

78 - 281 +

BOOK 539 PAGE 247

D E C L A R A T I O N

Affecting Lots One (1) through Eleven (11), inclusive, in Replat of Lot Thirty-five (35), Country Club Oaks, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

THIS DECLARATION made July 9, 1974 by:

BOYER & BISKUP ENTERPRISES, INC., a Nebraska corporation, with its registered office in Omaha, Douglas County, Nebraska, hereinafter called "Declarant",

WITNESSETH: THAT,

WHEREAS, Declarant owns all of Lots One (1) through Eleven (11), inclusive, in Replat of Lot Thirty-five (35), Country Club Oaks, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, and

WHEREAS, it is appropriate, convenient and necessary to preserve and promote the private residential character of said property pursuant to a general scheme of development and use as hereinafter expressed,

NOW, THEREFORE, IN CONSIDERATION OF THE MATTERS HEREIN RECITED, DECLARANT DOES HEREBY DECLARE AS FOLLOWS, TO-WIT:

1. Involved Property: All real property involved in this Declaration, hereafter called "Involved Property" is and will be acquired, conveyed, devised, inherited, sold, or otherwise transferred and is and will be occupied and used subject to all and each of the conditions and other terms as set out in this Declaration; and the following does, and will, constitute the Involved Property so subjected to this Declaration:

a. Lots Ten (10) and Eleven (11), hereafter sometimes referred to as "Common Ground", and Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), all in Replat of Lot Thirty-five (35), Country Club Oaks, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

2. Covenants: The Involved Property is and will be through December 31, 2004, subject to all and each of the following conditions and other terms, hereafter called "Covenants":

a. Except for such other purposes or uses as may from time to time be permitted or required by this Declaration, no part of the

Common Ground will be occupied or used for other than open space or recreational area purposes for the general common benefit of all contract purchasers and owners of all other lots and for related purposes as determined by Country Club Oaks Townhomes Association, a Nebraska nonprofit corporation, hereinafter sometimes referred to as "Association" in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended.

b. Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), in Replat of Lot Thirty-five (35), Country Club Oaks, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, are designated as townhome lots. Except for such townhome lot or townhome lots or part thereof as may from time to time be added to or occupied or used as part of or in connection with the Common Ground, no townhome lot will be occupied or used for other than single-family clustered residential purposes; and no townhome lot will be occupied or used for such residential purposes at a density greater than permitted by the zoning ordinances of the City of Omaha, Nebraska.

c. The structure or associated structures comprising a clustered residence will consist of a dwelling attached to one or more other dwellings by one or more common foundations, roofs, walls, or other structural elements or a detached dwelling, each unit being designed to accommodate a single person or one family group together with household servant or servants, of not more than two and one-half stories in height with an enclosed private garage equipped with an automatic or remote control device for operation of its door or doors and with or without attached breezeways, enclosed or walled patios, and other structural elements appropriate, convenient, or necessary for clustered residential purposes.

d. No clustered residence will be altered, built, constructed, or otherwise maintained on any townhome lot without an express written approval executed by Association, or its permission by implied approval secured in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, as to general appearance,

exterior color or colors, harmony of external design and location in relation to surroundings and topography and other relevant architectural factors, location within townhome lot boundary lines, quality of construction, size, and suitability for clustered residential purposes; and no exterior air conditioning equipment, antenna, ditch, fence, flag pole, tennis court, wall, or other structure or associated structures and no trees or other landscaping in any location within public view will be altered, built, constructed, erected, installed, planted, or otherwise maintained or undertaken on any townhome lot without such approval by Association so secured as to general appearance, composition, design, exterior color or colors, and suitability for clustered residential purposes.

e. After commencement thereof all approved or permitted construction on any townhome lot will be as diligently as practicable prosecuted to completion as soon as practicable, and no approved or permitted construction will be maintained on any townhome lot in uncompleted or unfinished condition for more than eighteen (18) months.

f. No driveway or sidewalk and no structural element of any approved or permitted clustered residence or exterior part thereof will be maintained on any townhome lot in damaged, deteriorated, hazardous, or otherwise unfit, unsafe, or unsightly condition.

g. No exterior burner, incinerator, or other receptacle for garbage, trash, or other refuse will be maintained above ground level on any townhome lot; and no barn, shack, tent, trailer, or other movable or temporary structure will be maintained on any townhome lot other than for temporary use or uses appropriate, convenient, or necessary for clustered residential purposes for not more than seven (7) days within any calendar year, or for use or uses connected and coterminous with approved or permitted construction.

h. No driveway will be constructed or maintained on any townhome lot and connected to or with an adjoining private or public street through its curb other than by a curb cut effected with a clean-cutting cement saw, leaving a smooth and unpatched curb cut

and by construction design leaving a smooth and unpatched union along a line or lines outside the path of water flow along said curb and surfaced, from the line of any intersected public sidewalk nearest such townhome lot to such union, only with concrete cement of quality similar to that used for such sidewalk and street and otherwise surfaced with asphalt, brick, concrete, laid stone, or other construction material so as to avoid and prevent erosion of or water damage to such curb, curb cut, sidewalk, or street; and no such driveway will be constructed or maintained and connected across or over an adjoining public sidewalk other than by some method leaving a smooth and unpatched intersection so as to avoid and prevent erosion of, water damage to, cracks in, or similar damage to such sidewalk.

