

\$56.50

*Dan Jalta*

REGISTER OF DEEDS

2002 APR 12 P 2:40

LANCASTER COUNTY, NE

INST NO 2002

024200

BLOCK

ASHLEY  
CODE  
CHECKED  
ENTERED  
EDITED

**DECLARATION OF  
PROTECTIVE COVENANTS  
OF ASHLEY HEIGHTS COMMERCIAL PROPERTY**

These Protective Covenants of Ashley Heights Commercial Property ("Protective Covenants") made and entered into on the date hereinafter set forth by M & S Construction, Inc., a Nebraska corporation, and Allen D. Schulz and Beth A. Schulz, husband and wife ("Schulz").

**DEFINITIONS.** Unless defined elsewhere in these Protective Covenants, the following terms are defined below:

**"Association"** shall mean the Ashley Heights Commercial Property Owners' Association which has been incorporated in Nebraska for the purposes of enforcing these Protective Covenants.

**"B-2 Property"** shall mean the following described real property:

Lot 1, Block 11, Ashley Heights Addition, Lincoln, Lancaster County, Nebraska

**"Common Detention Cell"** shall mean the area of the detention cell easement located on the eastern most part of the H-4 Property and highlighted on Exhibit "1" which is attached hereto and incorporated by this reference.

**"Declarant"** shall mean M & S Construction, Inc. and Allen D. Schulz and Beth A. Schulz, Husband and Wife.

**"Drainage Easement"** shall mean the drainage easements shown on the Plat for the B-2 Property and the H-4 Property, respectively.

**"Lot"** shall mean a platted lot of record within the Properties, including any lot resulting from the subdivision of either the B-2 Property or the H-4 Property.

**"H-4 Property"** shall mean the following described real property:

Lot 1, Block 10, Ashley Heights Addition, Lincoln, Lancaster County, Nebraska; and,

Outlot E, Ashley Height Addition, Lincoln, Lancaster County, Nebraska

**"Plat"** shall mean the Final Plat known as "Ashley Heights Addition", filed on September 13, 2001 as Inst. No. 01-52826 with the Lancaster County Register of Deeds.

**"Properties"** shall mean the B-2 Property and the H-4 Property.

**"Titleholder"** shall mean the owner of record of any Lot within the Properties.

1. **DECLARATION OF PROTECTIVE COVENANTS.** Declarant as the present titleholder of the Properties hereby declares that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with Properties 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.

2. **RESTRICTIONS ON USE.** The use of the south 200 feet of the H-4 Property, pursuant to the "Ashley Heights Conditional Annexation and Zoning Agreement" dated April 20, 2001, shall be restricted as follows:

- a. The south 60 feet of the H-4 Property is subject to a permanent drainage easement.
- b. A landscape screen as required by the City of Lincoln shall be established along the north side of the drainage easement, within the easement.
- c. The south 200 feet of the H-4 Property may be used as permitted by the H-4 General Commercial District except for the following uses which shall not be permitted:
  - i. Heavy equipment;
  - ii. Commercial storage or sale of farm implements and products used for agriculture, including fertilizer, or toxic or flammable agricultural chemicals;
  - iii. Lumber yards;
  - iv. Truck terminal;
  - v. Ambulance service;
  - vi. Outdoor theater;
  - vii. Open kennels;
  - viii. Sale barns;
  - ix. Drive-through restaurants;
  - x. Service stations;
  - xi. Truck stops;
  - xii. Auctions;
  - xiii. Any use listed under Lincoln Municipal Code 27.45.030, Permitted Special Uses; however, special permits for planned service consumption on or off the premises, and early childhood care facilities may be permitted.
- d. There shall be no outdoor storage or dumpsters of any kind, and no roadway or driveway permitted on the south side of any building.

3. COMPLETION OF CONSTRUCTION. Any building placed or constructed upon any Lot within the Properties shall be completed within twelve (12) months after the commencement of construction.

4. GRADING. The Properties shall be graded and storm water drained pursuant to the drainage plan in the Plat.

5. CITY REQUIREMENTS. All buildings and improvements within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks, street trees and landscape screens shown on any applicable Use Permit issued or the Plat shall be installed by each Lot owner at their own expense in accordance with the City of Lincoln, Nebraska's construction standards and design standards for sidewalks, street trees and landscape screens respectively.

