

**DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 16th day of August, 1993, among

BENCHMARK HOMES, INC., a Nebraska corporation,

as Trustor,

FIRST NATIONAL BANK OF OMAHA, a national banking association, One First National Center, Omaha, Nebraska,

as Trustee, and

FIRST NATIONAL BANK OF OMAHA, a national banking association, One First National Center, Omaha, Nebraska,

as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfer and assigns to Trustee in trust, with power of sale, the following described Real Estate:

See Exhibit "A" attached hereto and by this reference incorporated herein.

3-15-11
ASH 18483 BK 4124 R 28-15-11 FB 01-62
FBI mtg PG 421-428 C/O COMP SCAN PN
FBI 4.00 OF mtg LEGL PG 426-428 MC FV
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Aug 20 1 07 PM '93

THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, at any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, licensees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The property so conveyed hereunder is hereinafter referred to as "such property," and the secured obligations hereunder are referred to as "Secured Obligations".

FOR THE PURPOSE OF SECURING EACH OF THE FOLLOWING (the "Secured Obligations"):

FOR THE PURPOSE OF SECURING EACH OF THE FOLLOWING (THE "SECURED CREDITORS")

1. A. Payment of the principal sum of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) evidenced by that certain promissory note dated as of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein or in any other security agreement or deed of trust at any time given to secure any indebtedness hereby secured, or any part thereof.

C. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

D. Payment of future advances necessary to protect such property.

E. Payment of future advances to be made at the option of Trustor and Beneficiary.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. Title: That it is lawfully seized and possessed of a good and indefeasible title and estate to such property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whatsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon such property.

2. **Maintenance.** To keep such property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of restrictions affecting such property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon such property in violation of law; to do all other acts in a timely and proper manner which from the character or use of such property may be reasonably necessary to protect and preserve said security; the specific enumerations herein not excluding the general.

3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against such property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding, (a) to promptly commence work and to complete the proposed improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any construction loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect such property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.

ADDITIONAL PROVISIONS TO DEED OF TRUST**11. Consent, Partial Reconveyance, Etc. (continued):**

Provided that no Default has occurred and is continuing under this Deed of Trust and the obligations secured hereby, Trustee and Beneficiary agrees to execute and deliver such instruments as Trustor shall request to evidence its consent to the platting of Elk Creek Crossing, a proposed subdivision, in accordance with the proposed final plat thereof.

30. Miscellaneous:

Provided that Trustor is not in default under this Deed of Trust or any of the obligations secured thereby, Trustee and Beneficiary agrees to execute such documents and instruments as may be reasonably required:

1. to approve the final plat of Phases I, II and III of Elk Creek Crossing, a proposed subdivision, in accordance with the proposed final plat thereof;

2. to grant, convey and dedicate portions of Phases I, II and III of proposed Elk Creek Crossing for streets, sewers, entrances, green areas and utilities;

3. to form and initiate a sanitary and improvement district to construct, operate and maintain public improvements on Phases I, II and III of Elk Creek Crossing;

4. to reconvey any of the lots in proposed Elk Creek Crossing, and any of the lots in Prairie Pointe, a Subdivision, mortgaged and conveyed hereunder, upon a principal reduction in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) per lot to be reconveyed plus a release fee of Seventy-five Dollars (\$75.00) per lot to be reconveyed, all as more particularly set forth in the Promissory Note;

5. to approve the final plat of Phases I and II of Banyan Hills, a proposed subdivision, in accordance with the proposed final plat thereof;

6. to grant, convey and dedicate portions of Phases I and II of proposed Banyan Hills for streets, sewers, entrances, green areas and utilities;

7. to form and initiate a sanitary and improvement district to construct, operate and maintain public improvements on Phases I and II of Banyan Hills; and

8. to reconvey any of the lots in proposed Banyan Hills, mortgaged and conveyed hereunder, upon a principal reduction in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) per lot to be reconveyed plus a release fee of Seventy-five (\$75.00) per lot to be reconveyed, all as more particularly set forth in the Promissory Note.

BENCHMARK HOMES, INC., a Nebraska
corporation

By: 

John C. Czerniewski, Jr.,
President

BOOK 4124 PAGE 426

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL I

(Banyon Hills, a Proposed Subdivision)

That part of the N.E. 1/4 of Section 28, T15N, R11E of the 6th P.M., Douglas County, Nebraska, described as follows:

