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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 OF WHISPERING RIDGE TOWNHOMES

THIS DECLARATION is made as of the date shown on the close of this instrument, by M.J.A., LLC ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain property in Douglas County in Nebraska, more particularly described as follows:

Lots One (1) through Eighteen (18), inclusive, in WHISPERING RIDGE REPLAT 4, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska;

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described 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, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Whispering Ridge Townhome Owners Association, a Nebraska nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) 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, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

FULLENKAMP, BOYLE & JOBEUN
 RCF/196298.3 11440 WEST CENTER ROAD 1
 OMAHA, NEBRASKA 68144-4482

✓ 38317

Section 3. "Properties" shall mean and refer to:

Lots One (1) through Eighteen (18), inclusive, in WHISPERING RIDGE REPLAT 4, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska;

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot (other than any Lot owned by Declarant, its successors or assigns who purchase more than one lot for the purpose of development, or its designated builders.

Section 7. "Declarant" shall mean and refer to M.J.A., LLC, and its successors and assigns if obtaining more than one Lot for the purpose of development.

Section 8. "Common Area" shall mean and refer to any property owned by or controlled by virtue of an easement in favor of the Association.

ARTICLE II PROPERTY RIGHTS

Section 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

Section 2. Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant and its designated builders. 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. Class B Members shall be the Declarant and its designated builders, which shall be entitled to twelve (12) votes for each Lot owned by it or its successors or assigns. The Class B membership shall terminate and be converted into Class A membership upon the occurrence of the first of the following dates:

- (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, 2014.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants for each Assessable Lot and for each Owner of any Assessable Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association,

which assessments shall be established and collected as hereinafter provided. The special assessments and monthly 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 shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the Properties and for exterior maintenance, and other matters as more fully set out in Article V herein.

Section 3. Monthly Assessments. The Board of Directors shall have the authority to levy and assess against each Assessable Lot an initial monthly maintenance assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance. At the commencement of each calendar year thereafter, the Board of Directors shall have the authority to increase the monthly maintenance assessment against each Assessable Lot by a percentage of the prior assessment, which percentage shall be the greater of five percent (5%) or the percentage increase in the U. S. Department of Labor Consumer Price Index (All Items)

for All Urban Consumers, 1982-84=100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other index which will accomplish the same result of reflecting general consumer price changes in the United States economy. Any additional increase in the monthly maintenance assessment above that authorized by the Board of Directors must be approved by a majority of the votes cast by the Members at a meeting duly called for such purpose.

Section 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article V herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Lot, including fixtures and personal property related thereto, provided that any such assessment shall be approved by the vote of the members, who shall vote in person or by proxy at a meeting duly called for such purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the purpose of taking action authorized under Sections 3 or 4 of this Article IV shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At such meeting, the presence of Members, in person or by proxy, holding ten percent (10%) of the votes entitled to be cast shall constitute a quorum.

Section 6. Uniform Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of this Declaration, is sixteen (16) percent per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

ARTICLE V
EXTERIOR MAINTENANCE

The Association may provide exterior maintenance upon each Assessable Lot as set forth hereinafter.

Section 1. Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed in the front yards of each Assessable Lot, excluding such improvements as may be within the confines of any fenced in area on any Assessable Lot or installed by or at the direction of the Owner. The Owner is responsible for replacement of all dead landscaping improvements and the Owner agrees to allow the Association to replace such dead landscape improvements at the expense of the Owner of record at the time of replacement and the Owner shall reimburse the Association on demand. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.
- (b) Routine maintenance of an underground watering system on each Lot, except that it shall remain the Owner's sole responsibility to maintain the underground watering system on Owner's Lot, including but not limited to turning off such system and clearing the pipes of such system during periods in which freezing temperatures may occur, and Owner shall remain liable for any damage caused to such system by a failure to maintain the same.
- (c) Snow removal for driveways, front sidewalks, front stoops and front steps for each Lot if snow accumulates in the amount of two (2") inch or more or as determined by the guidelines set forth by the Board of Directors.
- (d) Optional exterior window cleaning as deemed necessary by the Board of Directors.
- (e) Providing such other services or maintenance as may be deemed appropriate by the Board or by a two-thirds (2/3) vote of the Association.

Section 2. Special assessments may be assessed for, but not limited to, the following:

- (a) Maintain, repair, and replace roofs.
- (b) Maintain, repair (including painting) and replace exterior surfaces (including walls and doors), with the exception that the Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass.
- (c) Maintain, repair, and replace gutters.
- (d) To provide any services pursuant to Section 1, above, for which there is an insufficient amount of current funds on reserve and to cover any shortfall.

All replacements shall be of like kind if at all possible.

