

FILED SARPY CO. NE.  
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 2008-33672 VERIFY ah D.E. LAA  
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 SHORT 508 NCR \_\_\_\_\_  
 REGISTER OF DEEDS

After recording, please return to:

Kevin J. McCoy  
 Smith, Gardner, Slusky,  
 Lazer, Pohren & Rogers, LLP  
 8712 W. Dodge Road, Suite 400  
 Omaha, NE 68114

**SECOND AMENDMENT TO THE AMENDED AND RESTATED  
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR LOTS 87 THROUGH 448, INCLUSIVE, SUNRISE ADDITION,  
 A SUBDIVISION IN SARPY COUNTY, NEBRASKA**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the date hereinafter set forth by the SUNRISE HOMEOWNERS ASSOCIATION, a Nebraska Nonprofit Corporation, hereinafter referred to as the "Association."

**WITNESSETH:**

WHEREAS, a certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Lots 87 through 338, inclusive, Sunrise Addition, a Subdivision in Sarpy County, Nebraska (hereinafter "Covenants") was filed for record in the office of the Register of Deeds of Sarpy County, Nebraska on June 18, 2002, at Instrument Number 2002-22721; and

WHEREAS, a certain First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions was filed for record in the office of the Register of Deeds of Sarpy County, Nebraska on June 24, 2003, at Instrument Number 2003-34510, making the Covenants specifically applicable as well to Lots 340 through 448, inclusive, in Sunrise Addition, a Subdivision as surveyed platted and recorded in Sarpy County, Nebraska; and

WHEREAS the Association was incorporated in 1995 as a Nebraska Nonprofit Corporation for the purpose of operation, maintenance, preservation and architectural control of the Lots and Common Facilities within Sunrise Addition, and was subsequently designated by Benchmark Homes Inc. (hereinafter "Declarant") pursuant to the Covenants as the entity entitled to further amend the Covenants, and which Declarant also previously made effective the terms and provisions of Articles II and III of the Covenants; and

WHEREAS the Sunrise Homeowners Association as designee has determined to further amend the Covenants to specify that the Enforcement provisions of Article VI, Section 1 of the Covenants are specifically vested in the Association, in addition to the

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manner in which future amendments to the Covenants may be undertaken after January 1, 2009;

NOW THEREFORE, the Association declares that the Covenants are hereafter amended as follows:

1. The following sentence is removed from Page 3 of the Covenants: "After January 1, 2009, this Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Owners, and such instrument must be properly recorded."

2. In its place is added the following provision as Section 6 of Article VI:

ARTICLE VI

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Section 6. **Amendment.** This Declaration may be amended at any annual meeting or special meeting of the Association called for such purpose, or by a petition signed and presented to the Board of Directors by at least seventy-five percent of all lot owners. Any amendment proposed by resolution of the Board of Directors or by petition shall require that notice be mailed, delivered or left at the front door by the Association to all lot owners, at least ten (10) but not more than twenty (20) days prior to such meeting, stating the time, place, and purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

Each lot owner present in person, or by proxy designated in writing to the Board of Directors, shall have one vote either in favor of or in opposition to any resolution or petition seeking to amend any provision of this Declaration. A vote of two-thirds (2/3) of all lot owners present in person or by proxy shall serve to adopt any proposed amendment, which shall then be duly recorded with the Register of Deeds. No vote shall be valid unless a quorum of at least twenty (20) lot owners vote either in person or by proxy at such meeting.

IN WITNESS WHEREOF, the undersigned Association has executed this Amendment to Declaration this \_\_\_\_\_ day of December, 2008.

SUNRISE HOMEOWNERS ASSOCIATION,  
A Nebraska Nonprofit Corporation

By:   
Anthony Madrigal  
Designee of the Board of Directors

2008-33672 B

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

The foregoing instrument was acknowledged before me this 23 day of ~~September~~ <sup>December</sup>, 2008, by ANTHONY MADRIGAL, Director of the Sunrise Homeowners Association, a Nebraska Nonprofit Corporation, on behalf of the corporation.



