

Dan Jaltz
REGISTER OF DEEDS
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LANCASTER COUNTY, NE

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**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
OF ASHLEY HEIGHTS HOMEOWNERS ASSOCIATION**

THIS DECLARATION, made on the date hereinafter set forth by M & S Construction, Inc., a Nebraska corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain real property in Lincoln, Lancaster County, Nebraska, which is more particularly described as follows:

Single Family Residential:

Lots 9 - 21 inclusive, Block 3; Lots 1 - 14 inclusive, Block 4; Lot 1, Block 5; Lots 1 and 2, Block 6; Lots 1 and 2, Block 7; Lots 1 - 10 inclusive, Block 8; Lots 1 - 27 inclusive, Block 9, all located in Ashley Heights Addition, Lincoln, Lancaster County, Nebraska.

Townhome Residential:

Lots 1 - 22 inclusive, Block 1; Lots 1 - 10 inclusive, Block 2; Lots 1 - 8 inclusive, Block 3, all located in Ashley Heights Addition, Lincoln, Lancaster County, Nebraska.

Commons:

Outlot D, Ashley Heights Addition, Lincoln, Lancaster County, Nebraska, together with such additional common areas as may be subsequently added hereto by written declaration of Declarant.

Hereinafter collectively referred to as the "Properties".

WHEREAS, Declarant has platted the Properties and other property via the appropriate platting process through the City of Lincoln, Nebraska, said Final Plat known as "Ashley Heights Addition", filed on September 13, 2001 as Inst. No. 01-52826 with the Lancaster County Register of Deeds (the "Plat");

WHEREAS, Ashley Heights Homeowners Association (the "Association") has been incorporated in Nebraska for the purposes of enforcing the Restrictive Covenants established upon the Properties and administering and maintaining any Commons and Outlots.

NOW THEREFORE, Declarant hereby declares that all of 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 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.

Restrictive Covenants

These Restrictive Covenants are established upon the Properties.

1. **USE**. All lots and property herein described shall be used exclusively for private, single family dwellings.
2. **COMPLETION OF CONSTRUCTION**. Any building placed or constructed upon any lot within the Properties shall be completed within twelve (12) months after the commencement of construction.

3. **ANTENNAS.** No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except within a building. One small satellite dish (under 18") shall be permitted subject to the requirements of paragraph 6.d.

4. **APPROVAL OF PLANS.** Declarant or its assignees shall have the exclusive right to establish grades and slopes for all lots within the Properties and to fix the grade at which any building or other improvement shall be placed or constructed upon any lot, in conformity with the general plan for the development of the Properties. Plans for any dwelling structure to be placed or constructed upon any lot within the Properties shall be submitted to the Declarant and shall show the design, size, exterior material and color for the building or improvement and the plot plan for the lot. One set of plans shall be left on permanent file with Declarant. Construction of the building or 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 receipt thereof. Approval of the plans shall not be unreasonably withheld, and upon disapproval, a written statement of the grounds for disapproval shall be provided. 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 Properties. The rights and duties of the Declarant under this paragraph, except as to lots of which the Declarant is the titleholder, may be assigned by the Declarant in writing to the Association at any time.

5. **GENERAL STANDARDS FOR DWELLING STRUCTURES.** The following general standards of development shall guide the Declarant in the review of any plans for dwelling structures submitted for approval within Ashley Heights. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Declarant shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority. However, the general standards for Townhome dwelling structures shall be governed by Section 6 of the Restrictive Covenants of Ashley Heights Townhome Association. The Declarant shall have the right to reduce, increase or otherwise explicitly modify these standards within other additions to the Properties.

