



After recording return to:  
Seacrest & Kalkowski, PC, LLO  
1128 Lincoln Mall, Ste. 105  
Lincoln, NE 68508

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
ASHLEY HEIGHTS COMMERCIAL CENTER**

THIS DECLARATION is made and entered into as of this 8<sup>th</sup> day of February, 2017, by **Muff-Stettinger, LLC**, a Nebraska limited liability company, hereinafter referred to collectively as the "Declarant".

**ARTICLE I  
DEFINITIONS**

Unless defined elsewhere in this Declaration, the following terms are defined below:

**"Assessment Units"** shall mean those units assigned to each Lot based upon the building area of each Lot as set out in the Use Permit, defined below, or after the issuance of an occupancy permit as to each building.

**"Association"** shall mean and refer to Ashley Heights Commercial Center Association, a Nebraska nonprofit corporation, which shall be established by the Declarant for the purpose of enforcing and maintaining compliance with this Declaration.

**"City"** shall mean and refer to the City of Lincoln, Nebraska, a political subdivision.

**"Common Area"** shall include the Green Area and sidewalks located along the north side of West Huntington Avenue, sidewalks along the east side of NW 48<sup>th</sup> Street, all drainage ways, improvements, and open space located within Outlot E, Ashley Heights Commercial Center Addition, and all roadways with public access easements, common entrance and exit ways, and common utilities which are now or may hereafter be located or constructed upon the Property.

**"Declarant"** shall collectively mean Muff-Stettinger, LLC, a Nebraska limited liability company, and any successors in interest.

**"Green Area"** shall mean that portion of the Property on which the front yard setback along West Huntington Avenue is located.

**"Improvement"** shall mean any building or other temporary or permanent exterior improvement, including, but not limited to, advertising devices, lighting, fences, landscaping, trees, and exterior remodeling, reconstruction, alterations or additions thereto.

**"Lot"** or **"Lots"** shall mean all buildable Lots now or hereafter located on the Property, defined below, which are shown on any final plat of all or any portion of the Property that has been filed with the Lancaster County Register of Deeds.

**"Lot Owner"** shall mean the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of any obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgage). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Lot Owner" for purposes of this Declaration.

**"Member"** shall mean those Lot Owners entitled to vote on matters pertaining to the business of the Association.

**"Property"** shall mean Lots 1 and 2, and Outlot E, except the part conveyed to the City of Lincoln by Warranty Deed recorded with the Lancaster County Register of Deeds as Instrument No. 2015006894, Ashley Heights Commercial Center Addition, Lot 1 and Outlot A, Ashley Heights Commercial Center 1<sup>st</sup> Addition, and Lots 1 and 2, Ashley Heights Commercial Center 2<sup>nd</sup> Addition, all located in Lincoln, Lancaster County, Nebraska.

**"Use Permit"** shall refer to City of Lincoln, Nebraska, Use Permit No. 04003, as the same may be amended, modified or altered with respect to the Property.

## ARTICLE II DECLARATION

In order to provide for the preservation of the values and amenities of the Lots as well as for the maintenance of the character and integrity of the Lots as a commercial center, the Declarant, owner of the Property, hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the restrictions, covenants, conditions and easements contained in this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the Lot Owners and users of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms.

