

**BY-LAWS  
OF  
MERRIFIELD VILLAGE HOMEOWNERS ASSOCIATION**

**ARTICLE I.**

**NAME AND LOCATION**

The name of the corporation is Merrifield Village Homeowners Association, hereinafter referred to as the "Association." The principal office of the corporation shall be located at the Properties as defined below, but meetings of members and directors may be held at such places within the State of Nebraska as may be designated by the Board of Directors.

**ARTICLE II.**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to the Merrifield Village Homeowners Association, its successors and assigns.

Section 2. "Common Facilities" may include parks (public or otherwise); dedicated and non-dedicated roads, paths, ways and green areas; signs; and entrances, all of which shall be contained within the Merrifield Village subdivision.

Section 3. "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 4. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties and recorded in the Office of the Register of Deeds of Douglas County, Nebraska. The term Declaration shall include all amendments thereto: (i) amending the provisions of the Declaration pursuant to Article VI of the Declaration, and (ii) submitting additional real estate to the terms of the Declaration and the jurisdiction of the Association ("Supplementary Declaration"), whether or not such amendments add provisions to the Declaration reflecting the unique character of the real estate being added.

Section 5. "Lot" shall mean and refer to any platted lot shown upon a recorded subdivision plat of any part of the Properties, exclusive of the Common Facilities, and includes any improvements now or hereafter appurtenant to that real estate.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the 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. In the event that any Lot is leased for a period in excess of five (5) years, the Owner shall be deemed to be the lessee under said lease, except where the leasehold interest is not subject to the Declaration.

Section 8. "Properties" shall mean and refer to that certain real property described in and subject to the Declaration of Covenants, Conditions and Restrictions, filed of record in the Miscellaneous Records in the Office of the Register of Deeds of Douglas County, Nebraska, at Book 2138, Page 648, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### ARTICLE III.

#### MEETING OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the Members shall be held at the times and places designated by the Board of Directors from time to time. The annual meeting of Members for any year shall be held no later than fourteen (14) months after the last annual meeting of the Members. As long as there are Class B members as provided in the Declaration, the Declarant may waive the annual meeting in its sole discretion.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the Board of Directors, or upon written request of the Members who are entitled to vote five percent (5%) of all of the votes of the membership.

Section 3. Notice of Meeting. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than thirty (30) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast fifty percent (50%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Whenever reference

is made to consent or a vote of Members, the number of votes allocated to Members shall be considered rather than the number of Members.

**Section 5. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of the Member's Lot.

**Section 6. Action by Written Ballot.** The Board of Directors shall have the right to conduct annual, regular or special meetings of the Members by delivering a written ballot to every member entitled to vote as provided in the Nebraska Nonprofit Corporation Act.

#### ARTICLE IV.

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

**Section 1. Number.** The affairs of this Association shall be managed by a Board of three (3) Directors, who shall be Members of the Association.

**Section 2. Term of Office.** At the next annual meeting the Members shall elect one director for a term of three (3) years, one director for a term of two (2) years, and one director for a term of one (1) year; and at each annual meeting thereafter, the Members shall elect the number of directors required to replace the director whose term is expiring, such directors to be elected for a term of three (3) years.

**Section 3. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve until the next election of directors at which time a new director will be elected to serve the remainder of the unexpired term of the director for whom an appointment has been made.

**Section 4. Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**Section 5. Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V.

### NOMINATION AND ELECTION OF DIRECTORS

**Section 1. Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. The Nominating Committee shall also make nominations to replace a vacancy on the Board of Directors.

**Section 2. Election.** Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Each Owner shall be entitled to as many votes as the number of vacancies on the Board of Directors to be filled.

## ARTICLE VI.

### MEETINGS OF DIRECTORS

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board, provided that any monthly meeting may be waived by the Board.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII.

