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Return:
Kennedy Law Firm
1904 Farnam Street
Suite 420

**AMENDED DECLARATION OF RESTRICTIVE AND PROTECTIVE
COVENANTS
FOR
ELK RIDGE VILLAS
CONCERNING CERTAIN LOTS IN
ELK RIDGE REPLAT 1, A SUBDIVISION, AS SURVEYED PLATTED
AND RECORDED, IN DOUGLAS COUNTY, NEBRASKA**

This Declaration is made and executed this 26th day of November 2006, by ELK RIDGE VILLAS, L.L.C., a Nebraska limited liability company, (hereinafter referred to collectively as the "Developer" and the "Declarants"). This documents supersedes any covenants filed before the filing of this document.

BACKGROUND INFORMATION

- A. ELK RIDGE VILLAS, L.L.C. is the owner of the following described real estate:
- Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska
- B. ELK RIDGE VILLAS, L.L.C. is the Developer of ELK RIDGE VILLAS Development, a planned continuous lifestyle and wellness community, and the above described real estate is a part of that development project and is hereinafter referred to as ELK RIDGE VILLAS.
- C. The Developer intends that ELK RIDGE VILLAS be dedicated as housing for the elderly (*hereinafter referred to as "Seniors" and specifically referring to persons 55 years of age or older*) and is intended to meet the criteria for the exemption from the Fair Housing Act familial status regulation.
- E. The Declarants deem it wise and expedient to subject the several lots of ELK RIDGE VILLAS, described above, to a plan of mutual maintenance for lawn care and snow removal from driveways and sidewalks and provide subsequent owners with the privileges and rights of fee simple ownership of the villa units and delineated lots. Declarants EXCLUDE any

other mutual maintenance and repair to the grounds and villa units from the terms and conditions of these restrictive and protective covenants.

- F. The overall goal of these restrictive and protective covenants is to produce a high quality and aesthetically pleasing Senior residential development that complements the community. The covenants that follow will help preserve and enhance an environment in the completed development of ELK RIDGE VILLAS that is pleasing to all of the occupants and owners of property with the development.

RESTRICTIVE AND PROTECTIVE COVENANTS

NOW, THEREFORE, Declarants hereby declare that all of the real estate described in paragraphs B above shall be held, sold and conveyed subject to the following Restrictive and Protective Covenants, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These Restrictive and Protective Covenants shall run with the real land, shall be binding on all parties having or acquiring any right, title or interest in the above described real estate or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

- 1.1 "ELK RIDGE VILLAS" shall mean the Lots 2 through 27, inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska on December 15, 2005, as Document No. 2005157960 and now known as Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska.
- 1.2 "Declarants" shall mean and refer collectively to ELK RIDGE VILLAS L.L.C., a Nebraska limited liability company.
- 1.3 "Villa Lot" shall mean and refer to Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska

- 1.4 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Villa Lot that is a part of Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.5 "Villas Manager" shall mean and refer to ELK RIDGE VILLAS L.L.C. and its successors and assigns, or its designated management agent, as the entity that manages and oversees the operations of ELK RIDGE VILLAS.
- 1.6 "Single Family" shall mean used and occupied by no more than one family, defined to include TWO persons related by birth or marriage, with the Owner to be one of the two persons, unless the Villas Manger approves an alternative arrangement in writing.
- 1.7 "Structure" shall mean anything erected or constructed the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground, and as further defined in the City of Elkhorn's zoning ordinance.
- 1.8 "Building" shall mean any Structure having a roof, supported by columns or walls, and intended for shelter, housing, or enclosure of any person or persons, and as further defined in the City of Elkhorn's zoning ordinance.
- 1.9 "Duplex" shall mean a single Building consisting of two Single Family dwelling units erected on two Villa Lots.
- 1.10 "Party Wall" shall mean a wall that is built as part of the original construction of a Duplex and placed on the dividing line between two Villa Lots.

ARTICLE II SPECIFIC PROVISIONS AND USE RESTRICTIONS

- 2.1 Use and Occupancy. Each Villa Lot shall be used and occupied for Single Family residential purposes for Seniors and for no other purpose. A Villa Lot shall be deemed to be used "for Seniors" if it is occupied solely by persons fifty-five (55) years of age or older and the spouse of such persons. Notwithstanding the foregoing, overnight visits by family members or other visitors under the age of fifty-five (55) years of age shall be allowed for periods not to exceed twenty (20) nights be calendar year. Persons who are under fifty-

five (55) years of age may reside on a Villa Lot if they are married to a resident of such Villa Lot who is fifty-five (55) years of age or older, and may, following the death of a Senior resident, continue residing on the Villa Lot for a period not to exceed one (1) year thereafter.