6. LANDSCAPING. Within six (6) months (weather permitting) after the completion of construction on any Lot within the Properties, the titleholder of each Lot shall install any landscaping required under the terms of these Protective Covenants, the Plat, or any Use Permit issued.

7. TEMPORARY STRUCTURES. No partially completed or temporary building and no trailer, tent, shack or garage on any Lot within the Properties shall be used as either a temporary or permanent place or business, other than as a temporary construction office or temporary equipment storage during construction.

8. NUISANCE. No noxious or offensive trade or activity shall be conducted or permitted upon any lot within the Properties, nor anything which is or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining Lots.

9. EROSION CONTROL. During the construction of any building or improvement on any Lot within the Properties, the title holder shall control soil erosion, using an erosion control mat straw bales and other techniques required by any applicable Use Permit issued and the City of Lincoln, Nebraska.

10. COMMERCIAL PROPERTY OWNERS' ASSOCIATION. Every person or entity who is a record titleholder of a fee interest in a Lot within the Properties which is subject to these Covenants shall be a member of the Association. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot and ownership of such Lot shall be the sole qualification for membership.

11. MANAGING AGENT. The Declarant or the Association may contract for the performance of any of the Association'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 Association. The fee charged by the Managing Agent shall be a common expense of the members.

12. VOTING. The Titleholder of the B-2 Property and the Titleholder of the H-4 Property shall each be entitled to one hundred (100) votes, for a total of two hundred (200) votes. In the event either the B-2 Property or the H-4 Property is subdivided into smaller lots, the 100 votes held

by the Property that is subdivided shall be divided proportionately between the resulting subdivided lots based upon the fraction, the numerator of which is the total number of square feet in the subdivided lot and the denominator of which is the total number of square feet in the whole of the Property subdivided. By way of example, if the H-4 Property were subdivided into three (3) lots of equal size, with the exact same square footage, the three (3) resulting lots in the H-4 Property would be entitled to 33 1/3 votes each and the B-2 Property would continue to be entitled to 100 votes.

13. MAINTENANCE OF LANDSCAPE SCREEN. Each member who is the titleholder of a Lot on which any street trees or landscape screens, whether composed of structural or live plant material, which is installed as required by the City of Lincoln, Nebraska, shall be deemed to covenant to maintain the street trees and landscape screens in conformance with the City of Lincoln design standards.

14. MAINTENANCE OF DRAINAGE EASEMENT. Each member who is the titleholder of a Lot on which and drainage easement is located on the Plat shall be deemed to covenant to maintain the drainage easement, at their own cost and expense, in conformance with the City of Lincoln design standards.

15. MAINTENANCE OF OUTLOT E. The Titleholder of the H-4 Property covenants and agrees to maintain Outlot E (Outlot E, Ashley Heights Addition, Lincoln, Lancaster County, Nebraska) at their own cost and expense, in conformance with the City of Lincoln standards.

16. GENERAL MAINTENANCE OBLIGATION. Each member of the Association shall be responsible for the proper storage and disposal of all construction debris and materials associated with the construction of any improvements upon their lot. During construction on any lot, a member shall be responsible to erect and maintain adequate erosion control measures, including slit fences, straw bales or other measures to prevent soil runoff upon adjoining lots or streets. Lots shall be periodically mowed and loose debris and materials picked up and properly stored to prevent them from being spread and blown throughout the Properties. Each member shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon their Lot.

17. FAILURE TO MAINTAIN. In the event any member fails or refuses to perform any required maintenance and upkeep of any landscape screen or the general maintenance obligations, the Declarant or Association 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 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.

18. MAINTENANCE OF THE COMMON DETENTION CELL. The Properties contribute 42.4% of the drainage that flows into the Common Detention Cell. The Ashley Heights Homeowners Association is responsible for 57.6% of the maintenance costs of the Common Detention Cell. The responsibility for the 42.4% cost of the maintenance of which shall be apportioned between the B-2 Property and the H-4 Property as follows:

- a. The titleholder of the B-2 Property is responsible for 12.3% of the drainage that flows from the B-2 Property and into the adjacent Common Detention Cell and

shall be responsible to the Association for 12.3% of the total cost of Maintenance of the Common Detention Cell.

b. The titleholder of the H-4 Property is responsible for 30.1% of the drainage that flows from the H-4 Property and into the adjacent Common Detention Cell and shall be responsible to the Association for 30.1% of the total cost of maintenance of the Common Detention Cell.