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**Section 1. Powers.** The Board of Directors shall have power to:

a. adopt and publish rules and regulations governing the use of the Common Facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof; provided, however, that such rules, regulations and penalties must be approved at a meeting of the Members before the same shall be effective;

b. suspend the voting rights of a Member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

c. exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

d. declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

e. employ a manager, independent contractors, or such other employees as they deem necessary, and to prescribe their duties.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

a. cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-third (1/3) of the Members who are entitled to vote;

b. supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c. as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot;

(2) send written notice of each assessment to every Owner subject thereto in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within ten (10) days after due date or to bring an action at law against the owner personally obligated to pay the same.

d. issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e. procure and maintain adequate liability and hazard insurance on property owned by the Association;

f. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

g. cause the repair, maintenance, administration and replacement of the Common Facilities and any personal property or fixtures related thereto; and

h. otherwise carry out the directions of the Members in accordance with the Declaration, the Articles of Incorporation and these By-Laws.

## ARTICLE VIII. OFFICERS AND THEIR DUTIES

**Section 1. Enumeration of Offices.** The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

**Section 3. Term.** The officers of this Association shall be elected annually by the Board and shall each hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or be otherwise disqualified to serve. No person shall succeed himself or herself as President of the Association.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any time later specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

**Section 7. Duties.** The duties of the officers are as follows:

**President**

a. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

**Vice President**

b. The vice-president shall act in the place and stead of the president in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

**Secretary**

c. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The duties of the secretary may be delegated to an administrator.

**Treasurer**

d. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory

notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy to each of the Members. The duties of the treasurer may be delegated to an administrator.

## ARTICLE IX.

### COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these By-Laws and, in addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE X.

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify every Director and Officer, his or her heirs and personal representatives against all loss, costs and expense, including counsel fees, reasonably incurred by such Director or Officer in connection with any action, suit or proceeding to which he or she may be made a party by reason of being or having been Director or Officer of the Association, except as to matters as to which such Director or Officer shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Board of Directors may determine that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his or her duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason of, arising out of, or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in this Article X shall be deemed to obligate the Association to indemnify any Member or Owner, who is or has been a Director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him or her under and by virtue of the Declaration as an Owner or a Member of the Association. In addition, the Association shall provide Director's liability insurance for each Director in such amounts as may be determined by the Board of Directors.



## ARTICLE XI.

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XII.

### ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of sixteen percent (16%) per annum until paid in full, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, with interest and costs.

## ARTICLE XIII.

### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of two-thirds (2/3) of the Members entitled to vote at such meeting; provided, however, that the quorum requirements for a meeting under this section shall be two-thirds (2/3) of the votes of the membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

JUL 11 1997

STATE OF NEBRASKA  
SECRETARY'S OFFICE  
Received filed and recorded on

film roll no. 97-17  
at page 504

13788

Secretary of State

By 11:50 am J. H. Smith

**ARTICLES OF INCORPORATION**  
**MERRIFIELD VILLAGE HOMEOWNERS ASSOCIATION**

In compliance with the requirements of the Nebraska Nonprofit Corporation Act, the undersigned, both of whom are residents of Nebraska and both of whom are of lawful age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

**ARTICLE I.**

**NAME**

The name of the corporation is Merrifield Village Homeowners Association, hereinafter called the "Association".

**ARTICLE II.**

**MUTUAL BENEFIT CORPORATION**

The Association is a mutual benefit corporation.

**ARTICLE III.**

**REGISTERED AGENT AND REGISTERED OFFICE**

The initial registered office of the Association is located at 2120 South 72nd Street, Suite 1250, Omaha, Nebraska 68124 and James F. Kasher, whose address is the same as the registered office of the Association, is hereby appointed the initial registered agent of the Association.