- a. **Minimum Floor Area.** The minimum ground floor area of any main dwelling building, exclusive of basements, garages, porches, terraces, patios, decks or enclosed decks shall be as follows:
 - i. Single story ranch style: 800 sq. ft.
 - ii. Two story: 1,280 sq. ft.
 - iii. Multi-level/split entry: 900 sq. ft.
- b. **Garage.** All dwellings shall have a private garage of a maximum three-car capacity, which such garage may be either attached or detached from the dwelling.
- c. **Setbacks.** No dwelling shall be located on any lot nearer than 20 feet to the front lot line nor nearer than 5 feet to a side lot line. In the case of a corner lot, the dwelling shall not be nearer than 20 feet to the side street lot line. No detached garage building shall be nearer than 60 feet to the front lot line nor nearer than 2 feet to the side lot line. In case of a corner lot, the garage shall not be nearer than 20 feet to the side street lot line.
- d. **Exterior Finish.**
 - i. **Approval.** All exterior finish materials and colors other than earthtone colors shall be approved by the Declarant.
 - ii. **Exposed Foundation.** Exposed foundation walls shall not exceed 24 inches and shall be painted or sided to match the exterior color scheme of the dwelling.
 - iii. **Roofing Materials.** Roofing materials shall be equal to or better than architectural-grade shingle which provides an appearance of depth such as the Horizon shingle.

- a. Roof Pitches. All roof pitches shall be a minimum of 4:12 or as may be dictated by a unique architectural style.

Not more than one dwelling and garage shall be built upon any lot except that nothing herein contained shall prevent the construction of one dwelling and garage on a portion of two or more lots, in such case restrictions pertaining to the side lot lines shall be construed to apply to the side line of such tract.

6. GENERAL STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS. The following general standards shall be satisfied in the construction and installation of improvements and structures other than the dwelling. Written approval for other improvements and structures is not required but shall comply with these standards. However, the general standards for Townhome dwelling structures shall be governed by Section 7 of the Restrictive Covenants of Ashley Heights Townhome Association. The Association and members of the Association shall have the right to enforce these standards.

- a. Fencing. Fencing shall not be constructed closer to the street than the front elevation of the dwelling and shall be constructed with the finished side facing the lot line. No livestock type fencing material shall be used for construction of a fence within the Properties.
- b. Accessory Structures. Accessory structures such as storage sheds and playhouses shall be constructed of compatible and similar materials and design with the dwelling. These structures shall not exceed 144 square feet, be more than ten (10) feet in height, shall not be located in the front or side yard setback, or within five (5) feet of any lot line. All other accessory improvements such as swing sets and sand boxes shall be compatible with the quality of the overall development and shall be maintained in good order and an attractive condition.
- c. Dog Kennels. Any dog run or kennel shall be adequately screened from view and shall not be located in the front yard or within 7.5 feet of any lot line. Dog runs and kennels shall not be located in the front yard or side yard setbacks.
- d. Satellite Dish. Any satellite dish shall be located and screened so as to be as unobtrusive as is reasonably possible.
- e. Clothes Lines. No permanent clothes lines shall be permitted, erected, placed or suffered to remain upon any lot or upon any improvement thereon, but retractable clothes lines shall be permitted.
- f. Landscaping. All front, side and rear yard areas shall be seeded or sodded within six (6) months after completion of any dwelling constructed within the Properties.

7. CITY REQUIREMENTS. All buildings within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks and street trees shall be installed during the construction of the dwelling in accordance with the City of Lincoln, Nebraska's construction standards and design standards for sidewalks and street trees, respectively.

8. PREFABRICATED AND TEMPORARY STRUCTURES. No partially completed dwelling or temporary building and no trailer, tent, shack, or garage on any lot within the Properties shall be used as either a temporary or permanent residence. No house or building which has been prefabricated shall be permitted to be placed or erected on any lot; and no building of any kind whatsoever shall be moved onto any building lot, except that the Declarant or builders may use temporary buildings for storage of tools and materials during construction of homes and development of the subdivision.

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

10. **SIGNS.** No advertising signs, billboards, or other advertising devices shall be permitted on any lot within the Properties larger than 24 inches by 36 inches. However, Declarant may erect signs of any size advertising lots for sale within the Properties, and a sign advertising a single lot for sale may be erected upon any lot.

11. **ANIMALS.** No horses, cows, swine, livestock, or poultry of any kind shall be raised, bred, or kept on any lot within the Properties for any purpose. The Association may require a member to remove any animal which, after notice and hearing to the member, is reasonably determined to be a nuisance to other members.

12. **RECREATIONAL VEHICLES.** No recreational vehicle, as defined by the Lincoln Municipal Code, shall be parked or stored upon any lot within the Properties, except within an enclosed structure. Recreational vehicles may be temporarily parked or stored upon a lot for a period of time not to exceed 14 days per year.

