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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

2002 DEC 13 PM 2:22

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MISC 2002 30867

For Recording Purposes

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE THOMSEN MILE REPLAT TWO AND  
LOT 1, THE THOMSEN MILE WEST**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of this 12<sup>th</sup> day of December, 2002, by The Thomsen Mile, L.L.C., a Nebraska limited liability company and its successors and assigns ("Declarant").

**RECITALS:**

WHEREAS, Declarant is the sole owner of certain real property situated in the County of Douglas, State of Nebraska, legally described as follows, to wit:

Lots 1 through 5 and Outlot "A", inclusive, The Thomsen Mile Replat Two, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska;

And

Lot 1, The Thomsen Mile West, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as "Lots" and individually as a "Lot".

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners and Occupants (as defined below), or any part thereof, certain mutually beneficial restrictions and obligations with respect to the use, operation and maintenance thereof consistent with a first class retail, commercial, and office development.

WHEREAS, by virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, whether or not such deed

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After recording, return to:  
SCOTT A. MEYERSON  
210 REGENCY PARKWAY  
OMAHA, NEBRASKA 68114

*Handwritten:* 16

or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof; and

WHEREAS, Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all its successors and assigns and all subsequent owners of the Lots and Improvements (as defined below), together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions on the Lot which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within the Development, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

#### ARTICLE I Definitions

Definitions. The following words and phrases shall have the following meanings:

1.1 "Common Areas" shall mean and include all parts of a Lot which are from time to time devoted primarily for parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas (excluding loading docks) and other similar areas or exterior areas not used as an area upon which a building, buildings or other structures are constructed or erected. Canopies may encroach over the Common Areas, provided such canopies do not interfere with the use of the Common Areas.

1.2 "Improvements" means any building, structure, tunnel, drainage way, driveway, walkway, fence, wall, trellis, lake, water feature, landscaping, and any other building, structure or improvement of every kind and nature whatsoever now or hereafter located on any Lot.

1.3 "Lot" or "Lots" means the Lots described above or any subsequent administrative subdivision, replat, revision or amendment thereof. If any Lot is hereafter lawfully subdivided, by administrative lot split, lot line adjustment, lot combination, or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificates or Replat (in the event of a replatting approved by the Omaha City Council) recorded in the Records of Douglas County, Nebraska, showing such subdivision.

1.4 "Development Agreement" means the certain Mixed Use District Development Agreement for The Thomsen Mile dated as of December 20, 1997, and as amended on or about January 10, 2001, and the Mixed Use District Development Agreement for Lot 1, The Thomsen Mile West dated as of November 15, 2002, between the City of Omaha and Declarant, copies of which are available from the Declarant, and incorporated herein by reference, as may be amended from time to time. The Development Agreement includes, without limitation, use and other requirements for the Development.

1.5 "Mortgage" means any instrument recorded or filed in the Records encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an incumbrance affecting any leasehold interest in a Lot (such as leasehold mortgage).

1.6 "Occupant" means any person or legal entity who is entitled to the exclusive use or occupancy of any building or portion thereof, or any Lot or portion thereof located within the Development under rights contained in any deed, lease or similar agreement.

1.7 "Owner" means the owner of Record, whether one or more, of the fee simple title, whether or not subject to any Mortgage, to any Lot, and any purchaser of fee simple title under a land contract of Record, but does not mean those having such interest merely as security for the performance of an obligation or a seller under a land contract or Record.

1.8 "Permittees" means any Owner, and any officer, director, employee, agent contractor, customer, invitee, licensee, vendor, subtenant, mortgages or concessionaire of any Owner or Occupant insofar as their activities relate to the intended use or enjoyment of the Development.

1.7 "Development" means, in the aggregate, all of the Lots, including all of the improved areas, all Common Areas and all Common Facilities (as defined herein), which area may be expanded or contracted at Declarants option.

