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RESTRICTIVE COVENANTS
Ashley Heights 3rd Addition
Townhome Residential

M & S Construction, Inc., a Nebraska Corporation, is the titleholder of record ("Declarant") of the following described real estate, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 1; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 2; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 3, and Outlot A, all in Ashley Heights 3rd Addition, Lincoln, Lancaster County, Nebraska.

Such real estate is collectively referred to as the "Properties."

EXISTING DECLARATIONS AND COVENANTS

Declaration of Protective Covenants, Conditions and Restriction of Ashley Heights Homeowners Association dated November 20, 2001 have been established, which were recorded in the office of the Register of Deeds of Lancaster County on November 20, 2001 as Instrument No. 2001-68968 (the "Covenants").

Restrictive Covenants of Ashley Heights Townhome Association dated November 20, 2001 have been established, which were recorded in the office of the Register of Deeds of Lancaster County on November 20, 2001 as Instrument No. 2001-68969 (the "Townhome Covenants").

ADDITION OF PROPERTIES

Pursuant to paragraph 12 of the Townhome Covenants, the undersigned Declarant is exercising its right to add additional real estate. The Properties are hereby added to the property already bound by the Townhome Covenants and are made subject to the Townhome Covenants.

PURPOSE OF RESTATEMENT

The following Restated Restrictive Townhome Covenants are intended by the title holder to restate the existing Townhome Covenants which have been recorded and make the Properties herein subject to the terms, conditions and requirements of the Townhome Covenants.

RESTATED RESTRICTIVE TOWNHOME COVENANTS

Ashley Heights Townhome Association (the "Townhome Corporation") has been incorporated in Nebraska for the purposes of enforcing the Townhome Covenants of the Ashley Heights Townhome Association established upon the Townhome Properties, or providing services to any Townhome Owner and performing such enforcement services required by the Townhome Covenants to the Townhome Properties as may be delegated to it by the Corporation;

Declarant hereby declares that all of the Properties described above 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 and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Declarant does hereby create, establish, adopt, and impose the following covenants, restrictions, and conditions on the Townhome Properties:

Townhome Covenants

The following covenants shall be binding solely upon the Townhome Properties and are intended to provide for the unique characteristics of these type of dwellings.

- 1. **PARTY WALLS.** Each wall which is built as a part of the original construction of a dwelling within the Townhome Properties and placed on the dividing line between two adjoining lots shall constitute a party wall.

The cost of reasonable repair and maintenance of a party wall shall be shared by the titleholders of the Townhome Properties who make use of a party wall in proportion to such use.

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If a party wall is destroyed or damaged by fire or other casualty, any titleholder of a lot who has used the wall may restore it. If any other titleholder subsequently makes use of the wall, they shall contribute to the cost of restoration in proportion to such use.

Notwithstanding any other provision of this paragraph, a titleholder who by their negligence or willful acts or omissions causes the party wall to be destroyed, damaged or otherwise exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements and the cost of restoration.

The right of any titleholder to contribution from any other titleholder under this paragraph shall be appurtenant to the land and shall pass to such titleholder's successors in interest.

Should a dispute arise concerning a party wall under these Townhome Covenants the parties are encouraged to resolve their dispute pursuant to the Dispute Resolution Act, NEB. REV. STAT. §25-2901 to 25-2920 prior to filing a lawsuit. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the parties have utilized the Dispute Resolution Act.

2. **ENCROACHMENTS:** When a building shall be constructed on any lot so as to encroach upon the adjoining lot within the Townhome Properties, the member who is the titleholder of the lot with the encroaching building shall have an easement upon the adjoining lot to the extent of the encroachment. Any expense of maintenance, repair or replacement of the encroaching building shall be borne by the member who is the titleholder of the lot with the encroaching building. The provisions of this paragraph shall not operate to relieve any member from any liability which the member may incur by reason of negligent or willful acts or omissions resulting in damage to the encroaching building.

3. **COMMON UTILITY LINES.** When any utility line shall be constructed on two or more adjoining lots with the Townhome Properties, each member who is the titleholder of one of the adjoining lots shall have an easement for the maintenance, repair and replacement of the utility line upon all of the adjoining lots, which easement shall be appurtenant to the interest requisite for membership. Any expense of maintenance, repair or replacement of the utility line shall be borne equally by the members who are the titleholders of such adjoining lots. The provisions of this paragraph shall not operate to relieve any member from any liability which such member may incur by reason of negligent or willful acts or omissions resulting in damage to the utility line.