Monica Gerhart  
Notary Public

94-17921

CONSENT TO AND RATIFICATION OF PLAT

The undersigned, being the owners of the property legally described as follows:

Lots 87 through 132, inclusive, Sunrise Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska described as follows:

Beginning at the SE corner of Lot 52, Sunrise Addition, as surveyed, platted and recorded in said Sarpy County; thence N89°58'22" E (assumed bearing) 50.00 feet on the easterly extension of the south line of said Lot 52 to the east line of said SE 1/4; thence south 782.76 feet on the east line of said SE 1/4; thence west 50.00 feet; thence S84°36'42" W 212.19 feet; thence northwesterly on a 1415.40 foot radius curve to the left, chord bearing N05°47'00" W, chord distance 19.51 feet, and an arc distance of 19.51 feet; thence S83°49'19" W 125.00 feet; thence N04°01'01" W 202.04 feet; thence S89°58'22" W 113.95 feet; thence S00°01'38" E 10.00 feet; thence S89°58'22" W 200.00 feet; thence N00°01'38" W 305.00 feet; thence S89°58'22" W 270.48 feet; thence N00°01'38" W 175.00 feet; thence N89°58'22" E 4.00 feet; thence N00°01'38" W 125.00 feet to the south line of Sunrise Addition Lots 1 through 86 inclusive; thence N89°53'22" E 932.36 feet on the south line of said Sunrise Addition to the point of beginning,

Book 9  
Page 38.00

do hereby consent to the filing of, and ratify the plat of Lots 87 through 132, inclusive, Sunrise Addition and the dedication of property therein, as filed in the Office of the Register of Deeds of Sarpy County, Nebraska in Deed Book 94-17894 at Page 10<sup>th</sup> day of August, 1994.

Dated this 13 day of July, 1994.

RECORD SERVICE  
INSTRUMENT NUMBER  
94-17921

94 AUG 10 AM 10:56

Carol A. Davis  
REGISTER OF DEEDS

Donald M. Vervaecke  
Donald M. Vervaecke, Co-Trustee of the Maurice M. Vervaecke Family Trust

David C. Kuehl  
David Kuehl, a/k/a David C. Kuehl, Co-Trustee of the Maurice M. Vervaecke Family Trust

17921

Donald M. Vervaecke  
Donald M. Vervaecke, Trustee of the  
Vervaecke Irrevocable Trust Dated  
May 24, 1994

Marlee L. Vervaecke  
Marlee L. Vervaecke

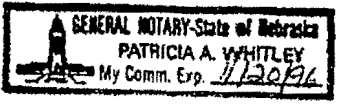
Lucille A. Vervaecke  
Lucille A. Vervaecke

Louise N. Scolaro  
Louise N. Scolaro

Clifford Whitley  
Clifford Whitley

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

Before me, a Notary Public, personally appeared Donald M. Vervaecke, Co-Trustee of the Maurice M. Vervaecke Family Trust, known to me to be the identical person who executed the foregoing Consent To and Ratification of Plat, and acknowledged the execution of the foregoing to be his voluntary act and deed.



Patricia A. Whitley  
Notary Public

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

Before me, a Notary Public, personally appeared David Kuehl, a/k/a David C. Kuehl, Co-Trustee of the Maurice M. Vervaecke Family Trust, known to me to be the identical person who executed the foregoing Consent To and Ratification of Plat, and acknowledged the execution of the foregoing to be his voluntary act and deed.

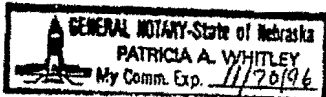


Kenneth Patora  
Notary Public

94-17921 B

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

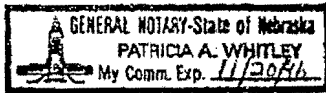
Before me, a Notary Public, personally appeared Donald M. Vervaecke, Trustee of the Vervaecke Irrevocable Trust Dated May 24, 1994, known to me to be the identical person who executed the foregoing Consent To and Ratification of Plat, and acknowledged the execution of the foregoing to be his voluntary act and deed.



*Patricia A. Whitley*  
Notary Public

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

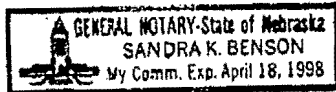
Before me, a Notary Public, personally appeared Marlee L. Vervaecke, Lucille A. Vervaecke and Clifford Whitley, known to me to be the identical persons who executed the foregoing Consent To and Ratification of Plat, and acknowledged the execution of the foregoing to be their voluntary act and deed.



