

ADDENDUM TO DECLARATION

COMES NOW BENCHMARK HOMES, INC., a Nebraska corporation (the "Declarant"), and as an Addendum to the Declaration filed at Book 726, Page 419 of the Miscellaneous Records in the office of the Register of Deeds of Douglas County, Nebraska, does hereby set forth and declare the following:

WHEREAS, the Declarant is the owner of those lots and/or portions of lots (herein called the "Lots") in LINDEN PLACE, a cluster subdivision as surveyed, platted and recorded in Douglas County, Nebraska, which are legally described on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant wishes to bind the Lots in the manner set forth herein with respect to the installation of telephone service by Northwestern Bell Telephone Company and payment therefor.

NOW, THEREFORE, Declarant hereby declares that the Lots shall be held, sold and conveyed subject to the covenant and condition that in the event that ninety (90%) percent of all of the lots within Linden Place are not improved on or before January 27, 1990, then every Lot that is unimproved as of said date shall be subject to a charge of Four Hundred Fifty (\$450.00) Dollars by Northwestern Bell Telephone Company or its successors. A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on that Lot. Construction shall be considered as having commenced if a footing inspection has been made on the Lot in question by officials of the City of Omaha or other appropriate governmental authority. It is understood that Northwestern Bell Telephone Company has completed the installation of its distribution system within Linden Place.

Such charge, if payable, shall be due and owing immediately on January 27, 1990, and if such charge is not paid within sixty (60) days after the sending of written notice by Northwestern Bell Telephone Company or its successors to the owner of an unimproved lot that such charge is due, then such charge will begin drawing interest commencing upon the expiration of the sixty (60) day period at the rate of twelve (12%) percent per annum, or the maximum rate allowed by law if said maximum rate is less than twelve (12%) percent per annum at that time.

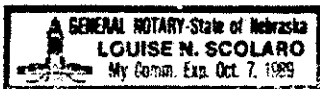
IN WITNESS WHEREOF, the undersigned Declarant has caused this Addendum to Declaration to be executed this 30th day of April, 1986.

BENCHMARK HOMES, INC., a Nebraska Corporation

By [Signature] President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of April, 1986, by John C. Czerwinski, Jr., the President of Benchmark Homes, Inc., a Nebraska corporation, on behalf of the corporation.



Laurie N. Sclaro
Notary Public

EXHIBIT "A"

Lots 1 through 5, 6 (North 33.17 feet), 7, 8, 9, (West 44.27 feet), 10 through 14, 15 (West 35.83 feet), 16 through 19, 27, 28, 31 through 43, 44 (West 33.17 feet), 45 (West 33.17 feet), and 46 through 70, in LINDEN PLACE, a cluster subdivision, being a replatting of Lot 300, PHEASANT RUN, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and

Lot 26, LINDEN PLACE, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, except that part described as follows: Beginning at the most Northerly corner of said Lot 26; then South 26 degrees 45'57" East (assumed bearing) on the common line between Lots 25 and 26, said Linden Place, 120.00 feet; thence South 40 degrees, 06'56" West on the Southeasterly line of said Lot 26, 49.82 feet; thence North 45 degrees, 03'36" West, 130.60 feet to the Northwestern line of said Lot 26; thence Northeasterly on the Northwestern line of said Lot 26 on a 250.00 foot radius curve to the right, chord bearing North 53 degrees, 04'28" East, chord distance 88.20 feet, an arc distance of 88.66 feet to the point of beginning.

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EXHIBIT - 5 PM 4:00

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DECLARATION OF EASEMENTS, CONDITIONS AND RESPONSIBILITY

THIS DECLARATION, 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, Declarant is the owner of real estate located in the County of Douglas, State of Nebraska, more particularly described as: Lot 44, in LINDEN PLACE, a Subdivision as surveyed, platted and recorded, in Douglas County, Nebraska, except the the West 53.17 feet thereof.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, responsibilities and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "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 Property including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore described.

Section 3. "Common Elements" shall include, but not necessarily be limited to, the following:

- (1) All foundations, roofs, bearing walls and columns, exterior walls of each Building;
- (2) To the extent that the same are to be used in common and are not separate, independent or indigenous to one Lot or another, all compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating (including, without limitation, the convectors located within each residential unit), reservoirs, water tanks and pumps, and the like;
- (3) In general, all devices or installations existing for common use; and
- (4) All other elements of the Property necessary to the existence, upkeep and safety of the Property.

