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GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

After recording, please return to:

James F. Kasher
CROKER, HUCK, KASHER, DeWITT, ANDERSON & GONDERINGER, P.C.
2120 South 72nd Street, Suite 1250
Omaha, NE 68124

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELK CREEK CROSSING, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION is made on the date hereinafter set forth by BENCHMARK HOMES, INC., a Nebraska corporation, hereinafter referred to as "Declarant", and those other signatories hereto who join in this Declaration and all of the actions taken by the Declarant herein by their signatures below.

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, described as follows:

> Lots 1 through 147, inclusive, and Outlot 1, in Elk Creek Crossing, 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 the Properties 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 seven (7) years from the date hereof. The terms and provisions of Articles II and III herein, dealing with the structure and activities of the Association, shall not become effective until directed in writing by the Declarant or at the end of eight (8) years from the date hereof, whichever shall first occur.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Elk Creek Crossing 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 Elk Creek Crossing (specifically, Outlot 1).

Section 5. "Declarant" shall mean and refer to Benchmark Homes, Inc., a Nebraska corporation, and its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Lot" shall mean and refer to any platted lot shown upon any recorded subdivision map of any part of the Properties with the exception of Outlot 1 and any park area, 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 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, workman's 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 on Outlot 1, which is 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, the procedure for budgets, annual assessments and special assessments shall be waived 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 voting 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 a 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

Section 1. No dwelling, building, fence, other than fences constructed by Declarant, wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, treehouse, swimming pool, tennis court, dog house, television or radio antenna, satellite and receiving dishes, flag pole, solar heating or cooling collecting panels, device or equipment, tool shed, or other external improvement, above or below the surface of the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed, planted, altered, or otherwise

maintained or permitted to remain on any Lot, nor shall any grading, excavation, or tree removal be commenced without express written prior approval of the Declarant.

Section 2. The Declarant shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. In this regard, Declarant intends that the Lots shall form a developed residential community with homes constructed of high quality materials consistent with this Declaration. The Declarant specifically reserves the right to deny permission to construct or place any of the Improvements which it determines will not conform to the general character, plan and outline for the development of the Lots.

Section 3. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the Improvement may be required of the applicant at the discretion of the Declarant. Each applicant shall submit to the Declarant the following documents, materials, designs and/or plans (herein collectively referred to as the "plans").

a. Site plan indicating specific improvement and indicating Lot number, street address, grading, location of the structure proposed for the Lot, surface drainage and sidewalks.

b. Complete construction plans, including but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections, exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials, exterior color or colors and landscaping plans.

c. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

Section 4. Written notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans or hand delivered. Such notice shall be mailed or delivered within thirty (30) days after the date of submission of the plans. If written notice of approval is not mailed or delivered within such period, the proposed Improvement shall be deemed refused by the Declarant.

Section 5. After January 1, 1999, all privileges, rights, powers and authority under this Article shall be exercised by and vested in a Committee to be selected by the Association. 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 during the period when such Committee is not operating.

ARTICLE V.

GENERAL RESTRICTIONS

Section 1. **Residential Purposes Only**. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, or for other non-profit use. 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.

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 hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No fences or walls shall exceed a height of six (6) feet. All produce or vegetable gardens shall be maintained only in rear yards. 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 within enclosed patio areas. No swimming pool shall be permitted which extends more than one (1) foot above ground level.

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 construction on 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 purpose 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 and dog houses shall be placed at the rear of the building, concealed from public view. 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 purposes.

Section 5. **Billboards and Nuisances Prohibited**. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one (1) sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

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 into the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, 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. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot.

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, electric power or other utility service from property line to the residences 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 excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour or drainage of any Lot. 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. All exposed foundations of each improved Lot 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.

Section 9. **Maintenance of Vegetation and Equipment**. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create

a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twenty-four (24) inches.

Section 10. **Vehicles, Trailers and Equipment**. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 10 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction.

Section 11. **Telephone Installation**. In the event ninety percent (90%) of all Lots within the Subdivision are not improved within five (5) years after the date on which U.S. West Communications, Inc. files notice that it has completed installation of telephone lines to all of the Lots covered by these Covenants in the Subdivision (herein the "Subdivision Improvement Date"), then U.S. West Communications, Inc. may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty Dollars ($450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority. The connection charge described herein shall be void and nonassessable in the event construction shall have commenced on at least ninety percent (90%) of the Lots subject to these covenants within five (5) years from the date U.S. West Communications, Inc. files the above-described notice. Should such charge be implemented by U.S. West Communications, Inc. and remain unpaid, then such charge may draw interest at the rate of ten percent (10%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) U.S. West Communications, Inc. sends each owner of record a written statement or billing for Four Hundred Fifty Dollars ($450.00) for each unimproved Lot.

ARTICLE VI.

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 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.

Section 3. **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 this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by not less than two-thirds (2/3) of the Owners. Any amendment must be recorded.