2.2 Owners Must Be Independent Residents. The Owner of a Villa Lot must be able to maintain himself, herself, or themselves, as "Independent Residents" as defined hereafter.

A. "Independent Resident" means a person who can remain safely and peaceably in a Building on a Villa Lot without assistance, or with the assistance of a third party, such as a spouse, relative, special duty aide, social services agency, home health, or hospice.

B. Each person desiring to become an Owner may be required by the Villas Manager to be examined by that person's regular medical doctor duly licensed in Nebraska and a medical doctor selected by the Villas Manager, if in the sole discretion of the Villas Manager a second opinion is required, all at the expense of the prospective purchaser. If the doctor determines that the prospective purchaser is able to maintain himself, herself, or themselves, as Independent Residents, the Villas Manager shall sell or permit, in writing, the sale of the Villa Lot to the prospective purchaser upon such terms and conditions as the Villas Manager set forth in writing.

C. If at any time during the period of his, her, or their ownership an Owner is no longer capable of maintaining his, her, or themselves as Independent Residents, then such person or persons may be required by the Villas Manager to be examined by a medical doctor duly licensed in Iowa and selected by the Villas Manager at the cost of the Owner. If the doctor determines that the Owner is unable to maintain himself or herself as an Independent Resident, the Villas Manager may require a sale of the Villa Lot or a transfer by said Owner.

2.3 Type of Use. No activity shall be carried on upon any Villa Lot which would constitute a nuisance of an unreasonable disturbance to persons occupying adjacent lots. No sheds or outbuildings of any kind shall be built on any Villa Lot subject to this Declaration.

2.4 Vehicles, Boats, Trailers and Campers. All vehicles, boats, trailers, campers or other recreational vehicles shall be stored or housed inside garages.

2.5 Temporary Building or Structures. No Structure of a temporary character,

trailer, camper, basement, tent, shack garage, barn or other outbuilding shall be used on any Villa Lot at any time as a residence, either temporarily or permanently. Temporary Buildings or Structures used during construction of a dwelling shall be on the same Villa Lot as the dwelling and such Buildings and Structures shall be removed upon completion of construction.

- 2.6 Animals, Livestock or Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Villa Lot, except for ONE (1) dog, weighing no more than 25 pounds, and/or TWO (2) cats, provided that they are not kept, bred or maintained for any commercial purpose. There shall be no kennels or dog runs or any other Structure built or constructed for the purpose of housing animals on any Villa Lot. The Villas Manager shall have the authority to approve, in writing, special pet situations for specific Owners. Proof of vaccination for rabies shall be supplied by the Owner to the Villas Manager for each pet.
- 2.7 Dumping of Rubbish, Trash or Junk. No Villa Lot shall be used or maintained as a dumping ground for rubbish, nor shall rubbish, trash, or junk be permitted to accumulate on any Villa Lot. Trash, garbage or other waste shall be kept at all times in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.
- 2.8 Parking of Commercial Vehicles. The parking of commercial vehicles other than in an attached garage is prohibited, except delivery vehicles during periods of deliveries.
- 2.9 Satellite Dishes. No satellite dishes may be installed on a Villa Lot without the written approval by the Villas Manager. The Villas Manager shall have the full discretion concerning the location and size of the satellite dish and may require the Owner to install and maintain landscaping by the satellite dish in order to reduce the unsightly appearance of the same.
- 2.10 Compliance. Use of all Villa Lots shall comply with the zoning Ordinance of the City of Elkhorn and as amended from time to time.

ARTICLE III BUILDING RESTRICTIONS

- 3.1 Land Use and Building Type. Each Villa Lot may be either a separate Single Family Building or one-half of a Duplex. Any Duplex shall be constructed on two Villa Lots, with one Single Family residential unit on each Villa Lot. Each residence shall have a private garage attached thereto. No Villa Lot as platted shall be subdivided so as to permit the erection of more than one dwelling.

- 3.2 Improvements and Modifications. Any improvements or modifications to the exterior or interior of a Building must be approved in writing by the Villas Manager prior to work being commenced.
- 3.3 Tennis Courts and Pool Prohibited. No swimming pool or tennis court shall be constructed on any Villa Lot.
- 3.4 Gardens. Any expansion of the original landscaping or installation of any type of garden by an Owner on a Villa Lot shall require the prior approval of the Villas Manager.
- 3.5 Preservation of Natural Habitat. All existing trees, bushes, and shrubs shall be protected and preserved in their native state as much as possible, except as the same may interfere with the dwelling area. Each Owner shall make every effort to preserve all ornamental shade trees.

