

92-04283

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF WESTERN HILLS, A SUBDIVISION IN
SARPY COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by Western Hills, Inc., a Nebraska Corporation, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 1 through 168, inclusive, Western Hills, a subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of Western Hills, for the maintenance of the character and residential integrity of Western Hills, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the resident of Western Hills.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such lots and shall be binding upon all parties having or acquiring any right, title or interest in the above described lots, or any part thereof, as is more fully described herein. The real estate is and will be subject to all and each of the following conditions and other terms:

**ARTICLE I
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or for a church, school or park, or for other non-profit use.

1 (a) No Bankers

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2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, pool house, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

(a) The ground floor finished and enclosed living area of main residential structures, exclusive of porches, breezeways, basements and garages, shall not be less than the following minimum sizes.

(i) 1600 square feet for a one-story dwelling; and

(ii) 1800 square feet for all 1 1/2 story or 2 story dwelling, with a minimum of 1000 square feet and the first level;

and for each dwelling there must be erected a private garage for not less than two (2) cars, nor more than (3) three cars (each car stall to be a minimum size of ten feet by twenty-one feet). A fourth garage is permissible provided it is constructed underneath an existing garage and plans are approved by the Declarant. No detached garages are permitted nor are utility sheds allowed.

(b) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description, type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

(c) Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the intergity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(d) Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner

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(e) No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than on detached single-family dwelling which does not exceed two and one-half stories in height.

4. The exposed front foundation walls and any exposed foundation walls facing any street must be constructed of or faced with brick or other material approved by Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, or other material approved in writing by Declarant. The roof of all Improvements shall be covered with wood shingles, or clay tile. Hardboard, pressed wood, bonded wood, and the like will not be approved by Declarant for coverage of any roof.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in anyway for any purpose which may endanger the health or unreasonably disturb the owner or owners of any lot or any resident thereof.

6. No exterior television or radio antenna, satellite receiving disc, or exterior solar heating or cooling device of any sort shall be permitted on any Lot.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat an inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar

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excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenge vehicles required by the applicable zoning ordinances of the City of Papillion, Nebraska.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards.

10. Exterior lighting on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. All fences must be approved by Declarant, unless otherwise specially approved by Declarant; (i) no fence shall extend beyond the front line of the main residence structure on the Lot; (ii) perimeter fences or walls on Lots which have common boundaries shall not exceed four (4) feet in height and shall be split rail, picket, wrought iron or other open type of fencing; (iii) no hedges or mass plantings shall be permitted more than ten (10) feet in front of the front building line of the residence on a Lot; and (iv) no fence shall exceed six (6) feet in height. Nevertheless limited privacy fences up to six (6) feet in height may be permitted around swimming pools, patios and the like.

12. No swimming pool may extend more than one foot above ground level.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and

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provided, however, this provision shall vary to comply with any requirements of the City of Papillion.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed adjacent to the rear of the building, concealed from public view. No dog runs or kennels may be constructed or installed on any Lot.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

19. No structure of a temporary character, carport, trailer, basements, tent, storage shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. Pool and bath houses may be approved by the Declarant as an Improvement, pursuant to Paragraph 2 of this Article. No structure or dwelling shall be moved from outside Western Hills to any Lot without the written approval of Declarant.

20. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

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**ARTICLE II
EASEMENTS AND RESTRICTIONS
RELATING TO GOLF COURSE**

1. Declarant anticipates that the proximity for the Adjacent Lots to the Golf Lots will enhance the desirability and value of the Adjacent Lots to purchasers and their successors and assigns. Nevertheless, purchasers and owners of the Adjacent Lots should be aware that: (i) golfers will from time to time hit golf balls from the Golf Lots onto the Adjacent Lots; and (ii) normal operation and maintenance of the golf courses will involve operation of mowers and other power equipment during the evening and early morning hours.

2. The Declarant hereby declares, grants and establishes easements on the Adjacent Lots in favor of the Grantees (defined below) for (i) intrusion of errant shots onto the Adjacent Lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, an "errant shot" shall refer to a golf shot which is hit onto an Adjacent Lot.