i. 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 townhome lot so as to constitute an actual or potential public nuisance, create a hazard of undesirable contagion or proliferation, or detract from a neat and trim appearance.

j. No basketball hoop, slide, swing, or other play or recreational equipment will be installed or maintained on any townhome lot, other than in a location out of public view, without an express written approval executed by Association in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended; and no garden implements, lawn mower, or other maintenance equipment not in actual use will be kept or otherwise maintained on any townhome lot, other than in a location out of public view.

k. No advertising sign or other poster, other than a sign of an area of not more than four (4) square feet advertising such townhome lot for sale, or a sign or signs belonging to Declarant as owner of such townhome lot, will be maintained on any townhome lot.

l. No excess or unused building material or materials will be kept, stored, or otherwise maintained on any townhome lot in a location within public view, other than for use or uses connected and coterminous with approved or permitted construction; and no junk,

rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any townhome lot.

m. No boat, camper, trailer, or similar chattel will be maintained on any townhome lot, other than in an enclosed structure, for more than seven (7) days within any calendar year; and no automobile, motor cycle, truck or other vehicle will be repaired, torn down, or stored on any townhome lot, other than in an enclosed structure. No motor powered vehicle of any type shall be driven on any part of any townhome lot or the common area except upon the paved portion of the Common Ground or the driveways, and then only for ingress and egress to the townhomes themselves.

n. No birds, livestock, poultry, or animals other than domesticated noncommercial pets in no more than reasonable quantity, will be kept, bred, or otherwise maintained on any townhome lot.

o. No commercial enterprise or gainful public business, occupation, or profession, no public annoyance or nuisance, and no noxious or offensive activity will be carried on, conducted, or otherwise permitted to commence or continue on any townhome lot.

3. Easements: The Involved Property is and will be perpetually, unless any thereof is terminated, subject to all and each of the following easements for common use, balcony, fireplace, patio, roof, and other structural projections, maintenance, repair, recreational, and other access, party walls, and private and public sewer and utilities conduits, connections, lines, maintenance, and services, hereafter called "Easements":

a. Each of Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, will have an Easement, together with rights of ingress, egress, and other access thereto, for purposes of constructing, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines, or other facilities in, over, under, and upon such strip or strips of the Common Ground or of any townhome lot as confined to noninterference with any driveway, sidewalk, or structural element of any approved or permitted

clustered residence on any townhome lot and as determined by Association as to the Common Ground in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, or by Declarant as to any townhome lot then owned by it by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written Easement describing such strip or strips and naming the grantee or grantees of such Easement and, further, after installation of any such facility for additional purposes of confining each such strip to its then present grade elevation and prohibiting use thereof for any building, tree, wall, or other structure or any other use inconsistent with the function of such facility; but such Easement for any such strip will terminate if no such facility is installed therein within twenty-four (24) months after recording of the Easement describing such strip, or will terminate any time thereafter if all such facilities installed therein are abandoned or completely removed without resumption of use or replacement of any thereof within ninety (90) days after such abandonment or removal.

b. Association and its successors and assigns, for itself and for the general common benefit of all contract purchasers and owners of all townhome lots, will have a general Easement, together with rights of egress, ingress, and other access thereto, for purposes of controlling, developing, landscaping, maintaining, and preserving the Common Ground for open space or recreational area uses and related uses as determined by it in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, and each contract purchaser or owner of each townhome lot will have a general Easement, together with rights of egress, ingress, and other access thereto, for purposes of individually enjoying or otherwise taking advantage of the open space and recreational areas of the Common Ground in common with all other such contract purchasers and owners and members of their household and to the extent not inconsistent with such other purposes or uses as may from time be permitted or required by this Declaration.

c. Association and its successors and assigns, for itself and

for the general common benefit of all contract purchasers and owners of all townhome lots, will have a general Easement, together with rights of egress, ingress, and other access thereto, for purposes of cultivating, cutting, installing, maintaining, mowing, planting, raking, renewing, trimming, or otherwise caring for grass, lawns, plants, sod, shrubs, trees, or other decorative or landscaping vegetation in, over, and upon all parts of each townhome lot not occupied or used for any driveway, sidewalk, or structural element of an approved or permitted clustered residence thereon, for purposes of maintaining, painting, repairing, restoring, or otherwise preserving any such driveway, sidewalk, or structural element, or exterior part thereof, and for purposes of cleaning and removing ice, mud, snow, or other debris or matter from any such driveway or sidewalk.

