

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION made this 20 day of MARCH, 1967,
by TREND HOMES OF NEBRASKA, INC., a Nebraska corporation, herein-
after referred to as "Developer", WITNESSETH:

WHEREAS, Developer is the owner of certain property in
Lancaster County, Nebraska, particularly described as follows:

A part of the West Half of Section 34, Township
10 North, Range 7 East of the 6th P.M., Lincoln,
Lancaster County, Nebraska, being more particularly
described as follows: Beginning at a point on the
west line of the Southwest Quarter of said Section
34, said point being 516.24 feet southerly of the
West Quarter corner of said Section 34; thence
south 89° 47' 27" east (assumed bearing) a distance
of 759.78 feet; thence south 23° 31' 56" east a
distance of 34.42 feet; thence north 66° 28' 04"
east a distance of 504.58 feet; thence south 56°
52' 06" east a distance of 224.23 feet to a point
of curvature; thence southeasterly on a 374.15 foot
radius curve to the left a distance of 203.85 feet
to a point of tangency; thence south 88° 05' 06" east
a distance of 348.61 feet to a point of curvature;
thence southeasterly on a 270.00 foot radius curve to
the right a distance of 30.77 feet; thence north 18°
39' 43" east a distance of 60.79 feet; thence south-
easterly on a 330.00 foot radius curve to the right,
a distance of 110.31 feet to a point of tangency;
thence south 60° 31' 50" east a distance of 155.43
feet to a point of curvature; thence southeasterly on
a 260.63 foot radius curve to the left a distance of
46.74 feet; thence north 00° 09' 35" east a distance
of 115.75 feet; thence south 89° 50' 25" east a distance
of 140.00 feet; thence south 80° 22' 41" east a distance
of 60.83 feet; thence south 89° 50' 25" east a distance
of 143.73 feet; thence south 01° 24' 14" east a distance
of 20.01 feet; thence south 01° 24' 08" east a distance
of 100.04 feet; thence south 01° 06' 55" west a distance
of 60.01 feet; thence south 04° 10' 25" west a distance
of 100.24 feet; thence north 89° 50' 25" west a distance
of 138.98 feet; thence south 85° 23' 45" west a distance
of 60.21 feet; thence north 89° 50' 25" west a distance
of 120.00 feet; thence south 03° 48' 09" west a distance
of 83.95 feet; thence south 33° 18' 41" west a distance
of 85.54 feet; thence south 57° 17' 05" west a distance
of 287.86 feet; thence south 52° 37' 50" west a distance
of 215.52 feet; thence south 42° 18' 22" west a distance
of 66.03 feet; thence southwesterly on a 745.00 foot
radius curve to the left a distance of 219.16 feet; thence
south 12° 51' 17" west a distance of 60.05 feet; thence
south 10° 12' 47" west a distance of 117.82 feet; thence
north 89° 29' 15" west a distance of 330.22 feet; thence
north 00° 30' 45" east along the east line of the South-
west Quarter of the Southwest Quarter of said Section 34
a distance of 384.66 feet; thence north 89° 35' 10" west
along the south line of the Northwest Quarter of the
Southwest Quarter of said Section 34, a distance of
1316.28 feet; thence north 00° 47' 13" east along the west
line of the Northwest Quarter of the Southwest Quarter
of said Section 34, a distance of 807.27 feet to the point
of beginning,

and,

WHEREAS, Developer intends to cause a plat to be recorded subdividing said property and to improve, develop, sell and convey lots therein and for the purpose of enhancing and protecting the value, desirability and attractiveness of said property, desires to create certain covenants, conditions and restrictions applicable thereto and binding thereon.

NOW, THEREFORE, Developer hereby declares that said above described real estate shall be held, sold and conveyed subject to the easements, restrictions, covenants, reservations, liens, charges and conditions which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein or any part thereof as follows:

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to the Association of owners which shall be incorporated under the Nebraska Nonprofit Corporations Act, and its successors.

Section 2. "Property" shall mean and refer to the real estate above described together with such additions as may be made thereto under the terms of this Declaration.