The term "Common Elements" shall not mean or infer common ownership, it being understood that any of the Common Elements located on one Lot shall be owned by the Owner of such Lot. Each Owner shall have an easement as described herein with respect to the Common Elements on the adjoining Lot within the Property.

Section 4. "Building" shall refer to the structural improvements located on one or more Lots forming part of the Property and intended primarily for residential purposes.

Section 5. "Lot" shall refer to any portion of the Property which has been designated by Declarant for use by Owner as the location for a Building or a portion of a Building which will serve as a single common residence and shall include the area around the Building designated by Declarant to be related to such Building or portion of the Building and intended for the private use of the Owner thereof subject to this Declaration.

Section 6. "Common Expenses" shall mean and include all expenses of administration and management, maintenance, operation, repair or replacement of, and additions to the Common Elements; expenses agreed upon as a Common Expense by the Owners; and expenses declared to be Common Expenses by this Declaration. Common Expenses shall be the equal and shared responsibility of the Owners of the Lots. It is intended that the Owners shall work together and in cooperation for the accomplishment of those matters or items described herein as Common Expenses. Such matters or items may be accomplished by contracting with third parties or by the cooperative or individual efforts of the Owners as may be determined by agreement of the Owners. Any action taken by one Owner without the assent of the other Owner may result in Common Expense if such action is reasonably necessary to preserve, maintain or protect the Property.

Section 7. "Declaration" means this instrument as amended from time to time.

Section 8. "Declarant" shall mean and refer to Benchmark Homes, Inc., a Nebraska corporation, its successors and assigns.

Section 9. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

ARTICLE II PAYMENT OF COMMON EXPENSES

The following shall apply to the obligations of Owners to pay Common Expenses:

Section 1. Common Expenses. Each Owner, including the Declarant, shall have a personal obligation to pay his proportionate share of the Common Expenses. The Declarant shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Elements after the date this Declaration is recorded. Payment of Common Expenses, including any prepayment thereof required by contract for sale of a Building, or portion of a Building, shall be in such amounts and at such times as may be necessary to pay such Common Expenses in a timely and commercially reasonable manner. No Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or nonuse or enjoyment of the Common Elements or by abandonment of his Lot. If any Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof together with interest thereon at the maximum rate as may then be permitted under the laws of the State of Nebraska, accruing from and after the date that said Common Expenses become due and payable, shall constitute a lien on the interest of said Owner and the Property and his Lot.

Section 2. Enforcement of Lien. One Owner may bring a personal action at law against the Owner personally obligated to pay the same, for collection of his unpaid proportionate share of the Common Expenses, or foreclose a lien against the Lot owned by such delinquent Owner, and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the other Owner the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this Section shall be in favor of the other Owner.

Section 3. Mortgage Protection. The lien for Common Expenses payable by a Owner shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Owner, except for the amount of the proportionate share of Common Expenses which become due and payable from and after the date in which the mortgagee thereunder either takes possession of the Lot encumbered thereby, accepts a conveyance of any interest therein (other than as security) or files suit to foreclose its mortgage and causes a receiver to be appointed. This Section shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees of record holding a lien against all or part of the Property.

ARTICLE III
MORTGAGES, TAXES AND INSURANCE

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Section 1. Mortgages. Each Owner shall have the right, subject to provisions herein, to make separate mortgages for his respective Lot together with his respective easement interest in the Common Elements. No Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any mortgage or other lien on or affecting the Property or any part thereof, except only to the extent of his own Lot and his respective interest in the Common Elements appurtenant thereto.

Section 2. Separate Real Estate Taxes. Taxes, assessments and other charges of any taxing or assessing authority shall be separately assessed to each Owner for his Lot and his corresponding interest in the Common Elements. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his proportionate share thereof, and, in said event, such taxes or assessments shall be a Common Expense.

