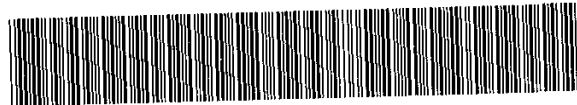


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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

*MIAMI HEIGHTS, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA*

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made on the date hereinafter set forth by MIAMI HEIGHTS DEVELOPMENT CO., LLC, a Nebraska limited liability company, hereinafter referred to as the "Declarant."

### PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots 1 through 18, Miami Heights, a subdivision of the City of Omaha,  
as surveyed, platted and recorded in Douglas County, Nebraska.

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

The Declarant desires to provide for the preservation of the values and amenities of the Lots, for the maintenance of the character and residential integrity of the Lots, and for the acquisition, construction and maintenance of Common Area and Common Area Improvements (as defined herein) for the use and enjoyment of the residents of Miami Heights (hereinafter the "subdivision").

NOW, THEREFORE, subject to the terms of this Declaration, the Declarant hereby declares that each and all of the Lots now and hereafter encumbered by this Declaration shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents 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, as more

fully described herein. Subject to the terms of this Declaration, the Lots, and each Lot are and shall be subject to all and each of the following conditions and other terms.

**ARTICLE I.**  
**RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.

2. No residence, building, fence (other than those constructed by Declarant), wall, pathway, driveway, patio, patio enclosure, deck, rock garden, swimming pool, tennis court, basketball backboards, dog house, tree house, pool house, antenna, satellite receiving station or "discs", flag pole, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by an Architectural Review Committee (herein all referred to as the "Committee") as appointed by the Declarant as follows:

- (a) An owner of a Lot (an "Owner") desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Committee (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement, as well as proposed elevations of the driveway and foundation. Concurrent with submission of the plans, Owner shall notify the Committee of the Owner's mailing address.
- (b) Committee shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Committee. In this regard, Committee intends that the Lots shall be developed as a residential community with homes, not to exceed two (2) stories and constructed of high quality materials. All improvements on the Lots shall comply with all set back or other requirements of the Zoning Code of the Municipal Code of the City of Omaha, Nebraska and any set back or other requirements promulgated by Declarant. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Committee to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Committee determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Committee may refuse approval of the proposed Improvements.

- (c) Written Notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the plans. Such notice shall be mailed or delivered within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed or delivered within such period, the proposed Improvement shall be deemed disapproved by Committee.
- (d) No Owner, or combination of Owners, or other person or persons shall have any right to any action by Committee, or to control, direct or influence the acts of the Committee with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Committee by virtue of the authority granted to Committee in this Section, or as a result of any act or failure to act by Committee with respect to any proposed Improvement.

3. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with clay fired brick or simulated brick or stone or stucco or other material approved in writing by Committee. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, or other material approved in writing by Committee. The roof of all Improvements shall be covered with asphalt shingles, or other material approved in writing by Committee. Hardboard, pressed wood, bonded wood, and the like will not be approved by Committee for coverage of any roof. All main residential structures shall have an attached garage for at least one vehicle.

4. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by Committee. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No business activities of any kind whatsoever, except those home occupation businesses allowed by virtue of city ordinance, shall be conducted on any Lot; nor shall any Lot be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, this paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, its agents or assigns, during the construction and sale of the Lots or any other property owned by the Declarant, its agents or assigns.

5. No exterior television, broadcasting or radio antenna of any sort shall be permitted on any Lot, except, those 18" or less in diameter or diagonal measurement, which shall be screened from public view. The foregoing notwithstanding, any earth station, satellite dish or other electronic antenna or aerial specifically exempted from restriction by statute, regulation, binding order of a court or governmental agency shall be maintained in accordance with the

strictest interpretation or condition for such use as may be permitted by such order. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

6. No repair of any boats, automobiles, snowmobiles, motorcycles, trucks, recreational vehicles, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot (other than in an enclosed structure); nor shall vehicles or parts of vehicles, unlicensed or otherwise offensive to the neighborhood, be visibly stored, parked or abandoned on any Lot. Any and all cars parked within the subdivision must be in running condition with all tires inflated. 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.

7. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, recreational vehicle, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than three (3) consecutive days and no more than twenty (20) days combined within any calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot or their guests. No grading or excavating equipment, tractors or semi-tractors/trailers or other commercial vehicles shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section shall not apply to trucks, tractors or commercial vehicles that are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable ordinances of the governing jurisdiction.

8. No incinerator or trash burner or other structure designed to burn any material (except standard consumer grills) shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

9. No fence shall be permitted to extend beyond the front building line of a residential structure. No chain link fences are permitted. No hedges or mass planted shrubs shall be permitted more than the ten feet (10') in front of the front building line. If a fence is constructed on any Lot by the developer or by the Owner, the Owner of any such Lot, or their successors in interest, shall, at his sole expense, maintain and keep such fence in good order, including the removal of graffiti and the prevention of posting of signs, banners or any other thing on said fence, and repair and replace the same with the same style and equal quality fence when and if reasonably necessary.

