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RETURN TO

Jeffrey L. Jorgensen

1425 S. 8th St.

Omaha, NE 68108

CHECK NUMBER

DECLARATION
OF

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION, made on the date hereinafter set forth by JEFFREY L. JORGENSEN ("JORGENSEN"), DEANN M. DRAKE ("DRAKE"), and JOSEPH MONTELLO, JR. ("MONTELLO") hereinafter collectively referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property (hereinafter the "Property") located in Douglas County, Nebraska, more particularly described as:

Lot 6, Pacific Gables Rowhouse Addition Replat 1, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 2959-61 Pacific St., Omaha, NE 68105, and hereinafter referred to as Rowhouse 6; and

Lot 5, Pacific Gables Rowhouse Addition Replat 1, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 2963-63 1/2 Pacific St., Omaha, NE 68105, and hereinafter referred to as Rowhouse 5; and

Lot 4, Pacific Gables Rowhouse Addition Replat 1, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 2965-65 1/2 Pacific St., Omaha, NE 68105, and hereinafter referred to as Rowhouse 4; and

Lot 3, Pacific Gables Rowhouse Addition Replat 1, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 2967 Pacific St., Omaha, NE 68105, and hereinafter referred to as Rowhouse 3; and

Lot 2, Pacific Gables Rowhouse Addition Replat 1, as surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 2969 Pacific St., Omaha, NE 68105, and hereinafter referred to as Rowhouse 2; and

Lot 1, Pacific Gables Rowhouse Addition Replat 1, as

surveyed, platted and recorded, in Omaha, Douglas County, Nebraska,

commonly known as 1101 S. 30 Ave., Omaha, NE 68105, and hereinafter referred to as Rowhouse 1;

MONTELLO is the owner of Rowhouse 6; DRAKE is the owner of Rowhouse 5; and JORGENSEN is the owner of Rowhouse 1, Rowhouse 2, Rowhouse 3, and Rowhouse 4 (hereinafter references shall be "Rowhouse" individually, and "Rowhouses" collectively); and

WHEREAS access to the rear entrances (South) and parking areas of Rowhouses 2, 3, 4, 5, and 6, and access to the garages of Rowhouse 6, to and from 30th avenue is across a strip of land eight (8) feet wide along and bordering the southern boundary of the Property ("Right-of-Way"); and

WHEREAS each Rowhouse is served by a private water line along Pacific Street extended from the Metropolitan Utilities District water main in 30th Avenue ("Private Water Line"); and

WHEREAS historically, the Rowhouses are separated only by party walls, some of which have had one owner in the past; and

WHEREAS the Declarant desires to impose upon the Property mutual and beneficial restrictions, covenants, conditions, easements, and charges under a general plan for the benefit of the owners of the Property and future owners of same.

NOW, THEREFORE, in consideration of the premises, Declarant, for themselves, their heirs, successors and assigns and all future grantees, does hereby impose, create and place upon the Property the reservations, conditions, covenants, restrictions, and easements (all of which are hereby termed "Covenants" and/or "Restrictions") contained hereinbelow.

Declarant further declares that the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used and occupied subject to provisions of this Declaration, all for which are declared to be in furtherance of a plan for the improvement, sale, ownership and habitability of rowhouse dwellings within the Property and are established for the purpose of enhancing the value, desirability and attractiveness thereof. Furthermore, the provisions of this Declaration are to be considered in addition to and not as a replacement of that certain party wall agreement and that certain eight foot access agreement recorded prior to the replatting of the Property.

The provisions of this Declaration are intended to create mutual equitable servitudes upon the Property; to create

reciprocal rights between the respective owners of individual Rowhouses herein; to foster, promote and enhance a spirit of cooperation between and among the owners of each Rowhouse with one another regarding access to utilities including, but not limited to, electricity, natural gas, water, sewer, telephone and cable, access to exterior walls, roofs, and other areas, e.g., some basement level courtyard spaces may be part of one unit but accessible from another unit, and/or some outside air conditioning units are not located on the property they benefit; to create a privity of contract and estate between the grantees thereof, their heirs, successors, and assigns, and shall, as to the owners of any interest in the Property, their heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other owners of the Property and this shall be so even if said covenants are omitted from any deed or instrument of conveyance of the Property, or any part thereof.