Section 4. **Annexation**. Additional phases of the Elk Creek Crossing subdivision will become subject to this Declaration as they are platted and recorded. Declarant may file a statement with the Register of Deeds of Douglas County confirming that the additional phases are subject to this Declaration, and no further action need be taken to accomplish such purpose. Additional real property and Common Facilities beyond Elk Creek Crossing may be annexed to the Properties with the consent of two-thirds (2/3) of the Owners.

Section 5. **Rules and Regulations**. The Board of Directors shall have the right to promulgate rules and regulations for the use of the Common Facilities which may be enforced in the manner provided in the By-Laws; provided, however, that no such rule or regulation shall be effective unless and until it has been approved at a meeting of the members.

Section 6. **Dissolution**. The Association may be dissolved with the assent given in writing and signed by not less than two-thirds of the Owners. Upon dissolution, other than incident to a merger or consolidation, and after payment of any obligations of the Association, the assets of the Association shall be dedicated to an appropriate public agency or other nonprofit corporation for use for purposes similar to those for which this association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association or trust to be devoted to such similar purpose.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 30 day of October, 1993.

DECLARANTS:

BENCHMARK HOMES, INC.,
a Nebraska Corporation

Attest:

By: _____
John C. Czerwinski, Jr., President

Barbara J. Czerwinski
Secretary

SIGNATURES CONTINUED ON NEXT PAGE

CONTINUATION OF SIGNATURES

Barbara J. Czerwinski

Louise N. Scolaro

Augustine S. Scolaro

Robert S. Vosik

Kathleen A. Vosik

Christopher Robertson

Beverly J. Robertson

Daniel P. Peters

Susan M. Peters

FIRST NATIONAL BANK OF OMAHA

By: Robert J. Hawk
Its: Vice President

Attest:

Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by JOHN C. CZERWINSKI, JR., President of Benchmark Homes, Inc., a Nebraska Corporation, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by BARBARA J. CZERWINSKI.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by LOUISE N. SCOLARO.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by AUGUSTINE S. SCOLARO.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by ROBERT S. VOSIK.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by KATHLEEN A. VOSIK.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by CHRISTOPHER ROBERTSON.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by BEVERLY J. ROBERTSON.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by DANIEL P. PETERS.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

The foregoing instrument was acknowledged before me this 22nd day of October, 1993, by SUSAN M. PETERS.

GENERAL NOTARY-State of Nebraska
SANDRA K. BENSON
My Comm. Exp. Apr. 18, 1994

Sandra K. Benson
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 28TH day of OCTOBER, 1993, by ROBERT J HORAK, VICE PRESIDENT of FIRST NATIONAL BANK OF OMAHA, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
TRACY URBANEK
My Comm. Exp. Dec. 24, 1995

Tracy Urbanek
Notary Public

8\benchmar\elkcreek\covenant

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

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Oct 13 4 04 PM '95

GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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DEL. C/O COMP MB
LEGAL PG SCAN FV

After recording, please return to:

James F. Kasher
CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, P.C.
2120 South 72nd Street, Suite 1250
Omaha, NE 68124

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELK CREEK CROSSING, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is 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, the undersigned is the Declarant under a certain Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "Declaration"), which Declaration was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on January 13, 1994, in Misc. Book 1108 at Pages 697 through 710, inclusive, and which governs Lots 1 through 147 and Outlot 1, Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, Declarant is the owner of certain real estate hereinafter referred to as the "**Properties**" in the County of Douglas, State of Nebraska, described as follows:

> **Lots 148 through 312, inclusive, and Outlots 2 and 3, in Elk Creek Crossing, a subdivision as surveyed, platted, and recorded in Douglas County, Nebraska;**

and

WHEREAS, pursuant to the terms and conditions of Article VI, Section 4 of the Declaration, Declarant is desirous of subjecting the Properties to the easements, restrictions,

covenants and conditions for use set forth in the Declaration for the purpose of protecting the value and desirability of the Properties.

NOW THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration as if same had been included at the time of the execution and filing of the Declaration. The Properties now being included in the Declaration shall be subject to all of the time periods referenced in the Declaration in the same manner as if they had originally been included in the Declaration. It is the intent hereof that the Properties shall be considered to have been covered by the Declaration from the time of its filing to allow for continuity among all of the Lots covered by the Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment to Declaration this 5th day of October, 1995.