*Patricia A. Whitley*  
Notary Public

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

Before me, a Notary Public, personally appeared Louise N. Scolaro, known to me to be the identical person who executed the foregoing Consent To and Ratification of Plat, and acknowledged the execution of the foregoing to be her voluntary act and deed.



*Sandra K. Benson*  
Notary Public

RETURN TO

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ ST \_\_\_\_\_ ZIP \_\_\_\_\_

This Instrument Drafted By: <sup>(E)</sup>  
Right-of-Way Department  
Northern Natural Gas Company  
P. O. Box 3330  
Omaha, Nebraska 68103-0330

94-19092

INSTRUMENT NUMBER  
94-19092

94 AUG 25 AM 11:17

Carol A. Davis  
REGISTER OF DEEDS

Proof	<u>W</u>
D.E.	<u>V</u>
Verify	<u>Q</u>
Filmed	
Checked	
Fee \$	<u>20.50</u>

480-1-32  
484-1-0  
484-1-1

MODIFICATION AND AMENDMENT OF EASEMENT GRANT

This instrument made and entered into this 22nd day of July, 1994, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation (hereinafter referred to as "Northern"), and DONALD M. VERVAECKE, as an individual and as Trustee of the Vervaecke Irrevocable Trust (hereinafter referred to as "Owner").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Laura LaDuke, et al., on the 16th day of December, 1931, and an Easement granted by Francis Miller on the 30th day of January, 1939, covering the following described premises in Sarpy County, Nebraska:

The East Half of the Southeast Quarter of Section 21, Township 14 North, Range 13 East, except the North 3 rods thereof;

which Easements were recorded the 22nd day of January, 1932, in Book 8 of Miscellaneous at Page 240, and the 1st day of February, 1939, in Book 10 of Miscellaneous at Page 52, respectively; in the Office of the Register of Deeds for Sarpy County, Nebraska; and Northern is the holder of an Easement granted by Mollie Fritz and Fred Fritz on the 24th day of June, 1938, covering the following described premises in Sarpy County, Nebraska:

Tax Lot 7A1 and the West Half of the Southeast Quarter of Section 21, Township 14 North, Range 13 East;

which Easement was recorded the 9th day of July, 1938, in Book 9 of Miscellaneous at Page 655; all in the Office of the Register of Deeds for Sarpy County, Nebraska (hereinafter referred to as "Easements"); and

WHEREAS, pursuant to the authority contained in the Easements, Northern has constructed and currently operates and maintains a 16-inch pipeline and a 4-inch pipeline through and across the premises above-described; and

WHEREAS, of the premises described in the Easements, Owner is present owner of the following described premises (hereinafter referred to as "Owned Premises"):

The East Half of the Southeast Quarter except Tax Lots 17 and 18 lying West of 25th Street; and the West Half of the Southeast Quarter except Tax Lots 15 and 18 lying East of Cedar Island Road; in Section 21, Township 14 North, Range 13 East.

94-19092A

480-1-32  
484-1-0  
484-1-1

WHEREAS, the parties hereto desire to more clearly define their rights under the Easements and further desire to modify and amend the Easements in certain respects.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

1. That Northern shall, and by these presents does, hereby limit its right-of-way under the Easements across the Owned Premises only to those strips of land as shown and described on Exhibit "A" attached hereto, and by this reference, made a part hereof.

2. That Northern shall, and by these presents does, hereby release from the Easements all of its rights in and to the Owned Premises EXCEPT the strips of land described in Paragraph 1 above, upon which strips the Easements are retained in full force and effect, with all rights (including, without limitation, multiple line rights) originally granted to Northern in the Easements.

3. The Owner shall not build, create, construct, nor allow to be built, created, or constructed, any hard, gravel, or similar surface road, any improvements or structures of any nature, nor alter the grade or permit such alteration, anywhere on the land upon which Northern has reserved its Easement rights, without the written consent of Northern, and, to the extent that written permission has not been given, Northern shall have the right to clear and keep cleared from within the right-of-way all trees, brush, undergrowth, buildings, structures, improvements, or other obstructions, and, Northern shall not be liable for loss, cost or damage caused on the right-of-way by keeping the right-of-way clear of such trees, brush, undergrowth, buildings, structures, improvements, and other obstructions in the exercise of its rights hereunder.