13. **HOMEOWNERS ASSOCIATION.** Every person or entity who owns a lot within the Properties shall be a member of the Ashley Heights Homeowners Association ("Association"). However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

14. **MANAGING AGENT.** The Declarant or the Association may contract for the performance of any of the Association's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Declarant or Association. The fee charged by the Managing Agent shall be a common expense of the members.

15. **MEMBERSHIP.** The Association shall have two classes of membership:

Class A. Class A membership shall include all members of the Association except Declarant and any successor in interest. Each Class A member of the Association shall be entitled to all the rights of membership and to one vote for each lot.

Class B. Class B membership shall include only the Declarant and any successor in interest. The Class B member shall be entitled to five (5) votes for each lot. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.

16. **CONVEYANCE OF COMMONS.** Declarant shall convey any Commons to the Association, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the City of Lincoln within one year after the conversion of Class B membership to Class A membership. The Association shall accept the conveyance of any commons from the Declarant, without limitations.

17. **USE OF COMMONS.** Each member of the Association shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Association and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership.

18. **RIGHTS OF COMMONS.** The rights and easements of the members of the Association shall be subject to:

- a. The right of the Association to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed mortgage is contained in the notice of the special meeting.

- b. The right of the Association to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Association to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed 30 days for any infraction of the published rules and regulations governing the use of the facilities.
- d. The right of the Association to charge reasonable admission and other fees for the use of the facilities.
- e. The right of the Association to dedicate or convey all or any part of the Commons to any public entity.

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

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

21. **FAILURE TO MAINTAIN.** In the event any member fails or refuses to perform any required maintenance and upkeep of any landscape screen or the general maintenance obligations, the Declarant or Association after seven (7) days notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance together with a 10% administrative fee shall be the personal obligation of the member who is or was the owner of the lot failing to perform their maintenance obligations, shall bear interest at the rate of 14% per annum and shall be a lien upon the lot assessed.

22. **ASSOCIATION RESPONSIBILITIES.** The Association shall provide such services to its members as they may determine. These services and responsibilities of the Association shall include, but are not limited to, the following:

- a. **Maintenance of Commons.** 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 maintain the Commons to the extent not otherwise provided for by these Covenants, which Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons. Such maintenance includes the upkeep and maintenance of all street trees and landscape screens on the Commons in conformance with the City of Lincoln design standards.
- b. **Maintenance of Common Detention Cell Area.** The Association shall be responsible for 67.6% of the drainage that flows from Ashley Heights Addition and into the adjacent detention cell. Consequently, the Association covenants and each member, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant and agree to pay equally all costs and expenses associated with the administration, insurance, maintenance, repair, replacement, addition and improvement of the Common Detention Cell Area to the entity that is ultimately responsible for administering, insuring, maintaining, repairing, replacing, adding and improving the Common Detention Cell Area. If no such entity has been established, the Association shall maintain a separate fund for such purpose. The covenant to pay shall be satisfied by the payment of general and special assessments for the Association's share of the cost of such administration, insurance, maintenance,

repairs, replacement, addition and improvement of the Common Detention Cell Area.

23. **LIEN OF DUES AND ASSESSMENT.** The lien of any dues or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

24. **ANNUAL ASSESSMENTS AND LIENS.** Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of members affected and entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting.

The members shall pay annual dues and special assessments to the Association or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any dwelling. The initial annual dues are established at \$60.00 per year per lot. Changes in the amount of future annual dues shall be based upon an estimate of the Association's costs for administration, maintenance and improvement of the Commons and Common Detention Cell Area, and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Common's operating costs may be presented to the members of the Association and the members shall pay any excess charge to the Association within thirty (30) days of the statement.

