

95-14120

DECLARATION

THIS DECLARATION made on the date hereinafter set forth by Donald M. Vervaecke, Trustee of the Maurice M. Vervaecke Family Trust; Donald M. Vervaecke, Trustee of the Vervaecke Irrevocable Trust Dated May 24, 1994; Marlee L. Vervaecke; Lucille A. Vervaecke; Louise N. Scolaro; Clifford L. Whitley; and Benchmark Homes, Inc., hereinafter referred to as "Declarants".

W I T N E S S E T H :

WHEREAS, Declarants are the owners of certain real estate hereinafter referred to as the "Properties" in the County of Sarpy, State of Nebraska, which is more particularly described as:

Lots 87 through 132, inclusive, Sunrise Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska;

and

WHEREAS, Declarants are 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, Declarants hereby declare 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 Donald M. Vervaecke, or any person, firm, corporation, partnership or entity designated in writing by Donald M. Vervaecke, in any manner he shall determine in its full and absolute discretion for a period of seven (7) years from the date hereof.

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Sunrise Home Owners Association, its successors and assigns.

Section 2. "By-Laws" shall mean the By-Laws adopted by the Association as they may exist as amended from time to time.

Section 3. "Committee" shall mean and refer to an architectural control committee composed of three (3) or more representatives appointed by the Declarant or a majority of the owners, as provided in Article IV hereof.

Section 4. "Common Facilities" may include parks (public or otherwise); dedicated and non-dedicated roads, paths, ways and green areas; signs; and entrances for Sunrise Addition.

Section 5. "Declarant" shall mean and refer to Donald M. Vervaecke, his successors and assigns, if such successors or assigns should acquire more than ten (10) Lots in one purchase of undeveloped Lots from the Declarant for the purpose of development.

Section 6. "Lot" shall mean and refer to platted Lots 87 through 132, inclusive, as shown upon the recorded subdivision map of the Properties, and includes any improvements now or hereafter appurtenant to that real estate.

Section 7. "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 purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Properties" shall mean and refer to those lots described in the foregoing "WHEREAS" clause, and such additions thereto as may hereafter be made subject to these Declarations.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment by the Association, as provided for in Article III hereof, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership of any Owner shall terminate upon conveyance of the interest of such person in a Lot to a New Owner.

Section 2. The Association shall have two classes of voting membership consisting of the following:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- A. When the total votes outstanding in the Class A membership equal eighty percent (80%) of the total votes outstanding for both classes of membership, or
- B. Ten (10) years after the date of filing of this Declaration, or
- C. The written direction of Declarant.

ARTICLE III

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of an instrument of conveyance thereof, whether by deed, lease, land contract or otherwise, and whether or not it shall be so expressed in such instrument of conveyance, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest from the due date at the rate of twelve percent (12%) per annum, and such reasonable late fees as shall be set by the Board of Directors from time to time, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and late fees, shall also be the personal obligation of the person who was the owner of such

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property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the residential and recreational purposes, health, safety and welfare of the Owners and their respective licensees and invitees and for the improvement and maintenance of the Common Facilities. The annual assessments may be used, among other things, to pay the costs of operating and maintaining the Common Facilities; general public liability and hazard insurance, director's liability insurance, workers' compensation insurance, and other appropriate types of insurance; upkeep and maintenance of the park areas; landscaping and landscaping maintenance; wages; payroll taxes, license and permit fees; security; professional services; repairs; replacement; maintenance supplies; and such other items as may be determined by the Board of Directors for the promotion of the purposes of the Association. The Association shall have the obligation to maintain the landscaping and signage for the common entryway to the Properties, in generally good and neat condition.

Section 3. Determination of Amount of Annual Assessments and Time for Making Such Determination. At least fifty (50) days before the beginning of the Association's fiscal year, the Board of Directors shall adopt an annual budget by estimating the amount of money necessary to make payment of all estimated expenses growing out of or connected with those items described in Section 2 for the purpose of assessments. Within thirty (30) days after making the budget, the Board of Directors shall provide a summary of the budget to all Owners and shall set a date for the annual meeting of the members at which the ratification of the budget shall be considered and voted on. In the event the proposed budget is rejected at the annual meeting, the annual budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. Promptly upon ratification of the budget for the ensuing year, the Board of Directors shall determine the amount of the annual assessment to be levied against each Lot and shall give written notice to each Owner of the amount of the annual assessment. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of Owners to pay the same. In determining the amount of the annual assessment to be paid by the Owners, consideration shall be given to all sources of income of the Association other than the annual assessments. As long as there is a Class B membership, or until proposed Lot 453 shall become a park, the procedure for budgets, annual assessments and special assessments shall be waived and no assessments shall be levied; and no assessments shall be levied;

and Declarant shall be responsible for operating and maintaining the common entrance.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto, or the amount by which the Board of Directors estimate that actual costs, expenses and liabilities of the Association, will exceed those budgeted for the fiscal year, provided that any assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voted in person or by proxy at a meeting duly called for this purpose.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at uniform rate for all Lots.

