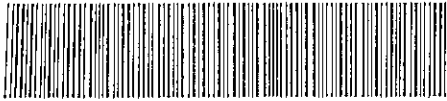




1272 676 MISC



17528 98 676-689

RECEIVED

DEC 7 8 08 AM '98

RICHARD H. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

17528 MC-16526
FEE 12.50 FB
T BKP COMP C/O COMP LP
DEL M SCAN ac FV JAC

[Space Above This Line For Recording Data]

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made as of the date shown on the close of this instrument, by Apollo Building Corp. ("Declarant"), a Nebraska corporation.

W I T N E S S E T H:

WHEREAS, Declarant, whether one or more, is the owner of that certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 12 through 96, inclusive, of Hillsborough Estates, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property herein above described 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, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Crocker, Huck et al
1250 Commercial Fed Tower
2120 S. 72 St.
Omaha, NE 68124

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Hillsborough Villas Association, a Nebraska nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) 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, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

Section 3. "Properties" shall mean and refer to:

Lots 12 through 96, inclusive, of Hillsborough Estates, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any platted lot (other than the Common Area) shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a lot split of a duplex zoned lot.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling, the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot (other than any Lot owned by the Declarant) which the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

Section 7. "Declarant" shall mean and refer to Apollo Building Corp. and its successors and assigns.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. A Lot Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant.

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Lot Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

Section 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or

both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Members shall be the Declarant. The Declarant shall be entitled to nine (9) votes for each Lot owned by the Declarant. The Class B membership shall terminate and be converted into Class A membership (with the Declarant then entitled to one vote for each Lot owned by the Declarant) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, and
- (b) January 1, 2008.

Section 4. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Assessable Lot is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association, and
- (3) Common Area maintenance assessments for repair, maintenance and other operational expenses with respect to the Common Area Improvements as deemed necessary by the Association,

which assessments shall be established and collected as hereinafter provided. The special assessments, monthly assessments and Common Area maintenance assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the

assessment became due. The personal obligation for delinquent assessments shall not pass to such 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 health, safety, recreation and welfare of the residents in the Properties and for exterior maintenance, Common Area maintenance, and other matters as more fully set out in Articles V and VI herein.

Section 3. Monthly Assessments. The Board of Directors shall have the authority to levy and assess against each Assessable Lot an initial monthly maintenance assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance. At the commencement of each calendar year thereafter, the Board of Directors shall have the authority to increase the monthly maintenance assessment against each Assessable Lot by a percentage of the prior assessment, which percentage shall be the greater of five percent (5%) or the percentage increase in the U. S. Department of Labor Consumer Price Index (All Items) for All Urban Consumers, 1982-84=100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other index which will accomplish the same result of reflecting general consumer price changes in the United States economy. Any additional increase in the monthly maintenance assessment above that authorized by the Board of Directors must be approved by a majority of the votes cast by the Members at a meeting duly called for such purpose.

All Owners shall, prior to or simultaneously with becoming an Owner, execute such document(s) as necessary to enable the Association to receive the monthly assessments for the Owner's lot through automatic withdrawal or transfer, or any other electronic or other method deemed acceptable to the Association.

Section 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article V herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Lot, including fixtures and personal property related thereto, provided that any such assessment shall be approved by the vote of the members, who shall vote in person or by proxy at a meeting duly called for such purpose.

Section 5. Common Area Maintenance Assessments. The Board of Directors shall have the authority to levy and assess from time to

time against an Assessable Lot any Common Area maintenance assessment for the purpose of meeting the requirements of Article VI herein for repair, maintenance and other operational expenses with respect to the Common Area Improvements; provided, however, Declarant shall pay such Common Area maintenance assessments in full until fifty percent (50%) or more of the Lots are Improved Lots.

Section 6. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4 or 5 of this Article IV shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. The monthly assessments and Common Area maintenance assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments and Common Area maintenance assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days

after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of this Declaration, is sixteen (16) percent per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

Section 9. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

ARTICLE IV EXTERIOR MAINTENANCE

The Association may provide exterior maintenance upon each Assessable Lot as set forth hereinafter.