ARTICLE IV
OWNER AGREEMENT WITH DEVELOPER

- 4.1 Included Services Contract. Each Owner shall be required to enter into an Included Services Contract with the Villas Manager for the purchase of certain services for a periodic fee that shall only be increased on the basis of increases in the underlying costs. Violation of the Included Services Contract shall be grounds for a lien against the Villa Lot for unpaid fees, and, if necessary, the forced sale of the Villa Lot.

ARTICLE V
RIGHTS, DUTIES, AND OBLIGATIONS OF THE VILLAS MANAGER

- 5.1 The Villas Manager for ELK RIDGE VILLAS shall have the rights, duties, and obligations:
- A. To provide for the lawn care and snow removal on the driveways and sidewalks of the improved Villa Lots;
 - B. To levy and collect the Annual and Special Assessments described hereafter;
 - C. To purchase and be the co-insured party on insurance policies as set forth hereafter;

- D. To fulfill its obligations for the repair and restoration of damaged or destroyed Villas hereunder; and
- E. To provide the approval and supervision of all work undertaken on improved Villa Lots.

5.2 ELK RIDGE VILLAS, L.L.C. and its successors and assigns, or its designated management agent, shall be the exclusive Villas Manager of ELK RIDGE VILLAS for all purposes and each Owner, by acceptance of a deed, conveyance, transfer by operation of law, or otherwise to a Villa Lot, irrevocably consents to ELK RIDGE VILLAS, L.L.C. and its successors and assigns, or its designated management agent, having such rights, duties, and obligations as the Villas Manager as set forth in this Declaration. The Owners of said lots shall only have the right to file an action in a Nebraska County or District Court against ELK RIDGE VILLAS, L.L.C. and its successors and assigns, or its designated management agent for damages concerning any breach of these Covenants for damages or specific performance. The term "association", "homeowners association" or any other variant of these terms does not grant voting rights or powers to the Owners of each Villa Lot to terminate, modify, or regulate the Villas Manager. Any Villas Lot Owner first shall first attempt mediation of any dispute before filing any legal proceeding against the Villas Manager, ELK RIDGE VILLAS, L.L.C. and its successors and assigns, or its designated management agent.

ARTICLE VI PROPERTY RIGHTS RELATING TO THE VILLA LOTS

- 6.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in the Common Facilities and such easement shall be appurtenant to and shall pass with the title to every Villa Lot, subject to the following provisions:
- A. The right of the Villas Manager to charge reasonable fees for the operation, insurance, maintenance, repair, and replacement of the Common Facilities;
 - B. The right of the Villas Manager, to borrow money for the purpose of repairing, replacing, improving, or enhancing the Common Facilities;
 - C. The right of the Villas Manager to suspend the privileges of an Owner: for any period during which any assessment or installment thereof, against that Owner's Villa Lot remains unpaid.
 - D. The right of the Villas Manager to adopt reasonable rules and

regulations for the operation, insurance, use, maintenance, repair, and replacement of the Common Facilities and for the mutual benefit and enjoyment of the Villa Lots and their Owners.

- 6.2 Title to the Common Facilities. The Declarants hereby covenant for themselves, their successors and assigns, that they will transfer ownership and title to the Common Facilities (other than areas dedicated to the City of Elkhorn for street purposes) to the Villas Manager at or before the time of the conveyance of the last Villa Lot in ELK RIDGE REPLAT 1.
- 6.3 Sanitary Sewer Easement and Maintenance. Subject to the Villas Manager's easement rights and duties as hereinafter defined, each Owner shall have the right to use the common sewer laterals, if any, located below the basement floor grade under each of the Villa Lots located in the same building cluster composed of contiguous Villa Lots, for sewage and waste water disposal purposes only. Each Owner shall have the exclusive right and duty to maintain, repair, replace or remove that Owner's sewer lateral. Each Owner's sewer pipes and lines on that Owner's Villa Lot shall be maintained, repaired and replaced by the Owner of said Villa Lot.
- 6.4 Easement of Access for Maintenance. The Villas Manager and such persons as may be engaged by the Villas Manager for maintenance purposes shall have the right to enter upon the exteriors of any residence site for the performance of maintenance at any reasonable time. The Villas Manager and such persons as may be engaged by the Villas Manager for maintenance or repair purposes, including the respective utility companies servicing the properties, shall have the right to enter a residence unit only upon reasonable notice under the circumstances in order to repair, replace or maintain the electrical, telephonic, television, or other communication services facilities serving adjacent residence units.
- 6.5 Reservation of Right. The Villas Manager reserves the right to install separate exterior water faucets and corresponding water meters in the residential properties constructed on the Villa Lots for the purpose of watering and other landscaping related uses. The cost associated with the installation of such faucets and water meters shall be paid by the Villas Manager. In addition, the Villas Manager will pay the water bills associated with water faucets and such billing will be directly to the Villas Manager. The use of said faucets shall be restricted by a lock with a key accessible only to the Villas Manager and its agents. In the event that the faucet or pipes associated therewith burst or otherwise damage the property on a Villa Lot where the faucet is located, the Villas Manager agrees to indemnify the Owner of said Villa Lot for damages sustained as a result.