Consequently, the Association covenants and each member, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant and agree to pay a proportionate share of all costs and expenses associated with the administration, insurance, maintenance, repair, replacement, addition and improvement of the Common Detention Cell to the entity that is ultimately responsible for administering, insuring, maintaining, repairing, replacing, adding and improving the Common Detention Cell. If no such entity has been established, the Association shall maintain a separate fund for such purpose. The covenant to pay shall be satisfied by the payment of general and special assessments for the Association's share of the cost of such administration, insurance, maintenance, repairs, replacement, addition and improvement of the Common Detention Cell.

19. LIEN OF DUES. The lien of any dues for maintenance of the Common Detention Cell, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

20. ANNUAL DUES AND LIENS. Annual dues for the maintenance of the Common Detention Cell, may be levied by the Board of Directors of the Association.

The members shall pay such annual dues to the Association or Managing Agent as billed. Each member's dues may be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any dwelling. Changes in the amount of future annual dues shall be based upon an estimate of the Association's costs for administration, maintenance and improvement of the Common Detention Cell, and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Common's operating costs may be presented to the members of the Association and the members shall pay any excess charge to the Association within thirty (30) days of the statement.

a. Additional Charges. In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association or Managing Agent may incur or levy in the process of collecting from each 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:

i. 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.

- ii. Late Charges. A late charge in an amount to be fixed by the Association to compensate the Association 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.
  - iii. Costs of Suit. Costs of suit and court costs incurred as allowed by the court;
  - iv. Filing Fees. Costs of filing notice of lien in the Office of the Register of Deeds;
  - v. Interest. Interest on all dues and assessments at the rate of 14% per annum, commencing thirty (30) days after the assessment becomes due; and
  - vi. Other. Any other costs that the Association may incur in the process of collecting delinquent dues and assessments.
- b. Lien. The dues and assessments shall be the personal obligation of the 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.
  - c. Fines. The Association may create a schedule of fines for violation of Association rules and regulations which fine shall be treated and billed as a special assessment to the offending member's lot.

21. ZONING DISCLOSURE. The Sun Husker/RE Meyer, L.L.C. meat processing facility is located on the real property described as Lot 1 Block 1 Lincoln Chamber Industrial Park (Benefited Property) is designated in the Lincoln City-Lancaster County Comprehensive Plan for Industrial uses and is located in the I-2 Industrial Park zoning district in the City of Lincoln. Future owners of residential, commercial and retail property in Ashley Heights are hereby notified that the Benefited Property has been used as a meat processing plant engaged in the breaking and processing of animal carcasses, cooking of meat, and handling of waste and byproducts of such operations for approximately ten (10) years, and that the Benefited Property is large enough to accommodate expansion of the plant.

Ashley Heights Subdivision rezoned a substantial portion of the Industrial District of which the Benefited Property is a part to commercial and retail uses and residential uses composed of single family and town homes, which will be locating in close proximity the meat processing plant.

- a. Restrictions. No lot owner of the Properties shall institute, encourage, or otherwise engage in any action, either legal or equitable, to change the designation of the Benefited Property from Industrial in the Lincoln City-Lancaster County Comprehensive Plan, or change the zoning classification of the Benefited Property from the I-2 Industrial Park zoning designation or its equivalent then existing in the Lincoln Municipal Code. No lot owner of the Properties shall institute, encourage or otherwise engage in any action, either legal or equitable, against the lawful operation of the meat packing

plant as it now exists or may otherwise be lawfully expanded. Any action against the Benefited Property based upon any theory of changed conditions as a result of the development of the Properties is specifically waived.

- b. Remedies for Enforcement. The lot owners of the Properties or the Benefited Property, their respective representatives, agents, heirs, successors and assigns may institute or prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate these Protective Covenants, including the right to proceed for an injunction of and for specific performance of any covenant herein contained and damages against the person or persons violating any such covenant.