ARTICLE III  
COVENANTS, CONDITIONS AND RESTRICTIONS

1. Use. No Lot shall be used other than as designated under the Use Permit.
2. Approval of Plans. No Improvement shall be constructed, erected, placed or permitted to remain on any Lot, or grading or excavation for any Improvement be commenced on any Lot, except for Improvements which have been approved by Declarant as set forth herein. All Improvements constructed upon the Property shall be similar in style to the buildings already constructed upon the Property. A Lot Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall show the design, size and exterior material for such Improvement and the plot plan for the Lot. Such Plans shall also include erosion control measures which will contain erosion of soil on the Lot during construction. One set of the approved Plans shall be left on permanent file with the Declarant. Construction of the Improvement shall not be commenced unless written approval of the Plans has been secured from the Declarant. Written approval or disapproval of the Plans shall be given by the Declarant within thirty (30) days after the receipt thereof. The Declarant shall have the exclusive right to disapprove the Plans, if in the Declarant's opinion, the Plans do not conform to the general standard of development in the Property. Upon disapproval, a written statement of the grounds for disapproval shall be provided.
3. Completion of Construction. Any Improvement placed or constructed upon any Lot within the Property shall have a shell complete within six (6) months from the commencement of construction and be completed within one (1) year after the commencement of construction.
4. Erosion Control. The adequacy of erosion control measures on a Lot shall be subject to continual review during construction. Declarant shall have the right to require any Lot Owner to maintain silt fences or other additional measures if soil is observed to be eroding onto any abutting Lot, sidewalk, street, or Common Area. In the event a Property Owner fails to adequately control erosion during construction, the Declarant shall provide the Lot Owner with written notice to implement measures to control erosion occurring on the Lot. In the event the Lot Owner fails to implement measures to control the erosion within ten (10) days from the date of the notice, Declarant may enter upon the Lot and contract for the services necessary to control the erosion and bring the Lot into compliance with this section and charge the actual costs plus a ten percent (10%) administrative fee to the Lot Owner. The Lot Owner shall remit payment for such charges within ten (10) days of billing. Upon failure of the Lot Owner to remit payment, the charges shall be specifically assessed against the Lot, shall bear interest at the rate provided for unpaid assessments, and shall be a lien upon the Lot.
5. Grading. The Declarant shall have the sole and exclusive right to establish grades and slopes of all Lots within the Property and to fix the grade upon which any Improvement shall be placed or constructed upon any Lot, in conformity with the general plan for the development of the Property. Once such grades, slopes and/or contours have been established by the

Declarant, they shall not be changed in connection with the construction of any Improvement on a Lot without written permission from the Declarant, which will not be unreasonably withheld, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots.

6. Lot Owner Maintenance. Each Lot Owner covenants to maintain the Improvements, internal sidewalks, landscaping, parking lot and driveways (not common roadways) located on their Lot in a neat and attractive manner. The Declarant may adopt from time to time minimum maintenance standards to establish the minimum acceptable standards for this covenant to maintain. In the event a Lot Owner fails to maintain any Improvement, internal sidewalk, landscaping, parking lot or driveway located on their Lot according to the maintenance standards, the Declarant shall after ten (10) days' written notice to the Lot Owner, and such deficiencies are not corrected during said ten (10) day period, have the right to enter upon any Lot, at reasonable times, to perform such maintenance. The written notice shall specify the required maintenance and the time in which it must be completed. The actual cost of the maintenance, plus a ten percent (10%) administrative fee, shall be paid by the Lot Owner within ten (10) days of billing. Upon failure of the Lot Owner to remit payment, the cost of maintenance and administrative fees shall be specifically assessed against the Lot upon which the Improvement is located, shall bear interest at the rate provided for unpaid assessments and, when shown of record, shall be a lien upon the Lot.

7. Maintenance of Screens. The Lot Owner of each Lot within the Property shall be required to implement screening of various items in accordance with the approved Plans. The Lot Owner of each Lot upon which a screen is installed in accordance with the Plans shall be deemed to covenant to maintain the screen. In the event a Lot Owner fails to comply with this requirement, the Declarant shall provide the Lot Owner with written notice to maintain the screen. If the Lot Owner fails to maintain the screen within ten (10) days from the date of the notice, the Declarant may contract for the services reasonably necessary to maintain the screen and to bring the Lot into compliance with the Plans. The actual cost of such services, plus a ten percent (10%) administrative fee, may be assessed against the Lot by the Association. Upon failure of the Lot Owner to remit payment, the cost of maintenance and administrative fees shall be specifically assessed against the Lot, shall bear interest at the rate provided for unpaid assessments and, when shown of record, shall be a lien upon the Lot.

8. Nuisance. No noxious or offensive activity shall be conducted or permitted upon any Lot within the Property, nor anything which is or may become an annoyance or nuisance to neighbors or which endangers the health or unreasonably disturbs the quiet of the occupants of the adjoining Lots.

9. Temporary Structures. No partially completed or temporary building and no trailer, tents, shack or garage on any Lot within the Property shall be used as either a temporary or permanent place of business, other than as a temporary construction office or temporary equipment storage during construction.