ARTICLE VII
VILLAS MANAGER: COVENANT FOR MAINTENANCE ASSESSMENTS

- 7.1 Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each improved Villa Lot owned within Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska, hereby covenants, and each Owner of any improved Villa Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Villas Manager:
- A. Monthly Assessments or charges payable to the several funds administered by the Villas Manager, and
 - B. Special Assessments for capital improvements, such assessments to be established and collected from time to time as hereinafter provided.

The term "improved Villa Lot" shall mean any Villa Lot having a Building erected thereon and ready for occupancy. The Monthly and Special Assessments, together with interest, costs, and reasonable attorney's fees for collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees for collection, shall also be the personal obligation of the person or entity who was the Owner of such property at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The Declarants shall maintain all unimproved Villa Lots at their sole cost and expense.

- 7.2 Assessment Funds. The assessments levied by the Villas Manager shall be allocated to separate funds, including but not limited to the following:
- A. General Operating Fund. The Owners of each improved Villa Lot shall be assessed in an amount necessary for the general operating expenses, including but not limited to, maintenance, mowing, and general care of the lawns and the removal of snow from driveways and sidewalks. Any payments made pursuant to the Included Services Contracts between Owners and the Villas Manager may be deposited into and expended out of the General Operating Fund.

B. **Capital Fund.** The Owners of each improved Villa Lot shall be assessed in an amount necessary for any capital expenditure made by the Villas Manager. For purposes of assessments for this fund each Duplex or Building on a Villa Lot shall be assessed based upon its size and construction.

7.3 **Rate and Assessments.** Monthly Assessments shall be equal and uniform for all improved Villa Lots and shall be collected on a monthly installment basis, except as hereinafter provided. Special Assessments upon improved Villa Lots may be unequal and apportioned according to size and construction of each Building on the Villa Lots, the use for which the amounts are being assessed, and the anticipated benefit among the Villa Lots. The Villas Manager shall fix the amount of the annual assessment against each Villa 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.

7.4 **Date of Commencement of Annual Assessments: Due Dates.** The Annual Assessments provided for herein shall commence as to all improved Villa Lots on the first day of the month following the initial conveyance of the improved Villa Lot. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Annual Assessment shall be paid in equal monthly installments, and the due dates and delinquency dates shall be uniformly established by the Villas Manager. The Villas Manager shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Villas Manager setting forth whether the assessments on a specified Villa Lot are current or delinquent. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.5 **Effect of Non-payment of Assessments: Remedies of the Villas Manager.** Any monthly payment not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. Such a delinquency of any monthly payment shall give the Villas Manager the right to declare the remainder of the entire annual assessment for that year immediately due and payable. The Villas Manager may bring any action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property by an action in equity. In any such action, interest, costs and reasonable attorney's fees shall be added to the amount of the delinquent assessment and collected as part of said judgment. In the event of such a foreclosure, if the Villas Manager waives any and all rights to a deficiency judgment against the Owner, the period for redemption as provided by the statutes of the State of Nebraska shall be reduced to six months from the date of

foreclosure sale. Any Villa Lot ultimately acquired by the Villas Manager through Sheriff's Deed after such a foreclosure shall be sold by the Villas Manager within a reasonable time either at public or private sale, and any surplus remaining after the payment of all assessments, interest, costs, and attorney's fees shall be paid over to the former Owner of said Villa Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his, her, their, or its Villa Lot.