22. AMENDMENTS. These Protective Covenants shall run with the land and shall be binding upon and enforceable by the Declarant and all persons claiming under the Declarant. These Protective Covenants may be terminated or modified, in writing, by the owners of two-thirds of the lots within the Properties, at any time. However, the provisions of these Protective Covenants governing membership in the Association and the maintenance of landscape screens and Common Detention Cell shall not be terminated or modified without the consent of the City of Lincoln, Nebraska.

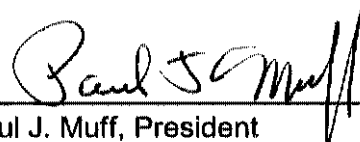
23. ENFORCEMENT. The enforcement of these Protective Covenants shall be by proceedings at law or in equity, and may be instituted by any of the following against any person or persons violating or attempting to violate any provisions hereof: (i) the Declarant, the Association, or any lot owner, or (ii) if the proceedings are to enforce the covenants regarding maintenance of the Common Detention Cell or landscape screens, 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, Association, or lot owner in any action to enforce these Protective Covenants is successful, they shall be entitled to an award of reasonable attorney's fees and court costs. Failure by the Association, 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 Association is dissolved, the lot owner shall remain jointly and severally liable for the cost of maintenance of the Common Detention Cell and landscape screens.

24. SEVERABILITY. The invalidation of any one of these Protective Covenants shall not affect the validity of the remaining provisions hereof.

4<sup>th</sup> IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this day of April, 2002.

M & S Construction, Inc.

By:

  
Paul J. Muff, President

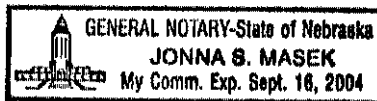
By: Allen D. Schulz  
Allen D. Schulz, Husband

By: Beth A. Schulz  
Beth A. Schulz, Wife

Approval of Protective Covenants  
for the limited purpose of conveying  
maintenance of the landscape  
screens, common detention cell  
to the Ashley Heights Commercial  
Property Owners Association.

Rick Peo  
Rick Peo, Chief Assistant City Attorney

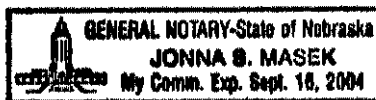
STATE OF NEBRASKA     )  
                                  ) ss:  
COUNTY OF LANCASTER )



The foregoing instrument was acknowledge before me this 4<sup>th</sup> day of April, 2002, by Paul J. Muff, known to be President of M & S Construction, Inc. a Nebraska Corporation, on behalf of the corporation.