10. Above ground swimming pools shall be no more than eight feet (8') in diameter and shall extend no more than three feet (3') above ground level.

11. All owners must commence construction of the single-family residential Improvement permitted by this Declaration within ninety (90) days of acquiring title to any Lot, subject to Committee approval. Such Owner must expend at least One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) in the hard construction cost to construct such Improvements. In the event that any Owner shall fail to perform its obligations set forth in this Section 11, Declarant shall have the right, at its option, to specifically enforce the provisions of this Section 11 and further, the right, but not the obligation, to cause such Owner to convey all right, title and interest in such Lot to Declarant for a cost equal to ninety percent (90%) of the base purchase price paid by such Owner for such Lot, with such Owner responsible for all closing and other costs incurred by Declarant to take title to such Lot (excepting the purchase price set forth above). Construction of any Improvement shall be completed within one (1) year 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.

12. Except on those Lots, if any, on which the Declarant has constructed decorative sidewalks, the Owner of the Lot shall construct a public sidewalk constructed of Portland concrete four feet (4') wide by four inches (4") thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed eight feet (8') back of the street curb line and shall be constructed by the owner of the Lot prior to occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the governing jurisdiction. It is understood, however, that from time to time because of weather or material shortages occupancy may be allowed prior to sidewalk construction, but only after an escrow has been established to assure such construction when weather and material availability permits. Owners shall maintain and keep the sidewalk located on their Lot in good repair. Any decorative sidewalks constructed by Declarant will be repaired or replaced by the Association.

13. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be constructed of concrete. No asphalt overlay of driveways or driveway approaches will be permitted.

14. No animals, livestock, agricultural-type animals, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that, subject to the ordinances of the governing jurisdiction, dogs, cats, and other small household pets may be kept, provided that they are not kept, bred or maintained for commercial purpose.

15. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for doghouses. Doghouses shall only be allowed at the rear of the residence, screened from public view. No outdoor enclosures for domestic animals, i.e., kennels or dog runs, of any kind shall be allowed on any Lot, including similar areas for pot-bellied pigs, without prior written approval of Committee.

16. Prior to placement on any Lot, any exterior air conditioning condenser unit shall be first approved by Committee and shall be placed in the rear yard or side yard so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, including grass clippings, and no vegetation on vacant Lots shall be allowed to reach a height in excess of that allowed by ordinance and regulations of the governing jurisdiction.

17. Notwithstanding any provision in this Declaration, Declarant, its agents, successors and assigns, shall be allowed to operate and maintain model homes, sales office trailers and construction trailers within the subdivision. This right does not expire with the sale of the last buildable Lot in the subdivision.

18. No structure of a temporary character, carport, detached garage, trailer, or tent shall be erected or used on any Lot at any time without the written approval of Committee. Only sheds which do not exceed ten feet (10') wide, twelve feet (12') deep, and eight feet (8') high may be erected on a Lot, so long as materials and colors are similar to those utilized for the construction of the single family residence of that same Lot and the design and location are approved in advance by Committee.

19. No structure or dwelling shall be moved from outside the subdivision to any Lot without the written approval of Declarant. No structure of a temporary character may be used as a dwelling at any time.

20. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood.

21. All permanent utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

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

23. The provisions for lot use, lot area, side yards, and front yard shall be amended if the public agency having zoning authority shall determine and permit a lesser area, a lesser distance, or a different use either by means of rezoning or the granting of waivers or special use permits.

24. The Lots are subject to a Redevelopment Agreement with the City of Omaha, Nebraska, which was approved by Ordinance No. 36231, passed April 8, 2003, (the "Redevelopment Agreement"). Each Owner of any Lot, for itself and its heirs, successors and assigns, by taking title to such Lot, during the period the Redevelopment Note (as defined in the

Redevelopment Agreement) is outstanding, shall (a) not protest any assessed valuation to such Lot assigned or proposed to be assigned by the Douglas County Assessor which does not exceed \$16,300.00 for the land plus the construction cost of all Improvements on the Lot; (b) not convey any Lot or portion thereof or any improvements on such Lot to any entity which would cause the Lot or any of the Improvements to be exempt from real estate taxes; (c) apply for any exemption, abatement, or reduction in real property taxes including, but not limited to, any exemption for charitable, religious, or educational purposes, or for the homestead exemption; (d) not apply to the Douglas County Assessor for the Improvements, or any portion thereof, to be taxed separately from the underlying land; (e) maintain insurance for ninety percent (90%) of the full value of the Improvements on the Lot, and in the event of damage to the Improvements, apply the insurance proceeds to the reconstruction of the Improvements; and (f) cause all real estate taxes and assessments levied on the Lot and the Improvements located thereon to be paid prior to the time such taxes and assessments become delinquent.

