following the completion of a living unit upon said lot and the issuance of a certificate of occupancy and the actual occupancy of any said living unit, whichever same shall occur. The annual assessments as to any lots owned by Declarants shall become subject to assessment upon termination of the Class B membership hereinbefore provided and shall commence in accordance with Section 10, Subsection (c). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall thereafter fix the amount of the annual assessment against each Lot at least thirty (30) days prior to the fiscal year of the Association, which shall coincide with the annual assessment, commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto at least thirty (30) days prior to the due date thereof. The failure of the Board to so notify each Owner in advance shall not relieve any Owner of his obligation to pay assessments. The due date or installment dates of the annual assessments shall be established by the Board of Directors. The Association shall, upon written request 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 to the date of request, any delinquent sums, if any, and the due date and amount of the next succeeding assessment or installment thereof. The annual assessment shall be and become a lien as of the date of the annual assessment.

Section 8. Effect of Nonpayment of Assessments-Remedies of the Association. Any assessment or installment which is not paid when due shall be delinquent. If the assessment or installment is not paid within thirty (30) days after the due date, the assessment or installment shall bear interest from the due date at the rate of six per cent (6%) 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 in proceedings in the nature of a mechanics lien foreclosure. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney fees with respect to the action. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of the subject property shall have the right to cure

any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure to the mortgagee.

Section 9. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional 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 proceedings 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 lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created therein:

- (a) All Properties dedicated to and accepted by a local public authority;
- (b) The Common Area; and,
- (c) The lots upon which dwelling units are not substantially completed, occupied and for which certificate of occupancy has not been issued.

ARTICLE VI

USE RESTRICTIONS

A. The use of the Common Area shall be subject to the restrictions set forth in Article II, Section 1, and to those restrictions hereinafter set forth.

B. No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.

C. No Owner shall place any structure whatsoever upon the Common Area nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all members.

D. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

E. The Properties are hereby restricted to residential and multi-family dwellings for residential use and structures and uses related to the convenience and enjoyment of such residential use, including but not limited to park and recreational facilities, such as tennis courts and swimming pools, together with schools and churches.

F. No dwelling shall contain more than two and one-half stories and shall be permitted only when the dwelling contains the

following minimum square footage:

(a) If a one-story building, not less than 1,000 square feet, ground floor area, exclusive of garage, open porches and basement.

(b) If a one and one-half story dwelling, the first story shall contain not less than 750 square feet ground-floor area, exclusive of garage, open porches and basement.

(c) If a two-story dwelling, the first story shall contain not less than 750 square feet ground-floor area, excluding garage, open porches and basement.

G. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Household pets within the Properties and Common Area will be subject to regulation, restriction, exclusion and special assessment as may be determined by the Association from time to time. Included within such regulations, but not by way of limitation thereof, shall be a prohibition against dogs, cats and other household animals being allowed to run at large within the Properties and Common Area, and a requirement that same at all times be on a leash or other immediate control of their owner. The owners of any pets known to be at large shall be properly assessed by the Association for the clean-up expenses incurred.

H. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any lot except that a doghouse for not more than one dog shall be permitted.

I. No advertising signs (except one not more than six square feet "For Rent" or "For Sale" sign per lot), billboard, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. Further, no retail business activities of any kind whatever shall be conducted in any building or in any portion of the property. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of the Declarants, their agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

J. No exterior television or radio antennas of any sort exceeding a height of seven feet (7') shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real estate, except as may be approved, in writing, by the West Bellevue Company, or the Board of Directors of the Association.

K. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

L. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of 48 extended hours shall be permitted outside of garages or on any Lot at any time; nor shall vehicle offensive to the neighborhood be visibly stored, parked or abandoned in the neighborhood. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations.

M. No boat, camper, trailer, camper-truck or similar chattel shall be maintained or stored on any lot or within the Properties other than in an enclosed structure, for more than thirty (30) days within any calendar year, nor shall this restriction restrict trucks or commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the common properties.

N. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any dwelling, except for pick-up purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or common properties, and not on any lot unless placed in a suitable container suitably located.

O. 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 adjacent property.

P. No fence shall be permitted to extend beyond the front line of a main residential structure unless written approval is obtained from the Association. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the above-mentioned front building line. No fences or walls shall exceed a height of six (6) feet.

Q. Notwithstanding any provisions herein contained to the contrary, it is expressly permissible for a builder of said buildings to maintain during the period of construction and sale of said buildings upon such portion of the premises as such builder may choose such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said buildings, including, but not limited to, a business office, a storage area, construction yards, signs, model units and sales office.

R. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

S. No owner, agent, occupant, or person in possession, charge or control of any lot shall permit, allow or maintain any growth of noxious weeds, grass or worthless vegetation thirty-six (36) inches or more in height, or to litter or cause or allow litter to be deposited thereon, or to allow litter to remain thereon, except as provided in Subsection N of Article VI.

ARTICLE VII

EASEMENTS AND LICENSES

A. The Association and its agents, contractors and designees shall have an easement and license to go upon any Lot at all times necessary in order to accomplish changes, replacements or repairs to sewers, gas lines, water lines, telephone lines, electrical lines, meters, vents and other utilities in order to maintain service to or prevent injury or damage to any persons or dwellings or property located within the Properties or the Common Area above described.

B. Declarants' Easements. Anything to the contrary herein notwithstanding, Declarants hereby reserve an easement and right-of-way over all Common Area, and over all Lots not conveyed, for its sole use for the purpose of constructing improvements, utilities and other matters including the right to erect temporary buildings to store any and all materials.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner or their grantees, assigns or heirs 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, either to prevent or restrain any violation of same, or to recover damages or any other dues for such violation. 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 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-five (25) years from the date of the recording of this Declaration, after which time they shall be automatically extended for successive period of ten (10) years. This Declaration may be amended during the first twenty (20) years period by an instrument signed by the owners of not less than ninety per cent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five per cent (75%) of the Lots. Any amendment must be recorded. Provided, however, that the Association shall have the right by an express written Permit for the purpose of avoiding undue hardship to waive partly or wholly the application to any Lot of any covenant or easement granted to the Association.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties. Additional land owned by Declarant, West Bellevue Company, of record on date hereof, which is located in the vicinity of Highway 73-75 and 370 in Sarpy