Section 3. "Common Area" shall mean that portion of the property designated as such, and which shall be held for the common use and enjoyment of all of the members of the Association. It shall include, but not necessarily be limited to the property shown on the plat of Wellington Greens as Lots 1, 2, 27, 45, 64 and 84, Block 1; Lot 1, Block 2, Lot 1, Block 3; Lot 1, Block 4, and Lots 2 and 3, Block 5.

Section 4. "Lot" shall mean and refer to any designated portion of the property as shown on the recorded subdivision plat, with the exception of the Common Area and streets.

Section 5. "Member" shall mean and refer to any person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Developer" shall mean and refer to Trend Homes of Nebraska, Inc., a Nebraska corporation, and its successors and assigns if such successors or assigns have or acquire a majority of the undeveloped lots for the purpose of development.

ARTICLE II

Annexation of Additional Property

At any time within five years from the date hereof, Developer may, by instrument duly executed by it, approved by the City of Lincoln and recorded, add additional land to the Property, and no consent or approval of other members of the Association shall be required.

ARTICLE III

Membership and Organization of the Association

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the terms of this instrument shall be a member of the Association, including contract sellers, but not including persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of such Lot shall be the sole qualification for membership. At its first meeting, the Association shall adopt By-Laws for its organization and the conduct of its business, which By-Laws shall include provision for the election of directors and officers.

ARTICLE IV

Voting Rights

The Association shall have two classes of voting membership: Class A members of the Association shall be all those Owners as defined in Article III hereof with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds an interest in any Lot, all of such persons

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 shall be members, but in no event shall more than one vote be cast with respect to one Lot and the vote for such Lot shall be exercised as they among themselves shall determine.

Class B member of the Association shall be the Developer, and the Class B member shall be entitled to four votes for each Lot in which it holds the interest required for membership by Article III, provided that Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs in point of time:

- (a) When the total vote outstanding in Class A memberships equals the total vote outstanding in the Class B membership, or
- (b) On January 1, 1972.

ARTICLE V.

Property Rights in the Common Area

Section 1. Developer hereby covenants for itself, its successors and assigns, that it will convey the Common Area to the Association, free and clear of all encumbrances and liens, prior to the termination of its Class B membership as provided in Article IV.

Section 2. Every member shall have the right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) Subject to the provisions of Section 3 of this Article, use of the Common Area shall be restricted to members and their guests, and the Association shall have the right to limit the number of guests of members and to adopt reasonable regulations applicable to use by guests.
- (b) The Association shall have the right to charge a reasonable admission or other fee for the use of any recreational facility situated upon the Common Area, and shall also have the right to contract with Developer or with any other person, persons or entity for the charging of reasonable admission or other fees in exchange for management, development, maintenance and improvement of any such recreational area.

- (c) The Association shall have the right, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage said property; provided, however, that the rights of any mortgagee shall be subject to the rights of the members of the Association while any mortgage is current and not in default.
- (d) The Association shall have the right to suspend the voting rights and rights to use the Common Area and recreational facilities therein by a member for the period during which any assessment against the Lot of the Owner remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- (e) The Association shall have the right to dedicate or transfer all or any part of the Common Area to the City of Lincoln, with its consent, for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective, however, unless an instrument signed by members entitled to cast two-thirds of the vote of the Class A membership and two-thirds of the votes 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 every member not less than thirty (30) days nor more than sixty (60) days in advance of the taking of any such action. Developer shall have the right at any time prior to the complete development of the property described in Article II to use so much of the Common Area as it deems necessary or advisable for the purpose of aiding in the constructions and development of unimproved lots and shall have the further right to dedicate such easements and rights-of-way in the Common Area as it may consider to be necessary or advisable for the purposes of development.

Section 3. Any member may delegate, in accordance with the By-Laws of the Association, his right of enjoyment in the Common Area and facilities to members of his family, his tenants, or to contract purchasers who reside on the property.

ARTICLE VI.