Section 1. Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees, shrubs, lawns, and other exterior landscaping improvements which have been approved by the Association, except such improvements as may be within the confines of any fenced-in area on any Assessable Lot (which shall be the responsibility of the Owner). However, the Owner is responsible for replacement of all dead landscaping improvements on Owner's lot; the Owner agrees to allow the Association to replace such dead

landscaping improvements at the expense of the Owner of record at the time of replacement, for which the Owner shall reimburse the Association on demand. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.

- (b) Operation and maintenance of an underground watering system.
- (c) Snow removal as to be determined by the guidelines set forth by the Board of Directors.
- (d) Optional exterior window cleaning as deemed necessary by the Board of Directors.

Section 2. Special assessments may be assessed for, but not limited to, the following:

- (a) Maintain, repair, and replace roofs.
- (b) Maintain, repair, including painting, of all exterior walls, with the exception that the Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditions systems. However, the Association shall assume the duty to paint the exterior surfaces of exterior doors.
- (c) Maintain, repair, and replace gutters.

All replacements shall be of like kind if at all possible.

ARTICLE V MAINTENANCE OF COMMON AREA IMPROVEMENTS

The Association may from time to time repair, maintain, and operate the Common Area Improvements, which maintenance may include, but not be limited to, the following:

- (a) Maintaining the surface of the roadways on the Common Area in a level, smooth, and evenly covered condition;
- (b) Snow removal as to be determined by the guidelines set forth by the Board of Directors;
- (c) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markers and lines;

- (d) Repairing and replacing when necessary such artificial lighting facilities;
- (e) Maintaining and repairing any and all common storm drains, utility lines, sewers and other service facilities which are necessary for the operation of the dwellings on the Properties (common storm drains, utility lines, sewers and other service facilities are those which serve all of the Lots);
- (f) Maintaining all common fences including those on the perimeter of the Properties;
- (g) Payment of all electrical, water, and other utility charges or fees for services furnished to the Common Area;
- (h) Payment of all real property taxes and other special taxes and assessments assessed against the Common Area or the Common Area Improvements; and
- (i) Payment of all premiums for general public liability insurance insuring against claims for personal injury, death or property damage occurring in, upon or about the Common Area.

As provided in Article IV herein, the Board of Directors may levy and assess Common Area maintenance assessments against each Assessable Lot for the costs and expenses of the repair, maintenance and operations of the Common Area Improvements, as provided in this Article VI.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications.

ARTICLE VII
GENERAL RESTRICTIONS AND OTHER PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No clothes line or clothes hanger (including but not limited to laundry umbrellas or other retractable apparatus) shall be constructed on any Lot or used on any Lot outside of a building located thereon. No exterior television or radio antenna or dish, other than an inconspicuously mounted or screened satellite dish antenna of less than 19 inches in diameter, shall be erected on any Lot within the Properties.
- (b) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets which, in the case of dogs, shall be limited to one per household. With respect to other non-exotic household pets, the Board of Directors may from time to time establish limits as to the size, weight, and quantity per household. All pets shall be leashed when outside of the residential structure unless restrained by fencing (including invisible sound-barrier fencing) authorized as provided in this Declaration. No such pet shall be kept, bred or maintained for commercial purposes. All reptiles and pot-bellied pigs are classified as exotic pets. All unpleasanties created by the household pet shall be the responsibility of the Owner who shall be obligated to clean up after the animal. The Owner also shall prevent any prolonged barking or other noises from the household pets from becoming offensive or annoying to other Owners.
- (c) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.
- (d) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size.

Nothing herein contained shall prevent the use of any Lot by the Declarant, its agents, and the Association as a sales and rental office, or as a model home or both, and while any Lot is so used, they shall have the right, for themselves, or their nominees, to place signs on the premises advertising such office or model home, or both.

- (e) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.
- (f) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulation, restriction or exclusion by the Association.
- (g) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.
- (h) No finish or preservative shall be applied to any wooden decks other than a clear wood finish or preservative.