Section 3. Insurance. The Owners shall obtain insurance for the Property, exclusive of decorating of and improvements to the interior of the Building by the Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Building, and against such other hazards and for such amounts as the Owners may deem advisable. Insurable replacement costs shall be deemed the cost of restoring the Common Elements, the Building or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Owners in equal shares, and the holders of Mortgages on the Lots, if any. Such policies of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Owners. The premiums for such insurance shall be a Common Expense.

Each Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his portion of the Building and on the contents of his portion of the Building, as well as his decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Property. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained for all Owners as part of the Common Expenses, as above provided, said Owner may, at his option and expense, obtain additional insurance.

ARTICLE IV
DAMAGE AND DESTRUCTION

In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Building, shall be applied to such reconstruction. Reconstruction of the Building, as used in this Article, means restoring the Building to substantially the same condition in which it existed prior to the fire, casualty, or other disaster with the Building and the Common Elements having the same vertical and horizontal boundaries as before.

If insurance proceeds are insufficient to reconstruct the Building, damage to or destruction of the Building shall be promptly repaired and restored using proceeds of insurance, if any, on the Building for that purpose, and the Owners shall be liable for assessment for any deficiency. However, if three-fourths (3/4) or more of the Building is destroyed or substantially damaged and if either Owner shall determine within one hundred (100) days after such destruction or damage not to proceed with reconstruction, such Owner shall record a notice setting forth such facts, and upon the recording of such notice:

- (a) The Property shall be deemed to be owned in common by the Owners in equal shares.
- (b) Any liens affecting any of the Lots shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Property; and
- (c) The Property shall be subject to any action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among the Owners in equal shares, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all liens on the undivided interest in the Property owned by each Owner.

ARTICLE V
MAINTENANCE, REPAIRS AND REPLACEMENTS

Each Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own portion of the Building. Maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Owners as a Common Expense. Each Owner is hereby declared to have an easement over, in and to the Common Elements and the use thereof in accordance with the terms and purposes of this Declaration. Such easement in the Common Elements corresponding to any Lot shall be deemed to be an unseverable appurtenance to such Lot and shall be deemed conveyed or encumbered with that Lot.

If, due to the act or neglect of an Owner, or his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to a portion of a Building owned by others, or maintenance, repair or replacement is required which would otherwise be a Common Expense, then such Owner shall pay for such damage or such maintenance, repair and replacements. However, the provisions of this Article are subject to the provisions of Article III hereof providing for waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained hereunder.

ARTICLE VI
ALTERATIONS AND DECORATING

Section 1. Alterations, Additions or Improvements. Except as provided in this Article 6, no alteration of any Common Elements or any additions or improvements thereto shall be made by any Owner without the prior written approval of the other Owner. Any Owner may make alterations, additions, or improvements within his portion of the Building (including minor alterations to the perimeter walls of his portion of the Building caused by nails, screws, staples and the like) without the prior written approval of the other Owner, but such Owner shall be responsible for any damage to other portions of the Building, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

Section 2. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all decoration within his own portion of the Building and Common Elements serving his portion of the Building, as may be required from time to time, including painting, wall papering, washing, cleaning, panelling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his portion of the Building, and such Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Decorating of the Common Elements (other than interior surfaces within the Building as above provided) and any redecorating of the interiors, to the extent

such redecorating of Building interiors is made necessary by damage to Building interiors caused by maintenance, repair or replacement of the Common Elements hereunder, shall be furnished as part of the Common Expenses. The interior surfaces of all windows forming part of a perimeter wall of a Building shall be cleaned and washed at the expense of the Owner of that Lot. No Owner shall decorate the portions of the Common Elements appurtenant to his portion of the Building visible from outside such portion of the Building in any manner which detracts from the appearance of the Building.

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ARTICLE VII ENCROACHMENTS AND USE RESTRICTIONS

Section 1. Encroachments. Each Lot and any Common Elements are hereby declared to have an easement over the adjoining Lot and the Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful act or acts with full knowledge of said Owner. In the event a Building is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor unintentional encroachments over the adjoining Lot shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 2. Use and Occupancy Restrictions. Subject to the provisions of this Declaration, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. The Building shall be used as a residence or such other use permitted by this Declaration.

The Common Elements shall be used only by the Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the Building and for other purposes incidental to use of the Lots. The use, maintenance and operations of the Common Elements shall not be restricted, damaged or unreasonably interfered with by any Owner.

