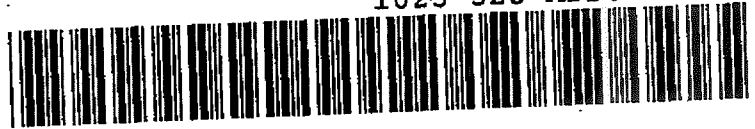




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DECLARATION

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 Three Hundred Seventy-Five (375) through Four Hundred Seventy-Nine (479), inclusive, PRAIRIE POINTE, a 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 twenty-five (25) years from the date of filing this Declaration, at which time this Declaration shall be automatically extended for successive periods of ten (10) years unless by written agreement of two-thirds (2/3) 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 (5) 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 Committee fails to approve or disapprove such design and location within thirty (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, 1997, or after ninety (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 (1) 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 clothesline or clothes hangers may be constructed or used unless completely concealed with enclosed patio areas.

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 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, 1996.

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. Any exterior lighting installed on any lot shall either be indirect or of such controlled focus and intensity as not to disturb the residence of any adjacent property.

Section 7. Trash Incinerators. No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated unto the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, contained 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 take 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 single family residences, and no more than one single family dwelling with garage attached shall be erected, altered, placed or permitted to remain on any one of said Lots and no homes may be attached as duplexes by use of zero lot line and party wall. All telephone and electric power service from property line to the residence shall be underground. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling. No dwelling shall exceed two and one-half (2 1/2) stories in height. All homes constructed on said Lots must have two-car garages. All homes must have a minimum building setback from the closest part of the building to front lot line of at least twenty-five (25') feet. The ground floor enclosed area of every one-story single family dwelling, exclusive of open porches, open breeze ways, basements and garages, shall not be less than nine hundred (900) square feet. The above ground total finished living area of every multi-level single family dwelling shall be

not less than one thousand one hundred (1,100) square feet. All exposed foundations of each improved lot shall be constructed to meet either one of the following requirements:

(a) The foundation facing the public or private street (front) shall be faced with brick, and all other foundations shall be painted to harmonize with the exterior of the building;

(b) All exposed foundations shall be bricked, brick-scored concrete block painted in brick colors to harmonize with the exterior of the home, concrete brick or painted, poured foundations with brick design. Foundations may also be finished with stucco provided the same shall harmonize with the architectural design of the dwelling.

Section 9. Telephone Installation. The Properties shall be held, sold and conveyed subject to the covenant and condition that in the event that ninety (90%) percent of all of the residential lots comprising the Properties are not improved within five (5) years from the date U.S. West Communications ("U.S. West") files a document with the Register of Deeds of Douglas County, Nebraska giving notice that installation by U.S. West of the telephone feeder and distribution facilities for the Properties has been completed, each such residential lot which has not been improved shall be subject to a facility charge payable to U.S. West or its successors in the amount of FOUR HUNDRED FIFTY DOLLARS (\$450.00) Dollars. Such facility charge shall be due and owing immediately upon the expiration of the sixty (60) day period at the rate of twelve (12.00%) percent per annum or the maximum rate allowed by law if said maximum rate is less than twelve (12.00%) percent at that time. A lot shall be considered to be unimproved if construction of a permanent structure has not commenced on that Lot. Construction shall be considered to have commenced if a footing inspection has been made on the subject Lot by officials of the City of Omaha or other appropriate governmental body. The facility charge described herein shall be void and nonassessable in the event construction shall have commenced on at least ninety (90%) percent of the residential lots comprising the Properties within five (5) years from the date U.S. West files the above described notice.

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