**ARTICLE IV.**

**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for operation, maintenance, preservation and architectural control of the Lots and Common Facilities within the tracts of property hereinafter described and such additional tracts of property as the Board of Directors of this Association shall determine, all as required and defined in the Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", applicable to each said tract of property and recorded or to be recorded in the Office of the Register of Deeds of Douglas County, Nebraska, initially including the real property described as follows, to wit:

Lots 1 to 118, inclusive, and Outlots A, B and C, in Merrifield Village, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska,

and to promote the health, safety, welfare and recreational and residential purposes of the owners within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association; for these purposes to:

a. exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

b. fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

c. acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

d. borrow money, and with the assent of two-thirds (2/3) of the votes of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed for debts incurred;

e. participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional property, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the votes of members;

f. have and to exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of Nebraska by law may now or hereafter have or exercise.

## ARTICLE V.

### MEMBERSHIP

The Association will have members. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract purchasers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or who hold a leasehold interest which is not subordinate to the Declaration. The lessee under a lease of five (5) years or longer shall be considered to be the owner of a Lot rather than the fee simple title holder. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

## ARTICLE VI.

### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all members with the exception of the Declarant (as defined in the Declaration) and shall be entitled to one vote for each lot owned which is subject to assessment by the Association. When more than one persons holds an interest in any such 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. The Class B member(s) shall be the Declarant (as defined in the Declaration) and shall be entitled to three (3) votes for each lot owned which is subject to assessment by the Association. 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 all classes of membership;
- b. The Declarant shall state in writing that the Class B membership has ceased; or
- c. Ten (10) years after the date of filing of these Articles of Incorporation.

## ARTICLE VII.

### BOARD OF DIRECTORS

The affairs of the Association shall be managed by a board of three (3) directors, who shall be members of the Association, or agents or employees of the Declarant. The number of directors may be changed by amendment of the by-laws of the Association, and will automatically change to five (5) when the Class B membership ceases.

At the first annual meeting, the members shall elect one director for a term of three (3) years, one director for a term of two (2) years and one director for a term of one (1) year; and at each annual meeting thereafter, the members shall elect the number of directors required to replace the director whose term is expiring, such directors to be elected for a term of three (3) years.

## ARTICLE VIII.

### DISSOLUTION

The Association may be dissolved by assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, 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, trust or other organization to be devoted to such similar purposes.

## ARTICLE IX.

### DURATION

This corporation shall have perpetual existence.

## ARTICLE X.

### AMENDMENTS

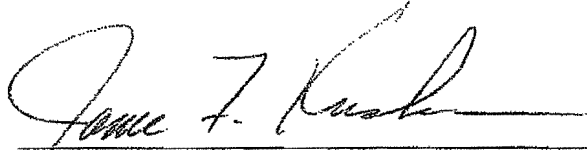
Amendment to these articles shall require the assent of two-thirds (2/3) of the votes of the members.

**ARTICLE XI.**  
**INCORPORATOR**

The name and address of the incorporator is:

James F. Kasher  
2120 South 72<sup>nd</sup> Street, Suite 1250  
Omaha, Nebraska 68124

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Nebraska, I, the undersigned, constituting the incorporator of this corporation, have executed these Articles of Incorporation this 10<sup>th</sup> day of July, 1997.

  
\_\_\_\_\_  
James F. Kasher

0031517.01



RECEIVED  
FEB 19 3 42 PM '98

RICHARD N. TAKEOHI  
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

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MERRIFIELD VILLAGE, 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.

**WITNESSETH:**

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 119, inclusive, and Outlots A, B and C, in Merrifield Village, 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

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this Declaration, at which time this Declaration shall be automatically extended for successive periods of ten (10) years, by written agreement of two-thirds (2/3) majority of the then owners of the Lots, 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 Merrifield Village 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; the Outlots and entrances for Merrifield Village.

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 the Outlots, and Lot 119 which will be a park area, and includes any improvements now or hereafter appurtenant to that real estate.

Section 7. "Outlot" shall mean and refer to Outlots A, B and C which shall be utilized and maintained for the general use and purposes of the Owners, their families and invitees, as streets, paths and sidewalks for ingress, egress and other normal or related activities.

Section 8. "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.



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Section 2. "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 determined in Section 12 of this Article, 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.