Section 6. Date of Commencement of Annual Assessment: Due Dates. The annual assessments provided for herein shall commence as to all Lots at such time and in such amount as may be determined by the Board of Directors. Thereafter, the Board of Directors shall fix the amount of the annual assessment in the manner provided in Section 3 and the assessment year shall be deemed to begin on January 1 of one year and end on December 31 of the same year. Assessments may be collected on whatever basis is deemed to be reasonable by the Board of Directors, but in no event less often than annually. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment, or part thereof, not paid within ten (10) days after the due date shall also bear an additional assessment equal to one-fifth (1/5) of the amount of the unpaid assessment. The Association may bring an action at law against the Owner personally obligated to pay any delinquent assessment, or may foreclose the lien against the Owner's Lot in the same manner as mortgages or other liens against real property are enforceable in the State of Nebraska at the time such lien arises. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot.

Section 8. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV

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 Donald M. Vervaecke, or by an architectural committee composed of three or more representatives appointed by the Declarant Donald M. Vervaecke ("Committee"). In the event Donald M. Vervaecke or his designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to him, approval will not be complied with. All owners shall submit plans and specifications to the Declarant Donald M. Vervaecke, or the Committee, in duplicate. When the same have been approved by the Declarant Donald M. Vervaecke, 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 Donald M. Vervaecke, or the Committee. After January 1, 2000, or after ninety percent (90%) 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 V

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 Donald M. Vervaecke, his 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, or
- D. If written permission for such placement erection or use under (A) or (B) above is first obtained from the Declarant Donald M. Vervaecke, 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. Not boat, camping trailer, campers (if removed from the carrying vehicle), auto-drawn trailers of any kind, mobile or motor home, snowmobile, truck, bus, grading or excavating equipment or other heavy machinery or equipment, or aircraft shall be stored outside the garage or in any manner left exposed on any lot at any time. No automobile or other vehicle undergoing repair shall be left exposed on any lot at any time. This restriction shall not apply to trucks or commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the same. Boats, campers or mobile motor homes may be parked on the property for a period not to exceed seven days without securing approval from Declarant Donald M. Vervaecke. No external television or radio antenna or satellite receiving dish shall hereafter be erected on or about any of the building sites or Lots with 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 Donald M. Vervaecke, or his 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 Donald M. Vervaecke, or his 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 dog house 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 Donald M. Vervaecke, 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. Drainage. The Declarants have created a water drainage plan by grading the property and installing improvements and easements for storm drainage in accordance with accepted engineering principals. No building shall be placed, nor any Lot graded to interfere with such water drainage plan nor cause damage to the building or neighboring building or lots. No planting or other materials shall be placed or be permitted to remain, or other activities undertaken, which may damage or interfere with storm drainage, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels.

Section 6. 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 Donald M. Vervaecke; provided, however, that the permission of Declarant Donald M. Vervaecke, shall not be required hereunder after January 1, 2000.

Section 7. 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 8. 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, trash 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 use 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 9. 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 (2½) 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.

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Section 10. Home Occupations. No home occupations shall be permitted other than those enumerated under the Bellevue City Code.

Section 11. Trees and Sodding. Within six (6) months of the completion of the building on each Lot, the owner shall cause to be planted in the front yard of each lot one tree of at least one and one-half (1½) inches in diameter. In addition, the owner shall sod all area in front of the dwelling within six (6) months of the date the building is completed.

Section 12. SID Easement. A perpetual license and easement is hereby reserved in favor of and granted to Sanitary and Improvement District No. 168, or any other Sanitary and Improvement District which covers the individual Lot, of Sarpy County, Nebraska, its successors and assigns, to construct, operate, maintain, repair and use Sanitary and Storm Sewers as defined on the Plat prepared by Thompson, Dreesen & Dorner, approved by the City of Bellevue, and filed with the Register of Deeds of Sarpy County, Nebraska.