Annual and Special Assessments

Section 1. The Developer hereby covenants, and each owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association an annual assessment or charge together with such special assessments for capital improvements as may be fixed, established and created upon the Lots as hereinafter provided. Such annual and special assessments, together with interest thereon and costs of collection

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thereof, shall be a lien upon the Lot so assessed and shall be a continuing charge thereon except as hereinafter provided. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person, persons or entity who is the owner or are the owners of such Lot at the time when any such assessment shall have become due. The personal obligations shall not pass to his successor in title unless expressly assumed.

Section 2. The assessments are to be levied by the Association for use exclusively to promote the recreation, health, safety and welfare of the residents in the property and in particular for the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated on the Property. The purposes for which such assessments may be levied shall include, but not limited to, the construction, operation and maintenance of guest parking space, parking islands, sidewalks, drives, open drainage ways and other structures and for taxes and special assessments upon the Common Area which may be incurred or imposed by the City, County or other governmental authorities, to provide adequate insurance of any and all types and amounts deemed necessary by the directors of the Association with respect to the Common Area and public ways and to provide such reserves as may be deemed necessary in order to accomplish the objects and purposes of the Association.

Section 3. The annual assessment with respect to each Lot shall be estimated by the directors of the Association prior to the conveyance of the first Lot and shall be payable in equal monthly installments. The directors of the Association shall determine as of March 1 of each year whether or not a deficiency exists with respect to annual assessment and shall bill all Owners at the uniform rate for any such deficiency with the April 1 monthly bill. Should the board of directors deem a surplus to exist, a pro rata credit shall be given to each Owner on a uniform basis to be credited first against the April 1 payment and the excess credit to be given on payments due each succeeding month.

On the 1st day of March in each year the directors of the Association shall also determine the assessment rate for the next ensuing year and shall apply the new annual assessment rate for monthly installments effective as of April 1 of each year. Monthly assessments shall be payable on or before the 10th day of each month; but shall be and become a lien as of the date of the annual assessment as hereinafter provided. Written notice of the annual assessment shall be sent to every owner immediately following the assessment date. The Association shall, upon demand at anytime, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A reasonable charge may be made by the board of directors for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such special assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. Any such special assessment shall be payable in equal monthly installments together with the regular assessment installment over such period of time as the directors of the Association may deem to be in the best interests of all of the Owners.

Section 5. All assessments, both annual and special, must be fixed at a uniform rate for all Lots.

Section 6. Any assessments which are not paid when due shall be delinquent, and if not paid within thirty (30) days thereafter

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 shall bear interest from the date of delinquency at the rate of eight per cent (8%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property for the full amount of such assessment together with interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 7. The lien of the assessments provided for herein shall be subordinate to a lien of any mortgage or mortgages executed and delivered in good faith and for a consideration. Sale or transfer of any Lot, whether or not subject to a mortgage, shall not affect the assessment lien, but transfer of title to any Lot subject to a mortgage, pursuant to a decree of foreclosure under such mortgage or any legal proceedings in lieu of foreclosure thereof, shall extinguish the lien of such assessments with respect to payments thereof which became due prior to the said transfer, but shall not relieve the person who was the Owner at the time such assessment became due of personal liability therefor. No transfer of title by foreclosure or other legal proceedings shall relieve such Lot from liability for any assessment becoming due after such transfer of title or from the lien of such assessment.

Section 8. All properties dedicated to and accepted by The City of Lincoln and the Common Area shall be exempt from all annual and special assessments of the Association.

ARTICLE VII

Party Walls

Section 1. Each wall which is built as a part of the original construction of the homes upon the property and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 2. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Owner involved in such dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators. The cost of any such arbitration shall be born equally by the parties involved. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the provisions of the arbitrators have been met. The appointment of arbitrators hereunder shall be made within twenty (20) days after notice by one Owner to the other Owner that a dispute exists.

ARTICLE VIII

Architectural Control.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior additions to or change or alteration therein be made until the plans

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 and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the directors of the Association, or by an architectural committee composed of three or more representatives appointed by the board. In the event that the board of directors, or its designated committee, fails to approve or disapprove such design and location thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully satisfied.