Section 3. Each Owner of an Improved Lot shall at all times maintain in good and clean condition and repair the trees, shrubs, lawn and other landscaping improvements within

view from the streets and sidewalks adjacent to such Improved Lot, excluding the landscaping improvements to be maintained by the Association as provided in Section 1 of this Article V. With the exception any duties undertaken pursuant to section 1 of this Article, the Association shall have no duty to repair, replace or maintain any concrete surfaces, buildings, systems, underground watering systems, fences or other improvements to the Properties, but may, at its discretion, in the event that any Owner of any Lot in the Properties has not maintained, replaced or kept repaired the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to maintain, repair (including painting), restore and replace the Lot and the exterior of the buildings and any other improvements erected thereon, including but not limited to any roofs, gutters, concrete, exterior walls, glass surfaces, doors, door openers, underground watering system and cooling units for air condition systems which have not been so maintained, repaired or replaced. The costs of such exterior maintenance shall be added to and become part of the assessments to which such Lot is subject. If such costs are not paid within thirty (30) days after written demand from the Association, such assessment shall accrue interest, constitute a lien on the Improved Lot, and be enforceable by the Association, all as set forth in Article IV hereof. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the Improved Lot through proceedings in any Court having jurisdiction of actions for the enforcement of such liens.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, or other structure or improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other structures, improvements, trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans as submitted within 30 days after the date of submission shall be deemed to be disapproval of such plans. Nothing in this paragraph shall be deemed to in any way supplant or supersede other architectural control requirements and restrictions that may encumber the Properties.

ARTICLE VII GENERAL RESTRICTIONS AND OTHER PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulation, restriction or exclusion by the Association.
- (b) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

- (c) No finish or preservative shall be applied to any wooden decks other than a clear wood finish or preservative.
- (d) The use and storage of motorized carts or other chattels on any Lot may be subject to written regulation, restriction or exclusion by the Association.

ARTICLE VIII INSURANCE

Section 1. The Association shall purchase and provide comprehensive general liability coverage insurance for the Properties in such amounts as shall be determined from time to time by the Board of Directors of the Association. The Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Association, for its Officers, and members of the Board of Directors. Finally, if the Association has any employees of any nature, the Association shall purchase and provide Worker's Compensation Insurance for all employees who may come within the scope of Nebraska Worker's Compensation laws.

Section 2. Each Owner shall, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of insurance insuring such Owner and the Association, as an additional insured, against loss or damage by fire and such or risks as may be included within an extended coverage endorsement covering the full replacement cost of the buildings and other improvements from time to time erected upon or under such Owner's Lot. All such insurance shall be written by companies which are satisfactory to the Association and which are authorized to do insurance business in the State of Nebraska. Each policy shall contain an agreement by the insurer that it will not cancel or modify such policy except after thirty (30) days prior written notice to the Association and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the insured. Certificates evidencing the existence of such insurance policies shall be delivered to the Association by the Owner annually and upon the reasonable request of the Association. Each Owner may obtain such additional insurance for such Owner's benefit and at such Owner's own expense as may be deemed necessary by the Owner, including coverage for personal property damage or personal liability.

Section 3. In the event that any building on the Properties shall be damaged or destroyed (partially or totally) by fire, the elements, or any other casualty, the Owner of such building shall, at its expense, promptly and with due diligence repair, rebuild, and restore the same as nearly as practical to the condition existing just prior to such damage or destruction; or alternatively, the Owner of such building shall be required to clear, clean and raze the damaged building and landscape the entire Lot.

Section 4. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient.

ARTICLE IX ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

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 of the Association or of 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 or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. Amendment. Additional lots, contiguous to the Whispering Ridge development, owned by the Declarant, its successor or assigns, or any designated builder, if any, may be added to the Properties and become subject to this Declaration upon the written direction of the Declarant, its successor or assign and any designated builder, recorded in the same manner as Deeds shall be recorded at such time. This Declaration may be amended at any time during the initial twenty-five (25) year term referred to in Section 4 by the Declarant, its successor or assign, in its sole and absolute discretion, or, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by this Declaration, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by this Declaration. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

Section 4. Term. The covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Covenants, Conditions and Restrictions as of this 12 day of ~~October~~ ^{May} 2007.

M.J.A, LLC, a Nebraska limited liability company,

By: *Gerald J Torczon*
Gerald Torczon, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me the undersigned, a notary public, personally came Gerald Torczon, Managing Member of M.J.A., LLC, personally known to me, and that he acknowledged the execution of the above to be his voluntary act and deed as President and that the execution of this document was duly authorized as the voluntary act and deed of such corporation.

WITNESS my hand and notarial seal this 12 day of ~~October~~ ^{May} 2007.

My Commission Expires: 1-29-2012

Doris J Nicholson
Notary Public

