

BOOK 602 p. 328

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR APPLEWOOD HEIGHTS

The undersigned, HARRISON STREET JOINT VENTURE, a Nebraska Joint Venture, being the owner of all of the following described property, to-wit:

Lots 1-31, 34-42, 44-48, 50-61, 63, 65-68, 70-88, 91-94, 96, 97, 99-105, 110, 113-116, 125-136, 138-140, 142-169, 172, 173, 175, 178-181, and 183-213, Applewood Heights, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska,

does hereby amend the Declaration of Covenants, Conditions and Restrictions, filed with respect to said property on November 5, 1980, and recorded in Book 641 of Miscellaneous Records at Pages 604 through 614, inclusive, in the Office of the Register of Deeds of Douglas County, Nebraska, pursuant to the power it reserved unto itself in Article VI(B), as follows:

1. Article III(W) is hereby deleted, and the following is substituted therefor:

"W. The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) inches in diameter, shall be planted in the yards within one (1) year from the date the foundation for the residence on the Lot is completed. At least one (1) of said trees shall be planted in the front yard of each residence, to be located between the front of the dwelling placed on the Lot and the front Lot line. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. The trees referred to above shall be one of the following varieties:

Greenspire Linden  
Marshall Seedless Ash  
Skyline Honeylocust  
Emerald Ash"

Except as so amended, the original Declaration of Covenants,  
Conditions and Restrictions shall remain in full force and effect.

Miss

BOOK 662 PAGE 329

IN WITNESS WHEREOF, the undersigned, HARRISON STREET JOINT VENTURE, has executed this Amendment to Declaration this 4 day of November, 1981.

HARRISON STREET JOINT VENTURE, A  
Nebraska Joint Venture

By: NEBRASKA INVESTMENT SERVICES, INC., a  
Nebraska Corporation, Partner

By: Jim K. Blair  
Vice-President

Attest:  
Paul Fechner  
Assistant Secretary

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

On this 4 day of November, 1981, before me a Notary Public in and for said County and State, personally appeared Jim K. Blair and Paul Fechner, Vice-President and Assistant Secretary of NEBRASKA INVESTMENT SERVICES, INC., a Nebraska Corporation, Partner of HARRISON STREET JOINT VENTURE, a Nebraska Joint Venture, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed, the voluntary act and deed of said corporation and the voluntary act and deed of said partnership.

GENERAL NOTARY State of Nebraska  
PAMELA M. WIMPLE  
My Comm. Exp. Dec. 21, 1983

Pamela M. Wimple  
Notary Public

My Commission Expires December 21, 1983

Mesa

12:42

etc

BOOK 641 PAGE 004

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR APPLEWOOD HEIGHTS  
LOTS 1 THROUGH 213, INCLUSIVE

THIS DECLARATION, made on the date hereinafter set forth, by HARRISON STREET JOINT VENTURE, a Nebraska Joint Venture, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of the following described real property:

Lots 1 through 213, inclusive, Applewood Heights, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska,

and,

WHEREAS, the Declarant will convey said lots, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, the Declarant hereby declares that all of the lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These easements, covenants, restrictions and conditions shall run with said real property and shall be binding upon all parties having or acquiring any right, title or interest in the above-described real property, or any part thereof, and they shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

A. "Association" shall mean and refer to the APPLEWOOD HEIGHTS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

B. "Owner" shall mean and refer to the record owner, whether one or more persons or entities.

C. "Properties" shall mean and refer to that certain real property hereinbefore described.

D. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties, with the exception of Lot 214, which is specifically excluded from the provisions of this Declaration.

E. "Declarant" shall mean and refer to HARRISON STREET JOINT VENTURE, a Nebraska Joint Venture, its successors and assigns.

## ARTICLE II.

### ARCHITECTURAL CONTROL

A. No dwelling, fence, other than fences constructed by Declarant, wall, driveway, patio, patio enclosure, deck, rock garden, swimming pool, television or radio antenna, solar collecting panels or equipment, air conditioning equipment, wind-generated power equipment, or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without the express written approval of the Association through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Association, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Superficial, cosmetic or minor architecture detail differences in like designs will not constitute a basis for approval. The Architectural Control Committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

for approval shall be made in duplicate and the comments and action of the Architectural Control Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or drawings:

1. Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks.
2. Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fire-place sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.
3. A review fee as determined by the Association.

The applicant's name, address and telephone number shall appear on each set of plans submitted to the Architectural Control Committee.

