

FILED JAN 24 2001

9:12 A.M.

CHARLOTTE L. PETERSEN  
WASHINGTON COUNTY CLERK  
BLAIR, NE 68008

20010307  
STATE OF NEBRASKA COUNTY OF WASHINGTON)SS  
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD  
THIS 24th DAY OF January A.D. 2001  
AT 9:12 O'CLOCK A. M AND RECORDED IN BOOK  
329 AT PAGE 159-167  
COUNTY CLERK Charlotte L. Petersen  
DEPUTY Naomi Madison

Recorded ☒  
General ☒  
Numerical ☒  
Photostat ☒  
Proated ☒

## DECLARATION OF COVENANTS,

## CONDITIONS AND RESTRICTIONS

THIS DECLARATION made the date hereinafter set forth by JCM Investments, Inc., a Nebraska corporation, and Melvin Sudbeck Homes Inc., a Nebraska corporation, hereinafter collectively referred to as "Declarants."

## WITNESSETH:

WHEREAS, Declarants are the owners of certain property in Washington County, Nebraska, which is more particularly described as:

Lots 18A, 18B, 19A, 19B, 20A, 20B, 21A, 21B, 22A and 22B, all in Deerfield, a subdivision as surveyed, platted and recorded in Washington County, Nebraska.

NOW, THEREFORE, Declarants hereby declare that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run, perpetually with, the real property and be binding on all parties having any right title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

## DEFINITIONS

Section 1. "Association" shall mean and refer to Deerfield Townhomes Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

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

Return to:  
James E. Lang  
11306 Davenport Street  
Omaha, NE 68154

If a townhome Unit or Lot is sold under a recorded contract of sale, the purchaser (rather than the fee Owner) will be considered the Owner.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of these Covenants.

Section 4. "Lot" shall mean and refer to those plots of land shown upon the recorded subdivision map of Lots 18A, 18B, 19A, 19B, 20A, 20B, 21A, 21B, 22A and 22B, Deerfield (hereinafter referred to as Lots 18A through 22B, inclusive), a subdivision in Washington County, Nebraska, and such additions thereto as may hereafter be brought within the jurisdiction of these Covenants.

Section 5. "Declarants" shall mean and refer to JCM Investments, Inc., a Nebraska corporation and Melvin Sudbeck Homes, Inc., a Nebraska corporation and their respective heirs, personal representatives, successors and assigns.

Section 6. "Unit" shall mean each of Lots 18A through 22B, inclusive, together with the individual townhome dwelling (½ of the duplex) which is built upon said Lot.

Section 7. "Architectural Control Committee" shall mean the Architectural Control Committee as defined in Article I(E) of the Declaration of Covenants, Conditions and Restrictions for Deerfield Duplex Lots dated October 26, 1998 and recorded on June 12, 2000 in Book 318 at Pages 570-577 of the Register of Deeds of Washington County, Nebraska (the "Deerfield Duplex Covenants").

(Note: The Association does not and will not own any real property for the common use and enjoyment of the Owner; sometimes referred to generally as "Common Area".)

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to these Covenants shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to these covenants.

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

Class A. The Class A members shall be all Owners with the exception of the Declarants (until the Class B membership is converted to Class A membership as set forth below), and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot all such persons shall be members. The vote for such Lot shall be exercised as

they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If more than one (1) vote is cast for a Lot, then the first vote cast will be the vote which shall be counted, and if it cannot be determined which vote for such Lot was cast first, then no vote for said Lot shall be counted.

Class B. Class B member(s) shall be the Declarants and each shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either or the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On December 31, 2005.

### ARTICLE III

#### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the expenses and costs of the operation of the Association and the exterior maintenance of the Lots and of the townhome Units situated thereon as more particularly described herein.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not exceed Nine Hundred Dollars (\$900.00) per Unit.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be Sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty-five percent (25%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Rate of Assessment. Annual assessments must be fixed, based on the status of each Lot. All Lots which have a townhome Unit completed thereon will be assessed. For the purposes of these Covenants, a townhome Unit is completed on the date that the townhome passes final inspection by the appropriate governmental entity or upon occupancy, whichever first occurs (the "Date of Completion"). All assessments may be collected on a monthly basis as determined by the Directors of the Association.

Section 6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Units upon completion of the Unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. The annual assessment provided for herein shall commence as to all Units upon the Date of Completion of the Unit. In the event the Board of Directors fails to establish an assessment schedule for the upcoming year, then the assessments shall remain the same for the upcoming year as the assessments were in the prior year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum legal rate for individuals allowable in the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his or her own Unit or Lot.

Section 8. Subordination of the Lien to Mortgages/Trust Deeds. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or Deed of Trust. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to a mortgage or trust deed foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfers, but the personal obligation of the Owner for the payment of such assessment is not extinguished and the Owner shall remain personally liable for the payment of such assessment(s). No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Lot Maintenance and Services. Lot Maintenance (as defined herein) of each Lot shall be provided by the Association and each Owner does hereby consent and grant to the Association a perpetual and permanent easement over and across such Lot at any reasonable time to perform such lot maintenance. "Lot maintenance" shall mean the maintenance of the lawns (mowing, fertilization and chemicals) and snow removal from sidewalks and driveways and from adjoining or connecting streets if the Association determines snow removal is not being adequately completed by the appropriate governmental subdivision. Lot maintenance under this paragraph shall not include exterior painting, landscape maintenance and any repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owner's Lot, roof repair or replacement, repair or maintenance of gutters, downspouts, sprinkler systems, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors and Owner's personal property. All exterior surfaces of the townhome Units shall be painted by the Owner in earth tone colors after first obtaining prior approval of the paint color from the Association. All exterior maintenance that is not the responsibility of the Association shall be the responsibility of each Owner of a townhome Unit and Lot.