Jonna S. Masek  
Notary Public

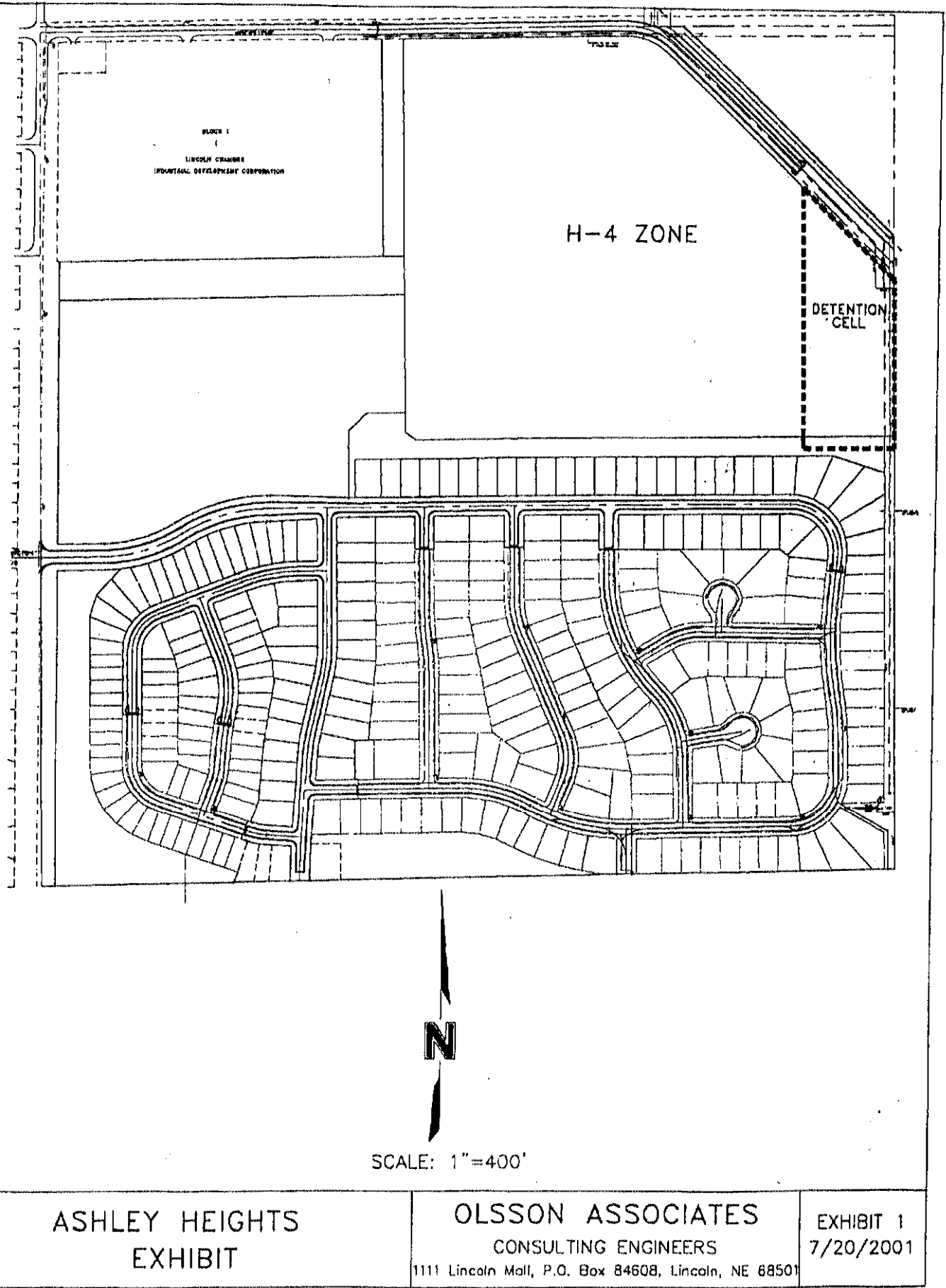
STATE OF NEBRASKA     )  
                                  ) ss:  
COUNTY OF LANCASTER )



The foregoing instrument was acknowledge before me this 4<sup>th</sup> day of April, 2002, by Allen D. Schulz and Beth A. Schulz, Husband and Wife.

Jonna S. Masek  
Notary Public





ASHLEY HEIGHTS  
EXHIBIT

OLSSON ASSOCIATES  
CONSULTING ENGINEERS  
1111 Lincoln Mall, P.O. Box 84608, Lincoln, NE 68501

EXHIBIT 1  
7/20/2001

EXHIBIT

tabbies

**LEGAL DESCRIPTION  
DETENTION CELL EASEMENT**

A LEGAL DESCRIPTION FOR DETENTION CELL EASEMENT PURPOSES FOR A TRACT OF LAND COMPOSED OF A PORTION OF LOT 1 BLOCK 10 ASHLEY HEIGHTS ADDITION, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1 BLOCK 10, SAID POINT BEING **THE TRUE POINT OF BEGINNING**, THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 08 MINUTES 55 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 285.00 FEET TO A POINT, THENCE NORTH 00 DEGREES 51 MINUTES 05 SECONDS WEST, A DISTANCE OF 775.26 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 1, THENCE SOUTH 45 DEGREES 52 MINUTES 10 SECONDS EAST ALONG A NORTHEAST LINE OF SAID LOT 1, A DISTANCE OF 402.92 FEET TO A EAST CORNER OF SAID LOT 1, THENCE SOUTH 00 DEGREES 51 MINUTES 05 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 490.44 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 180,361.59 SQUARE FEET OR 4.14 ACRES, MORE OR LESS.

March 25, 2002 (11:56AM)  
F:\Projects\20000589\lyplat\dwg\DETENTION.rtf

