

DECLARATION

THIS DECLARATION made on the date hereinafter set forth by BENCHMARK HOMES, INC., a Nebraska corporation, hereinafter referred to as "Declarant".

## W I T N E S S E T H

WHEREAS, Declarant is the owner of certain real estate hereinafter referred to as the "Properties" in the County of Douglas, State of Nebraska, which is more particularly described as:

Lots One (1) through Seventy (70), inclusive, Linden Place, a cluster subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

and

WHEREAS, Declarant is desirous of providing easements, restrictions, covenants and conditions for the use of said premises for the purpose of protecting the value and desirability of said property.

NOW, THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property above described and shall be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof for a period of 25 years from the date of filing this Declaration, at which time this Declaration shall be automatically extended for successive periods of ten years unless by written agreement of a two-thirds majority of the then owners of the lots it is agreed to change said covenants in whole or in part, said agreement to be executed and recorded in the manner provided by law for conveyance of real estate in the State of Nebraska. 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 years from the date hereof.

## ARTICLE I

## DEFINITIONS

Section 1. "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.

Section 2. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

## ARTICLE II

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or by an architectural committee composed of three or more representatives appointed by the Declarant ("Committee"). In the event the Declarant or its designated

Linden Park OTrr

Committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All owners shall submit plans and specifications to the Declarant or the Committee, in duplicate. When the same have been approved by the Declarant or the Committee, the approval shall be designated on the duplicate plans, one copy shall be returned to the owner and the other copy shall be retained by the Declarant or the Committee. After January 1, 1990, or after 90 percent of the Lots comprising the Properties have been improved with residence buildings, whichever shall first occur, all privileges, rights, powers and authority under this Article shall be exercised by and vested in a Committee to be selected by the owners of a majority of the Lots. If such a Committee has not been selected at that time or at any later time, the requirements of this Article shall not be applicable.

### ARTICLE III

#### GENERAL RESTRICTIONS

Section 1. Buildings or Uses Other than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the Lots within the Properties. No Lots shall be used except for residential purposes. Provided, however, this prohibition shall not apply:

(a) to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the Properties, or

(b) to any portion of a building used by Declarant, its licensees or assigns, for a manager's office or a sales office, or

(c) to any portion of a building leased for residential purposes for a term of one year or more,

if written permission for such placement, erection or use under (a) or (b) above is first obtained from the Declarant or the Committee. Permission of the Committee is not required for exception (c) above.

Section 2. Fences, etc. No fence shall be erected or permitted to remain in front of the minimum building setback line applicable to any Lot on the Properties. No truck, trailer, boat, equipment or machinery or cars not in daily use shall ever be parked, located, or otherwise maintained on any building site, parking area or street in the Properties. No external television or radio antenna or satellite receiving dish shall hereafter be erected on or about any of the building sites or Lots within the Properties. No clotheslines or clothes hangers may be constructed or used unless completely concealed with enclosed patio areas. Any fence to be built on any of the Lots shall conform to a uniform style or design which shall be approved by the Declarant, to the end that all Lots within the Properties shall maintain a common theme of appearance and design.

Section 3. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of the construction and sale of the Lots within the Properties. Declarant or its assigns may also erect and maintain model homes for sales purposes, and rental and lease purposes, and may operate such office or offices therein for so long as it deems necessary for the purposes of selling, renting or leasing the Properties.

Section 4. Livestock and Poultry Prohibited. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or be permitted to remain on any Lot except that a doghouse shall be permitted provided the construction plans and specifications and the location of the proposed structure have first been approved in writing by the Declarant or the Committee. Dog runs shall be placed at the rear of the building. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than two dogs, cats or other household pets maintained within the dwellings may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 5. Billboards Prohibited. The construction, placing or maintenance of billboards, advertising boards or structures or "for sale" or "for rent" signs on any building site in the Properties is expressly prohibited except that "for sale" or "for rent" signs may be placed by others after first obtaining the written consent of the Declarant; provided, however, that the permission of Declarant shall not be required hereunder after January 1, 1990.

Section 6. Noxious Activity. No noxious or offensive activity shall occur on the Properties, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any vacant building site, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

Section 7. Trash Incinerators. No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, container or fuel tank shall be permitted to remain outside of any dwelling, except for pick-up purposes. During the period of construction, however, there may be occasions when it will be necessary to have temporary propane tanks until gas has been installed in the subdivision, and the temporary installation of these propane tanks is specifically allowed. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except when in actual use unless completely screened from view from every street and from all other Lots in the Properties.