**Section 3. Obligations of Association.** The Association will assume the obligation to maintain the landscaping and signage for the common entryway to the Properties, in generally good and neat condition. The Association will install the street lights in the private way and public streets. In addition, the Association will maintain the paving and sidewalks in the Outlots and the street lights and decorative pavement crosswalks in the public streets and private ways, in good and satisfactory condition and will make all necessary repairs and replacements as needed. Electrical bills for the private way and public street lighting will be paid by the Association. The Association will also arrange for removal of snow from the private streets on Outlots A and B. The obligations stated in this paragraph are not intended to limit the powers and rights of the Association with respect to the performance of any other functions which may be suitable or desirable hereunder.

**Section 4. 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

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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 as described herein may be waived in the discretion of the Declarant, and, in that event, the Declarant shall determine the amount of any assessments to be levied against the Lots and shall make all decisions regarding the operation and maintenance of the common entrance and the Outlots.

**Section 5. 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 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Section 7. 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 8. Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessment, or part thereof, not paid within thirty (30) days after the due date shall also bear interest from the due date at the annual rate of three percent (3%) above the national prime rate of interest as stated in the Wall Street Journal (or, in the absence thereof, such other publication which regularly reports the same) on the due date or as soon thereafter as available. 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 9. 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; trehouse; swimming pool; tennis court; dog house; 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 changed in any manner (including color), 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, 2005, or at such earlier date as may be directed in writing by the Declarant, 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. A particular type of fence may be specified as standard for the Properties by Declarant, but, in any event, any fence and the location thereof must still be approved by the Declarant as provided in Article IV. All produce or vegetable gardens shall be maintained only in rear yards. No external television or radio antenna shall hereafter be erected on or about any of the building sites or Lots within the Properties. A satellite receiving dish not exceeding eighteen (18) inches in diameter may be allowed if the appearance and location are approved by the Declarant as provided in Article V. 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. No storage shed of any kind shall be permitted on any Lot.

**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,

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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 excluding the basement or walk-out level. All homes constructed on said Lots must have two-car garages. All exposed foundations of each improved Lot facing the public or private street (front) shall be faced with brick, stone or a comparable substance approved by Declarant, 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.

**Section 12. Tree Maintenance.** The Association is granted an easement over a fifteen (15) foot strip of property along that portion of each lot which adjoins either public streets or the Outlots for the purpose of maintaining, moving, replacing, removing, trimming, servicing, feeding and otherwise dealing with any trees which have been planted within the described easement area. Any trees within such area will be the property of the owner of the subject lot, but the Association will have the continuing and absolute right to work and deal with said trees as described above. No owner or designee of any owner shall take any action with respect to any of the trees in the described easement area without the prior written consent of the Association. The Association will use its best effort not to unduly interfere with any Lot in the exercise of its rights under this easement and will return any damaged or disturbed area to the same condition as existed before the subject activity.

**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. Conveyance of Outlots.** The Declarant will convey the Outlots to the Association at such time as the Class B membership in the Association shall cease, or at such earlier time as the Declarant may determine, in its sole discretion. Easements shall be granted by the Declarant over the Outlots to accommodate sanitary and storm sewers and other public utilities to serve the Properties.

**Section 4. 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 5. 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 6<sup>th</sup> day of JANUARY, 1998.

BENCHMARK HOMES, INC.,  
a Nebraska Corporation

Attest:

Susan J. Cipriani  
Secretary

By: [Signature]  
John C. Czerwinski, Jr., President

COMMERCIAL FEDERAL BANK

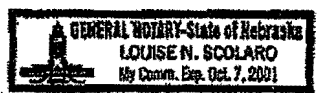
Attest:

[Signature]  
Secretary

By: [Signature]  
Its: Assistant Vice-President

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 1998, by JOHN C. CZERWINSKI, JR., President of Benchmark Homes, Inc., a Nebraska Corporation, on behalf of the corporation.



[Signature]  
Notary Public