ARTICLE IX

Exterior Maintenance

In the event that an Owner of any Lot in the Property shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the board of directors of the Association, the Association, after approval by two-thirds decision of the board of directors, shall have the right, through its agents and employees, to enter upon said parcel of ground and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the annual assessments to which such Lot is subject.

ARTICLE X

Use Restrictions

In addition to the restrictions and conditions set forth in Article V, Section 1, the use of the Common Area shall be subject to the following:

- (a) 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 such Common Area.
- (b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which would temporarily or permanently deny free access to any part of the Common Area to all members.

- (c) 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.

ARTICLE XI

Easements

The easements over and across the Common Area shall be those shown on the recorded plat of the subdivision, and such other easements as may be established pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XII

General Provisions

Section 1. It shall be the general obligation and duty of the Association to properly maintain and repair all Common Areas, and the walks, drives, open drainage areas, parking areas, parking islands and all structures and improvements therein, in accordance with reasonable standards as generally required by The City of Lincoln, and nothing in this Declaration shall be construed as any limitation upon the authority of The City of Lincoln to enter upon said property and perform necessary maintenance should the Association fail to do so, and to assess the property with the cost thereof.

Section 2. The Association, any member thereof or The City of Lincoln, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, any member thereof or The City of Lincoln to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Any firm, person, corporation or other entity which shall succeed to title of any Owner through foreclosure of a mortgage or other security instrument or through other legal proceedings, shall upon issuance of the official deed to any Lot, become thereupon a member of the Association and succeed to the rights, duties and liabilities of the previous Owner as herein provided. Conveyance by such person, firm, corporation or other entity shall pass membership in the Association to the buyer as herein provided.

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Section 4. The covenants and restrictions of this Declaration shall run with the land and bind the same, and shall enure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, or by their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of this Declaration, after which time said covenants and restrictions shall be automatically extended for successive periods of ten years, unless revoked or amended by instruments signed by not less than ninety per cent (90%) of the Lot Owners if during the first twenty (20) years, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any instrument amending, modifying or cancelling this Declaration must be approved by the City of Lincoln and must be properly acknowledged and recorded before it shall be effective.

Section 5. In the event that the Association, the members thereof, or the directors of the Association shall fail or neglect to perform its rights, duties and obligations in accordance with the intents, purposes and provisions of this Declaration, then Developer reserves the right to call such meetings, make such appointments and to take such further action as may be necessary, from time to time, to insure that the objects and purposes of this Declaration are being fulfilled.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be duly executed by its proper officers the day and year first above written.

TREND HOMES OF NEBRASKA, INC.
A Nebraska Corporation - Developer

By *James A. Stiller*
Its President

ATTEST:

John A. [Signature]
Secretary

STATE OF NEBRASKA :
 ss.
 Lancaster County

Now on this 20 day of March, 1967, personally
 appeared before me James J. Mattison, President of Trend
 Homes of Nebraska, Inc., a Nebraska corporation, personally known
 to me to be such officer and the same and identical person who
 signed the above and foregoing Declaration for and on behalf of said
 Corporation, and he acknowledged said Declaration to be his
 voluntary act and deed as such officer and the voluntary act and
 deed of said Corporation, and that the corporate seal of said
 Corporation was thereunto affixed by its authority.

Witness my hand and Notarial Seal this 20 day of March, 1967.



James J. Mattison
 Notary Public

Howard R. Mattison
 My Commission Expires April 23, 1971

C E R T I F I C A T E

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

I, Harold W. Springer, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above is a true and correct copy of the Declaration of Covenants, Conditions and Restrictions accompanying Ordinance No. 9187 accepting and approving the plat of Wellington Greens, as an addition in the City of Lincoln, Nebraska adopted by the City Council of the City of Lincoln, Nebraska on March 20, 1967 and approved by the Mayor on March 24, 1967 as the original appears of record in my said office, on pages 200, 201, and 202 of Ordinance Book No. 6, and is now in my charge remaining as City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, this 10th day of May, A.D., 1967.



Harold W. Springer
City Clerk

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LANCASTER COUNTY CLERK
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1967 MAY 10 PM 2:46

Harold W. Springer

REGISTER OF DEEDS

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