ARTICLE I. DEFINITIONS

SECTION 1. "Property Owners Association" shall mean and refer to PACIFIC GABLES ROWHOUSE PROPERTY OWNERS ASSOCIATION, its successors and assigns. Declarant has heretofore caused or will cause to be organized the Property Owners Association as a non-profit corporation under the laws of the State of Nebraska, having as its members each owner of a Rowhouse. The purpose of the Property Owners Association is (i) to ensure access to the rear entrances and parking areas of Rowhouses 2, 3, 4, and 5 to and from 30th Avenue along the Right-of Way, (ii) to ensure access to the garages of Rowhouse 6 to and from 30th Avenue along the Right-of-Way, (iii) to provide for maintaining, repairing, replacing, and improving the Right-of-Way, (iv) to provide for snow removal from the public sidewalks, parking areas, and the Right-of-Way, (v) to provide for maintaining, repairing, replacing, and improving the Private Water Line, and (vi) to provide for maintaining, preserving, and controlling the dwelling amenities within the Property.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Rowhouse which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including mortgagees in possession and receivers or trustees in bankruptcy.

SECTION 3. "Property" shall mean and refer to Rowhouses 1, 2, 3, 4, 5, and 6, as legally described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Property Owners Association.

SECTION 4. "Right-of-Way" shall mean and refer to a strip of land eight (8) feet wide along and bordering the southern

boundary of the Property as identified in one or more applicable easements for travel to and from each Rowhouse and that portion of adjoining property reasonably necessary to access garages and/or parking behind a Rowhouse.

SECTION 5. "Rowhouse" shall mean and refer to any one of Rowhouses 1, 2, 3, 4, 5, and 6, as legally described above.

SECTION 6. "Declarant" shall mean and refer to JEFFREY L. JORGENSEN, DEANN M. DRAKE, and JOSEPH MONTELLO, JR., their heirs, successors, assigns and legal representatives.

SECTION 7. "Private Water Line" shall mean and refer to the improvements located along Pacific Street carrying potable water from the Metropolitan Utilities District water main in 30th Avenue connecting to the service line of each Rowhouse.

ARTICLE II. PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to (i) the Right-of-Way and (ii) Private Water Line which shall be appurtenant to and shall pass with the title to every Rowhouse, subject to the following provisions:

A. The right of the Property Owners Association to suspend the voting rights of any Owner for (i) any period during which any assessment against his Rowhouse remains unpaid and (ii) for any infraction of the By-Laws and/or the published rules and regulations of the Property Owners Association;

B. The right of the Property Owners Association to dedicate or transfer all or any part of the Right-of-Way to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members has been recorded.

C. The right of the Property Owners Association to dedicate or transfer all or any part of the Private Water Line to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members has been recorded.

D. The Property Owners Association, as successor to the Declarant, shall have the sole responsibility, and at its cost, to repair and maintain the Right-of Way and the Private Water Line, and to hold the public, the State of Nebraska, or any of its political subdivisions, harmless from the same.

SECTION 2. Delegation of Use. Any Owner may delegate in accordance with the By-Laws of the Property Owners Association, his right of enjoyment to the Right-of-Way and to the Private Water Line to the members of his family, his tenants, or contract purchasers who reside in the Rowhouses.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Membership. Every Owner of a Rowhouse shall be a member of the Property Owners Association. Membership in the Property Owners Association shall be appurtenant to and may not be separated from ownership of any Rowhouse.

SECTION 2. Voting Rights. Members of the Property Owners Association shall be entitled to one vote for each Rowhouse owned. When more than one person holds an interest in any Rowhouse, all such persons shall be members, however, there shall be only one vote per Rowhouse, and in no event shall more than one vote for Property Owners Association matters be cast with respect to any Rowhouse. Accordingly, if two or more persons are members from a Rowhouse, their acts with respect to voting shall have the following effect: (i) if only one votes, such act binds all; and (ii) if more than one votes, the vote shall be divided on a pro rata basis.