## **ARTICLE II. HOMEOWNERS' ASSOCIATION**

### **1. Definitions.**

- (a) "Association" shall mean and refer to the Miami Heights Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.
- (b) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot that is a part of the Properties, but excluding those having such interest merely as a security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner.
- (c) "Properties" shall mean and refer to: Lots 1 through 18, Miami Heights, a subdivision of the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.
- (d) "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Area, or as a church, school, park, or for other nonprofit use.
- (e) "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.
- (f) "Common Area" shall mean and refer to any land owned by the Association or controlled by an easement in favor of the Association or required as a contractual obligation of the Declarant or the Association.

- (g) "Common Area Improvements" shall mean and refer only to signs, landscaping, lighting, retaining walls, benches, decorative sidewalks and sprinkler systems, which may be located from time to time on the Common Area, including those improvements within public rights-of-way and the retaining wall located on Lots 4, 5, 6, 7, 8, 9, 10, and 11.
- (h) "Common Area Expenses" means expenditures made on an annual basis by or financial liabilities of the Association, together with any allocations to reserves.
- (i) "Mortgagee" shall mean the holder of a mortgage or deed of trust on a Lot.

2. General Information. The Association shall be required to maintain the Common Area and the Common Area Improvements in good condition and repair and shall exercise those powers, duties and responsibilities as more particularly set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association. The fiscal year of the Association shall be the calendar year. The office of the Association shall be located at such location as the Board of Directors shall designate from time to time.

- (a) Additional residential or commercial property may be annexed to the Properties by the Declarant or with the consent of two-thirds (2/3) of the votes entitled to be cast. All Lot Owners, by virtue of their ownership of a Lot, are automatically mandatory Members of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote, pursuant to the Declaration and in accordance with the Bylaws. Additional property may be annexed to the Properties by the Declarant even if the Declarant is no longer entitled to vote as a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.
- (b) The initial Board of Directors of the Association and all officers of the Association shall be appointed by the Declarant and thereafter be elected as provided for in the Bylaws.

3. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, 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 as hereinafter provided, as such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable 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 reasonable attorney's fees, shall also be the personal obligation of the person 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 his successors in title unless expressly assumed by them. Upon the sale of any Lot, the current year's assessment shall be prorated between the parties.

4. Membership. The membership of the Association shall consist of all Owners of the designated Lots within the Properties. Membership in the Association shall be mandatory and no Owner during his ownership of a Lot shall have the right to relinquish or terminate his membership in the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

5. Succession. The membership of each owner shall terminate when they cease to be an Owner of a Lot, and their membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

6. Voting. The Association shall have two classes of voting members, Class A Members and the Class B Member, defined as follows:

Class A: Class A Members shall be the Owners of all Lots with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided, however, that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B: The Class B Member shall be the Declarant and shall be entitled to twenty (20) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2023.

Except for the Declarant, no Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown in the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

7. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray annual Common Area Expenses and administrative expenses of the Association and may include estimated funds for the payment of future Common Area Expenses.

8. Assessments.

- (a) All Owners shall be obligated to pay the assessments imposed by the Board of Directors of the Association to meet the Common Area Expenses

of the Association. The Common Area Expenses of the Association shall be equally assessed among all of the Lot Owners. Annual Assessments for the estimated Common Area Expenses of the Association shall be due in advance of the first day of January of each year. The method of assessment described herein may not be amended without the written approval of the Declarant, so long as there is a Class B Membership or thereafter, the owners of two-thirds (2/3) of the votes entitled to be cast.

- (b) Each Lot Owner's personal obligation of payment of assessments shall be due on the first day of the month in which the closing of the purchase of said Lot occurs.
- (c) Assessments shall be based upon the cash requirements deemed to be such aggregate sum the Board of Directors of the Association shall from time to time determine is to be paid by all of the Lot Owners to provide for the payment of all estimated expenses growing out of or connected with the acquisition, construction, maintenance, repair, operation, alterations and improvements of and to the Common Area and the Common Area Improvements and for the creation of a reasonable contingency and reserve for the same.
- (d) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the Owner's personal obligation to pay the same.
- (e) Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall provide a summary of the Budget to all the Lot Owners, and shall set a date for a meeting of the Lot Owners to consider ratification of the Budget. That date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the votes entitled to be cast, or any larger vote specified in the Declaration, reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

9. Association Lien for Non-Payment of Common Area Expenses.

- (a) Except for the Declarant as provided in paragraph 3 of this Article, all sums assessed by the Association but unpaid for the share of Common Area Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens of the Lot in favor of any assessing entity, and all sums unpaid on any Mortgage filed of record prior to the filing of the Declaration, including all unpaid obligatory sums as may be provided by

such encumbrances. In the event of default in the payment of the assessment, the Owner shall be obligated to pay interest at the maximum rate of interest allowable by law, on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees, incurred together with such late charges as provided by the Bylaws of the Association. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest, late charges and expenses, including attorney's fees thereon, the name of the Owner of the Lot and a description of the Lot. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums with interest and other charges thereon, shall have been fully paid.