ARTICLE VIII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Building upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party walls shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weather Proofing. Notwithstanding any other provision of this Article, and Owner by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX REMEDIES

In the event of any violation of the provisions of this Declaration by any Owner (either by his conduct or by the conduct of any other occupant of his portion of the Building) the other Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief.

ARTICLE X AMENDMENT

The provisions of this Declaration may be amended, modified or rescinded by a resolution setting forth such amendment, modification or rescission and duly adopted by the affirmative vote of each of the Owners, or by instrument in writing setting forth such amendment, modification or rescission and signed by each of the Owners and duly acknowledged before a Notary Public. All holders of a reported mortgage encumbering any one or more Lots shall be notified by certified mail of any such amendment, modification or rescission. No such amendment, modification or rescission shall change the boundaries of any Lot, the undivided interest in the Common Elements appurtenant to any Lot, or the liability for Common Expenses appurtenant to any Lot, except to the extent authorized by this Declaration. Any amendment, modification or rescission of this Declaration pursuant to this Article or any other provision of this Declaration shall be valid and effective only upon the recording thereof in the Office of the Register of Deeds of Douglas County, Nebraska.

ARTICLE XI MISCELLANEOUS

Section 1. Notices. Notices provided for in this Declaration shall be in writing, and shall be addressed to any Owner, at the address of the Lot owned by such Owner, or at such other address as hereinafter provided. Any Owner may designate a different address for notices to him by giving written notice to the other Owner. Notice addressed as above shall be deemed delivered when mailed by United States mail with postage prepaid, or when delivered in person.

Upon written request to the Owners, the holder of any recorded mortgage encumbering any Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Lot is subject to such mortgage.

Section 2. Severability. If any provision of this Declaration, or any section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created

DATE 7/30/77

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1986.

BENCHMARK HOMES, INC.,
corporation

ATTEST:

Secretary

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On this 15th day of March, 1986, before me,
a Notary Public in and for said county, personally appeared
J.C. Czerwinski, President of Benchmark Homes, Inc.
, to me known to be the individual who
signed the foregoing instrument and acknowledged the execu-
tion thereof to be his voluntary act and deed and the volun-
tary act and deed of said corporation.



Laurie N. Schlaro
Notary Public

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GEORGE J. HOLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

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DECLARATION OF EASEMENTS, CONDITIONS AND RESPONSIBILITY

BOOK 789 PAGE 152

THIS DECLARATION, 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, Declarant is the owner of real estate located in the County of Douglas, State of Nebraska, more particularly described as:

West 33.17 feet of Lot 44, in Linden Place, a Subdivision as surveyed, platted and recorded, in Douglas County, Nebraska

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, responsibilities and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "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 Property including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore described.

Section 3. "Common Elements" shall include, but not necessarily be limited to, the following:

- (1) All foundations, roofs, bearing walls and columns, exterior walls of each Building;
- (2) To the extent that the same are to be used in common and are not separate, independent or indigenous to one Lot or another, all compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating (including, without limitation, the convectors located within each residential unit), reservoirs, water tanks and pumps, and the like;
- (3) In general, all devices or installations existing for common use; and
- (4) All other elements of the Property necessary to the existence, upkeep and safety of the Property.

The term "Common Elements" shall not mean or infer common ownership, it being understood that any of the Common Elements located on one Lot shall be owned by the Owner of such Lot. Each Owner shall have an easement as described herein with respect to the Common Elements on the adjoining Lot within the Property.

Section 4. "Building" shall refer to the structural improvements located on one or more Lots forming part of the Property and intended primarily for residential purposes.

Section 5. "Lot" shall refer to any portion of the Property which has been designated by Declarant for use by Owner as the location for a Building or a portion of a Building which will serve as a single common residence and shall include the area around the Building designated by Declarant to be related to such Building or portion of the Building and intended for the private use of the Owner thereof subject to this Declaration.