4. **MANAGING AGENT.** The Declarant or the Townhome Corporation may contract for the performance of any of the Townhome Corporation's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Declarant or Townhome Corporation. The fee charged by the Managing Agent shall be a common expense of the members.

5. **TOWNHOME CORPORATION MEMBERSHIP AND RESPONSIBILITIES.** The Townhome Corporation shall:

- a. **Membership.** Every Townhome Owner shall be a member of the Townhome Corporation. However, any person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. The Townhome Corporation shall have two classes of membership:

Class A. Class A membership shall include all members of the Townhome Corporation except M & S Construction, Inc. (Declarant) and any successor in interest. Each Class A member of the Townhome Corporation shall be entitled to all the rights of membership and to one vote for each lot.

Class B. Class B membership shall include only the Declarant and any successor in interest. The Class B member shall be entitled to five (5) votes for each lot. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.

- b. **Grounds Maintenance.** The Townhome Corporation shall (subject to Townhome Owner approval as provided for below) provide to the Townhome Properties ground maintenance which may include garbage and trash removal service; mowing and maintenance of each member's lawn, trees and shrubs; repair and placement of the lawn sprinkler system and snow removal from the public sidewalk, front stoop and driveway. In the event any improvements, such as fences, planters or similar obstructions or plantings, such as gardens, shrubs, plants or trees, increase the cost to the Townhome Corporation of performing ground maintenance service for any lot, the additional cost shall be paid by the Townhome Owner, or the improvements or plantings shall be removed by the Townhome Owner, or the Townhome Corporation may discontinue this service without any reduction to the dues or assessments paid by the Townhome Owner. The cost for these grounds maintenance services shall be paid only by the Townhome Owners that receive these services.
- c. **Additional Townhome Corporate Authority.** The Townhome Corporation may exercise all rights granted to the Corporation in, by or through the Covenants on the Townhome Properties as if the Townhome Corporation were the Corporation.

- d. Delegation. The Corporation may elect to delegate the Townhome Corporation any of its duties under the Covenants as they relate to Townhome Properties.
- e. Lien of Dues and Assessment. The lien of any dues or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.
- f. Annual Assessments and Liens. Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Townhome Corporation. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of Townhome Owners affected and entitled to vote, at a regular meeting of the Townhome Owners or at a special meeting of the Townhome Owners, if notice of a special assessment is contained in the notice of the special meeting.

The members shall pay Townhome dues and special assessments to the Townhome Corporation or Managing Agent as billed. Each Townhome Owner's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of an occupancy permit for any dwelling. The initial annual dues are established at \$660.00 per year per lot. Changes in the amount of future annual dues shall be based upon an estimate of the Townhome Corporation's costs for administration, maintenance and improvement of the Townhome Properties grounds and each Townhome Owner shall pay the annual dues so established on a monthly basis over 12 months. Such Townhome dues are in addition to the annual dues established by and payable to the Ashley Heights Homeowners Association by each Townhome Owner. At the end of each fiscal year, a statement of the total year's Townhome Properties ground's maintenance and operating costs may be presented to the Townhome members of the Townhome Corporation and the Townhome members shall pay any excess charge to the Townhome Corporation within thirty (30) days of the statement.

- i. Budgets. The Townhome Corporation or Managing Agent shall prepare, approve and make available to each Townhome member a pro forma operating statement (budget) containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Townhome Corporation currently available for replacement or major maintenance of the Townhome Properties grounds and for contingencies; (3) an Itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Townhome Properties grounds.
- ii. Additional Charges. In addition to any amounts due or any other relief or remedy obtained against a Townhome member who is delinquent in the payment of any dues or assessments, each Townhome member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Townhome Corporation or Managing Agent may incur or levy in the process of collecting from each Townhome member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but not be limited to, the following:
 - 1. Attorney's Fees. Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by suit or otherwise.
 - 2. Late Charges. A late charge in an amount to be fixed by the Townhome Corporation to compensate the Townhome Corporation for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any "grace" period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater.
 - 3. Costs of Suit. Costs of suit and court costs incurred as allowed by the court;
 - 4. Filing Fees. Costs of filing notice of lien in the Office of the Register of Deeds;
 - 5. Interest. Interest on all dues and assessments at the rate of 14% per annum, commencing thirty (30) days after the assessment becomes due; and
 - 6. Other. Any other costs that the Townhome Corporation may incur in the process of collecting delinquent dues and assessments.
- iii. Lien. The dues and assessments shall be the personal obligation of the Townhome member who is the owner of the lot assessed at the time of assessment and when shown of record shall be a lien upon the lot assessed.