ARTICLE IV. COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS.

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Rowhouse owned within the Property, hereby covenants and each Owner of any Rowhouse 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 Property Owners Association annual and special assessments or charges for the Right-of-Way and/or the Water Line as provided for herein. The annual and special assessments, established and collected as hereinafter provided, 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 Rowhouse 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.

SECTION 2. Purpose of Assessments. The annual assessments levied by the Association shall be used exclusively for the maintenance and repair of the Right-of-Way, including, but not limited to, expenses for grading, drainage, snow removal (which shall be extended and include the public sidewalks), security lighting, etc., as well as insurance coverages associated

therewith. In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, replacement, or improvement to the Right-of-Way and/or the Private Water Line; PROVIDED THAT, any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting by person or proxy at a meeting duly called for this purpose.

SECTION 3. Annual Assessment. Until January 1, 2014, the maximum annual assessment shall be One Hundred and no/100 Dollars (US\$100.00.00) per Rowhouse. Unless otherwise agreed by a vote of two-thirds (2/3) of the members who are voting by person or proxy at a meeting duly called for this purpose, from and after January 1, 2014, the annual assessment may be increased or decreased as determined by the Board of Directors who, in determining the annual assessment, shall consider such factors as the physical condition of the Right-of-Way, previous as well as reasonably anticipated expenses, inflation, etc. Unless otherwise agreed by a vote of two-thirds (2/3) of the members who are voting by person or proxy at a meeting duly called for this purpose, from and after January 1, 2014, special assessments shall be determined by the Board of Directors, which special assessments shall be in an amount sufficient to pay the full cost of the work resulting in such special assessment. If so determined by the Board of Directors, the annual assessment and/or any special assessment may be collected on a monthly basis.

SECTION 4. Notice and Quorum for Members Meeting to Determine Annual or Special Assessment. Written notice of any meeting of the members called for the purpose of determining any annual or special assessment shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes 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. Uniform Rate of Assessment/Special Assessment Exception. The annual assessment regarding the Right-of-Way, with respect to all Rowhouses, shall be uniform in amount, in recognition of the fact that all such Rowhouses are benefited more or less equally. Special assessments, with respect to all Rowhouses, shall be uniform in amount, excepting, however, that notwithstanding any provision herein to the contrary, there shall be no special assessments levied against Rowhouse 1 for construction, reconstruction, replacement, or improvement of the

Right-of-Way because Rowhouse 1 dependency on the Right-of-Way is minimal.

SECTION 6. Date of Commencement of Annual Assessments/Due Dates. The Annual Assessments provided for herein shall commence as to all Rowhouses on January 1, 2013, or as soon thereafter following the conveyance of the Right-of-Way to the Property Owners Association, and shall be for the full calendar year even though such conveyance may occur after January 1, 2013. Written notice of the annual assessment and/or any special assessment shall be sent to every Owner subject thereto. The due date of the annual assessment and/or special assessment, as the case may be, shall be established by the Board of Directors. The Property Owners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Property Owners Association setting forth whether the special assessments on a specified Rowhouse have been paid. A properly executed certificate of the Property Owners Association as to the status of annual assessments and/or special assessments, as the case may be, on a Rowhouse is binding upon the Property Owners Association as of the date of its issuance.

SECTION 7. Effect of Non-Payment of Assessments: Remedies of the Property Owners Association. Any annual assessment or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Property Owners Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Rowhouse in question. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Right-of-Way or abandonment of his Rowhouse.

SECTION 8. Subordination of the Lien to Mortgages. The lien of the annual assessments and/or special assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Rowhouse shall not affect the assessment lien. However, the sale or transfer of any Rowhouse pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Rowhouse from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V. INSURANCE.