4. The Owner shall allow Northern to establish aboveground marking along the centerline of the present location of Northern's pipelines as described in Paragraph 1 above.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"

"OWNER"

NORTHERN NATURAL GAS COMPANY

By David W. Amelais *DM*

Title Agent and Attorney-In-Fact

Donald M. Vervaecke

Donald M. Vervaecke, as an Individual and as Trustee of the Vervaecke Irrevocable Trust



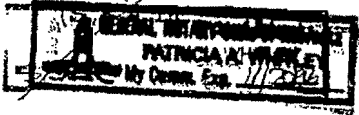
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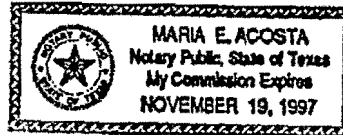
STATE OF TEXAS )  
                  )SS  
COUNTY OF HARRIS)

On this 22nd day of August, 1994, before me a Notary Public duly commissioned and qualified in and for said county and state, personally came David W. Sinclair, the Agent and Attorney-in-Fact of Northern Natural Gas Company, who is personally known to me to be the identical person whose name is affixed to the above instrument in the capacity stated, and he acknowledged the said instrument to be his free and voluntary act and deed and the free and voluntary act and deed of said corporation.

WITNESS my hand and official seal at Houston, in said county and state, the date aforesaid.



Maria E. Acosta  
Notary Public  
My Commission Expires 1/19/97

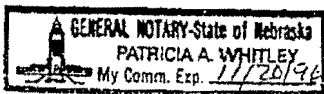


STATE OF Nebraska )  
                          )SS  
COUNTY OF Douglas )

On this 22 day of July, 1994, before me a Notary Public duly commissioned and qualified in and for said county and state, personally came Donald M. Vennocake, who is personally known to me to be the identical person whose name is affixed to the above instrument in the capacity stated, and he acknowledged said instrument to be his free and voluntary act and deed and the free and voluntary act and deed of said Trust.

WITNESS my hand and official seal at Ralston, in said county and state, the date aforesaid.

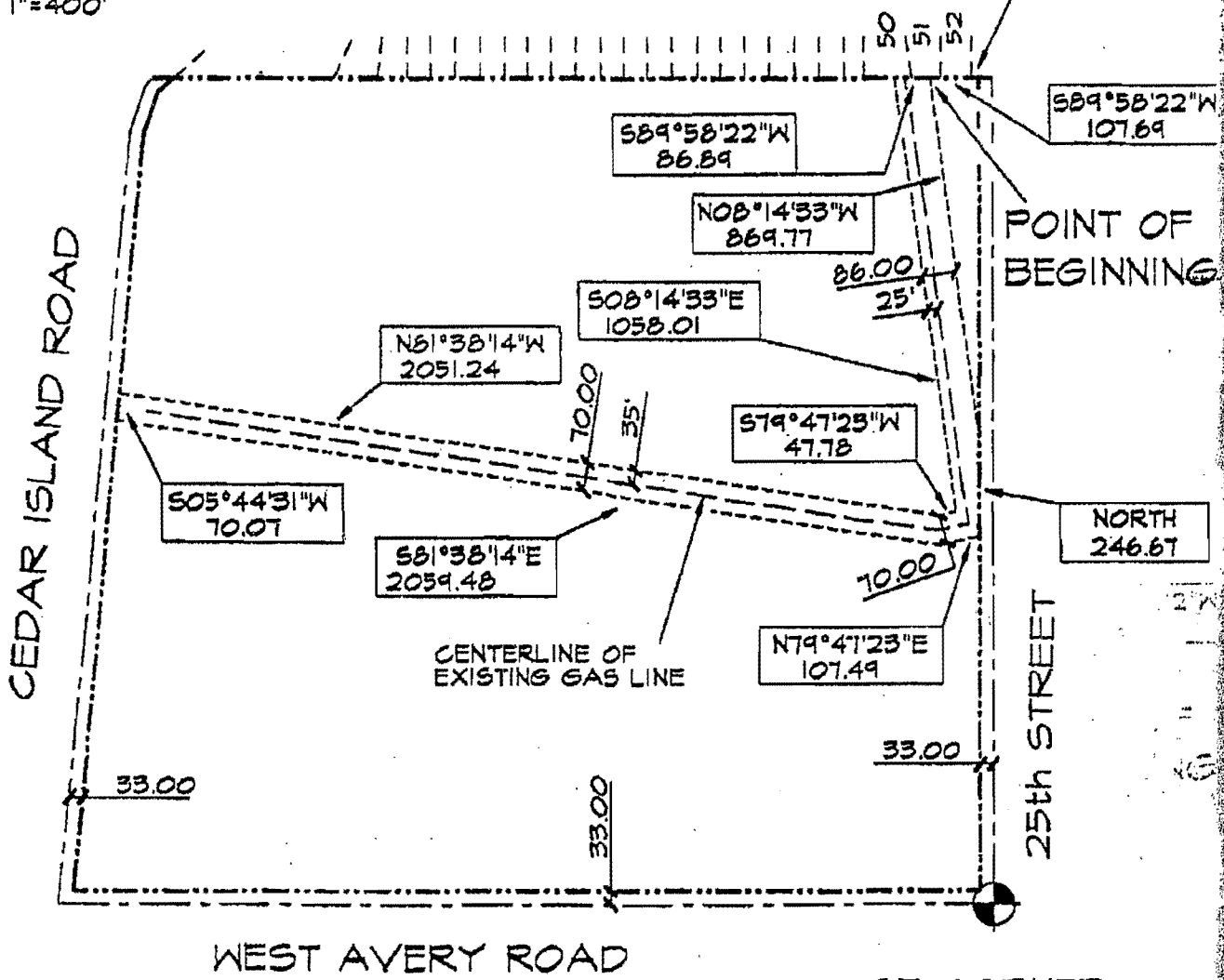
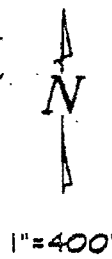
(S E AL)