## ARTICLE II Restrictions

2.1 Development. No Owner or Occupant shall permit the use or condition of any Lot that is inconsistent with a comparable first class commercial, business and retail center. Without limiting the generality of the foregoing, the following uses or services shall not be consistent with the concept of a first class retail, commercial, and office development:

(a) Zoning. All uses must conform to the Development Agreement and any subsequent amendments thereto, and all other applicable zoning regulations.

(b) Parking Restrictions. Each Owner or Occupant shall use reasonable efforts to ensure that its Permittees do not park or block the Common Area or public streets.

(c) Use Restrictions. Except as otherwise provided for in this Declaration, as may be amended from time to time, no Lot within the Development shall:

(i) be used in violation of any applicable federal, state or local laws, ordinances, rules or regulations;

(ii) be used, operated or maintained in a dangerous or hazardous condition;

(iii) constitute a nuisance or be used, operated or maintained in an obnoxious manner by reason of unsightliness or excess emission or odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation;

(iv) be used for the operation and maintenance of as a circus, carnival, bowling alley, roller rink, skating rink, auction house, flea market, funeral parlor or mortuary, unemployment office, bingo or other game room, teen club, gambling enterprise, warehouse operating or manufacturing or assembling operation, storage (except incidental to the primary commercial use), facility in which fire sales, bankruptcy sales (unless pursuant to court

order, and provided that any Owner or Occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four (4) weeks in duration), or auction sales are conducted, establishment selling or exhibiting pornographic materials, striptease clubs, ballroom.

2.2 Private Use Restrictions. Declarant and/or its successors and assigns may, from time to time, enter into purchase agreements and/or deed restrictions, and/or leases, which may contain certain use or occupancy restrictions. Prior to any Owner or Occupant changing any prior use of any Lot or a Portion thereof from one use to another such Owner or Occupant shall advise Declarant of such event and obtain Declarant's prior written approval of such change.

2.3 Lot 1 Exclusive Use for Retail Sales of Motorcycles.

(a) Except for Lot 1, The Thomsen Mile West, the Development shall prohibit the use of any Lot as and for the wholesale, retail or consignment sales of motorcycles without the express written consent of the Owner of Lot 1, The Thomsen Mile West. This prohibition shall expire in the event Lot 1, The Thomsen Mile West is not used as and for the wholesale, retail or consignment sales of motorcycles for a period of more than 365 days after January 1, 2004.

(b) Lot 1, The Thomsen Mile West shall only be used as and for wholesale, retail or consignment sales of motorcycles and related products and services, and for no other use, without the express written consent of the Declarant, or its assignee, which consent may be withheld at Declarant's sole discretion.

2.4 No Interference. No Owner or Occupant shall keep or maintain anything or shall permit any condition to exist upon such Owner's or Occupant's Lot or cause any other condition on any Lot which materially impairs or interferes with any other Owner or Occupant. No Owner or Occupant shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner or Occupant within the Development.

2.5 Design Regulations and Performance Standards.

(a) All Improvements will be designed and built so as to present an appearance on all sides consistent with that of a first class retail, commercial, and office development and shall be designed so that the exterior elevations of Improvements shall be architecturally and aesthetically compatible with Improvements to be constructed on other Lots in the Development, as determined by the Declarant in its sole discretion. Exterior materials of any building shall consist of brick, marble, granite or other natural stone, architectural concrete, EIFS, materials having the appearance of these items, glass, or any combination of these. No pre-engineered metal buildings will be permitted.

(b) Height limits, required minimum building setbacks, and other basic development standards may be established by the Development Agreement from time to time.

(c) The Owner or Occupant of each Lot will make provisions for adequate off-street parking to serve the Lot. Such parking shall be in the form of hard-surfaced parking lots. No on-street parking will be permitted except as provided for in the Development Agreement.

(d) All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets, and/or at ground level along an adjacent Owner's Lot lines. Such screening will consist of permitted building materials and/or landscaping.

(e) Immediately upon completion of building construction, or at the next available planting season, the Owner shall install and maintain permanent landscaping. Such landscaping will consist of plant materials, paving materials, ground cover, and other landscaped features consistent with the overall development theme of the Development. All permanent landscaping will include automatic underground irrigation systems sufficient to support the living plant materials used.