- (b) Such lien may be enforced by the foreclosure on the defaulting Owner's Lots by the Association in the manner of a deed of trust or mortgage on real property upon the recording of a notice to claim thereof or by an action at law against the Owner personally obligated to pay the same. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Lot being foreclosed or subject to litigation shall be required to pay the Association the monthly assessment for the Lot during the period of foreclosure or litigation, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.
- (c) Any Mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Area Expenses payable with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of this mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. Upon request of a Mortgagee, the Association shall report to the Mortgagee of a Lot any unpaid assessments remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a Mortgagee shall have furnished to the Association notice of such encumbrance.
- (d) The recorded lien may be released by recording a Release of Lien signed by one of the Members of the Association's Board of Directors or by one

of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds of the jurisdiction.

- (e) Notwithstanding any of the foregoing provisions, any Mortgagee who obtains title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all annual assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12 below, the aggregate dues, which may become due and payable in any year, shall not exceed the greater of:

- (a) Two hundred and No/100 Dollars (\$200.00) per Lot.
- (b) In each calendar year beginning on January 1, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for 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 Common Area or Common Area Improvement, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in an amount to Five Hundred and No/100 Dollars (\$500.00) per Lot.

12. Excess Dues and Assessments. With the approval of the majority of the votes entitled to be cast by the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

### **ARTICLE III.** **EASEMENTS**

1. Utility Easement. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U.S. West Communications and any company which has been granted a franchise to provide a cable television system in the area subdivided, their successors and assigns, to erect, operate, maintain, repair and renew poles, wires, cables, conduits and other related facilities, and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power and for the transmission of signals and sounds of all kinds including signals provided by a cable television system, and the reception on, over, through, under and across a five-foot (5') wide strip of land abutting all front and side boundary lot lines; an eight-foot (8') wide strip of land abutting the rear boundary lines of all interior lots; and a sixteen-foot (16') wide strip of land abutting the rear boundary lines of all exterior lots. The term "exterior lots" is herein defined as those lots forming the outer perimeter of the above-described subdivision. Said sixteen-foot (16') wide easement will be reduced to an eight-foot (8') wide strip when the adjacent land is surveyed, platted and recorded, and we

further grant a perpetual easement to Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes for the transmission of gas and water on, through, under and across a five-foot (5') wide strip of land abutting all cul-de-sac streets. No permanent buildings or retaining walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

2. Telephone Connection Charges. Quest Communications, Inc. and/or any other telecommunications company may, upon completion of its distribution system, require a connection charge on some or all of the Lots at the time service is requested.

3. Platted Easements. Platted easements are provided for in the final plat of Miami Heights, which is filed in the Register of Deeds of Douglas County, Nebraska, and other easements provided for in further platting(s).

4. Retaining Wall. A perpetual easement is hereby reserved and granted to the Association, its agents and contractors for the construction, inspection, maintenance, repair, and replacement of the retaining wall located on Lots 4, 5, 6, 7, 8, 9, 10, and 11 and for ingress and egress over such Lots for such purposes as shown on the recorded plat of the Lots.

#### **ARTICLE IV. GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration to either prevent or restrain any violation or to recover damages or other dues of such violation. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Developer and/or Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a period of forty-five (45) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by the owners of not less than seventy-five percent (75%) of said Lots, which termination or amendment shall thereupon become binding upon all Lots. This Declaration may be amended by Declarant, or any person, firm corporation, partnership, or entity designated in writing by Declarant, in any manner that it may determine in its full and absolute discretion for a period of fifteen (15) 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 (75%) of the Lots covered by this Declaration.

3. Declarant, its successors or assigns, may, at its option, terminate its status as Declarant under this Declaration, as to any Lot or Lots at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing the rights of the Declarant shall automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association, or individual to serve as Declarant, and the Association or such appointee shall thereafter serve as Declarant with same authority and powers as the original Declarant.

4. Invalidation of any one or more provision or covenant of this Declaration by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 28 day of May, 2003.

DECLARANT:

MIAMI HEIGHTS DEVELOPMENT CO., LLC, a  
Nebraska limited liability company

By: Michael B. Maroney  
Title: Manager Manager

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 2003, by Michael B. Maroney, Manager of Miami Heights Development Co., LLC, a Nebraska limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said company.

Witness my hand and Notarial Seal this 28 day of May, 2003.



Michael D. Matejka