D. The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. Failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents and the fee required above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate to release such Lot from the provisions of this paragraph.

#### ARTICLE III.

##### RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. The Lot shall be used only for single family residential dwelling purposes, and no Lot shall contain more than one (1) detached, single family dwelling.

B. No building shall be created, altered, placed or permitted to remain

| <u>TYPE OF DWELLING</u>                        | <u>MINIMUM AREA</u>            | <u>LOCATION OF AREA</u>  |
|--|--------------------------------|--|
| 1. One-story house with attached garage        | 1,300 sq. ft.                  | On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor) |
| 2. One-story house with basement garage        | 1,400 sq. ft.                  | On the main floor  |
| 3. One and one-half story and two-story houses | 1,800 sq. ft.<br>1,000 sq. ft. | Total area above the basement level; minimum area on the main floor  |
| 4. Split entry (bi-level house)                | 1,400 sq. ft.                  | On the main floor  |
| 5. Tri-level (split level) house               | 1,700 sq. ft.                  | Total area above grade   |

Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story if it is one hundred percent (100%) above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have attached, enclosed, side-by-side, two (2) car garages which must contain a minimum area of four hundred (400) square feet.

C. All buildings shall be located at least thirty (30) feet from the front Lot line, at least five (5) feet from the side Lot lines and at least twenty-five (25) feet from the rear Lot line. On corner lots, either street side may be designated by the Owner as the front, and either nonstreet side as the rear, for purposes of determining compliance herewith, but buildings must be at least fifteen (15) feet from the other street side Lot line. For purposes of this restriction, eaves, open patios and steps shall not be considered part of the building.

D. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone. Ex-

of the foundation on the sides not facing a street of a dwelling located on a corner lot, and the exposed portion of the foundation on the rear of every dwelling shall be covered with clay-fired brick, siding or shall be painted.

F. In the event that a fireplace is constructed as a part of a dwelling on any lot, except a corner lot, and said fireplace and/or the enclosure for the fireplace flue, is constructed in such a manner so as to protrude beyond the outer perimeter of the front or side of the dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. If the fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the rear of the dwelling, the enclosure of the fireplace and flue shall be constructed of, or finished with, the same material as is the dwelling at the point from which the fireplace and/or the flue protrudes.

Notwithstanding the foregoing, when any fireplace is constructed as a part of a dwelling on any corner lot, and said fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone.

F. No fences may be built forward of the rear-most wall of the house and, under no circumstances, closer to any adjoining street than the closest point on the residence. Fences shall be constructed only of wood, brick or stone and are subject to the approval of the Architectural Control Committee referred to above. Wire or chain-link fences shall not be permitted.

G. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on said real estate, or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said lots. No pre-cut dwelling shall be assembled on any of said lots.

H. No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes or wood shingles. The parts of all pre-fabricated metal furnace flues that protrude from the roof of a dwelling must be painted and no furnace flue may protrude more than five (5) feet from the roof of the dwelling, as measured from the top cap of the flue to the point from which the flue emerges from the roof.

I. Public sidewalks are the responsibility of, and shall be constructed by, the then Owner of a Lot prior to the time of completion of a dwelling and before occupancy thereof. The extent of sidewalks, location, construction details, materials and grades shall be in accordance with the regulations of the City of Omaha and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.

J. The Declarant has created a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with accepted engineering principles. No building shall be placed, nor any Lot graded, to interfere with such water drainage plan nor cause damage to the buildings or neighboring buildings or Lots.

K. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their owner and are not permitted to run loose outside the Lot of the Owner.

L. No incinerator or trashburner shall be permitted on any Lot. No garbage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling ex-



M. . No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored outside of the garage. For purposes of the preceding provision, "stored outside of the garage" shall mean, parking the vehicle or trailer overnight on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles must be done in the garage. The dedicated street right-of-way located between the pavement and the Lot line of any residential Lot shall not be used for the parking of any vehicle, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

N. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have been installed adjoining the Lots shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant lots, where capital improvements have been installed adjoining the Lot, shall be allowed to reach more than a maximum height of eight (8) inches.

O. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

P. 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, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Further, home occupations, as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska, shall not be permitted to take place within any of the residential dwellings.

Q. A dwelling on which construction has begun must be com-

R. Vegetable gardens and rock gardens shall be permitted only if maintained on the rear yard of any Lot, behind the dwelling on said Lot. Further, rock gardens must be approved by the Architectural Control Committee.