(f) No outdoor advertising signs or billboards, and no signs incorporating flashing, pulsating, or rotating lights will be permitted without the written consent of Declarant, which consent may be withheld in its absolute and sole discretion. Further signage standards and restrictions may be established in the Development Agreement and the Omaha City Code.

(g) No Owner shall place or permit any garbage, debris or refuse to be placed on or to accumulate in any areas on, in or adjacent to any Lot or building that are visible from any other Lot within the Development. All garbage, debris and refuse shall be placed in a dumpster or similar receptacle and removed at regular intervals. All dumpsters or garbage containers shall be completely surrounded with decorative fencing approved by Declarant and designed to preclude public view. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. Each Owner, at its expense, shall cause the windows and exterior surfaces of any building on the Owner's Lot to be washed or cleaned regularly.

(h) During any building construction or renovation, the Owner and such Lot shall insure that such construction is carried out in a good and workman like manner and completed in a timely fashion. Owner's agents, contractors, and employees shall insure that the construction site is maintained in an orderly appearance, trash and debris is contained on-site, building materials are stored in an orderly manner, and that no debris, soil erosion, or building materials are permitted to leave the Lot or adversely affect other Lots, Common Areas, public streets or Common Facilities.

(i) No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be so screened by fences, walls or plantings that can not be seen from any public street, other than the storage and display of motorcycles and Harley Davidson branded products including products, trailers or vehicles incidental to the Harley Davidson sales and service business on Lot 1, The Thomsen Mile West so long as the same are displayed consistent with a first class retail development.

(j) Landscaping shall not materially obstruct, in the sole judgment of the Declarant (either through original planting or through untrimmed growth) the view of the buildings constructed from time to time on any Lot. All trees shall be of an ornamental, low-growing type.

(k) Until such time as a Lot is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition. This provision may be waived as to land owned by the Declarant.

- (l) No outdoor satellite, receiving dishes, exterior television, radio antenna, or antenna of any type shall be installed on the roof of any building or within or on any portion of any Lot, without prior consent of Declarant.
- (m) Lots may not be subdivided in any manner without the prior written consent of the Declarant which may be withheld in its sole discretion.
- (n) Without the prior written consent of the Declarant, no barricades, fences or other dividers will be constructed at or near the property lines of a Lot and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within a Lot in the areas designated for such purpose by the Owner of such Lot except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barrier, once each year for a period not exceeding 24 hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights there.
- (o) No vehicles offensive to the Development may be visibly stored, parked or abandoned on any Lot.
- (p) No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.
- (q) No 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. No motor vehicle may be parked or stored outside on any Lot for more than 24 hours. No grading or excavating equipment, tractors or semi tractors/trailers shall be stored, parked, kept or maintained on any Lot, and in any yards, driveways or streets. However, this Section (q) shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of a building during the period of construction. This provision shall be waived as to Harley Davidson branded products including products, trailers or vehicles incidental to the Harley Davidson sales and service business on Lot 1, The Thomsen Mile West so long as they are displayed consistent with a first class retail development. Declarant may also waive this provision with respect to other individual Owner's or Occupants at its discretion.
- (r) All Lots shall provide at least the minimum number of parking areas or spaces for private passenger vehicles required by the applicable zoning ordinance of the City of Omaha, Nebraska.
- (s) Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the tenants of adjacent Lots.
- (t) Construction of any Improvement shall be completed within one and one-half (1½) years from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot. As much as possible during the construction process, root zone areas will be barricaded to prevent contractors from compacting the soil by driving vehicles beneath trees or by piling dirt or other construction material on top of roots. If retaining walls prove necessary, underground aeration systems will be installed to maintain

a reasonable amount of oxygen to the affected roots.

(u) All utility service lines to and from each Lot line to a building or other Improvement shall be underground.

(v) Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

## 2.6 Design Review.

(a) The Declarant may, from time to time, establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of any Improvements on the Lots, which it may from time to time, in its sole discretion, amend, repeal or augment including, without limitation, regulations in conjunction with the construction of a Building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior additions, changes or alterations to or maintenance of any building or Improvement, including, without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location thereof.