iv. Fines. The Townhome Corporation may create a schedule of fines for violation of Townhome Corporation rules and regulations which fine shall be treated and billed as a special assessment to the offending Townhome members lot.

g. Undeveloped Lot Fee And First Year Prorate. The Townhome Owner shall have no obligation to pay annual fees, annual dues or assessments to the Townhome Corporation on undeveloped lots. Upon the initial sale of a lot within the Properties from the Townhome Owner, the purchaser shall pay to the Townhome Corporation the sum of \$10.00 in lieu of any annual dues or assessments. The \$10.00 annual fee shall be due and owing from the titleholder on January 1st of each and every year until such time as a townhome is constructed upon the lot and occupied. No portion of this fee shall be credited to the annual dues or assessments.

Upon the initial occupancy of a townhome on a lot within the Properties, the titleholder of the lot shall pay to the Townhome Corporation the prorated amount of the annual dues or assessments, prorated from the date of occupancy to the end of the calendar year.

h. Maintenance. All costs and expenses associated with the maintenance and upkeep of the Commons, landscape screens, street trees and Detention Cell Area surrounding the property shall be paid as a part of the dues payable to the Ashley Heights Homeowners Association pursuant to the Declaration of Protective Covenants, Conditions and Restrictions for the Ashley Heights Homeowners Association.

6. GENERAL STANDARDS FOR DWELLING STRUCTURES. The following general standards of development shall guide the Declarant in the review of any plans for dwelling structures submitted for approval within the Townhome Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Declarant shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority. The Declarant shall have the right to reduce, increase or otherwise explicitly modify these standards within other additions to the Properties.

a. Minimum Floor Area. The minimum ground floor area of any main dwelling building, exclusive of basements, garages, porches, terraces, patios, decks or enclosed decks shall be as follows:

- i. Single story ranch style: 800 sq. ft.
- ii. One and one-half story: 1,280 sq. ft.
- iii. Multi-level /split entry: 900 sq. ft.

b. Garage. All dwellings shall have a private garage of a maximum three-car capacity, which such garage shall be either attached or detached from the dwelling.

c. Setbacks. No dwelling shall be located on any lot nearer than 20 feet to the front lot line nor nearer than 5 feet to a side lot line (zero feet if a party wall). In the case of a corner lot, the dwelling shall not be nearer than 20 feet to the side street lot line. In no event shall any cantilever, chimney or overhand extend beyond the foundation and into the 5 feet set back area from the side lot line.

d. Exterior Finish.

i. Approval. All exterior finish materials and colors other than earthtone colors shall be approved by the Declarant.

ii. Exposed Foundation. Exposed foundation walls shall not exceed 24 inches and shall be painted or sided to match the exterior color scheme of the dwelling.

iii. Roofing Materials. Roofing materials shall be equal to or better than architectural-grade shingle which provides an appearance of depth such as the Horizon shingle.

e. Solar Panels. No solar panels shall be allowed upon any dwelling within the Townhome Properties and shall not be located in any required yard or upon any accessory structure.

f. Roof Pitches. All roof pitches shall be a minimum of 4:12 or as may be dictated by a unique architectural style.

7. GENERAL STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS. The following general standards shall be satisfied in the construction and installation of improvements and structures other than the dwelling. Written approval for other improvements and structures is not required but comply with these standards. The Townhome Corporation and Townhome Owners shall have the right to enforce these standards.

a. Fencing. Fencing shall not be constructed closer to the street than the front elevation of the dwelling and shall be constructed with the finished side facing the lot line.

- b. Accessory Structures. Accessory structures such as storage sheds and playhouses shall be constructed of compatible and similar materials and design with the dwelling. These structures shall not exceed 144 square feet, be more than ten (10) feet in height, shall not be located in the front or side yard setback, or within five (5) feet of any lot line. All other accessory improvements such as swing sets and sand boxes shall be compatible with the quality of the overall development and shall be maintained in good order and an attractive condition.
- c. Dog Kennels. Dog runs and kennels shall not be permitted within the Townhome Properties.
- d. Satellite Dish. Any satellite dish shall be located and screened so as to be as unobtrusive as is reasonably possible.
- e. Clothes Lines. No permanent clothes lines shall be permitted, erected, placed or suffered to remain upon any lot or upon any improvement thereon, but retractable clothes lines shall be permitted.
- f. Landscaping. All front, side and rear yard areas shall be seeded or sodded within six (6) months after completion of any dwelling constructed within the Properties.