3. No Grantee shall have any liability, obligation or expense to the owner of an Adjacent Lot in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not; (i) negligently, intentionally or recklessly hit onto an Adjacent Lot; or (ii) hit in violation of the rules established by any operator of a golf course or driving range on the Golf Lots. By accepting title to an Adjacent Lot, each owner hereby covenants that it will not sue any Grantee for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future.

4. The Golf Lots are public property. Owner of Adjacent Lots and their invitees shall comply with all the rules and regulations of the operator of the Golf Lots relating to use of the play on the Golf Lots.

5. Declarant shall not be liable for any personal injury and/or property damage whatsoever occurring as a result of any errant shot, golf course maintenance or any other injury, damage or expense occurring out of the operation of the adjacent golf course Lots.

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**ARTICLE III
GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of 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.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Western Hills Inc., a Nebraska Corporation, or any person, firm, corporation, partnership, or entity designated in writing by Western Hills Inc., a Nebraska Corporation, in any manner which it may 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 sixty (60%) of the Lots covered by this Declaration.

3. Western Hills Inc., a Nebraska Corporation, or its successor or assign, may terminate or assign its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant.

4. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

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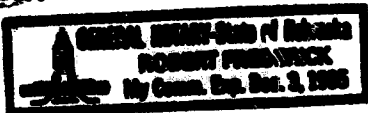
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 10th day of March, 1992.

WESTERN HILLS Inc.
a Nebraska Corporation, the "Declarant"

BY [Signature]

STATE OF NEBRASKA)
) ss.:
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 10th day of March, 1992, by Harold R. Young, Jr. of Western Hills, Inc. a Nebraska Corporation, on behalf of the Corporation.



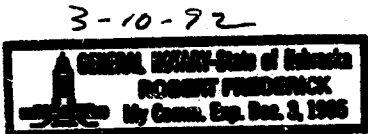
3/10/92 [Signature]
NOTARY Public

CONSENT

The undersigned does hereby consent to the above and foregoing declaration.

BANK OF PAPILLION

BY: [Signature]
John Schmid
ITS: Vice President



[Signature]
Notary Public

FILED BANK OF PAPILLION
INSTRUMENT NUMBER
92-04283

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[Signature]
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City [Signature]
Name [Signature]

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**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTERN HILLS, A SUBDIVISION IN SARPY COUNTY, NEBRASKA**

This Amendment to Declaration made on the date hereinafter set forth, is made by Jeffrey S. Johnston, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

1. That Western Hills, Inc. did, on March 11, 1992, file in the office of the Register of Deeds of Sarpy County, Nebraska its Declaration of Covenants, Conditions, Restrictions and Easements of Western Hills, a subdivision in Sarpy County, Nebraska as Instrument No. 92-04283 against the following-described lots, to-wit:

Lots 1-168, inclusive, in Western Hills, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

2. That the following-described lots, to-wit:

Lots 177-185, inclusive, Western Hills Replat, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska,

have been made a part of and are subject to the Declaration of Covenants, Conditions, Restrictions and Easements of Western Hills, a subdivision in Sarpy County, Nebraska, all as set forth above, as recorded in Instrument No. 94-09574 on the 27th day of April, 1994 in the office of the Register of Deeds of Sarpy County, Nebraska.

3. That by Instrument No. 94-07186 filed March 31, 1994, Western Hills, Inc. did, pursuant to Article III, Paragraph 2 assign its rights as Declarant to the undersigned, hereinafter referred to as "Declarant".

MOW, THEREFORE, the Declarant, pursuant to Article III, Paragraph 2 of the above-described Declaration of Covenants, Conditions, Restrictions and Easements of Western Hills, a subdivision in Sarpy County, Nebraska, does hereby amend Article I, Paragraph 11, by adding thereto the following subparagraph (v):

(v) No perimeter fences shall be constructed on any lot abutting the golf course.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to Declaration of Covenants, Conditions, Restrictions and Easements of Western Hills, a subdivision in Sarpy County, Nebraska to be executed this 3rd day of OCTOBER, 1994.

DECLARANT:


JEFFREY S. JOHNSTON

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me by Jeffrey S. Johnston on this 3rd day of October, 1994.

