

DECLARATION

A Portion of CANDLEWOOD II, a Subdivision, as Surveyed,  
Platted and Recorded, Douglas County, Nebraska.

THIS DECLARATION, made this 8<sup>th</sup> day of MAY,  
1979, by the undersigned, BOARD OF TRUSTEES FOR THE BRUCE N.  
MILLER REAL PROPERTY ARRANGEMENT and THE UNITED STATES NATIONAL  
BANK OF OMAHA,

WITNESSETH: That,

WHEREAS, the undersigned, BOARD OF TRUSTEES FOR THE  
BRUCE N. MILLER REAL PROPERTY ARRANGEMENT and THE UNITED STATES  
NATIONAL BANK OF OMAHA, are the owners, with each owning an  
undivided one-half interest, of the following described real  
estate:

Lots Nineteen (19) through Twenty-eight (28),  
both inclusive, and Lot Forty-eight (48) all  
in Candlewood II, a subdivision, as surveyed,  
platted, and recorded, Douglas County, Ne-  
braska;

WHEREAS, all of the above-described real estate has  
been zoned "R-6 Cluster", and, therefore, is available for single-  
family or two-family use; and

WHEREAS, the undersigned, being the owners of all of the  
above-described real estate, in order to establish a uniform  
plan for the development thereof, do hereby declare as follows:

1. All of the above-described real estate involved  
in this Declaration 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 set forth in this Declaration. The following does  
and will constitute the real property subject to this Declaration:

(a) Lots Nineteen (19) through Twenty-eight  
(28), both inclusive, and Lot Forty-eight  
(48), all in Candlewood II, a subdivision,  
as surveyed, platted, and recorded, Douglas  
County, Nebraska.

(b) Declarants will retain the right at any time or  
from time to time through December 31, 2000, to  
subject additional real property owned by them in  
Douglas County, Nebraska, and comprised of one or  
more subdivisions or units suitable for private  
residential purposes, hereafter called "lot" or

"lots," and any other owners will have the right at any time or from time to time but only upon the receipt of an express written Acceptance executed by Candlewood Homes Association, a Nebraska non-profit corporation, hereafter called "Association", also to subject additional real property owned by them in Douglas County, Nebraska, and comprised of one or more lots, to this Declaration by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written supplementary declaration describing such property and extending to each of such lots all of the conditions and other terms set out in this Declaration with only such complimentary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the different character of such property but not inconsistent with the private residential character of the property.

2. The above-described residential property of Candlewood II is and will be through December 31, 2000, subject to all and each of the following conditions and other terms hereafter called "covenants":

(a) Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious, or other nonprofit public purposes to the extent permitted by applicable zoning regulations, none of the above-described real property, hereinafter will be occupied or used for other than single-family or two-family residential purposes; and no lot will be occupied or used for such residential purposes at a density greater than one single-family or one two-family residence for each lot or for each part thereof of an area not less than Seven Thousand Five Hundred (7,500) square feet.

(b) The structure or associated structures comprising a single-family or two-family residence will consist of a detached dwelling designed to accommodate a single person or one family group per dwelling or one-family group per unit with respect to a duplex, together with household servant or servants, of not more than two and one-half stories in height and which shall be constructed in compliance with the following restrictions:

(1) The enclosed floor area of every single-family one-story single floor level dwelling, exclusive of open porches, open breeze-ways, basements and garages, shall be not less than One Thousand One Hundred (1,100) square feet.

(2) The ground floor enclosed area of every single-family two-story or one and one-half story dwelling, exclusive of open porches, open breeze-ways, basements and garages, shall be not less than Six Hundred Seventy-five (675) square feet and the first floor and other floors combined shall have an aggregate floor area of not less than One Thousand Three Hundred Fifty (1,350) square feet.

(3) The enclosed floor area of every single-family split-level style of dwelling with the garage built under a portion of the building shall have an aggregate floor area, including the floor level above the garage, of not less than One Thousand Three Hundred Fifty (1,350) square feet, exclusive of open porches, open breeze-ways, garages and basements

regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(4) The enclosed floor area of every single-family split entry style of dwelling where the entrance level is not a primary level of the building and the garage is built below a portion of the building shall have an aggregate main floor area of not less than One Thousand Three Hundred Fifty (1,350) square feet (One Thousand Two Hundred Fifty (1,250) square feet if the garage is not below a portion of the building), exclusive of open porches, open breeze-ways, garages and basements, regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(5) The enclosed floor area of every two-family (duplex) style of dwelling shall have an aggregate floor area of not less than Nine Hundred Fifty (950) square feet per living unit, exclusive of open porches, open breeze-ways, garages and basements, regardless of whether the basement level is to be finished or is to be fifty percent (50%) or more exposed above grade level.

