

BOOK 742 PAGE 679
DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTERN TRAILS III
LOTS 1 THROUGH 29 INCLUSIVE

THIS DECLARATION, made on the date herinafter set forth by PETTEGREW BUILDERS, INC., a Nebraska Corporation, hereinafter referred to as the "Declarant",

WITNESSETH:

WHEREAS, The Declarant is the Owner of the following described real property:

Lots 1 through 29, inclusive, in Western Trails III, 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 lots, or any part thereof and they shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

A. "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

B. "Properties" shall mean and refer to all such properties that are subject to the Declaration or any supplemental Declaration under the provisions hereof, in Western Trails III, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

C. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties, including lots and outlots.

D. "Declarant" shall mean and refer to PETTEGREW BUILDERS, INC., a Nebraska Corporation, its successors and assigns.

E. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or 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-generating 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 express written prior approval of the Declarant through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Declarant, 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. Only exterior colors of certain earthtone hues will be acceptable. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Similar designs, forms, plans, styles or motifs will be considered repetitive if they are not separated by at least three adjacent lots regardless of orientation. 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.

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 of the applicant at the discretion of the Architectural Control Committee. Submittals for the 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 information, 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 fireplace sections and exterior elevations clearly indicating all flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.

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 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 these covenants, conditions and restrictions.

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 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>TYPE OF DWELLING</u>	<u>MINIMUM AREA</u>	<u>LOCATION OF AREA</u>
1. One-story house with attached garage	1,400 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	1,500 sq. ft.	On the main floor
3. One and one-half & two story houses	1,800 sq. ft.	Total area above the basement level, and 1,000 sq. ft. minimum on the main floor
4. Split entry (bi-level house)	1,500 sq. ft.	On the main floor.
5. Tri-level (split-level house)	1,700 sq. ft.	Total area above grade

C. For the purpose of these restrictions, two-story height shall, when the basement wall is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). 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 even 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.

D. All buildings shall be located at least thirty-five (35) feet from the front Lot line, at least (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 as the front, and either nonstreet side as the rear, for purposes of determining compliance herewith, but buildings must be at least seventeen and one-half (17.5) 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.

E. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone even if a portion of those exposed foundations may be perpendicular, or nearly so, to the affronting street. Exposed portions of the foundation on the side of each dwelling facing the street, when said dwelling is located on a corner lot, are to be covered with clay-fired brick or stone. Exposed portions of the foundation on the sides, or rear, not facing a street of a dwelling located on a corner lot shall be covered with clay-fired brick, stone, siding or shall be painted. The

exposed portion of the foundation on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted.

F. In the event that a fireplace is constructed as a part of a dwelling on any 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 may 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.

G. No fences may be built forward of the rear-most wall of the house and, under no circumstances, closer to any adjoining side street than the property line. Fences shall be constructed only of wood, decorative iron, 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. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

H. No structure of a temporary character, trailer, basement, tent, shack barn or other out building shall be erected

on said lot, 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.

I. No primary flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes or wood shingles, asphalt or fiberglass shingles.

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 interfere with such water drainage plan nor cause damage to the building 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. 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 of any dwelling at any time. All exterior air conditioner condensing units or heat pump units shall be placed in the designated rear yard of the dwelling and in no case closer than ten (10) feet to the neighboring property line. 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. For purposes of the preceding

provision, "stored or maintained outside of the garage" shall mean, parking the vehicles or trailer on the driveway, or any part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair or maintenance 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, campers 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.

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 not yet been installed 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 not yet been installed shall be allowed to reach more than a maximum height of twelve (12) 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 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.

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 designated 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 or persons as a dwelling until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Architectural Control Committee.

U. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except the 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 sign erected by the Declarant, or his agents, in the development of Western Trails III.

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, 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 year after construction on the dwelling is initiated, and two (2) trees, each not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. All yards shall be sodded and the trees planted within four (4) months from the date the dwelling on the Lot was completed.

ARTICLE IV.
EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company, the City franchised cable television firm, and to Omaha Public Power District, their successors, and assigns, to erect, 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, telegraph and message services and cable television under an 8-foot strip of land adjoining the rear boundary lines and a

5-foot strip of land adjoining the side boundary lines of said lots, license being granted for the use and benefit of all present and future owners of said lots; provided, however, that said lot line easement is granted upon the specific condition that if any of said utility companies fail to construct wires or conduits along any of the said lot lines within 36 months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within 60 days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementway, 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, cable television and electric power service lines from property line to dwelling shall be underground.

