

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by DAMARK PROPERTIES, INC., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property, more particularly described as:

Eldorado, Lots 120 through 298, both inclusive, and Lots "J", "K" and "M", as surveyed, platted and recorded in Douglas County, Nebraska, and

WHEREAS, Declarant desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and to this end, desires to subject the aforesaid real property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Nebraska a nonprofit corporation, known as the Eldorado II Home Association, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, transferred, sold, conveyed and occupied subject to the following covenants, easements, restrictions, charges, and liens hereinafter set forth.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Eldorado II Home Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one of more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation (mortgagees).

Section 3. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 4. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners, and shall include the properties whereupon the private, non-dedicated Cul-de-Sac roads are situated, as well as the common park areas separating the individual lot clusters. The Common Area to be conveyed to the Association by the Declarant within ninety days of the conveyance of the first lot is described as follows:

Eldorado, Lots "J", "K" and "M", as surveyed, platted and recorded, in Douglas County, Nebraska.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Damark Properties, Inc., its successors and assigns, if such successors or assigns should at any time acquire all the remaining right, title and interest of Damark Properties, Inc. in and to the "Properties" as defined herein.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to otherwise impose reasonable limitations on the use thereof;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said Common Properties.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument approved by two-thirds (2/3) of each class of members present and voting at a meeting duly called for that purpose and agreeing to such dedication or transfer has been recorded, and unless written notice of the time and purpose of a meeting called for that purpose is sent to every member at least sixty (60) days prior to any such meeting.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment 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.

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

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 holds 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. The 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 either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On June 30, 1978.

ARTICLE IV  
COVENANT FOR MAINTENANCE 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 a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree 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, costs, and reasonable attorney's fees, 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, costs, and reasonable attorney's fees incurred in collection of the same, 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 his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties and in particular for the improvement and maintenance of Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common Properties and of the homes situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be  fifty dollars (\$50.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than three percent (3%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above three percent (3%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment to an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A members who are voting in person or by proxy at a meeting duly called for this purpose. For purposes of this section, capital improvements shall be defined as recreation-oriented facilities (swimming pool, tennis courts, club house and similar related facilities). The term capital improvements shall not be construed to include bicycle paths, benches, trees, shrubs and similar landscaping amenities.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, provided that the rate set for the Lots owned by the Declarant shall be fixed at one-third (1/3) the assessment rate for the other Lots. These assessments may be collected on a monthly, quarterly, semi-annual or annual basis as designated by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area from the Declarant to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar

year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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. Such certificate shall be conclusive evidence of the facts stated therein.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of seven percent (7%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his 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 assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas as defined in Article I, Section 5 hereof.

#### ARTICLE V ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, structure, or other improvement of any type or description shall be constructed, 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, 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 Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board.

Section 2. In the event said Board of Directors, or its designated architectural control committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully satisfied.

Section 3. A majority vote of the Board of Directors or its designated committee is required for approval or disapproval of proposed improvements.

Section 4. The said Board or its designated committee shall maintain written records of all applications submitted to it and of all actions taken by it.

#### ARTICLE VI USE RESTRICTIONS AND EASEMENTS

Section 1. The Properties described herein have been platted as a Cluster Housing development under and in accordance with the regulations pertaining thereto of the Omaha Municipal Code.

Section 2. All Lots covered by this declaration shall be known and described as residential lots, but may be used for any purpose as set forth in the use regulations on the zoning ordinance of the City of Omaha for first residence (R-1) district. Every dwelling unit constructed on these Lots shall have a garage with a capacity of not less than two cars. In addition, each lot shall have sufficient driveway space, excluding that covered by garages, to accommodate two full sized automobiles entirely within the boundaries of said lot.

Section 3. All buildings, appurtenances thereto and improvements located on the Lots covered by this declaration shall comply with the front, side, and rear yard requirements as specified in the zoning ordinance of the Omaha Municipal Code for Cluster Housing.

Section 4. No noxious or offensive trade or activity shall be carried on upon any Lot covered by this declaration, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

Section 5. No house trailer, basement, tent, shack, barn, or other out-building shall be built, erected or placed upon any Lot covered by this declaration.

Section 6. No camping trailer, travel trailer, boat trailer, motorboat, houseboat, sailboat, motorhome, truck or other recreational vehicle may be maintained, stored or kept on any of the Lots covered by this declaration for more than fifteen (15) days in any one calendar year, unless housed completely within a structure allowed on said Lots by other provisions contained herein.

Section 7. No animals of any kind (excepting ordinary house pets) shall be kept or maintained on any Lot covered by this declaration.

Section 8. Fences and walls not exceeding six (6) feet in height shall be permitted on the Lots covered by this declaration, provided that the same shall not be constructed closer than ten (10) feet to any publicly dedicated street, and subject to the provisions of Article V hereof.

Section 9. No outdoor antenna of any type and for any purpose shall be erected or placed on any Lot covered by this declaration without the prior written approval of the architectural control committee.

Section 10. No signs, except conventional temporary "For Sale" and similar temporary real estate signs shall be erected or placed on any Lot or structure located thereon covered by this declaration.

Section 11. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road, or portion of the Common Area, nor on any of the Lots covered by this declaration unless placed in a suitable container discretely concealed so as to not be visible from other Lots, Common Areas or streets.

Section 12. The structures and the grounds of each Lot shall be maintained in a neat and attractive manner. Upon the owner's failure so to do, the Board of Directors of the Association, or its designated architectural control committee may, at its option, after giving the owner thirty (30) days written notice sent to his last known address, have the grass, weeds, and vegetation cut when, and as often as, the same is necessary in its judgment, and have dead trees, shrubs and plants removed from any Lot.

Section 13. Upon the owner's failure to maintain the exterior of any structure in good repair and appearance, the said Board or its designated committee may, at its option, after giving the owner six month's written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner.

Section 14. The cost of such maintenance referred to in Sections 12 and 13 of this Article shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the periodic maintenance, assessment or charge to which such Lot is subject under Article IV hereof.



ARTICLE VII  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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 Association or by any Owner to enforce any covenant or restriction 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed, post paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Construction Easement. If any portion of an exterior wall of a residence is situated within three (3) feet of any adjoining lot line, a valid easement shall and does exist, three (3) feet in width along the adjoining Lot and adjacent to the said lot line, which easement may be used for the purpose of construction, reconstruction and maintenance of said exterior wall of the residence that is situated within three (3) feet from the nearest point of said easement. The Owner of any Lot subject to this easement shall not erect or build any structure upon or over said easement which will interfere with the purposes of this easement.

Section 5. Maintenance Easement. If any portion of a residence encroaches upon the common properties or upon the easement of any adjoining Lot established under the provisions of Section 4 above, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 6. Roof Overhang Easement. If any portion of the roof or eaves of a residence shall encroach upon the Common Properties or any adjoining Lot, there shall exist in the air above the ground within three (3) feet of the lot line to which the encroaching residence abuts, an easement for the purposes of construction and maintenance of the said encroaching portion of the roof or eaves, provided however, that no roof overhang of any description shall encroach on any adjoining property by an amount greater than three (3) feet, and further provided that this easement shall not extend to or include any easement, license or right upon the surface or subsurface of said adjoining property.