Beginning at the N.W. corner of said N.E. 1/4;

thence S00°11'09"E (assuming the North line of said N.E. 1/4 to bear due East and West) on the West line of said N.E. 1/4, 2647.50 feet to the S.W. corner of said N.E. 1/4;

thence N89°58'49"E on the South line of said N.E. 1/4, 1071.10 feet to the S.W. corner of Lot 71, Rose Garden Estates, a subdivision as surveyed, platted and recorded in Book 1573 at Page 702 of the Douglas County Records;

thence Northerly on the Westerly boundary of said Rose Garden Estates on the following described 36 courses;

thence N00°06'58"W, 172.33 feet;

thence N89°53'02"E, 13.00 feet;

thence N00°06'58"W, 127.00 feet;

thence N89°53'02"E, 17.00 feet;

thence N00°06'58"W, 217.25 feet;

thence N9°46'51"W, 411.67 feet;

thence S84°22'16"W, 7.32 feet;

thence S86°08'37"W, 75.51 feet;

thence N1°51'33"E, 117.96 feet;

thence N88°08'27"W, 23.00 feet;

thence N1°51'33"E, 170.00 feet;

thence N79°31'06"E, 83.74 feet;

thence N13°01'35"W, 170.00 feet;

thence Northeasterly on a curve to the left (radius 198.64 feet, chord bearing N74°04'47"E, chord distance 20.06 feet), an arc distance of 20.06 feet;

thence N18°48'50"W, 130.00 feet;

thence N75°06'00"E, 45.31 feet;

thence N48°23'58"E, 145.95 feet;

thence N54°48'14"E, 83.10 feet;

thence N63°40'33"E, 132.63 feet;

thence S26°19'27"E, 31.90 feet;

thence N63°40'33"E, 130.00 feet;

thence N8°54'27"W, 113.15 feet;

thence Northeasterly on a curve to the right (radius 480.66 feet, chord bearing N85°57'22"E, chord distance 81.50 feet), an arc distance of 81.60 feet to a point of tangency;

NWNE
NENE
SWNE

thence S89°10'49"E, 16.38 feet;
 thence N00°49'11"E, 117.41 feet;
 thence S88°10'51"W, 3.90 feet;
 thence N1°49'09"W, 160.00 feet;
 thence N88°10'51"E, 32.33 feet;
 thence N1°49'09"W, 132.82 feet;
 thence N85°44'15"E, 62.05 feet;
 thence N85°39'22"E, 130.00 feet;
 thence Southeasterly on a curve to the left (radius 524.82 feet, chord bearing S4°37'40"E, chord distance 5.21 feet) an arc distance of 5.21 feet;
 thence N85°05'15"E 128.54 feet;
 thence North 104.72 feet;
 thence East, 45.00 feet;
 thence North 50.00 feet;
 thence West 330.00 feet on a line 185.00 feet South of and parallel with the North line of said NE 1/4;
 thence North 185.00 feet to the North line of said N.E. 1/4;
 thence West on the North line of said N.E. 1/4, 1570.18 feet to the Point of Beginning.

PARCEL II

(Elk Creek Crossing, a Proposed Subdivision, Lots 1 to 147)

That part of the SW 1/4 of Section 3, T15N, R11E of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the SW corner of said SW 1/4;

thence N89°59'52"E (assumed bearing) 1,023.38 feet on the South line of said SW 1/4;

thence N00°54'07"W 157.11 feet to the Point of Beginning, said point being on the North right-of-way line of West Maple Road;

thence Easterly on said North right-of-way line of West Maple Road on the following described three courses:

thence S89°27'49"E 302.12 feet;

thence S89°53'00"E 616.09 feet;

thence N79°43'53"E 130.30 feet;

thence N05°58'35"W 186.37 feet;

thence Southwesterly on a 1,664.80 foot radius curve to the right, chord bearing S84°44'43"W, chord distance 41.94 feet, an arc distance of 41.94 feet;

thence N04°31'59"W 125.00 feet;

thence N83°11'44"E 49.92 feet;

NESW
 NWSW
 SESW
 SWSW

thence N06°33'40"W 276.39 feet;

thence N83°26'20"E 18.99 feet;

thence N06°33'40"W 194.20 feet;

thence N79°44'07"E 30.50 feet;

thence N10°15'53"W 203.98 feet;

thence Northeasterly on a 1,932.39 foot radius curve to the left, chord bearing N78°19'44"E, chord distance 94.86 feet, an arc distance of 94.87 feet;

thence N21°11'36"W 120.27 feet;

thence N00°26'20"E 779.06 feet;

thence N89°33'40"W 475.00 feet;

thence S00°26'20"W 80.00 feet;

thence N89°33'40"W 55.54 feet;

thence S74°14'36"W 59.51 feet;

thence S34°31'26"W 76.19 feet;

thence S66°27'54"W 117.58 feet;

thence Northwesterly on a 331.49 foot radius curve to the left, chord bearing N16°24'54"W, chord distance 10.03 feet, an arc distance of 10.03 feet;

thence S72°43'04"W 183.69 feet;

thence S20°22'39"E 44.18 feet;

thence S00°26'20"W 255.05 feet;

thence S04°00'57"W 94.08 feet;

thence S14°49'01"W 104.31 feet;

thence S23°48'28"W 183.78 feet;

thence S17°23'42"W 120.00 feet;

thence S72°36'18"E 25.26 feet;

thence S17°23'42"W 125.00 feet;

thence S71°16'44"E 64.31 feet;

thence S59°03'11"E 57.50 feet;

thence S40°18'35"E 52.55 feet;

thence S56°56'34"W 235.21 feet;

thence N67°15'45"E 118.84 feet;

thence S01°23'41"W 422.40 feet;

thence S12°56'19"W 114.88 feet;

thence S00°54'07"E 63.12 feet to the Point of Beginning,