d. Each contract purchaser or owner of each townhome lot, or part thereof, will have a general Easement, together with rights of egress, ingress, and other access thereto, for purposes of building, constructing, and otherwise maintaining any approved or permitted balconies, gates, patios, roofs, walls, or other structural elements of a single-family clustered residence thereon to encroach or project not more than 10 feet in, over, or upon any part of the Common Ground abutting such townhome lot or part thereof upon which such single-family clustered residence has been or is to be constructed; and each contract purchaser or owner of each townhome lot, or part thereof, will have a general Easement, together with rights of ingress, egress, and other access thereto, for purposes of building, constructing, and otherwise maintaining all approved or permitted common foundations, roofs, or walls, individual balconies, fireplaces, gates, patios, party walls, or roofs, or other structural elements of any single-family residence thereon, to be shared jointly as structural elements of any one or more single-family clustered residences on adjoining townhome lots, or parts thereof, or to encroach or project not more than five (5) feet in, over, or upon any part of any abutting townhome lot, or part thereof.

e. Each contract purchaser or owner of each townhome lot will have a general Easement, together with rights of ingress, egress, and other

access thereto, for purposes of passing between any part of the Common Ground and any public sidewalk or street in, over, or upon such connecting strip or strips of any townhome lot, or part thereof, as delineated by lines extending directly from the side or sides of any approved or permitted single-family clustered residence thereon to points of intersection with the front and rear lines of such townhome lot, or part thereof.

4. Homes Association: Except for the Common Ground, the Involved Property is and will be, through December 31, 2004, or for such longer or other period as may otherwise be fixed, included in membership in Association as a benefit or burden running with and charge upon the ownership of each townhome lot, or part thereof, upon which a single-family clustered residence shall exist, and for such purposes, each single-family clustered residence shall be considered as a "Townhome" or "Dwelling Unit" as referred to in the Articles of Incorporation of Association and its By-Laws, as from time to time amended.

5. Association: The Involved Property is and will be, through December 31, 2004, or for such longer or other period as may otherwise be fixed, included in membership in Association subject to all and each of the following conditions and other terms:

a. Association shall 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 nonprofitable interests by acquiring, maintaining, operating, contributing to the acquisition, maintenance, and operation of, or otherwise making available for use any one or more open spaces, parks, recreational areas, swimming pools, tennis courts, and any other recreational equipment, facilities, grounds, or structures, by acquiring and maintaining or contributing to the acquisition and maintenance of common or jointly shared fire, extended coverage, and other insurance, by exercising architectural control and securing compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, by providing general exterior maintenance and repairs, services, security service, weed and other actual or potential nuisance abatement



or control, and other community services, by fixing and collecting or abating dues or other charges for financing its operations, by delegating by contract or otherwise to any other Nebraska nonprofit corporation or other professional manager 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, and dispose of any interest in or species of personal or real property wherever located, and to engage in any other venture for the mutual nonprofitable interests of its members for which a corporation may be organized under the Nebraska Nonprofit Corporation Act, as amended.

b. Every townhome will be automatically included in membership in Association as a benefit or burden running with and charge upon the ownership of each townhome and the portion or all of a townhome lot upon which located.

c. Dues or other charges for each townhome and the portion or all of a townhome lot upon which located included in membership as fixed by Association in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, will each constitute until abated or paid a lien upon and charge against such townhome and the portion or all of the townhome lot upon which the townhome shall be located, in favor of Association; but no such lien upon any such property will at any time be superior to any earlier or later established lien upon such townhome lot or portion thereof for security for a home improvement or purchase money mortgage or the unpaid balance of a purchase contract for the same.

d. The obligations and privileges of membership in Association will in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, extend to contract purchasers and owners of all townhomes included in membership and appertain to and be coterminous with the duration of the interest of each such contract purchaser or owner; but each member will be and remain personally liable to Association until abatement or payment for all dues or other charges

as fixed by it at any time or from time to time throughout the duration of such interest and membership.

e. Association will have the right in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, to divide the membership into classes, to deny or limit voting rights of members or any membership class, and to deny access to or use of facilities or services, suspend the membership or privileges of, or otherwise discipline any member for failure to pay dues or charges or for other conduct detrimental to its affairs or otherwise improper.

6. Enforcement: The covenants, easements, conditions, and other terms set out in this Declaration are and will be subject to the following enforcement:

a. Association and every contract purchaser or owner of any townhome will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement as to the Common Ground or as to any townhome of any covenant or easement granted to it or to such contract purchaser or owner and to fix a reasonable charge for such action as to any townhome and the townhome lot or portion thereof upon which constructed, as a lien upon and charge against such property in favor of Association; and Association will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for collecting dues or other charges as to any townhome as affixed by Association in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended.

b. Every grantee, assignee thereof, or successor thereto will be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient, or necessary for enforcement of any easement granted to such grantee.

7. Extension, Modification, Termination: The conditions and other terms of this Declaration are and will be subject to the following provisions for extension, modification, or termination:

a. Association will have the right, by an express written permit for the purpose of avoiding undue hardship, to waive partly or wholly the application to any townhome lot or portion thereof, of any covenant