ARTICLE V.
GENERAL PROVISIONS

A. The Declarant, or its assigns, or any owner of a lot named herein, shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereinafter 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 or by any owner to enforce any

covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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 this Declaration is recorded. 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 hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than ninety percent (90%) of the lots covered by this Declaration.

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

14 True
R

BOOK **742** PAGE **693**

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 20th day of May 1984.

DECLARANT:

PETTEGREW BUILDERS, INC., a Nebraska Corporation

BY: PETTEGREW BUILDERS, INC.
a Nebraska Corporation

By: Robert P. Pettegrew
Robert P. Pettegrew, President

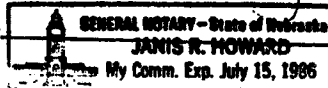
STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On this 20th day of May, 1984, before me the undersigned, a Notary Public in and for said County and State, personally came Robert P. Pettegrew, known to me to be the President of Pettegrew Builders, Inc., a Nebraska corporation, and acknowledged that he executed the same as his voluntary act and deed as such officer and that the corporate seal of said corporation was thereto affixed by its authority.

Witness my hand and official seal the day and year last above written.

Janis R. Howard
Notary Public

My Commission Expires



RECEIVED
1985 JUN 24 AM 11: 17
GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

Book 742
Page 679
of Sub C
Fee \$9.50
Del. 100
Index 221
Comped 11
N 90-67N
90-670w
Comped 118
P. D.

14 More
P

AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTERN TRAILS III
LOTS 1 THROUGH 29

THIS AMENDMENT TO DECLARATION made on the date hereinafter set forth by PETTEGREW BUILDERS, INC., a Nebraska Corporation, hereinafter referred to as the "Declarant",

W I T N E S S E T H:

WHEREAS, the Declarant recorded a certain Declaration of Covenants, Conditions and Restrictions (herein referred to as the "Declaration") in Book 742, Page 679 of the records of the Register of Deeds of Douglas county, Nebraska, for and against the following described real property:

Lots 1 through 29, inclusive, of Western Trails III, a subdivision, as surveyed, platted and recorded in Douglas county, Nebraska, and

WHEREAS, Article V.B. of the Declaration provides that it 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 of the Declaration,

WHEREAS, by this document the Declarant hereby desires to amend the Declaration,

NOW, THEREFORE, the Declarant hereby amends said Declaration as follows:

1. A new Article VI shall be added to said Declaration which shall read as follows:

15860 misc - J.

RECEIVED
1966 AUG 19 AM 8:59
GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

BK 786 N 90-67 etc KP
DEL VR FEE 29.50 mo
PG 100-102 CIO 1 MC BC
OFF REC'D COMP VR FD 11-22-66

**ARTICLE VI
NOTICE OF POTENTIAL TELEPHONE FACILITIES CHARGE**

In the event that ninety percent (90%) of all the Lots 1 through 29, inclusive, of Western Trails III are not improved within five (5) years from the date that Northwestern Bell Telephone Company shall have completed the installation of its distribution system for said Lots 1 through 29, inclusive, and filed notice of such completion ("Five Year Term"), then every Lot that is unimproved at the end of the Five Year Term shall be subject to a charge of Four Hundred Fifty Dollars (\$450.00) by Northwestern Bell Telephone Company or its successors. A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on that lot. Construction shall be considered as having commenced if a footing inspection has been made on the lot in question by officials of the City or other appropriate governmental authority.

Each development phase of the Western Trails Subdivision shall be considered separately in determining whether ninety percent (90%) of the Lots within that Phase have been improved within the Five (5) Year Term. Lots 1 through 29 Western Trails III shall be considered a separate phase. In determining the date Northwestern Bell Telephone Company shall have completed the installation of its distribution system, each development phase shall also be considered separately.

Such charge shall be due and owing immediately upon the expiration of the Five Year Term, and if such charge is not paid within sixty (60) days after the sending of written notice by Northwestern Bell Telephone Company or its successors to the owner of an unimproved Lot that such charge is due, then such charge will begin drawing interest commencing upon the expiration of the 60 day period at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law if said maximum rate is less than twelve percent (12%) per annum at that time.

2. Except for the addition of said Article VI, all of the provisions of the Declaration shall remain in full force and effect.

DATED this 8th day of August, 1986.

DECLARANT:

PETTEGREW BUILDERS, INC. a
Nebraska Corporation,

By: Robert P. Pettegrew
Robert P. Pettegrew,
President