10. Signs. No advertising sign, billboard, or other advertising device shall be permitted on any Lot or any part of the outside of an Improvement or inside if visible from the exterior, unless the color, size, style and material thereof have been approved in writing by the Declarant pursuant to Paragraph 2 above. Any amendment to the Use Permit regarding signage within the Property must be approved by the Declarant prior to its submittal to the City of Lincoln. The Declarant shall have the exclusive right to disapprove any sign, billboard or advertising device, if in the Declarant's sole discretion, it does not conform to the general standard of development of the Property. No pole signs shall be allowed for any individual Lot.

11. Sprinkler Systems. All Lots shall have an underground sprinkler system installed on the Lot by the titleholder prior to seeding or sodding the Lot. Declarant shall have the right to name the designer of the sprinkler system, to assure continuity and compatibility of the individual systems with the overall system of private water distribution. Plans for the sprinkler system shall be approved by the Declarant prior to installation in accordance with Paragraph 2 above.

#### ARTICLE IV ASHLEY HEIGHTS COMMERCIAL CENTER ASSOCIATION

1. The Association. Declarant shall cause the incorporation of the Association. The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the owners and tenants of the Property. The Common Area shall be subject to the control and management of the Association through its Board of Directors. The Association shall have the right from time to time to establish, revoke, modify and enforce reasonable rules and regulations with respect to all or any part of the Common Area. In the event the Association dissolves, the Lot Owners shall remain jointly and severally liable for the cost of maintenance of the Common Area.

2. Maintenance of Common Area. The City has approved the final plats of Ashley Heights Commercial Center Additions upon the condition that the Common Area be maintained by the Declarant on a permanent and continuous basis. The Association covenants and each Member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to assume the obligations of the Declarant to comply with the requirements of the final plats of Ashley Heights Commercial Center Additions, and any subsequent final plats of the Property, regarding continuous and permanent maintenance of the Common Area and to administer, maintain and improve the Common Area, which covenants by the Members shall be satisfied by the payment of annual and special assessments for such administration, maintenance and improvement of the Common Area. In the event the Association dissolves, the Lot Owners shall remain jointly and severally liable for the cost of maintenance of the Common Area incurred during such Lot Owner's ownership of any such Lot. The covenant to maintain the Common Area shall include insuring the Common Area against public liability and property damage, including, at the sole option of the Association, the addition of the Lot Owner of any Lot upon which a portion of the Common Area may be located as an additional insured. Such insurance shall be in commercially reasonable amounts. Annual and special assessments shall be based upon the Assessment Units allocated to the Lots within

the Property as provided for elsewhere herein. Each assessment shall be the personal obligation of the Member who is, or was, the Lot Owner of the Lot assessed at the time of the assessment. If not paid when due, assessments shall bear interest at the rate of sixteen percent (16%) per annum and, when shown of record, shall be a lien upon the Lot.

3. Costs of Administration, Maintenance or Improvement of Common Area. All costs of administration, maintenance or improvement of the Common Area shall mean the total cost and expense incurred by the Association in operating, maintaining, repairing, and replacing any open space, facility, utility, and improvement within the Common Area, including, without limitation, the cost of maintaining and resurfacing roads, gardening and landscaping, signage, underground sprinkler system, retaining walls, line painting, lighting, maintenance of utility lines, snow removal, ice, drainage, rubbish and other refuse, public liability and property damage insurance premiums, repairs, reasonable reserves for capital replacements, depreciation on equipment and machinery used in such maintenance, cost of postage, photocopies, telephone and fax charges, or other expenses and personnel required to provide such services and management, together with a reasonable charge for overhead not to exceed ten percent (10%) of the foregoing (excluding taxes and insurance), or amounts paid to independent contractors for any or all of such services.

The Association shall keep accurate records of the costs associated with the administration, maintenance and improvement of the Common Area for the purpose of making assessments as provided by this Declaration. The Association, through its duly authorized employees and contractors, shall have the right after reasonable notice to the Lot Owner thereof, to enter upon any such Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein.