8. TOWNHOME PROPERTIES MAINTENANCE. Each Townhome Owner shall be responsible for the proper upkeep, care, maintenance and exterior appearance of the improvements located upon their Townhome Lot for the purpose of maintaining a high quality and attractive development. Specific rules, regulations, requirements and specifications further implementing this provision may be adopted by not less than two-thirds (2/3) of the Townhome Owners and with written notice shall be binding upon and enforceable by the Townhome Corporation and any Townhome Owner against all Townhome Properties. In the event any Townhome Owner fails or refuses to perform any required townhome maintenance, the Declarant or Townhome Corporation after seven (7) days notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance together with a 10% administrative fee shall be the personal obligation of the member who is or was the Townhome Owner of the lot failing to perform their maintenance obligations, shall bear interest at the rate of 14% per annum and shall be a lien upon the lot assessed.

9. TOWNHOME PROPERTIES PETS. Domestic pets have the potential to create significant nuisance problems within the Townhome Properties. Each Townhome Owner shall be responsible for controlling all domestic pets and preventing them from becoming an annoyance, nuisance, or unreasonably disturbing the quiet of any other Townhome Owner. Specific rules, regulations, and requirements further implementing this provision (including the banning of individual animals, types of animals, or specific breeds) may be adopted by not less than two-thirds (2/3) of Townhome Owners and with written notice shall be binding upon and enforceable by the Townhome Corporation and any Townhome Owner against all Townhome Properties.

10. TOWNHOME OWNER APPROVAL. The provision of grounds maintenance to the Townhome Properties provided for in paragraph 4 above, shall be mandatory for all Townhome Properties if two-thirds (2/3) or more Townhome Owners request in writing that the Townhome Corporation provide the service. If less than two-thirds (2/3) Townhome Owners request the service, only those requesting the service shall receive or pay for the grounds maintenance service.

11. TOWNHOME COVENANT AMENDMENTS. These Townhome Covenants shall run with the land and shall be binding upon and enforceable by the Declarant and all persons claiming under the Declarant. These Townhome Covenants may be terminated or modified, in writing, by two-thirds (2/3) of the Townhome Owners, at any time, and shall not be terminated or modified without the consent of the City of Lincoln, Nebraska.

12. ADDITIONS. Additional phases of the Ashley Heights Addition will be final platted in the future. The Declarant shall be allowed to add such additional contiguous or adjacent real estate to the Properties or as Commons, at any time, without notice or the consent of the members of the Townhome Corporation. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants; provided the general standards set forth in paragraphs 6 and 7 may be reduced, increased or otherwise modified within any such addition.

13. ENFORCEMENT. The enforcement of these Restrictive Covenants shall be by proceedings at law or in equity, and may be instituted by any of the following against any person or persons violating or attempting to violate any provisions hereof: (i) the Declarant, the Townhome Corporation, or any Townhome Owner, or (ii) if the proceedings are to enforce the covenants regarding maintenance of the Commons, the City of Lincoln. Such proceedings may be to restrain such violations or to recover damages, and may also be instituted to enforce any lien or obligation created hereby. If the Declarant, Townhome Corporation, or Townhome Owner in any action to enforce these Restrictive Covenants is successful, they shall be entitled to an award of reasonable attorney's fees and court costs. Failure by the Townhome Corporation, any member thereof, or the City of Lincoln to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so. In the event the Townhome Corporation is dissolved, the Townhome Owner shall remain jointly and severally liable for the cost of maintenance of the Commons.

14. SEVERABILITY. The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof. In the event of any conflict between these Restrictive Covenants and the Protective Covenants, Conditions and Restrictions of Ashley Heights Homeowners, the Protective Covenants, Conditions and Restrictions of Ashley Heights Homeowners shall control.

IN WITNESS WHEREOF, the Declarant has caused these Restrictive Covenants of Ashley Heights Townhome Association to be executed this 3rd day of June, 2003.

M & S Construction, Inc.

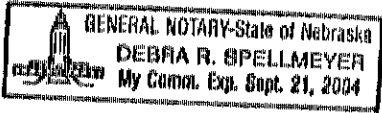
By: Paul J. Muff
Paul J. Muff, President

Approval of Restrictive Covenants
for the limited purpose of conveying
maintenance of the Commons and Outlots
to the Homeowners Association.

Rick Peo
Rick Peo, Chief Assistant City Attorney

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledge before me this 3rd day of June, 2003, by Paul J. Muff, known to be President of M & S Construction, Inc. a Nebraska corporation, on behalf of the corporation.



Debra R. Spellmeyer
Notary Public