Section 6. "Common Expenses" shall mean and include all expenses of administration and management, maintenance, operation, repair or replacement of, and additions to the Common Elements; expenses agreed upon as a Common Expense by the Owners; and expenses declared to be Common Expenses by this Declaration. Common Expenses shall be the equal and shared responsibility of the Owners of the Lots. It is intended that the Owners shall work together and in cooperation for the accomplishment of those matters or items described herein as Common Expenses. Such matters or items may be accomplished by contracting with third parties or by the cooperative or individual efforts of the Owners as may be determined by agreement of the Owners. Any action taken by one Owner without the assent of the other Owner may result in Common Expense if such action is reasonably necessary to preserve, maintain or protect the Property.

Section 7. "Declaration" means this instrument as amended from time to time.

Section 8. "Declarant" shall mean and refer to Benchmark Homes, Inc., a Nebraska corporation, its successors and assigns.

Section 9. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

ARTICLE II PAYMENT OF COMMON EXPENSES

The following shall apply to the obligation of Owners to pay Common Expenses:

Section 1. Common Expenses. Each Owner, including the Declarant, shall have a personal obligation to pay his proportionate share of the Common Expenses. Except for its responsibilities as an Owner, as provided herein, the Declarant shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Elements after the date this Declaration is recorded. Payment of Common Expenses, including any prepayment thereof required by contract for sale of a Building, or portion of a Building, shall be in such amounts and at such times as may be necessary to pay such Common Expenses in a timely and commercially reasonable manner. No Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or nonuse or enjoyment of the Common Elements or by abandonment of his Lot. If any Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof together with interest thereon at the maximum rate as may then be permitted under the laws of the State of Nebraska, accruing from and after the date that said Common Expenses become due and payable, shall constitute a lien on the interest of said Owner and the Property and his Lot.

Section 2. Enforcement of Lien. One Owner may bring a personal action at law against the Owner personally obligated to pay the same, for collection of his unpaid proportionate share of the Common Expenses, or foreclose a lien against the Lot owned by such delinquent Owner, and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the other Owner the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this Section shall be in favor of the other Owner.

Section 3. Mortgage Protection. The lien for Common Expenses payable by a Owner shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Owner, except for the amount of the proportionate share of Common Expenses which become due and payable from and after the date in which the mortgagee thereunder either takes possession of the Lot encumbered thereby, accepts a conveyance of any interest therein (other than as security) or files suit to foreclose its mortgage and causes a receiver to be appointed. This Section shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees of record holding a lien against all or part of the Property.

Section 1. Mortgages. Each Owner shall have the right, subject to provisions herein, to make separate mortgages for his respective Lot together with his respective easement interest in the Common Elements. No Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any mortgage or other lien on or affecting the Property or any part thereof, except only to the extent of his own Lot and his respective interest in the Common Elements appurtenant thereto.

Section 2. Separate Real Estate Taxes. Taxes, assessments and other charges of any taxing or assessing authority shall be separately assessed to each Owner for his Lot and his corresponding interest in the Common Elements. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his proportionate share thereof, and, in said event, such taxes or assessments shall be a Common Expense.

Section 3. Insurance. The Owners shall obtain insurance for the Property, exclusive of decorating of and improvements to the interior of the Building by the Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Building, and against such other hazards and for such amounts as the Owners may deem advisable. Insurable replacement costs shall be deemed the cost of restoring the Common Elements, the Building or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Owners in equal shares, and the holders of Mortgages on the Lots, if any. Such policies of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Owners. The premiums for such insurance shall be a Common Expense.

Each Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his portion of the Building and on the contents of his portion of the Building, as well as his decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Property. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained for all Owners as part of the Common Expenses, as above provided, said Owner may, at his option and expense, obtain additional insurance.

ARTICLE IV DAMAGE AND DESTRUCTION

In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Building, shall be applied to such reconstruction. Reconstruction of the Building, as used in this Article, means restoring the Building to substantially the same condition in which it existed prior to the fire, casualty, or other disaster with the Building and the Common Elements having the same vertical and horizontal boundaries as before.

If insurance proceeds are insufficient to reconstruct the Building, damage to or destruction of the Building shall be promptly repaired and restored using proceeds of insurance, if any, on the Building for that purpose, and the Owners shall be liable for assessment for any deficiency. However, if three-fourths (3/4) or more of the Building is destroyed or substantially damaged and if either Owner shall determine within one hundred (100) days after such destruction or damage not to proceed with reconstruction, such Owner shall record a notice setting forth such facts, and upon the recording of such notice:

- (a) The Property shall be deemed to be owned in common by the Owners in equal shares.
- (b) Any liens affecting any of the Lots shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Property; and
- (c) The Property shall be subject to any action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among the Owners in equal shares, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all liens on the undivided interest in the Property owned by each Owner.

