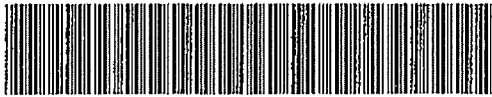




BK 1507 PG 202-210



MISC 2003 11974

STATE OF NEBRASKA
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

03 APR -3 PM 3:09

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After recording, please return to:

Robert J. Huck, Esq.
CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, L.L.C.
2120 South 72nd Street, Suite 1250
Omaha, NE 68124

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made as of the date shown at the close of this instrument, by Pacesetter Homes, Inc. ("Declarant"), a Nebraska corporation.

WITNESSETH:

WHEREAS, Declarant is the owner of that certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 7 through 20, inclusive, and Lots 22 through 24, inclusive, of Quail Hollow, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded;

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth, in addition to those covenants, conditions and restrictions contained in that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded on June 8, 2001 in Book 1385 at Page 55 of the Miscellaneous Records of the Douglas County Register of Deeds, as amended from time to time thereafter;

NOW, THEREFORE, Declarant hereby declares that all of the property herein above described 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, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to The Villas at Quail Hollow Homeowners Association, a Nebraska nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) 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, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

Section 3. "Properties" shall mean and refer to:

Lots 7 through 20, inclusive, and Lots 22 through 24, inclusive, of Quail Hollow, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any platted lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a lot split.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling, the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot (other than any Lot owned by the Declarant) which the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

Section 7. "Declarant" shall mean and refer to Pacesetter Homes, Inc. and its successors and assigns.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or, if requested by the Association, execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. A Lot Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant.

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Lot Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

Section 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Members shall be the Declarant. The Declarant shall be entitled to nine (9) votes for each Lot owned by the Declarant. The Class B membership shall terminate and be converted into Class A membership (with the Declarant then entitled to one vote for each Lot owned by the Declarant) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal or exceed the total votes outstanding in the Class B membership, or
- (b) January 1, 2015.

Section 4. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Assessable Lot is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses of the Association (which operational expenses shall include, but shall not be limited to, all expenses in connection with all tasks, functions, and activities that the Association is required or permitted to engage in pursuant to the terms of this Declaration), as deemed necessary by the Association,

which assessments shall be established and collected as hereinafter provided. The special assessments, and monthly assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them. As set forth in Article I, Section 6 hereof, a Lot owned by the Declarant shall not be an Assessable Lot during any period in which the Declarant is the Owner of such Lot, and the Association shall have no power to levy assessments against any Lot while such Lot is owned by the Declarant.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the Properties and for exterior maintenance, capital improvements, and other matters as more fully described elsewhere herein. The Association may employ such agents, employees, and professionals, including without limitation legal, accounting, engineering, and property management professionals, as the Association may determine to be reasonably necessary to accomplish such purposes.

Section 3. Monthly Assessments. The Board of Directors shall have the authority to levy and assess against each Assessable Lot an initial monthly assessment for the purpose of meeting the requirements of Article IV herein for exterior maintenance and for other operating needs of the Association. The initial monthly assessment during the calendar year in which this Declaration is recorded shall be \$100.00. At the commencement of each calendar year thereafter, the Board of Directors shall have the authority to increase the monthly assessment against each Assessable Lot by a percentage of the prior assessment, which percentage shall be the greater of five percent (5%) or the percentage increase in the U. S. Department of Labor Consumer Price Index (All Items) for All Urban Consumers, 1982-84=100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other index which will accomplish the same result of reflecting general consumer price changes in the United States economy. The Members of the Association may approve an increase

in the monthly assessments greater than the increase the Board is authorized to make, when acting alone as described above, if approved by a majority of the votes cast by the Members at a meeting duly called for such purpose.

No proration or refund of prepaid monthly assessments shall be made by the Association in the event that the Owner of a Lot sells such Lot to a third party prior to the end of the period for which such prepayment has been made. Such third party purchaser shall, however, enjoy the benefit of such prepayment and shall not be required to pay monthly assessments during any period for which prepayment was made to the Association by the third party purchaser's predecessor in title.