(b) The Declarant may also, from time to time, enter into agreements, by lease, purchase agreement, deed restrictions or other agreements, with other Owners or Occupants regarding design restrictions, sign restrictions, site planning, or other architectural standards affecting the Development or any portion thereof.

(c) No excavation, fill, grading or other alteration of the topography or drainage of any Lot shall be commenced and no building or Improvements of whatever type other than improvements or alterations to the interior of a building shall be constructed, erected or maintained upon any Lot, nor shall there be any addition or change to the exterior appearance of any building or Improvement, including, without limitation, the color (other than repainting with the same color of paint as previously existed) of exterior walls, entryways, overhangs, parapets, atriums and fences, except in compliance with plans and specifications therefor, which have been submitted to the Declarant for its prior review and written approval.

(d) Such plans and specifications shall consist of, at a minimum, site plans, grading plans, utility plans, signage plans, landscaping plans, and building elevations showing exterior building materials to be used. Declarant may employ architects, engineers, and other professional consultants and agents to review such plans.

(e) Declarant will complete its plan review in a reasonable and timely fashion and provide the Owner or Occupant requesting such review with a written report of the conclusions and recommendations resulting from such review. Owner or Occupant may not commence construction until after receipt of written approval from Declarant. Declarant may charge a review fee for review of plans and specifications.

2.7 Maintenance. Each Owner shall maintain its Lot in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

- (a) maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitutes as shall in all respects be equal or superior in quality, use and durability;
- (b) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;
- (c) placing, keeping in repair and replacing any necessary or appropriate directional signs, marker and lines;
- (d) repairing and replacing when necessary such artificial lighting facilities as shall be reasonable required;
- (e) maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary;
- (f) maintain all signage in proper working order and appearance; and
- (g) maintain all perimeter walls in good condition and state of repair.

2.8 Indemnification/Insurance.

(a) Indemnification. Each Owner and/or Occupant shall indemnify and hold the other Owners and/or Occupants harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act of negligence of the Owner and/or Occupant of another Lot.

(b) Insurance.

(i) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot, Owner's insurance to afford protection to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$1,000,000 for property damage. Each Owner shall provide the Declarant with certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the Lot covered by this Declaration. Such insurance shall provide that the same may not be cancelled without 30 days prior written notice to the Declarant.

(ii) At all times during the term of this Declaration, each Owner shall keep Improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the "all-risk" policy broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Nebraska, with such insurance to be for the full replacement value of the insured Improvements.



(iii) In the event that any Improvement on a Lot shall be damaged or destroyed (whether partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence, repair, rebuild or restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if such building is totally destroyed, the Owner of such building shall be required to clear, clean and rebuild and/or restore the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed building shall have the right to make reasonable alterations as part of the reconstruction. Any rebuilding or restoration shall comply with this Article II.

2.9 Enforcement and Remedies. If any Owner defaults in any of its obligations or covenants hereunder, the Declarant or any other Owner or any mortgagee holding a first lien against any other Lot with the Development (a "First Mortgagee") shall have the right, but not the obligation, to enforce this Declaration by all remedies available at law or in equity, including, but not limited to, injunctive relief, specific performance and/or monetary damages. Any enforcement of any right or remedy hereunder by the Declarant, Owner or First Mortgagee, either prior to simultaneously with or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

2.10 Easements. Declarant hereby grants to Permittees the following easements:

(a) **Fire and Emergency Access.** Nonexclusive easements for the purpose of fire protection and emergency access over each Lot in the Development and for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas of each Lot in the Development.

(b) **Self Help Easements.** Nonexclusive rights of entry and easements in favor of the Declarant over, across and under each Lot in the Development for all purposes reasonably necessary to enable the Declarant to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform.