BENCHMARK HOMES, INC.,
a Nebraska Corporation

Attest:

Barbara J. Czerwinski
Secretary

By: John C. Czerwinski, Jr., President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 5th day of October, 1995, by JOHN C. CZERWINSKI, JR., President of Benchmark Homes, Inc., a Nebraska Corporation, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
LOUISE N. SCOLARO
My Comm. Exp. Oct. 7, 1997

Louise N. Scolaro
Notary Public

0016950.01

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

1259 616 MISC

11514 98 616-618

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

98 AUG 19 PM 3:22

RECEIVED

After recording, please return to:

James F. Kasher
CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, P.C.
2120 South 72nd Street, Suite 1250
Omaha, NE 68124

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELK CREEK CROSSING, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is 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, the undersigned is the Declarant under a certain Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "Declaration"), which Declaration was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on January 13, 1994, in Misc. Book 1108 at Pages 697 through 710, inclusive, and which governs Lots 1 through 147 and Outlot 1, Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, the undersigned is the Declarant under a certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "First Amendment to Declaration"), which First Amendment was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on October 13, 1995, in Misc. Book 1158 at Pages 555 and 556, which governs Lots 148 through 312, inclusive, and Outlots 2 and 3, Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, Declarant is the owner of certain real estate hereinafter referred to as the "**Properties**" in the County of Douglas, State of Nebraska, described as follows:

11514 H
FEE 67.00 FB 98-10986
BKP ____ C/O ____ COMP ____
DEL ____ SCAN 1N FV ____

Lots 313 through 416, inclusive, in Elk Creek Crossing, a subdivision as surveyed, platted, and recorded in Douglas County, Nebraska;

and

WHEREAS, pursuant to the terms and conditions of Article VI, Section 4 of the Declaration, Declarant is desirous of subjecting the Properties to the easements, restrictions, covenants and conditions for use set forth in the Declaration for the purpose of protecting the value and desirability of the Properties.

NOW THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration as if same had been included at the time of the execution and filing of the Declaration. The Properties now being included in the Declaration shall be subject to all of the time periods referenced in the Declaration in the same manner as if they had originally been included in the Declaration. It is the intent hereof that the Properties shall be considered to have been covered by the Declaration from the time of its filing to allow for continuity among all of the Lots covered by the Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment to Declaration this 17 day of August, 1998.

BENCHMARK HOMES, INC.,
a Nebraska Corporation

Attest:

Barbara J. Czerwinski
Secretary

By: _____
John C. Czerwinski, Jr., President

U.S. BANK NATIONAL ASSOCIATION
formerly known as
FIRST BANK, N.A.

Attest:

David P. Ohm
Title: BBO

By: _____
Its: Sr. Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11th day of August, 1998, by JOHN C. CZERWINSKI, JR., President of Benchmark Homes, Inc., a Nebraska Corporation, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
LOUISE N. SCOLARO
My Comm. Exp. Oct. 7, 2001

Louise N. Scolaro
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 17th day of August, 1998, by Edward J. Kelleher, Sr. Vice President of * First Bank, N.A., on behalf of the corporation.

Dolores E. Terwey
Notary Public

GENERAL NOTARY-State of Nebraska
DOLORES E. TERWEY
My Comm. Exp. Jan. 16, 2001

*now known as U.S. Bank National Association

0038439.01

m

1314 243 MISC

16593 99 243-244

Nebr Doc Stamp Tax

Date

$

By

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

99 OCT 26 PM 3:46

RECEIVED

After recording, please return to:

James F. Kasher
CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, P.C.
2120 South 72nd Street, Suite 1250
Omaha, NE 68124

16593P

FEE 21.50 FB

BKP C/O COMP

DEL SCAN FV

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ELK CREEK CROSSING, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the date hereinafter set forth by BENCHMARK HOMES, INC., a Nebraska corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the undersigned is the Declarant under a certain Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "Declaration"), which Declaration was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on January 13, 1994, in Misc. Book 1108 at Pages 697 through 710, inclusive, and which governs Lots 1 through 147 and Outlot 1, Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, the undersigned is the Declarant under a certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "First Amendment to Declaration"), which First Amendment was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on October 13, 1995, in Misc. Book 1158 at Pages 555 and 556, which governs Lots 148 through 312, inclusive, and Outlots 2 and 3, Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, the undersigned is the Declarant under a certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for Elk Creek Crossing, A Subdivision in Douglas County, Nebraska (the "Second Amendment to Declaration"), which Second Amendment was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, on August 19, 1998, in Misc. Book 1259 at Pages 616 to 618, which governs Lots 313 through 416,

inclusive, in Elk Creek Crossing, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and

WHEREAS, pursuant to the terms and conditions of the introductory paragraphs of the Declaration, Declarant is desirous of amending the text of Article V, Section 5, Billboards and Nuisances Prohibited.

NOW THEREFORE, Declarant hereby declares that Article V, Section 5 shall be amended and shall read as follows:

> No sign, picture, banner, poster or other object of any kind shall be erected, placed, displayed to the public view, or permitted to remain on any Lot except one (1) sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

In all other respects, the Declaration heretofore executed, and its First and Second Amendments, are hereby ratified and confirmed in their original form.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Third Amendment to Declaration this 18th day of Oct, 1999.

BENCHMARK HOMES, INC.
a Nebraska Corporation

Attest:

Secretary

By:
John C. Czerwinski, Jr., President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 18th day of Oct, 1999, by JOHN C. CZERWINSKI, JR., President of Benchmark Homes, Inc., a Nebraska Corporation, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
LOUISE N. SCOLARO
My Comm. Exp. Oct. 7, 2001

Notary Public

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