(c) No single-family or two-family residence will be altered, built, constructed, or otherwise maintained on any lot without an express written approval executed by Association through its Architectural Control Committee 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 or external design and location in relation to surroundings and topography and other relevant architectural factors, location within lot boundary lines, quality of construction, size, and suitability for residential purposes of such single-family or two-family residence; and no exterior air-conditioning equipment, antenna, ditch, fence, flag pole, pool, tennis court, wall, or other structure or associated structures, and no trees or other substantial landscaping in any location within public view will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken on any lot without such approval by Association so secured as to general appearance, composition, design, exterior color or colors, and suitability for residential purposes. All exposed foundations facing the front and side yards of each lot shall be faced with brick, stone, or wood. All single-family dwellings shall have attached enclosed garages which must be capable of accommodating at least two standard size automobiles. Two-family dwellings shall have attached enclosed garages which must be capable of accommodating at least one standard size automobile per living unit.

(d) After commencement thereof, all approved or permitted construction on any lot will be as diligently as practicable prosecuted to completion, and no approved or permitted construction

will be maintained on any lot in uncompleted or unfinished condition for more than eighteen (18) months.

(e) No exterior burner, incinerator or other receptacle for garbage, trash, or other refuse will be maintained above ground level on any lot; and no barn, shack, tent, trailer, or other moveable or temporary structure will be maintained on any lot other than for temporary use or uses appropriate, convenient or necessary for residential purposes for not more than seven (7) days within any calendar year or for use or uses connected with approved or permitted construction. Public concrete sidewalks, four feet wide and four inches thick, shall be installed by the owner in front of each improved lot and on the side street of each improved corner lot prior to completion of construction of the dwelling on each lot.

(f) No driveway will be constructed or maintained on any lot and connected to or with any adjoining public streets 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 a 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 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 materials so as to avoid and prevent erosion of or water damage to such curb, curb cut, sidewalk, or street, and such driveway will be so constructed or maintained and connected across or over an adjoining intersection so as to avoid and prevent erosion of, water damage to, cracks in, or similar damage to such sidewalk.

(g) No grass, weeds, or other vegetation will be grown or otherwise permitted to commence or to continue and no dangerous, diseased, or otherwise objectionable shrubs or trees will be maintained on any lots 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.

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

(i) No excess or unused building material or materials will be kept, stored, or otherwise maintained on any lot in a location within public view, other than for use or uses connected with approved or permitted construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any lot.

(j) No boat, camper, trailer, or similar chattel will be maintained on any lot, other than in an enclosed structure, for more than seven (7) days within any calendar year; and no automobile, motorcycle, truck, or other vehicle will be repaired, torn down, or stored on any lot, other than in an enclosed structure.

(k) No birds, livestock, poultry or animals other than domesticated non-commercial pets and no more than reasonable quantity will be bred, kept, or otherwise maintained on any lot.

3. The single-family or two-family residential property described above is and will be through December 31, 2000, 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 will 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 interest by acquiring, maintaining, operating, contributing to the acquisition, maintenance or operation of or otherwise making available for use any one or more area entrances or entry structures, boat docks, golf courses, lakes, parks, swimming pools, tennis courts, and other recreational equipment, facilities, grounds or structures, by providing weed and other actual or potential nuisance abatement or control, security service, other community services, by exercising architectural control and securing compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, 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 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, or dispose of for profit or otherwise any interest in or species of personal or real property wherever located, and to engage in any other venture for the mutual non-profitable interests of its members for which a corporation may be organized under the Nebraska Non-profit Corporation Act, as amended.

(b) Except for such lot or lots or part thereof as may from time to time be occupied or used for educational, recreational, religious or other non-profit or public purposes to the extent permitted by applicable zoning regulations, every single-family or two-family residence lot subject to this Declaration will be automatically included in membership in Association as a benefit or burden running with and charged upon the ownership of each such lot; and the owners of any other lots will have the right at any time or from time to time but only upon the receipt of an express written acceptance executed by Association thereafter to include any such lot in membership in the Association as a benefit or a burden running with and charged upon the ownership of such lot.