(c) **Use of Easements.** Subject to the reasonable rules and regulations adopted for the use of each Lot in the Development by such Lot's Owner, the use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of the Permittees. Each Owner specifically reserves the right, at any time and from time to time, to promulgate such rules and regulations applicable to the Lot as might be reasonably imposed but in all cases consistently applies and uniformly enforced to promote the health, safety, welfare and security of such Lot, the improvements located thereon and the Owner's and Occupants and their customers. Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe the reasonable rules and regulations established as permitted herein. If the unauthorized use is being made of any easement area by any Permittee, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting owner and failure to abate such unauthorized use within 14 days after receipt of such notice.

(d) **Maintenance of Easement Areas and Common Areas.** Except to the extent that such

areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration, the Owner of each Lot will operate, maintain and replace all of the areas of the Lot which are subject to the easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the Lot. Additionally, the Owner of any Lot in the Development, at its own expenses, shall repair, maintain and replace the Common Areas and all Improvements within or upon located on such Lot. Such repairs, replacements and maintenance shall include, but shall not be limited to:

- (i) maintenance, repair and replacement of the surface and subsurface of any parking areas so as to maintain level, smooth and evenly covered parking areas with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability;
- (ii) maintenance, repair and replacement of all buildings and other improvements;
- (iii) maintenance and care of all grass, shrubs and landscaping, including, but no limited to, the fertilizing, weeding, watering, mowing and rimming thereof and the making of such replacements of shrubs, trees and other landscaping as it necessary to maintain the same in first-class condition;
- (iv) removal from the Common Areas of papers, debris, ice, snow, refuse, filth and any hazards to personal using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;
- (v) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as may be reasonable required from time to time;
- (vi) such painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and
- (vii) maintenance and replacement of all lighting equipment, facilities and identification signs.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a first class retail, commercial, and office development.

- (e) **Maintenance of Sewers and Utilities.** The Owner of each Lot will operate, maintain and replace all sewers and utilities located within the boundaries of such Lot in sound structural and operating condition (except to the extent that such operating and maintenance is performed by public authorities or utilities) and will pay all costs associated with the consumption of utility services which relate to the improvements located on an individual Lot and no other Owner will have any liability with respect thereto.
- (f) **Impositions Prohibited.** Nothing in this Declaration shall be interpreted to permit,

nor shall the Owner of any Lot impose, any charge or cost for the use of any of the Common Areas.

2.11 Eminent Domain.

(a) **Owner's Right to Award.** Nothing herein shall be construed to give an Owner of any Lot in the Development any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Lot or granting the public or any government any rights in such Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvement of such portion of the Common Areas shall be payable only to the Owner thereof.

(b) **Tenant's Claim.** Nothing in this Article shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

(c) **Restoration of Common Areas.** The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

ARTICLE III

Amendments, Duration and Termination

3.1 Amendment, Modification. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by The Thomsen Mile, L.L.C., in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent of the land area covered by this Declaration; excepting, however, for the use restriction portion of Article II, Section 2.3 shall be at the sole discretion of the Owner of Lot 1, The Thomsen Mile West so long as it has not expired according to its terms. All such amendments or waivers must be in writing and recorded in the Records of Douglas County, Nebraska, as a modification to this Declaration.

3.2 Termination. The Declaration herein shall not be terminated except with the written acknowledgment and consent of 75% of the Owners, and such termination shall be effective when duly recorded in the office of the Register of Deeds in the county in which the Lots are situated.

3.3 Duration. Unless otherwise canceled or terminated, this Declaration and all of the covenants, easements, restrictions, rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law or the duration thereof.

ARTICLE IV

Miscellaneous

4.1 Effective Covenants. Each grantee of the Declarant, its successors and assigns, by the acceptance of a deed of conveyance, accept the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this

Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest of estate in said property, and shall inure to the benefit of such Owners on like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

4.2 Waiver. No covenant, restriction, condition or provision of this Declaration shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

4.3 Dedication. Nothing contained in this Declaration shall not be deemed to create a gift of all or any portion of the Premises to the general public or as a dedication for public use or public purpose it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Development, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements deemed necessary by the City of Omaha to serve the Lots as contemplated by the Subdivision Agreement, as amended from time to time.