Section 13. Easements. A perpetual license and easement is hereby reserved in favor of and granted to U. S. West, Metropolitan Utilities District and the Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair and renew cables, conduits and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat, gas and power and telephone as shown on the Plat filed with the Register of Deeds of Sarpy County, Nebraska. No permanent buildings shall be placed in perpetual easements, but the same may be used for gardens, shrubs, sidewalks, driveways, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant Donald M. Vervaecke, 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 Donald M. Vervaecke, 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 Declarants have executed this Declaration this 24th day of August, 1995.

Donald M. Vervaecke

Donald M. Vervaecke, Trustee of the Maurice M. Vervaecke Family Trust

Donald M. Vervaecke

Donald M. Vervaecke, Trustee of the Vervaecke Irrevocable Trust Dated May 24, 1994

Donald M. Vervaecke

Donald M. Vervaecke, Individually

Marlee L. Vervaecke

Marlee L. Vervaecke

Lucille A. Vervaecke

Lucille A. Vervaecke

Louise N. Scolaro

Louise N. Scolaro

Augustine S. Scolaro

Augustine S. Scolaro

Clifford L. Whitley

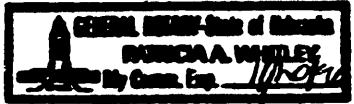
Clifford L. Whitley

Patricia A. Whitley

Patricia A. Whitley

STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

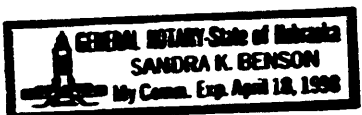
Before me, a Notary Public, personally appeared Lucille A. Vervaecke, a single person, known to me to be the identical person who executed the foregoing Declaration and acknowledged the execution of the foregoing to be her voluntary act and deed.



Patricia A. Whitley
Notary Public

STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

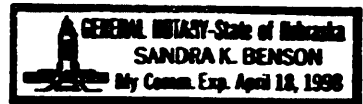
Before me, a Notary Public, personally appeared Louise N. Scolaro, wife of Augustine S. Scolaro, known to me to be the identical person who executed the foregoing Declaration and acknowledged the execution of the foregoing to be her voluntary act and deed.



Sandra K. Benson
Notary Public

STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

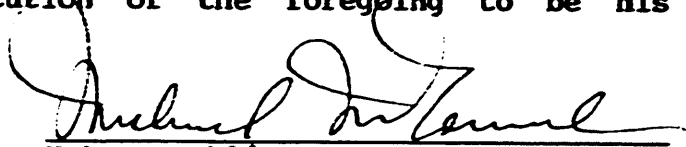
Before me, a Notary Public, personally appeared Augustine S. Scolaro, husband of Louise N. Scolaro, known to me to be the identical person who executed the foregoing Declaration and acknowledged the execution of the foregoing to be her voluntary act and deed.



Sandra K. Benson
Notary Public

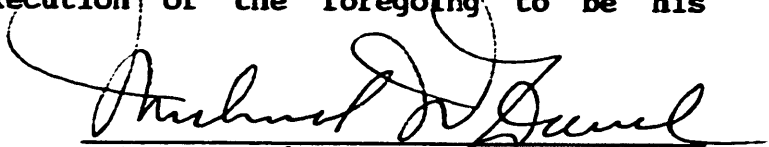
STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

Before me, a Notary Public, personally appeared Clifford L. Whitley, husband of Patricia A. Whitley, known to me to be the identical person who executed the foregoing Declaration and acknowledged the execution of the foregoing to be his voluntary act and deed.


Notary Public

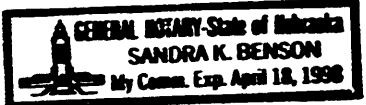
STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

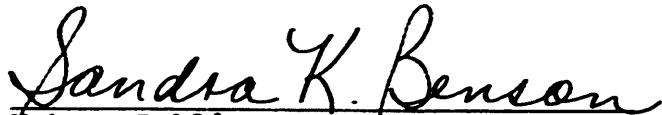
Before me, a Notary Public, personally appeared Patricia A. Whitley, wife of Clifford L. Whitley, known to me to be the identical person who executed the foregoing Declaration and acknowledged the execution of the foregoing to be his voluntary act and deed.


Notary Public

STATE OF NEBRASKA,)
) ss.
COUNTY OF DOUGLAS.)

Before me, a Notary Public, personally appeared John C. Czerwinski, known to me to be the identical person who executed the foregoing Declaration as President of Benchmark Homes, Inc. and acknowledged the execution of the foregoing to be his voluntary act and deed and the voluntary act and deed of said corporation.




Notary Public