ARTICLE V
MAINTENANCE, REPAIRS AND REPLACEMENTS

Each Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own portion of the Building. Maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Owners as a Common Expense. Each Owner is hereby declared to have an easement over, in and to the Common Elements and the use thereof in accordance with the terms and purposes of this Declaration. Such easement in the Common Elements corresponding to any Lot shall be deemed to be an unseverable appurtenance to such Lot and shall be deemed conveyed or encumbered with that Lot.

If, due to the act or neglect of an Owner, or his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to a portion of a Building owned by others, or maintenance, repair or replacement is required which would otherwise be a Common Expense, then such Owner shall pay for such damage or such maintenance, repair and replacements. However, the provisions of this Article are subject to the provisions of Article III hereof providing for waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained hereunder.

ARTICLE VI
ALTERATIONS AND DECORATING

Section 1. Alterations, Additions or Improvements. Except as provided in this Article 6, no alteration of any Common Elements or any additions or improvements thereto shall be made by any Owner without the prior written approval of the other Owner. Any Owner may make alterations, additions, or improvements within his portion of the Building (including minor alterations to the perimeter walls of his portion of the Building caused by nails, screws, staples and the like) without the prior written approval of the other Owner, but such Owner shall be responsible for any damage to other portions of the Building, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

Section 2. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all decoration within his own portion of the Building and Common Elements serving his portion of the Building, as may be required from time to time, including painting, wall papering, washing, cleaning, panelling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his portion of the Building, and such Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Decorating of the Common Elements (other than interior surfaces within the Building as above provided) and any redecorating of the interiors, to the extent

such redecorating of Building interiors is made necessary by damage to Building interiors caused by maintenance, repair or replacement of the Common Elements hereunder, shall be furnished as part of the Common Expenses. The interior surfaces of all windows forming part of a perimeter wall of a Building shall be cleaned and washed at the expense of the Owner of that Lot. No Owner shall decorate the portions of the Common Elements appurtenant to his portion of the Building visible from outside such portion of the Building in any manner which detracts from the appearance of the Building.

ARTICLE VII ENCROACHMENTS AND USE RESTRICTIONS

Section 1. Encroachments. Each Lot and any Common Elements are hereby declared to have an easement over the adjoining Lot and the Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful act or acts with full knowledge of said Owner. In the event a Building is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor unintentional encroachments over the adjoining Lot shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 2. Use and Occupancy Restrictions. Subject to the provisions of this Declaration, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. The Building shall be used as a residence or such other use permitted by this Declaration.

The Common Elements shall be used only by the Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the Building and for other purposes incidental to use of the Lots. The use, maintenance and operations of the Common Elements shall not be restricted, damaged or unreasonably interfered with by any Owner.

ARTICLE VIII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Building upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party walls shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weather Proofing. Notwithstanding any other provision of this Article, and Owner by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX REMEDIES

In the event of any violation of the provisions of this Declaration by any Owner (either by his conduct or by the conduct of any other occupant of his portion of the Building) the other Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief.

ARTICLE X AMENDMENT

The provisions of this Declaration may be amended, modified or rescinded by a resolution setting forth such amendment, modification or rescission and duly adopted by the affirmative vote of each of the Owners, or by instrument in writing setting forth such amendment, modification or rescission and signed by each of the Owners and duly acknowledged before a Notary Public. All holders of a reported mortgage encumbering any one or more Lots shall be notified by certified mail of any such amendment, modification or rescission. No such amendment, modification or rescission shall change the boundaries of any Lot, the undivided interest in the Common Elements appurtenant to any Lot, or the liability for Common Expenses appurtenant to any Lot, except to the extent authorized by this Declaration. Any amendment, modification or rescission of this Declaration pursuant to this Article or any other provision of this Declaration shall be valid and effective only upon the recording thereof in the Office of the Register of Deeds of Douglas County, Nebraska.