With respect to those maintenance obligations that are not the responsibility of the Association, including but not limited to exterior painting, gutter maintenance and repair, roof repair and replacement and landscape maintenance and replacement, in the event an Owner of any Unit shall fail to maintain the exterior of the Owner's Unit and any other improvements included on the Owner's Lot in a manner satisfactory to the Board of Directors, the Association, after approval by no less than a sixty percent (60%) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Owner's Lot and to repair, maintain, and restore the Unit and any other improvements erected on the Owner's Lot. The cost of such exterior maintenance shall be added to and become an additional part of the assessment to which such Unit is subject

under this Declaration. Each Owner does hereby consent and grant to the Association a perpetual and permanent easement over and across such Unit and Lot at any reasonable time to perform such maintenance, repairs and restoration of those maintenance obligations which are the responsibility of the Owner and which the Owner has not performed as set forth in this paragraph, in order for the Association to perform the maintenance, repair and restoration described in this paragraph.

Section 10. Insurance. Each townhome Owner shall provide homeowners insurance with respect to the improvements (townhome Units) in an amount equal to at least eighty percent (80%) of the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like units. Upon request of the Association from time to time, each Owner shall provide written evidence of the insurance coverage.

#### ARTICLE IV

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhome Unit upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes that party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section 6. Binding Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party to the dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be binding and enforceable against the parties to the dispute.

## ARTICLE V

### RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and enjoyment to his individual Unit, subject to the restrictions set forth herein and in the Deerfield Duplex Covenants, which Deerfield Duplex Covenants is by this reference incorporated herein, and to the extent not inconsistent with Article III of such Deerfield Duplex Covenants, the following additional restrictions:

(a) No fences (other than fences constructed by Declarants) shall be erected without the prior written consent of the Board of Directors of the Association. All Lots shall be kept free of all types of trash and debris.

(b) No snakes, cattle, horses, sheep, poultry, pigs or any other such animals shall be kept or maintained on any Lot. Each Owner may, however, keep a maximum of two (2) domestic pets.

(c) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjoining Units.

## ARTICLE VI ARCHITECTURAL CONTROL

All the provisions of the Deerfield Duplex Covenants, including, but not limited to, the provisions of Article II, entitled Architectural Control, are hereby incorporated herein by this reference the same as if each and every provision thereof were set forth in full herein.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Annexation of Additional Properties to the Association. The Declarants shall have the right to include within the jurisdiction of the Association any additional property which is now subject to the Deerfield Duplex Covenants, and by so doing, the additional property shall then come within the term Properties as defined in Section 3, Article I of this Declaration and

the term Lot as defined in Section 4, Article I of this Declaration. Including such additional property to these Covenants shall be accomplished by the Declarants executing and recording an amendment to these Covenants in the real estate records of Washington County, Nebraska, and upon the date of such recording such additional property shall then be subject to the terms of these Covenants.

**Section 2 Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any of the provisions of the Deerfield Duplex Covenants incorporated herein by reference. Failure by the Association or by an owner to enforce any covenant or restriction herein contained or contained in the Deerfield Duplex Covenants shall in no event be deemed a waived of the right to do so thereafter.

**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 4.** The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by an action of not less than seventy-five percent (75%) of the Unit Owners. Subject to complying with the provisions of Section 4 of this Article, this Declaration may be amended or dissolved by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Notwithstanding any other provision contained in these Covenants to the contrary, these Covenants may be amended by the Declarants, or any person, firm, corporation, partnership, or entity designated in writing by the Declarants, in any manner it or they shall determine in their full and absolute discretion for a period of five (5) years from the date hereof. Any amendment or extension must be recorded in the appropriate real estate records of Washington County, Nebraska to be effective.

IN WITNESS WHEREOF, the undersigned being the Declarants herein have executed this Declaration this 17<sup>th</sup> day of January, 2000.

DECLARANTS:

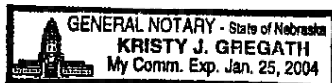
JCM INVESTMENTS, INC., a Nebraska corporation

By: Judith C. Morrison  
Judith C. Morrison, President



STATE OF NEBRASKA     )  
                                   )SS.  
 COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January, 2000, by Judith C. Morrison, President of JCM Investments, Inc., a Nebraska corporation.



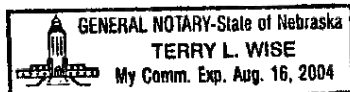
Kristy J. Gregath  
 Notary Public

MELVIN SUDBECK HOMES, INC., a  
 Nebraska corporation

By: Melvin Sudbeck  
 Melvin Sudbeck, President

STATE OF NEBRASKA     )  
                                   )Ss.  
 COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of December, 2000, by Melvin Sudbeck, President of Melvin Sudbeck Homes, Inc., a Nebraska corporation.



Terry L. Wise  
 Notary Public