4. Assessments. The Board of Directors of the Association shall fix the annual assessments. The Members shall pay assessments to the Association as billed. Each Member's assessment shall be determined on an annual basis for each fiscal year, prorating fractional years and changes in Assessment Units which may occur by issuance of occupancy certificates. An estimate of the Association's cost for administration, maintenance and improvement of the Common Area shall be made annually. All assessments, other than assessments that are assessed to pay for services or improvements benefiting only one or more Lots, shall be assessed ratably based on the Assessment Units of each Lot. The Association may elect to bill each Member for their estimated assessment annually or biannually. Each Member shall pay their estimated assessment in advance within thirty (30) days of the date of the billing statement from the Association which shall be the due date. The Bylaws of the Association shall detail more specifically the assessment procedure.

5. Liens and Personal Obligations for Dues and Assessments. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Lot Owner that owned the Lot at the time when the assessments first become due and payable. The 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 assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor

in title to the Lot Owner at the time the dues and assessments become delinquent unless such 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.

6. Effect of Nonpayment of Assessment; Remedies of the Association. Any of assessment which is not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Lot Owner 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 a 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 Lot Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Lot Owner 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.

7. Subordination of the Lien to Mortgagee. The lien of any annual or special assessment shall, until shown of record, be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a loan for construction of any Lot improvements or for a purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

8. Self-Help by Association. In the event that any Member shall fail to (i) maintain erosion control on the Lot during construction in accordance with Paragraph 4 of Article III, (ii) maintain or repair the exterior of any Improvement constructed on the Lot as provided in Paragraph 6 of Article III, or (iii) maintain any landscape screen on the Lot as provided in Paragraph 7 of Article III, in a manner satisfactory to the Board of Directors of the Association, and such deficiency continues after ten (10) days written notice to the affected Lot Owner, the Board of Directors of the Association may authorize and direct the installation, maintenance or repair of such erosion control, Improvement, or screen by agents or employees of the Association. Such agents or employees shall have the right to enter upon such Lot for the purpose of such installation, maintenance or repair, and the cost thereof shall be levied and assessed as a specific special assessment only against such Lot upon which the installation, maintenance or repair took place.

9. Membership in Association - Voting Rights. Every Lot Owner, whether one or more persons or entities, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of each Lot and ownership of such Lot shall be the sole qualification for membership.

The Association shall have two (2) classes of voting Members as follows:

Class "A". Class "A" Members shall be all Lot Owners with the exception of Declarant, and shall be entitled to one (1) vote for each Assessment Unit allocated to each Lot owned. When more than one (1) person holds an interest in a given Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine among themselves; however, the number of votes for any Lot owned by Class "A" Members shall never exceed the number of Assessment Units allowed to that Lot.

Class "B". Class "B" Members shall be the Declarant, who shall be entitled to ten (10) votes for each Assessment Unit allocated to each Lot owned by Declarant. Class "B" membership shall automatically be converted to Class "A" membership at such time as all of the Lots have been sold and/or built upon by the Declarant and shall have the same voting rights as Class "A" members.

10. Allocation of Assessment Units. Assessment Units are allocated to the Lots within the Property as follows:

(a) Any Lot that has not obtained a certificate of occupancy from the City of Lincoln, Nebraska shall be allocated one (1) Assessment Unit per one hundred (100) square feet of building area permitted for the Lot as designated on the site plan for the Use Permit.

(b) Upon issuance of a certificate of occupancy by the City of Lincoln, Nebraska, for any completed Improvement(s), the Lot shall be allocated three (3) Assessment Units per one hundred (100) square feet of actual building area.

The Assessment Units referred to above shall not be cumulative.

11. Easements to Common Area. Declarant does hereby establish, give, grant, and convey to the Association and to each of its Members for their mutual benefit and the benefit of their respective successors, heirs, assigns, tenants, customers, officers, employees, and invitees, the following easements and the benefits and corresponding burdens shall be appurtenant to and run with the Property:

(a) Perpetual nonexclusive easements upon and across all the sidewalks, driveways, entrance and exit ways, and roadways in the Property which are now or hereafter from time to time used for pedestrian and vehicular traffic for the purpose of allowing pedestrian and vehicular ingress and egress access to and from each Lot within the Property.