4.4 Savings Clause. If any covenant, restriction, condition, limitation or any other provision of this Declaration or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Declaration and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

4.5 Successors and Assigns. Each and all of the covenants, restrictions, limitations, terms, provisions, and agreements contained in this Declaration shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Declaration and by applicable law, their respective heirs, legal representatives, successors, and assigns.

4.6 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof.

4.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

#### ARTICLE V Owner's Association

5.1 The Association. Declarant has caused or shall cause the incorporation of The Thomsen Mile Owner's Association, a Nebraska not-for-profit corporation (hereinafter referred to as the "Association"). Each Lot Owner shall be a member (hereinafter referred to as "Member") of the Association. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the Owners and Occupants of the Lots, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities (as hereinafter defined) for the general use, benefit and enjoyment of the Members. Common facilities may include, but are not limited to, recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, and signs and entrances for The Thomsen Mile (collectively the "Common Facilities"). Common Facilities may be situated on property owned or leased by the Association or its Members, on public property, or on private property subject to an easement in favor

of the Association.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict the use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required by pay a fee or other charge in connection with the use or enjoyment of the Common Facilities.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the Owners and Occupants of the Development; and the protection and maintenance of the character of the Development.

5.2 Membership and Voting. Each Owner shall be a Member of this Association. The Association shall include further phases of The Thomsen Mile as may be developed by the Declarant. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot.

Each Member, whether one or more persons and entities, shall have a number of votes equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time (i.e., the Owner of 5% of the land area of the Development shall be entitled to 5 votes), on each matter properly coming before the Members of the Association. A Member holding title to more than one Lot shall be entitled to one vote for each Lot so owned.

5.3 Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include by shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property, all within the Common Facilities, within or near the Development.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment of purchase of insurance covering any Common Facilities against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

5.4 Mandatory Duties of Association. The Association shall maintain and repair any boundary fence, entrance monuments, and signs which have been installed by Declarant, in generally good and neat condition. The Association shall also provide those services to Members as set forth in the bylaws of the Association as it may be amended from time to time.

5.5 Imposition of Dues and Assessments. The Association may fix, levy and charge each Member with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

5.6 Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens.

5.7 Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of each Member at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Member at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

5.8 Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 5.1 of this Article, to perform the Powers and Responsibilities of the Association described in paragraphs 5.3 and 5.4 of this Article, and to provide the services set forth in the bylaws of the Association.

5.9 Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 5.11 below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

- (a) One hundred fifty and no/100 Dollars (\$150.00) per month per Lot;

(b) In each calendar year beginning on January 1, 2003, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year;

5.10 Assessments and Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any of the Common Facilities, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in calendar year shall be limited in amount to Five Hundred and no/100 Dollars (\$500.00) per Lot.

5.11 Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

5.12 Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5.5 above.

5.13 Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of the request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessments shall be and become a lien as of the date such amounts first become due and payable.

5.14 Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of 1.5% per month. The Association may bring an action at law against any Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Member may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Member by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

5.15 Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on the day and year set forth above.

DECLARANT:

The Thomsen Mile, L.L.C., a Nebraska limited liability company, By: TM Associates, L.L.C., a Nebraska limited liability company,

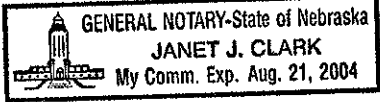
By *Trenton B. Magid*  
Trenton B. Magid, Manager Member

By: West Maple, L.L.C., a Nebraska limited liability company,

By *Jerry M. Slusky*  
Jerry M. Slusky, Manager Member

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 12 day of December 2002, by Trenton B. Magid, Manger Member of TM Associates, L.L.C., a Nebraska limited liability company, Member of The Thomsen Mile, L.L.C., a Nebraska limited liability company.



*Janet J. Clark*  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 12 day of December 2002, by Jerry M. Slusky, Manger Member of West Maple, L.L.C., a Nebraska limited liability company, Member of The Thomsen Mile, L.L.C., a Nebraska limited liability company.

*Janet J. Clark*  
Notary Public