Patricia A. Whitley  
Notary Public  
My Commission Expires 11/20/96

44-19092C POINT OF COMMENCEMENT  
EXHIBIT "A"

SUNRISE ADDITION



WEST AVERY ROAD

SE CORNER SECTION 21-14-13

LEGAL DESCRIPTION OF EASEMENT

THAT PART OF THE SE 1/4 OF SECTION 21, T14N, R16E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SE CORNER OF LOT 52, SUNRISE ADDITION, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN SAID SARPY COUNTY; THENCE S 89°58'22" W (ASSUMED BEARING) 107.69 FEET ON THE SOUTH LINE OF LOTS 51 AND 52, SAID SUNRISE ADDITION, TO THE POINT OF BEGINNING; THENCE CONTINUING S 89°58'22" W 86.89 FEET ON THE SOUTH LINE OF LOTS 50 AND 51, SAID SUNRISE ADDITION; THENCE S 08°14'33" E 1058.01 FEET; THENCE S 79°47'23" W 47.78 FEET; THENCE N 81°38'14" W 2051.24 FEET TO THE EASTERLY LINE OF CEDAR ISLAND ROAD; THENCE S 05°44'31" W 70.07 FEET ON THE EASTERLY LINE OF SAID CEDAR ISLAND ROAD; THENCE S 81°38'14" E 2059.48 FEET; THENCE N 79°47'23" E 107.49 FEET TO THE WEST LINE OF 25TH STREET; THENCE NORTH 246.67 FEET ON THE WEST LINE OF SAID 25TH STREET; THENCE N 08°14'33" W 869.77 FEET TO THE POINT OF BEGINNING.

95-14120

**DECLARATION**

THIS DECLARATION made on the date hereinafter set forth by Donald M. Vervaecke, Trustee of the Maurice M. Vervaecke Family Trust; Donald M. Vervaecke, Trustee of the Vervaecke Irrevocable Trust Dated May 24, 1994; Marlee L. Vervaecke; Lucille A. Vervaecke; Louise N. Scolaro; Clifford L. Whitley; and Benchmark Homes, Inc., hereinafter referred to as "Declarants".