(b) Perpetual nonexclusive easements as may be necessary to install, maintain, repair, reconstruct or replace underground utilities serving any portion of the Property over and across any such portion of the Property that is not within the building areas on the Property; provided, that such easements shall (i) be only for the most direct route or smallest space reasonably feasible and in conformity with applicable codes and regulations, and (ii) be limited to areas or routes so as not to interfere with the operation of permitted activities in the areas in or adjacent to such easement, and (iii) permit reasonable maintenance, repair,



reconstruction and replacement in such a manner as to not interfere with the use of areas adjacent to such easement, and (iv) shall be subject to the titleholder of the benefited property being responsible for payment of any construction, maintenance, repair, reconstruction or replacement costs related to same, and (v) shall be to the extent and duration necessary to assure the benefited property to be in compliance with applicable codes and laws, and to provide a reasonable and beneficial use to the benefited property for the required purposes.

(c) Perpetual and nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Lot, subject to the following:

(i) Easements shown upon any final plat of any portion of the Property recorded with the Register of Deeds of Lancaster County, Nebraska;

(ii) The right of the Association to promulgate rules and regulations for the reasonable use and enjoyment of the Common Area;

(iii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility and subject to such conditions as may be agreed to by the Members; provided, however, that any such dedication or transfer shall be approved by a majority vote at a regular meeting of the Members, providing notice of the proposed dedication or transfer be contained in the notice of such meeting; and provided further, that any such dedication or transfer shall not materially affect adversely the vehicular or pedestrian access to any Lot; and

(iv) The use of the roadways located within the Common Area by the general public pursuant to a public access easement granted or to be granted by the Declarant.

12. Easements to City. Declarant does hereby establish, give, grant, and convey to the City of Lincoln a permanent right to enter upon the Common Area to maintain the Common Area in the same manner as required of the Association in the event the Association dissolves and the Lot Owners fail to perform said maintenance.

13. Dissolution of Association; Lot Owner Responsibilities. Each Lot Owner by the acceptance of a deed by which the interest requisite for membership in the Association is acquired, shall be deemed to covenant that, in the event the Association dissolves, such Lot Owner shall remain jointly and severally liable along with all other Lot Owners for the cost of administering and maintaining the Common Area in the same manner as required of the Association under paragraph 2 above. In the event such Lot Owners fail or refuse to perform any required maintenance and upkeep of the Common Area, the City of Lincoln after seven (7) days' notice to such Lot Owners, may perform the required maintenance and assess each Lot and Lot Owner for the cost of the performance of such maintenance on an equal per lot basis. Each

assessment of the City's actual costs of performing the maintenance shall be the personal obligation of each Lot Owner who is the owner of the Lot at the time of assessment and shall be a lien upon the Lot assessed. To evidence such lien for unpaid assessments, the City shall prepare a written notice setting forth the amount, the name of the Lot Owner, and a legal description of the Lot. Such notice shall be signed on behalf of the City by the Mayor and shall be recorded with the Register of Deeds of Lancaster County, Nebraska. Each Lot Owner shall pay the Lot Owner's pro-rata share of the City's actual cost of maintaining the Common Area within thirty days following receipt of an assessment therefor. Delinquent payments shall be subject to a late charge of 10% of the delinquent payment or twenty dollars (\$20) whichever is greater.

## ARTICLE V GENERAL PROVISIONS

1. Use Permit or Final Plat Amendments. Declarant shall have the right at any time to amend the Use Permit within the Common Area and on Lots owned by the Declarant, without the consent of any Lot Owners provided, that any such amendment does not materially affect any access to or use of any Lot not owned by Declarant without such Lot Owner's consent. Lot Owners, other than the Declarant, may not amend the Use Permit without the prior written consent of the Declarant. Lot Owners acknowledge that the Use Permit contains a maximum amount of daily trips that may be generated by the uses within the Property. The Declarant shall have the right to deny any amendment to the Use Permit it reasonably deems inconsistent with or detrimental to any other existing or proposed use within the Property. Members of the Association covenant not to object to any amendment of the Use Permit provided the amendment does not change the approved use, permitted building square footage or allocation of daily trips for their Lot. Declarant shall have the right to alter the Lot configurations in any final plat within the Use Permit within the Common Area and on Lots owned by the Declarant without the consent of any Lot Owners so long as vehicular and pedestrian access is not materially affected by such change. Upon approval by the City of Lincoln, Nebraska of any amendment to the Use Permit, the amended use, permitted building area or Lot configuration shall govern interpretation of this Declaration.