Section 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Lot, including fixtures and personal property related thereto, provided that any such assessment shall be approved by the vote of the members, who shall vote in person or by proxy at a meeting duly called for such purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article III shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of the voting power of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time

of the execution of this Declaration, is sixteen (16) percent per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

Section 8. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

ARTICLE IV EXTERIOR MAINTENANCE

The Association shall, in a manner determined to be appropriate by the Association, in its discretion, provide exterior maintenance upon each Assessable Lot as set forth in this Article IV.

The Association shall:

- (a) Maintain the lawns within the Properties in such manner as deemed appropriate by the Association, including mowing, fertilizing, weed control, aerating, and power raking.
- (b) Effect the removal of snow from the driveways, front sidewalks, and front stoops on the Properties, and from such portions of any front courtyard areas on any Lots to the extent reasonably necessary, in the determination of the Association, to permit reasonable pedestrian access to the front door of any house located on any such Lot.
- (c) Maintain the above ground storm water easement area located between Lots 14 and 15.
- (d) Maintain the rear yard perimeter fences adjoining those Lots subject to this Declaration. To the extent that any such fences adjoin real property not subject to this Declaration, the Association shall have no responsibility for maintaining the portion of such fences adjoining such real property not subject to this Declaration.

- (e) Maintain the retaining walls surrounding the utility boxes on Lots abutting "Q" Street.

Notwithstanding anything to the contrary contained herein, the Association shall have no responsibility for the following:

- (a) Maintenance of sprinkler systems located on any Lot.
- (b) Maintenance of landscaping on any Lot.
- (c) Maintenance of grading and drainage swales located on the Properties.

ARTICLE V INSURANCE

The Association shall purchase and provide comprehensive general liability coverage insurance in such amounts as shall be determined from time to time by the Board of Directors of the Association. The Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Association, for its Officers, and members of the Board of Directors. Finally, if the Association has any employees of any nature, the Association shall purchase and provide Worker's Compensation Insurance for all employees who may come within the scope of Nebraska Worker's Compensation laws.

ARTICLE VI ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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 of the Association or of 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.

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

Section 3. Term; Amendment. 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 of this Declaration.

Thereafter, the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods, unless terminated or amended by the Owners of not less than seventy-five percent (75%) of the Lots, which termination or amendment shall thereupon become binding upon all Lots. This Declaration may be amended by Pacesetter Homes, Inc., a Nebraska corporation, its successors or assigns, or any person, firm, corporation, partnership, or entity designated in writing by Pacesetter Homes, Inc., a Nebraska corporation, in any manner in which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

Section 4. Status of the Declarant. Pacesetter Homes, Inc., a Nebraska corporation, or its successors or assigns, may terminate its status as Declarant under this Declaration, as to any Lot or Lots at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the rights of the Declarant shall automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association, or an individual to serve as Declarant, and the Association or such appointee thereafter shall thereafter serve as Declarant with the same authority and powers as the original Declarant. No Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by the Declarant, or any right to control, direct, or influence the acts of the Declarant with respect to any of the matters contemplated under this Declaration. No responsibility, liability, or obligation shall be assumed by, or imposed upon the Declarant by virtue of the authority and rights granted to the Declarant hereunder.

Section 5. Officers and Directors of the Association; Indemnification. No Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by the Association, its directors, or officers, except as specifically provided for herein, nor shall any Lot Owner, combination of Lot Owners, or other person or persons have any right to control, direct, or influence the acts of the Association, its officers, or directors in connection with their duties hereunder. No responsibility, liability, or obligation shall be assumed by, or imposed upon the Association, its directors, or its officers by virtue of the authority and rights granted to them hereunder. The Association shall indemnify its directors and officers to the fullest extent permitted by the Nebraska Non-profit Corporation Act.

Section 6. Previous Declaration. The terms, conditions, and restrictions of this Declaration shall apply to the Properties in addition to the terms, conditions, and restrictions contained in that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded on June 8, 2001 in Book 1385 at Page 55 of the Miscellaneous Records of Douglas County, Nebraska.

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