S. No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details.

T. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except that residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to signs erected by the Declarant, or his agents, in the development of Applewood Heights.

U. No driveway shall be constructed of gravel, crushed rock or any other material except concrete, brick or asphaltic concrete.

V. None of said Lots shall be subdivided, split or in any manner combined with any other Lot, or portion of any other Lot, unless the resulting parcel shall contain at least as much area as the smallest of the Lots used in assembling the resulting parcel.

W. The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) inches in diameter, shall be planted in the front yard of each residence, to be located between the front of the dwelling, placed on the Lot and the front Lot line. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. The trees referred to above shall be of one of the following varieties:

Greenspire Linden  
Marshall Seedless Ash  
Skyline Honeylocust  
Emerald Ash

The yards shall be sodded and the trees planted within one (1) year

ARTICLE IV.

APPLEWOOD HEIGHTS HOMEOWNERS ASSOCIATION

A. The Declarant, every subsequent Owner of a Lot, and every contract purchaser of a Lot within the Properties shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot.

B. The Association will have the right, in general, without any part of its net earnings inuring to the private benefit of its members, to promote and sustain their social welfare, and otherwise provide for their health, pleasure, recreation, safety and other non-profitable interests by acquiring, maintaining, operating, contributing to the acquisition, maintenance or operation of, or otherwise making available for use, any one or more area entrances or entry structures, parks, swimming pools, tennis courts and other recreational equipment, facilities, grounds or structures, by providing weed and other actual or potential nuisance abatement or control, security services, other community services, by exercising architectural control and securing compliance with, or enforcement of, applicable covenants, easements, restrictions and similar limitations, by fixing and collecting or abating dues, assessments or other charges for financing its operations, by delegating by contract or otherwise to any other Nebraska non-profit corporation general responsibility for administration and executive management of its affairs, and by undertaking any one or more other activities appropriate, convenient or necessary to promote or sustain any such interest, to acquire by purchase or otherwise, hold for investment or otherwise, or dispose of for profit or otherwise any interest in or species of personal or real property wherever located, and to engage in any other venture for the mutual non-profitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as from time to time amended.

C. The manner in which dues, assessments or other charges levied against each Lot by the Association shall be collected and enforced, shall be set out in the Association's Articles of Incorporation or its By-Laws, as from time to time amended.

D. The dues, assessments or other charges provided for

or any proceeding 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 dues, assessments or other charges thereafter becoming due or from any lien thereof.

ARTICLE V.

EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of, and granted to, the NORTHWESTERN BELL TELEPHONE COMPANY and to OMAHA PUBLIC POWER DISTRICT, their successors and assigns, to erect and operate, maintain, repair and renew, cables, conduits and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph message service under easements as specified in the final plat or as modified by due process, and license being granted for the use and benefit of all present and future Owners of said Lots; provided, however, that said easements are granted upon the specific condition that if said utility companies fail to construct wires or conduits along any of said easements within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed or hereafter moved without replacement within sixty (60) days after their removal, then these easements shall automatically terminate and become void as to such unused or abandoned easementways. No permanent building shall be placed in perpetual easementways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

B. All telephone and electric power service from property lines to dwellings shall be underground.

ARTICLE VI.

GENERAL PROVISIONS

A. The Declarant, the Association or any Owner or contract purchaser of a Lot shall have the right to enforce by a proceeding at law, or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure

B. 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 that this Declaration is recorded, and shall be automatically renewed and extended for successive periods of ten (10) years each, unless and until the then Owners of a majority of said Lots execute and record an instrument terminating these covenants. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date this Declaration is recorded. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

C. Invalidation of any one of these covenants by judgment or court order will in no way affect any of the other provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Owner of all of said real estate, has executed this Declaration this 14<sup>th</sup> day of November, 1980.

HARRISON STREET JOINT VENTURE, A Nebraska Joint Venture, "Declarant",

By C. E. Westphal  
President  
For NEBRASKA INVESTMENT SERVICES, INC.,  
A Nebraska Corporation, Partner

STATE OF NEBRASKA )  
: ss.  
COUNTY OF DOUGLAS )

On this 14<sup>th</sup> day of November, 1980, before me, a Notary Public, in and for said County and State, personally appeared C. E. WESTPHAL, President of NEBRASKA INVESTMENT SERVICES, INC., Partner of HARRISON STREET JOINT VENTURE, to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed, the voluntary act and deed of said corporation, and the voluntary act and deed of said partnership.