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**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WESTERN PINES ESTATES HOMEOWNERS ASSOCIATION, INC.**

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

WITNESSETH:

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

Lots one (1) through fifty-two (52) Western Manor Second Addition, Lincoln, Lancaster County, Nebraska

Hereinafter referred to as the "properties"; and

Outlot "A" Western Manor Second Addition, Lincoln, Lancaster County, Nebraska

Hereinafter referred to as the "common area".

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, its heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
Definitions**

Section 1. "Association" shall mean and refer to the Western Pines Estates Homeowners Association, Inc., its successors and assigns.

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 Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Outlot "A" Western Manor Second Addition,
Lincoln, Lancaster County, Nebraska

Section 5. "Lot" shall mean and refer to any designated portion of the property shown on the recorded subdivision plat with the exception of the Common Area and the streets. Lots may be added to the Association as provided herein and determined by declarant.

Section 6. "Declarant" shall mean and refer to M & S Construction, Inc. and its successors or assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II Property Rights

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area 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 each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III Membership and Voting Rights

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

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

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 2002.

ARTICLE IV Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Lots owned by the developer and declarant, M & S Construction, Inc., shall not be subject to annual assessments or charges or special assessments of any type until such lots are developed, construction is completed, and services are received. Each owner of any lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special 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.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred and Ninety-two dollars (\$492.00) per Lot (\$41.00 per month).

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

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

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for his purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 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 each class of membership shall constitute a quorum. If the required quorum is not present, another meeting maybe 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or 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 Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V. Party Walls

Section 1. Each wall which is built as a part of the original construction of the homes upon the property and placed on the dividing line between the lots shall constitute a party wall and to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

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

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

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

Section 5. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

ARTICLE VI. Exterior Maintenance

In the event that an owner of any lot in the property shall fail to maintain and repair the premises and the improvements situated thereon in a manner satisfactory to the board of directors of the Association, the Association, after approval by two-thirds decision of the board of directors, shall have the right, through its agents and employees, to enter upon said parcel of ground and to repair, maintain and restore the lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the annual assessments to which such Lot is subject.

ARTICLE VII. Use Restrictions

Section 1. Lot Restrictions.

(a) Residential Development Only. No building placed or constructed on any lot within the property shall be used other than for residential purposes.

(b) Conformance with City Regulations. All buildings within the property shall be constructed in conformance with the requirements of the applicable building codes of the City of Lincoln, Nebraska, and in compliance with any special permits or other governmental regulations or ordinances.

(c) No Temporary Structures. No partially completed dwelling or temporary building and no trailer, tent, shack or garage on any lot within the property shall be used as either a temporary or permanent residence. Declarants may erect such structures for the purpose of construction projects on the property.

(d) Control of Nuisances. No noxious or offensive activity shall be carried on or permitted upon any lot within the property, nor shall anything be done thereon which is or may

become an annoyance or nuisance to the neighborhood or shall endanger the health or unreasonably disturb the quiet of the owners or occupants of adjoining lots.

(e) No Advertising Signs. No advertising signs, billboards, or other advertising device shall be erected, placed or permitted on any lot within the property, provided that the owners may place signs advertising lots within the property for sale upon any lot owned by the owners, and provided further, that a sign advertising a single lot for sale may be placed upon such lot by the owner thereof, provided the Declarants or its assigns shall have the right to place one billboard upon the common area advertising lots or homes for sale within the property for a period of eleven (11) years from the date of the filing of these Covenants, or until such time as the Declarants no longer own a lot within the properties.

(f) Control of Animals. No animals, livestock or poultry of any kin shall be raised, bred or kept on any individual lot within the property except two household pets, provided that such household pets shall not be raised, bred or kept for any commercial purpose and in no event may any household pet be kept in any enclosure or structure of any kind upon the common area or lot except within a residence located upon a lot.

(g) Vehicles. No vehicle owned by or under the control of a member, which has a fair-market value under \$1,000 or is nonoperating, wrecked, junked, or partially dismantled, shall be parked, abandoned, or otherwise allowed to remain in a fixed location on the property except in an enclosed building or garage. Such vehicles may otherwise be operated on the property at the member's discretion. Declarants may park such vehicles for the purpose of construction projects on the property.

Section 2. Common Area Restrictions:

In addition to the restrictions and conditions set forth in Article IV, Section 2, the use of the Common Area shall be subject to the following:

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over such Common Area.

(b) No owner shall place any structure whatsoever upon the Common Area, nor shall any owner engage in any activity which would temporarily or permanently deny free access to any part of the Common Area to all members. Declarants may, from time to time, deny free access to any part of the Common Area for the purpose of completing construction projects.

(c) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the board of directors of the Association.

ARTICLE VIII. Additional Construction

The Declarants, without consent of Class A members or the Association, may construct additional residential property and streets, may create new lots for living units on the Common Area, and may abridge the Common Area accordingly. Each such new lots and living unit(s) thereon shall come under the jurisdiction of the Association, shall be subject to all the responsibilities and shall enjoy all of the rights of existing members of the Association.

ARTICLE IX Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of eternal design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE X General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. City Approval. Any instrument amending, modifying, abrogating or cancelling these protective covenants pertaining to the structure, existence or financing of the Homeowner's Association must be approved by the City Attorney's Office in writing and recorded before it shall be effective.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17 day of April, 1997.

M & S CONSTRUCTION, INC.

BY: Paul J. Muff
Paul J. Muff, President

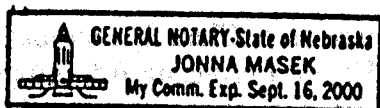
Approval of Restrictive Covenants
for the limited purpose of conveying
maintenance of the common area to
the Homeowners Association.

Dana W. Roper
Dana Roper, City Attorney 4/17/97

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this 17th day of April, 1997, before me, the undersigned notary public, duly commissioned and qualified in and for said county, personally appeared Paul J. Muff, known to me to be the identical person who signed the above and foregoing instrument and acknowledged the execution of the same to be his voluntary act and deed.

WITNESS my hand and seal the day and year last above written.



Jonna Masek
Notary Public