

BOOK 827 PAGE 536

BK 827 N 91-571ite C/O FEE 112.00
PG 536-573 N 11-527 DEL 1/11 MC
OF Miss COMP F/B 112.00

RECEIVED
1987 SEP 28 AM 10:16

GEORGE J. DUMLENTOWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBRASKA

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR APPLEWOOD HEIGHTS
LOTS 366 THROUGH 523, INCLUSIVE

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

WITNESSETH:

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

Lots 366 through 523, 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, of a fee simple title to any lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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.

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, gazebo, deck, rock garden, swimming pool, television or radio antenna, solar collecting panels or equipment, heating and/or air conditioning equipment, wind-generated power equipment, or other external structures or 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

16988c
Miss H

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 architectural 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 improvements referred to above in Paragraph A of this Article II which it determines, in its sole and absolute discretion, will not conform to the general character, plan and outline for the development of the Properties.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required at the discretion of the Architectural Control Committee. Submittals 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 improvements and indicating Lot number, street address, grading, surface drainage, sidewalks and location of heating and/or air conditioning units or equipment.
2. Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace 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 Article II of this Declaration.

ARTICLE III.

RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. The Lots 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 on any lot other than the one (1) detached, single family dwelling referred to above, and said dwelling shall conform to the following requirements:

<u>1.</u>	<u>TYPE OF DWELLING</u>	<u>MINIMUM AREA</u>	<u>LOCATION OF AREA</u>
	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).
	One-story house with basement garage	1,500 sq. ft.	On the main floor.
	One and one-half story and two-story houses	1,800 sq. ft. 1,000 sq. ft.	Total area above the basement level; minimum area on the main floor.
	Split entry (bi-level) house	1,500 sq. ft.	On the main floor.
	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 (1) side, and essentially below grade on the other three (3) sides. All dwellings shall have an attached, enclosed, side-by-side, two (2) or more car garage 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 seven (7) 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 slab-on-grade patios and steps shall not be considered part of the building.

D. Exposed portions of the foundation on the front of each dwelling shall be covered with clay-fired brick or stone. Exposed portions of the foundation on the side of each dwelling facing a street, when said dwelling is located on a corner lot, shall be covered with clay-fired brick or stone. Exposed portions 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.

E. When any 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 peak of the roof of said dwelling, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone.

When any 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 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. Provided, however, if the enclosure for the fireplace flue is exposed above the peak of the roof, said enclosure shall be constructed of, or finished with, clay-fired brick or stone.

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 peak of the roof of said dwelling, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone.

F. 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. All furnace flues shall be located on the rear side of the ridge of the roof of the dwelling.

G. No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes or wood shingles.

H. No fence may be built on any Lot within thirty (30) feet of the front Lot line. Further, no fence may be built in the sideyard adjoining the street of a corner Lot closer to said street than is permitted by the Municipal Code of the City of Omaha. No fence shall be constructed on any Lot until the same has been approved by the Architectural Control Committee as provided in Article II hereof; provided, however, that wire or chain-link fences and snow fences are strictly prohibited.

I. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on the Properties, 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. No full or partial subterranean dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

J. 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.

K. 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, in any manner, interfere with such water drainage plan nor cause damage to the buildings or neighboring buildings or Lots.

L. 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.

M. 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, except after 10:00 P.M. the day before the scheduled garbage pickup, provided said garbage or trash can or container is removed from view as herein provided by 6:00 P.M. the day of

the garbage pickup. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothesline shall be permitted outside the dwelling at any time. Detached accessory buildings are not permitted.

N. 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 or maintained outside of the garage of a dwelling. For purposes of the preceding provision, "stored or maintained 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 Lot shall not be used for the parking of any vehicles, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the Properties, or upon the streets thereof, must be in operating condition.

O. 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 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.

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

Q. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or 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.

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

T. 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.

U. No advertising signs, posters, streamers, banners, balloons or lights of any kind shall be erected or placed on any of the 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 type, size or design shall not apply to signs erected by the Declarant, or with Declarant's permission, in the development of Applewood Heights Subdivision.

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

W. 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.

X. The front, side and rear yards of all Lots shall be sodded within one (1) year from the date the dwelling on the Lot is completed. No trees may be planted in the dedicated street right-of-way, located between the pavement and the Lot line, at any time.

Y. All exterior air conditioning condenser and/o. heat pump units shall (1) be placed in the rear yard of a dwelling and (2) said units shall not be placed within twelve (12) feet of either side or the rear lot lines of the Lot upon which the dwelling is situated; provided, however, that the Architectural Control Committee may grant a waiver as to either or both of the preceding requirements when it determines, in its sole and absolute discretion, that a waiver thereof will not result in the noise, heat and odors that emanate from said units unreasonably interfering with the adjoining Lot Owner's use and enjoyment of his, her or their Lot.

Z. No structure or other external improvement, above or below the surface of the ground, shall be built, erected, placed, altered or otherwise be maintained on any Lot and no activity shall be carried on on any Lot which will, in any manner, violate any statute, ordinance, rule or regulation of any governmental authority having jurisdiction over the Properties.

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 herein shall be, and at all times remain, subordinate to the

lien of any first mortgage or deed of trust. Further, the dues, assessments or other charges provided for herein shall be, and at all times remain, subordinate to the lien of any mortgage or deed of trust given to or for the benefit of Declarant. The sale or transfer of any Lot shall not affect the lien for dues, assessments or other charges; however, the sale or transfer of any Lot pursuant to a mortgage foreclosure, trustee's sale 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 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, Northwestern Bell Telephone Company, Omaha Public Power District, and any company which has been granted a franchise to provide a cable television system within the Properties, 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 the transmission of signals and sounds of all kinds and the reception thereof, including signals provided by a cable television system and their reception, 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 thereof, or if any wires or conduits are constructed and are thereafter removed 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, electric power and cable television 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 by the Declarant, the Association or by any Owner or contract purchaser to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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.