- a. **Additional Charges.** In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association or Managing Agent may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but not be limited to, the following:
 - i. **Attorney's Fees.** Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by suit or otherwise.
 - ii. **Late Charges.** A late charge in an amount to be fixed by the Association to compensate the Association for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any "grace" period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater.
 - iii. **Costs of Suit.** Costs of suit and court costs incurred as allowed by the court;
 - iv. **Filing Fees.** Costs of filing notice of lien in the Office of the Register of Deeds;
 - v. **Interest.** Interest on all dues and assessments at the rate of 14% per annum, commencing thirty (30) days after the assessment becomes due; and
 - vi. **Other.** Any other costs that the Association may incur in the process of collecting delinquent dues and assessments.
- b. **Lien.** The dues and assessments shall be the personal obligation of the member who is the owner of the lot assessed at the time of assessment and when shown of record shall be a lien upon the lot assessed.
- c. **Fines.** The Association may create a schedule of fines for violation of Association rules and regulations which fine shall be treated and billed as a special assessment to the offending member's lot.

25. **UNDEVELOPED LOT FEE AND FIRST YEAR PRORATE.** Upon the initial sale of a lot within the Properties from the Declarant, the purchaser shall pay to the Association the sum of \$10.00 in lieu of any annual dues or assessments. The \$10.00 annual fee shall be due and owing from the titleholder on January 1st of each and every year until such time as a residence is constructed upon the lot and occupied. No portion of this fee shall be credited to the annual dues or assessments.

Upon the initial occupancy of a residence on a lot within the Properties, the titleholder of the lot shall pay to the Association the prorated amount of the annual dues or assessments, prorated from the date of occupancy to the end of the calendar year.

26. **ADDITIONS.** Additional phases of the Ashley Heights Addition will be final platted in the future. The Declarant shall be allowed to add such additional contiguous or adjacent real estate to the Properties or as Commons, at any time, without notice or the consent of the members of the Association. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants; provided the general standards set forth in paragraphs 5 and 6 may be reduced, increased or otherwise modified within any such addition.

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

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

a. **Restrictions.** No lot owner of the Properties shall institute, encourage, or otherwise engage in any action, either legal or equitable, to change the designation of the Benefited Property from industrial in the Lincoln City-Lancaster County Comprehensive Plan, or change the zoning classification of the Benefited Property from the I-2 Industrial Park zoning designation or its equivalent then existing in the Lincoln Municipal Code. No lot owner of the Properties shall institute, encourage or otherwise engage in any action, either legal or equitable, against the lawful operation of the meat packing plant as it now exists or may otherwise be lawfully expanded. Any action against the Benefited Property based upon any theory of changed conditions as a result of the development of the Properties is specifically waived.

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

28. **AMENDMENTS.** These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Declarant and all persons claiming under the Declarant. These Restrictive Covenants may be terminated or modified, in writing, by the owners of two-thirds of the lots within the Properties, at any time. However, the provisions of these Restrictive Covenants governing membership in the Association, maintenance of the Commons, and the maintenance of landscape screens pursuant to paragraph 19 shall not be terminated or modified without the consent of the City of Lincoln, Nebraska.

29. **ENFORCEMENT.** The enforcement of these Restrictive Covenants shall be by proceedings at law or in equity, and may be instituted by any of the following against any person or persons violating or attempting to violate any provisions hereof: (i) the Declarant, the Association, or any lot owner, or (ii) if the proceedings are to enforce the covenants regarding maintenance of the Commons or landscape screens pursuant to paragraph 19, the City of Lincoln. Such proceedings may be to restrain such violations or to recover damages, and may also be instituted to enforce any lien or

obligation created hereby. If the Declarant, Association, or lot owner in any action to enforce these Restrictive Covenants is successful, they shall be entitled to an award of reasonable attorney's fees and court costs. Failure by the Association, any member thereof, or the City of Lincoln to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so. In the event the Association is dissolved, the lot owner shall remain jointly and severally liable for the cost of maintenance of the Commons.

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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 20 day of November, 2001.

M & S Construction, Inc.

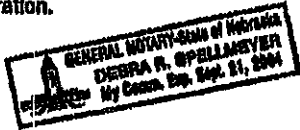
By: Paul J. Muff
Paul J. Muff, President

Approval of Restrictive Covenants for the limited purpose of conveying maintenance of the Commons and Outlots to the Homeowners Association.

Rick Pao
Rick Pao, Chief Assistant City Attorney

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledge before me this 20 day of November, 2001, by Paul J. Muff, known to be President of M & S Construction, Inc. a Nebraska corporation, on behalf of the corporation.



Debra R. Spellmeyer
Notary Public