SECTION 1. Property Owners Association Insurance. The Property Owners Association shall purchase and provide liability insurance for the Property Owners Association and for its members with respect to the Right-of-Way and the Private Water Line only, any such liability insurance for the protection of the Owners of any Rowhouses being the responsibility of each Owner.

SECTION 2. Annual Review of Policies. The Board of Directors shall be encouraged to review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient with respect to potential liability.

ARTICLE VI. LIABILITY FOR WILLFUL OR NEGLIGENT ACTS

SECTION 1. Right-of-Way. In the event that the need for maintenance or repair of the Right-of-Way is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, or invitees of an Owner, which acts shall include damages of any nature caused by vehicles passing over the Right-of-Way, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Owner and his Rowhouse(s) are subject.

SECTION 2. Private Water Line. In the event that the need for maintenance or repair of the Private Water Line is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, or invitees of an Owner, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Owner and his Rowhouse(s) are subject.

ARTICLE VII. ACCESS

SECTION 1. Property Owners Association Access. The Property Owners Association, its officers, employees and agents, and contractors and repairmen designated by the Property Owners Association, shall have the right to go on any Rowhouse for the purpose of performing maintenance, repair, replacement and/or improvement to the Right-of-Way and/or Private Water Line, making inspections and performing the duties of the Property Owners Association hereunder, carrying out any responsibility delegated to the Property Owners Association by the Owners, and the Property Owners Association is hereby granted a specific easement for such purposes.

ARTICLE VIII. GENERAL RESTRICTIONS

SECTION 1. Building or Uses Other Than for Residential Purposes NOT Permitted. The Rowhouses shall be used only for residential purposes in accordance with appropriate zoning regulations. No structures shall be erected, altered, placed or permitted to remain on any Rowhouse property other than one rowhouse dwelling not to exceed two and one-half stories in height; no structures shall be erected, altered, placed or permitted to remain on or in the Right-of-Way.

SECTION 2. Water Service. There shall be no private well drilled on any Rowhouse or any part thereof, except when the

water therefrom is to be used for closed loop water circulating heat pump systems located on such Rowhouse. No other use shall be permitted or allowed for such wells.

SECTION 3. Telephone/Electric Service/Cable Line. All telephone, electric power service, and cable lines from property line to each Rowhouse shall be underground whenever practicable.

SECTION 4. Rowhouse Development Restrictions. No residential Rowhouse shall be subdivided into more than two dwelling units.

SECTION 5. Noxious Activity. No noxious or offensive trade or activity shall be carried on at or from any Rowhouse, nor shall any trash, junk cars, or other refuse be thrown, placed, or dumped upon any Rowhouse property, nor shall anything ever be done which may be, or may become, an annoyance or nuisance to the other Rowhouses. The Owner of a vacant Rowhouse is required to keep said Rowhouse in presentable condition and all refuse must be disposed of in accordance with applicable laws.

SECTION 6. Pet Restrictions. No animals, livestock or poultry of any kind shall be raised or kept on any Rowhouse other than dogs, cats or other household pets, which shall be limited to two (2) per dwelling unit. All pets shall be leashed when outside of the home. No such pet will be kept, bred or maintained for commercial purposes.

SECTION 7. Additional Restrictions. In addition to the Covenants set forth herein, all Rowhouses shall be subject to all applicable zoning ordinances, rules, and regulations of the City of Omaha, Douglas County, Nebraska, and any other political subdivision, governmental or quasi-governmental entities having jurisdiction over these Rowhouses.

ARTICLE IX. EASEMENTS AND LICENSES

SECTION 1. Ingress and Egress. A perpetual non-exclusive license and easement for ingress and egress is hereby reserved in favor of and granted by the Declarant for itself, its successors and assigns and all future grantees, to enter on the real estate constituting the Right-of-Way at any time for travel to and from each Rowhouse. The license and easement is to be and shall run with the land, and shall be for the benefit and use of all future Owners of all or any portion of the Property or any of the Rowhouses, and the family, guests, and invitees of an Owner.