Section 8. General Building Restrictions. All Lots within the Properties shall be used only for detached duplex residences, and not more than one duplex with attached garages shall be erected, altered, placed or permitted to remain on any one of said Lots. A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling. All telephone and electric power service from property line to the duplex shall be underground. In order to maintain a common scheme of appearance and design, each of the duplexes to be built upon the Lots shall be of substantially similar exterior design, using a combination of the two basic unit designs established by the Declarant in the initial duplexes to be constructed within the Properties. In addition, each duplex to be built within the Properties shall utilize the same basic color scheme as nearly as possible. All exposed foundations on each Lot shall be painted or otherwise covered to conform with the general scheme of appearance and design as determined by the Declarant or the Committee.

#### ARTICLE IV

#### GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, or any Owner, shall have the right to enforce by any proceeding 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 Declarant or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 11<sup>th</sup> day of December, 1984.

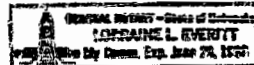
BENCHMARK HOMES, INC.  
a Nebraska corporation

By [Signature]  
President

ATTEST:

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) ss.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 1984 by John L. Gierowski, President of Benchmark Homes, Inc., a Nebraska corporation, on behalf of the corporation.



[Signature]  
Notary Public

RECEIVED

1984 DEC 18 AM 9:56

RECEIVED  
RECORDS  
DEPT. OF REVENUE

Book 726  
Page 419  
of 419

FILED  
INDEXED  
COMPILED  
SERIALIZED

39 M-100

ADDENDUM TO DECLARATION

COMES NOW BENCHMARK HOMES, INC., a Nebraska corporation (the "Declarant"), and as an Addendum to the Declaration filed at Book 726, Page 419 of the Miscellaneous Records in the office of the Register of Deeds of Douglas County, Nebraska, does hereby set forth and declare the following:

WHEREAS, the Declarant is the owner of those lots and/or portions of lots (herein called the "Lots") in LINDEN PLACE, a cluster subdivision as surveyed, platted and recorded in Douglas County, Nebraska, which are legally described on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant wishes to bind the Lots in the manner set forth herein with respect to the installation of telephone service by Northwestern Bell Telephone Company and payment therefor.

NOW, THEREFORE, Declarant hereby declares that the Lots shall be held, sold and conveyed subject to the covenant and condition that in the event that ninety (90%) percent of all of the lots within Linden Place are not improved on or before January 27, 1990, then every Lot that is unimproved as of said date shall be subject to a charge of Four Hundred Fifty (\$450.00) Dollars 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 of Omaha or other appropriate governmental authority. It is understood that Northwestern Bell Telephone Company has completed the installation of its distribution system within Linden Place.

Such charge, if payable, shall be due and owing immediately on January 27, 1990, 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 sixty (60) day period at the rate of twelve (12%) percent per annum, or the maximum rate allowed by law if said maximum rate is less than twelve (12%) percent per annum at that time.

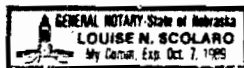
IN WITNESS WHEREOF, the undersigned Declarant has caused this Addendum to Declaration to be executed this 30th day of April, 1986.

BENCHMARK HOMES, INC., a Nebraska Corporation

By *John C. Czerwinski, Jr.* President

STATE OF NEBRASKA )  
                          ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 30th day of April, 1986, by John C. Czerwinski, Jr., the President of Benchmark Homes, Inc., a Nebraska corporation, on behalf of the corporation.



*Louise N. Scolaro*  
Notary Public

EXHIBIT "A"

Lots 1 through 5, 6 (North 33.17 feet), 7, 8, 9, (West 44.27 feet), 10 through 14, 15 (West 35.83 feet), 16 through 19, 27, 28, 31 through 43, 44 (West 33.17 feet), 45 (West 33.17 feet), and 46 through 70, in LINDEN PLACE, a cluster subdivision, being a replatting of Lot 300, PHEASANT RUN, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and

Lot 26, LINDEN PLACE, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, except that part described as follows: Beginning at the most Northerly corner of said Lot 26; then South 26 degrees 45'57" East (assumed bearing) on the common line between Lots 25 and 26, said Linden Place, 120.00 feet; thence South 40 degrees, 06'56" West on the Scutheasterly line of said Lot 26, 49.82 feet; thence North 45 degrees, 03'36" West, 130.60 feet to the Northwesterly line of said Lot 26; thence Northwesterly on the Northwesterly line of said Lot 26 on a 250.00 foot radius curve to the right, cnord bearing North 53 degrees, 04'28" East, chord distance 88.20 feet, an arc distance of 88.66 feet to the point of beginning.

JA 773 Del 15 N 1601 Fee 1601  
PG 28-80 Indx 1A S 1 MC 13C  
OF Misc Com 16 Comp 16

Page 5 of 6

7455 111463

(the  
Book  
the  
set f

PRAIF  
in Dc

ISII

set  
servi  
there

shall  
condi  
the  
prove  
unimp  
Hundr  
Compa  
prove  
on t  
-nence  
tion  
gover  
Telep  
tion

ately  
sixty  
weste:  
an un  
begin  
(60) .