(c) Dues or other charges for each lot included in membership fixed by Association in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, will



constitute until abated or paid, a lien upon and charge against such lot in favor of Association; but no such dues or charges shall constitute a lien until and unless a written notice of such lien is filed by Association on such lot with the Register of Deeds of Douglas County, Nebraska, and no such lien upon any such lot will at any time be superior to any earlier or later established lien upon such lot for security for a home improvement or purchase money loan or the unpaid balance of a purchase contract for such lot.

(d) The obligations and privileges of membership in Association will, in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, extend to contract purchasers and owners of all lots included in membership and appertain to and be coterminous with the duration of the interest for membership for a period or from period to period, but each member will be and remain personally liable to Association until abatement or payment for all dues or other charges fixed by it at any time or from time to time throughout the duration of such interest or membership.

4. Association will have the right in the manner set out in its Articles of Incorporation or its Bylaws, as from time to time amended, to divide the membership into classes, to deny or limit voting rights of members of 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.

5. The covenants, easements, conditions, and other terms set out in this Declaration for single-family or two-family residence property are and will be subject to the following enforcement:

(a) Association and every contract purchaser or owner of any lot 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 any lot of any covenant or an easement granted to it and to fix a reasonable charge for such action as a lien upon and charged against such lot in favor of Association.

(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.

6. A perpetual license and easement has been granted to Omaha Public Power District and Northwestern Bell Telephone

Company, their successors and assigns, as provided in the recorded plat of Candlewood II.

IN WITNESS WHEREOF, the undersigned have executed this Declaration at Omaha, Douglas County, Nebraska, the date and year above first written.

BOARD OF TRUSTEES FOR THE BRUCE N. MILLER REAL PROPERTY ARRANGEMENT

By: [Signature]  
Richard K. Flory, Trustee

By: [Signature]  
Donald D. Siebler, Trustee

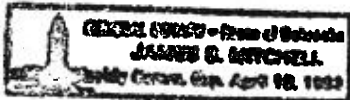
THE UNITED STATES NATIONAL BANK OF OMAHA,

By: [Signature]  
Its [Signature]

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

Before me, a Notary Public qualified for said county, personally came Richard K. Flory and Donald D. Siebler, as Trustees and on behalf of the Board of Trustees for the Bruce N. Miller Real Property Arrangement, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed and the voluntary and authorized act and deed of Board of Trustees for the Bruce N. Miller Real Property Arrangement.

WITNESS my hand and notarial seal this 8th day of May, 1979.



[Signature]  
Notary Public

My commission expires: \_\_\_\_\_

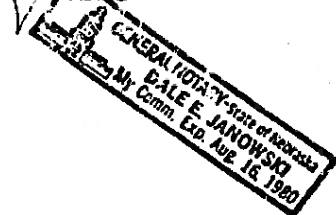
STATE OF NEBRASKA )  
 ) ss.:  
COUNTY OF DOUGLAS )

Before me, a Notary Public qualified for said county, personally came N. Harry Nelson of The United States National Bank of Omaha, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary and authorized act and deed of The United States National Bank of Omaha.

WITNESS my hand and notarial seal this 7 day of May, 1979.

[Signature]  
Notary Public

My commission expires: 8-16-80



ACCEPTANCE

The foregoing Declaration is hereby accepted and approved by Candlewood Homes Association, a nonprofit corporation.

Dated this 2nd day of June, 1979.

By: Rosina R. Washen  
Its President

By: Karen Burnard  
Its Secretary

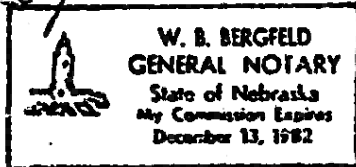
STATE OF NEBRASKA) ss.:  
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said county, personally came Rosina R. Washen, President and Karen Burnard, Secretary, of the Candlewood Homes Association, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their voluntary and authorized act and deed and the voluntary and authorized act and deed of the Candlewood Homes Association.

WITNESS my hand and notarial seal this 2nd day of June, 1979.

W B Bergfeld  
Notary Public

My commission expires: 12-13-82



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79-940  
K  
79-940

Book 615  
Page 337  
of Miss  
Fee 36.75  
Index ✓  
Comped ✓

RECEIVED  
1979 JUN -4 PM 3:28  
C. HARRIS LUTER  
RECORDER OF DEEDS  
DOUGLAS COUNTY, NEBR.

*Handwritten signature*