ARTICLE VIII INSURANCE

Section 1. The Association shall purchase and provide comprehensive general liability coverage insurance for the Properties and Common Area in such amounts as shall be determined from time to time by the Board of Directors of the Association. The Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Association, for its Officers, and members of the Board of Directors. Finally, if the Association has any employees of any nature, the Association shall purchase and provide Worker's Compensation Insurance for all employees who may come within the scope of Nebraska Worker's Compensation laws.

Section 2. Each Owner shall, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of insurance insuring such Owner and the Association, as an additional insured, against loss or damage by fire and such or risks as may be included within an extended coverage endorsement covering the full replacement cost of the buildings and other improvements from time to time erected upon or under such Owner's Lot. All such insurance shall be written by companies which are

satisfactory to the Association and which are authorized to do insurance business in the State of Nebraska. Each policy shall contain an agreement by the insurer that it will not cancel or modify such policy except after thirty (30) days prior written notice to the Association and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the insured. Certificates evidencing the existence of such insurance policies shall be delivered to the Association by the Owner annually and upon the reasonable request of the Association. Each Owner may obtain such additional insurance for such Owner's benefit and at such Owner's own expense as may be deemed necessary by the Owner, including coverage for personal property damage or personal liability.

Section 3. In the event that any building on the Properties shall be damaged or destroyed (partially or totally) by fire, the elements, or any other casualty, the Owner of such building shall, at its expense, promptly and with due diligence repair, rebuild, and restore the same as nearly as practical to the condition existing just prior to such damage or destruction; or alternatively, the Owner of such building shall be required to clear, clean and raze the damaged building and landscape the entire Lot.

ARTICLE IX ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

ARTICLE X EASEMENTS

Section 1. Ingress and Egress. There hereby is reserved in favor of the Owners and their tenants, agents, and invitees, and the agents and invitees of such tenants, a non-exclusive easement to use, free of charge, in common with others entitled to similar use, any and all of the Common Area Improvements existing from time to time on the Properties, including but not limited to roadways, entrances, and exits and other service facilities located in, upon or under the Common Area, subject to such reasonable and uniformly applied rules and regulations as the Board of Directors may establish from time to time with respect to such use.

Section 2. Utility Lines. There hereby is reserved in favor of and granted to the Owners non-exclusive easements under, through

and across the Common Area for water drainage systems, water mains, sewers, water sprinkler system lines, telephone and electrical conduits or systems, gas mains, other public utilities and service easements, which reservation shall include the right of an Owner to reasonably join in the use of any such existing systems, structures, mains, sewers, conduits, lines, and other public utilities and service facilities. The grantee of such easement shall bear all costs related to the use of the easement and shall repair to the original specifications any damage to the Common Area resulting from such use, provided the costs of maintaining and repairing common storm drains, utility lines, sewers and other service facilities are expenses in accordance with Article VI.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of 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 or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. Amendment. Additional lots owned by Declarant in Hillsborough Estates Subdivision in Douglas County, Nebraska, if any, may be added to the Properties and become subject to this Declaration upon the written direction of Declarant recorded in the same manner as Deeds shall be recorded at such time. Subject to the preceding sentence, this Declaration may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by this Declaration, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by this Declaration. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

Section 4. Term. The covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial 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 each.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants, Conditions and Restrictions as of this 20 day of November, 1998.

APOLLO BUILDING CORP.

By: Terrence J. Ficenec - Pres
Terrence J. Ficenec, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Before me the undersigned, a notary public, personally came Terrence J. Ficenec, to me personally known to be the President of Apollo Building Corp., a Nebraska corporation, and that he acknowledged the execution of the above to be his voluntary act and deed as President and that the execution of this document was duly authorized by the Board of Directors as the voluntary act and deed of such corporation.

WITNESS my hand and notarial seal this 20 day of November, 1998.

Patricia S. Devaney
Notary Public

My Commission Expires:

7-5-01

44138.3