**W I T N E S S E T H :**

WHEREAS, Declarants are the owners of certain real estate hereinafter referred to as the "Properties" in the County of Sarpy, State of Nebraska, which is more particularly described as:

Lots 87 through 132, inclusive, Sunrise Addition, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska;

and

WHEREAS, Declarants are 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, Declarants hereby declare that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property above described and shall be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof for a period of twenty-five (25) years from the date of filing this Declaration, at which time this Declaration shall be automatically extended for successive periods of ten (10) years unless by written agreement of two-thirds (2/3) majority of the then owners of the Lots it is agreed to change said covenants in whole or in part, said agreement to be executed and recorded in the manner provided by law for conveyance of real estate in the State of Nebraska. This Declaration may be amended by the Declarant Donald M. Vervaecke, or any person, firm, corporation, partnership or entity designated in writing by Donald M. Vervaecke, in any manner he shall determine in its full and absolute discretion for a period of seven (7) years from the date hereof.

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Verify   m    
D.E.   J    
Proof   W    
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**ARTICLE I**

**DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Sunrise Home Owners Association, its successors and assigns.

**Section 2.** "By-Laws" shall mean the By-Laws adopted by the Association as they may exist as amended from time to time.

**Section 3.** "Committee" shall mean and refer to an architectural control committee composed of three (3) or more representatives appointed by the Declarant or a majority of the owners, as provided in Article IV hereof.

**Section 4.** "Common Facilities" may include parks (public or otherwise); dedicated and non-dedicated roads, paths, ways and green areas; signs; and entrances for Sunrise Addition.

**Section 5.** "Declarant" shall mean and refer to Donald M. Vervaecke, his successors and assigns, if such successors or assigns should acquire more than ten (10) Lots in one purchase of undeveloped Lots from the Declarant for the purpose of development.

**Section 6.** "Lot" shall mean and refer to platted Lots 87 through 132, inclusive, as shown upon the recorded subdivision map of the Properties, and includes any improvements now or hereafter appurtenant to that real estate.

**Section 7.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 8.** "Properties" shall mean and refer to those lots described in the foregoing "WHEREAS" clause, and such additions thereto as may hereafter be made subject to these Declarations.

**ARTICLE II**

**MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every owner of a Lot which is subject to assessment by the Association, as provided for in Article III hereof, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership of any Owner shall terminate upon conveyance of the interest of such person in a Lot to a New Owner.

95-14120B

Section 2. The Association shall have two classes of voting membership consisting of the following:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- A. When the total votes outstanding in the Class A membership equal eighty percent (80%) of the total votes outstanding for both classes of membership, or
- B. Ten (10) years after the date of filing of this Declaration, or
- C. The written direction of Declarant.

### ARTICLE III

#### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of an instrument of conveyance thereof, whether by deed, lease, land contract or otherwise, and whether or not it shall be so expressed in such instrument of conveyance, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest from the due date at the rate of twelve percent (12%) per annum, and such reasonable late fees as shall be set by the Board of Directors from time to time, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and late fees, shall also be the personal obligation of the person who was the owner of such

15-4120C

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, workers' compensation insurance, and other appropriate types of insurance; upkeep and maintenance of the park areas; landscaping and landscaping maintenance; wages; payroll taxes, license and permit fees; security; professional services; repairs; replacement; maintenance supplies; and such other items as may be determined by the Board of Directors for the promotion of the purposes of the Association. The Association shall have the obligation to maintain the landscaping and signage for the common entryway to the Properties, in generally good and neat condition.

Section 3. Determination of Amount of Annual Assessments and Time for Making Such Determination. At least fifty (50) days before the beginning of the Association's fiscal year, the Board of Directors shall adopt an annual budget by estimating the amount of money necessary to make payment of all estimated expenses growing out of or connected with those items described in Section 2 for the purpose of assessments. Within thirty (30) days after making the budget, the Board of Directors shall provide a summary of the budget to all Owners and shall set a date for the annual meeting of the members at which the ratification of the budget shall be considered and voted on. In the event the proposed budget is rejected at the annual meeting, the annual budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. Promptly upon ratification of the budget for the ensuing year, the Board of Directors shall determine the amount of the annual assessment to be levied against each Lot and shall give written notice to each Owner of the amount of the annual assessment. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of Owners to pay the same. In determining the amount of the annual assessment to be paid by the Owners, consideration shall be given to all sources of income of the Association other than the annual assessments. As long as there is a Class B membership, or until proposed Lot 453 shall become a park, the procedure for budgets, annual assessments and special assessments shall be waived and no assessments shall be levied; and no assessments shall be levied;