ARTICLE XI MISCELLANEOUS

Section 1. Notices. Notices provided for in this Declaration shall be in writing, and shall be addressed to any Owner, at the address of the Lot owned by such Owner, or at such other address as hereinafter provided. Any Owner may designate a different address for notices to him by giving written notice to the other Owner. Notice addressed as above shall be deemed delivered when mailed by United States mail with postage prepaid, or when delivered in person.

Upon written request to the Owners, the holder of any recorded mortgage encumbering any Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Lot is subject to such mortgage.

Section 2. Severability. If any provision of this Declaration, or any section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created

by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years.

Section 4. Rights and Obligations. Each grantee of the Declarant by the acceptance of the deed of conveyance from the Declarant, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

1986. Made and signed this 26th day of August

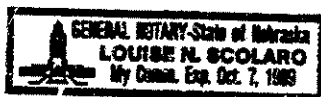
BENCHMARK HOMES, INC., a Nebraska corporation

ATTEST:

Secretary

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On this 26th day of August, 1986, before me,
a Notary Public in and for said county, personally appeared
J.C. Czerwinski, President of BENCHMARK HOMES, INC.
 , to me known to be the individual who
signed the foregoing instrument and acknowledged the execu-
tion thereof to be his voluntary act and deed and the volun-
tary act and deed of said corporation.



Notary Public

RECEIVED

1986 SEP 17 PM 1:53

CELESTE L. PRZYBYCZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

789 89/485 C/O FEE 35.50
152-158 52- VK MC
MOC 11.1 - 75.50

DECLARATION

THIS DECLARATION 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, Declarant is the owner of certain real estate hereinafter referred to as the "Properties" in the County of Douglas, State of Nebraska, which is more particularly described as:

Lots One (1) through Seventy (70), inclusive, Linden Place, a cluster 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 said premises 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 25 years from the date of filing this Declaration, at which time this Declaration shall be automatically extended for successive periods of ten years unless by written agreement of a two-thirds 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 five years from the date hereof.

ARTICLE I

DEFINITIONS

Section 1. "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 sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

ARTICLE II

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, or by an architectural committee composed of three or more representatives appointed by the Declarant ("Committee"). In the event the Declarant or its designated

Committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All owners shall submit plans and specifications to the Declarant or the Committee, in duplicate. When the same have been approved by the Declarant 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 or the Committee. After January 1, 1990, or after 90 percent 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 III

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, its 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 year or more,

if written permission for such placement, erection or use under (a) or (b) above is first obtained from the Declarant 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. No truck, trailer, boat, equipment or machinery or cars not in daily use shall ever be parked, located, or otherwise maintained on any building site, parking area or street in the Properties. 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 clotheslines or clothes hangers may be constructed or used unless completely concealed with enclosed patio areas. Any fence to be built on any of the Lots shall conform to a uniform style or design which shall be approved by the Declarant, to the end that all Lots within the Properties shall maintain a common theme of appearance and design.

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 the construction 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 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 be 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 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. 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; provided, however, that the permission of Declarant shall not be required hereunder after January 1, 1990.

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.

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 have 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 8. General Building Restrictions. All Lots within the Properties shall be used only for detached duplex residences, and not more than one duplex with attached garages shall be erected, altered, placed or permitted to remain on any one of said Lots. A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling. All telephone and electric power service from property line to the duplex shall be underground. In order to maintain a common scheme of appearance and design, each of the duplexes to be built upon the Lots shall be of substantially similar exterior design, using a combination of the two basic unit designs established by the Declarant in the initial duplexes to be constructed within the Properties. In addition, each duplex to be built within the Properties shall utilize the same basic color scheme as nearly as possible. All exposed foundations on each Lot shall be painted or otherwise covered to conform with the general scheme of appearance and design as determined by the Declarant or the Committee.

ARTICLE IV

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.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 17th day of December, 1984.

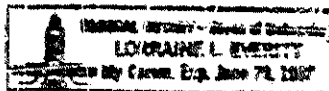
BENCHMARK HOMES, INC.
a Nebraska corporation

President

ANDERSON, J. C.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged on this 10 day of April, 1984 by John C. Borchert, President of Borchert Homes, Inc., a Nebraska corporation on behalf of the corporation.



Notary Public

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