2. Avigation and Noise Easement. Each Lot Owner acknowledges that the Property is located within the Airport Environs Noise District and is subject to an Avigation and Noise Easement (Ashley Heights Commercial Center) granted to the Lincoln Airport Authority which was filed on July 7, 2006 with the Lancaster County Register of Deeds as Instrument No. 2006033226 providing for the right of flight and consequent aircraft noise which may affect the use of the Property.

3. Amendments. This Declaration shall run with the land and shall be binding, upon and enforceable by the Declarant, the Association, and all persons claiming under the Declarant. This Declaration may be terminated or modified, in writing, by the holders of two-thirds of the cumulative total of voting rights established without regard to class of membership at any time. Notwithstanding the foregoing provisions, any instrument amending, modifying, abrogating, or terminating this Declaration pertaining to the structure, existence or financing of the Association

maintenance of the Common Area, enforcement of this Declaration by the City and City approval of amendments to this Declaration must be approved by the City Attorney's office in writing and recorded with the Register of Deeds before it shall be effective.

4. Enforcement. The enforcement of this Declaration may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages and, by the Association or Declarant, may be to enforce any lien or obligation created hereby. The City shall have the right to enforce all restrictive covenants regarding maintenance of the Common Area by proceedings at law or in equity against any person violating or attempting to violate said provisions. The City proceedings may be to restrain violation of the duty to maintain the Common Area, to recover a money judgment upon the personal obligation and debt of the Lot Owner to pay the Lot Owner's pro-rata share of the City's cost to maintain the Common Area or to foreclose upon the defaulting Lot Owner's Lot in a like manner as mortgages on real property. In any such foreclosure or lawsuit, the Lot Owner shall be required to pay the cost and expenses of such proceedings, including reasonable attorney fees, costs of suit, and court costs incurred as allowed by the court. Suit to recover a money judgment for unpaid assessments for the cost to maintain the Commons shall be maintainable without foreclosure of the Lot Owner's Lot or waiving the lien securing the assessment.

5. Assignment. Muff-Stettinger, LLC shall have the power to assign any or all of their rights and duties as Declarant in this Declaration to a successor or assign, or to the Association, at such time as the Declarant deems appropriate, by filing a Notice of Assignment of Declarant Rights and Duties that delineates which rights and duties are being assigned. Muff-Stettinger, LLC or their successors or assigns, may also terminate their status as Declarant under this Declaration in their entirety, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant with respect to those remaining rights and duties the Declarant has not previously assigned to another entity, association or individual under a Notice of Assignment of Declarant Rights and Duties, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant with respect to those remaining rights and duties. Notwithstanding the foregoing, all of Declarant's rights set forth herein shall be automatically assigned to the Association at the time Declarant, and its successors and assigns, no longer has any ownership interest in the Property.

6. Severability. Invalidity of any one of these covenants, restrictions, conditions, easements or reservations by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

7. City Attorney Approval. Notwithstanding the foregoing provisions, any instrument amending, modifying, abrogating, or terminating this Declaration pertaining to the structure, existence, or financing of the Association maintenance of the Common Area, enforcement of this Declaration by the City of Lincoln and City of Lincoln approval of amendments to this Declaration must be approved by the City of Lincoln City Attorney's office in writing and recorded with the Register of Deeds before it shall be effective.

The undersigned City Attorney hereby approves the form of the foregoing Declaration for the limited purpose of conveying maintenance of the Common Area to the Association.

*Paul Peo*  
Assistant City Attorney

Date: 2-6-2017

**MUFF-STETTINGER, LLC**, a Nebraska  
limited liability company

By: *Paul J. Muff*  
Title: *President*

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2017 by Paul J. Muff, as President of **MUFF-STETTINGER, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

*Danay A. Kalkowski*  
Notary Public