SECTION 2. Property Owners Association. A perpetual non-exclusive license and easement, with specific rights of ingress and egress, is hereby reserved in favor of and granted by the Declarant for itself and to and for the Property Owners Association, its officers, employees and agents, and contractors and repairmen designated by the Property Owners Association, to

enter on the real estate constituting the Right-of-Way at any time that it may see fit to perform maintenance, repair, replacement and/or improvements to the Right-of-Way, making inspections, and performing the duties of the Property Owners Association hereunder, and carrying out the responsibilities delegated to the Property Owners Association by the Owners. The license and easement is to be and shall run with the land, and shall be for the benefit and use of the Declarant, the Property Owners Association, its successors and assigns.

SECTION 3. Water/Sewer/Gas. A perpetual license and easement, with specific rights of ingress and egress, is hereby reserved in favor of and granted by the Declarant for itself and to and for the Property Owners Association, Metropolitan Utilities District, County of Douglas, the City of Omaha, Douglas County, Nebraska, and any other affected governmental body or political subdivision, their successors and assigns, to enter on the real estate constituting the Right-of-Way at any time that it may see fit, for the purpose of installing, constructing, maintaining, altering, repairing, upgrading, extending, replacing, removing, operating, etc. underground pipelines, mains, sewers, and surface manholes for conveying gas, water and/or sewerage through and under the area of the license and easement, together with the right to refill ditches and trenches for the location of such pipelines, mains, sewers, and manholes, and the further right to remove trees, bushes, undergrowth and other obstructions from the surface and subsurface interfering with the location, construction, maintenance, etc. of such pipelines, mains, sewers, and manholes. The license and easement granted herein is to be and shall run with the land, said license and easement being granted for the use and benefit of all present and future Owners of any and all Rowhouses.

SECTION 4. Utility Company. A perpetual license and easement, with specific rights of ingress and egress, is hereby reserved in favor of and granted by the Declarant for itself and to and for the Omaha Public Power District, Cox Communications, or any other utility company, their successors and assigns, to enter on the real estate described in Section 6 of this Article at any time that it may see fit, for the purpose of installing, constructing, maintaining, altering, repairing, upgrading, extending, replacing, removing, operating, etc. cables, wires, conduits, other instrumentalities, etc. for carrying and transmitting electric current for light, heat and power and for all telephone and telegraph and/or message service, together with the right to refill ditches and trenches for the location of such cables, wires, conduits, other instrumentalities, etc., and the further right to remove trees, bushes, undergrowth, crops and other obstructions from the surface and subsurface interfering with the location, construction, maintenance, etc. of such cables, wires, conduits, and other instrumentalities. The license and easement granted herein is to be and shall run with the land,

said license and easement being granted for the use and benefit of all present and future Owners of any and all Rowhouses.

SECTION 5. No Construction. No structure, shed or building of a temporary or permanent nature shall be erected or constructed, nor shall any well be drilled or operated, nor shall any obstacle be constructed above ground, in the area of the license and easement described in Section 6 below, nor shall any obstacle be constructed below ground or underground fixtures of any kind be placed in the area of the license and easement described herein except if same shall be buried below plow depth, nor shall any ground cover over the instrumentalities or the appurtenances thereto be added.

SECTION 6. Description. The license and easement granted under this Article shall cover a strip of land eight feet (8') in width over, under, across and through the real estate constituting the Right-of-Way set forth within the Property.

ARTICLE X. INDEMNIFICATION OF OFFICERS AND DIRECTORS

SECTION 1. Indemnification. The Association shall indemnify every Director and officer, his heirs and personal representatives against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Board of Directors may determine that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason of, arising out of, or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in this Article XI shall be deemed to obligate the Association to indemnify any member or Owner of a Rowhouse who is or has been a Director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him and by virtue of this Declaration as a member of the Association or Owner of a Rowhouse. In its discretion, the Association may obtain such liability insurance for the Directors as the Association may deem appropriate, which liability insurance shall be treated and handled by the Association as common expenses.