- 7.6 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed upon any Villa Lot. Sale or transfer of any Villa Lot shall not affect the assessment lien. However, the sale or transfer of any Villa Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien only of such assessments as to payments which became due prior to such sale or transfer, provided that such sale or transfer shall not extinguish the personal obligation of the prior Owner or his, her, their, or its heirs, successors or assigns, for payment of such assessment. No sale or transfer shall relieve such Villa Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- 7.7 Exemption from Assessments. All property conveyed to and accepted by a local public authority shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VIII PARTY WALLS

- 8.1 General Rules of Law to Apply. 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 thereto.
- 8.2 Sharing of Repair and Maintenance. 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. In the event that the need for maintenance is caused through the willful or negligent act of one of the Owners, his family, guests, tenants or invitees, the cost of such maintenance shall be paid by that Owner. In the event that the Owner does not pay the cost of such maintenance, the Villas Manager may do so, and such costs shall become a Special Assessment for the Villas Lot owned by said Owner.

- 8.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, the Owners who make use of the wall shall restore it, subject to the provisions of Articles IX and X hereunder, and the Owner or Owners who make use of the wall shall contribute to the cost of restoration thereof in proportion to such use, as provided in Articles IX and X of this Declaration, without prejudice, however, to the right of any of such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.
- 8.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent 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.
- 8.5 Right to Contribution Runs With Land. 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 Owners' successors in title.
- 8.6 Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision regarding such dispute shall be by a majority of all the arbitrators. The arbitration shall be carried out under the rules of the American Arbitration Association, and pursuant to applicable sections of the Code of Iowa. The decision of the arbitrators shall be binding upon the parties.

ARTICLE IX VILLAS MANAGER: INSURANCE

- 9.1 Duties of the Villas Manager. The Villas Manager shall have the duty to purchase, carry and at all times to maintain in force insurance for the interest of the Villas Manager, in such amounts and with such endorsements and coverage as shall be hereinafter specified. Such insurance shall include, but need not be limited to:
- A. A policy or policies insuring the Villas Manager, its agents and employees against any liability to the public, the Owners, contract purchaser in possession, their invitees or tenants, incident to the Villas Manager's activities. Limits of liability under such policy shall be not less than \$100,000/\$300,000 for personal injury and \$100,000 for property damage in each occurrence. Such policy or policies shall be issued on a comprehensive liability basis to provide cross-liability endorsements wherein the rights of the named insured under the policy shall not be prejudiced as respects

the right of action of any such insured against any other named insured. The Villa's Manager shall have the authority to raise the minimum insurance policy limits with 30 days written notice to the Owner's of the Villa Lots.

- 9.2 Duties of Owners. Each Owner shall have the duty to purchase, carry and at all times maintain in force insurance covering the Villa Lot and dwelling unit owned by the Owner, the improvements thereon appurtenant thereto against loss or damage by fire and hazards covered by a standard homeowners extended coverage policy in an amount which shall be equal to the maximum insurable replacement value, as determined annually by the insurance carrier. The Villas Manager shall be named a co-insured on all such policies in order to enforce the replacement and reconstruction of any such insured dwelling pursuant to the provisions of Article X of this Declaration. Each Owner shall replace his dwelling upon damage or destruction by fire or other casualty, and if he does not commence replacement or reconstruction within ninety (90) days of said destruction or damage, the Villas Manager shall use the insurance proceeds to replace and repair said damage, and the Owner shall pay any excess costs of repair or replacement as herein specified.
- 9.3 Quality of Insurance Policies. All insurance policies required under this Article shall be written by a company approved by the Villas Manager and which is licensed to do business in Nebraska and holding an A+/AAA or better, by Best's Insurance Reports. The Villas Manager shall limit its approval to one insurance company for the purchase of coverage required under this paragraph unless circumstances arise where one insurance company is unable to write insurance coverage for all Villa Lots on an economically reasonable basis.
- 9.4 Authority to Adjust Losses. Exclusive authority to adjust losses under policies obtained by the Villas Manager and Owners pursuant to this Article shall be vested in the Villas Manager or its authorized representative.
- 9.5 Provisions of Insurance Policies. The Villas Manager and Owner shall obtain insurance policies that will provide:
- A. A Waiver of Subrogation by the insurer as to any claims against the Villas Manager, its agents and employees, the Owners and their respective servants, agents and guests.
 - B. The policy with respect to the properties cannot be canceled, invalidated, or suspended on account of the conduct of any one or more Owners, on account of the conduct of any officer or employee

of the Villas Manager, or the manager, without prior demand in writing that the Villas Manager cures the defect.

C. Owner's policies shall require thirty (30) days notification to the Villas Manager before cancellation by insurance company.

9.6 Annual Review of Insurance. At least annually the Villas Manager and Owners shall review all insurance and such review shall include appraisal of all structures and other improvements located on the Properties by a representative of the insurance carrier.

9.7 Failure of Owners to Buy Insurance. Should any Owner fail to pay the premiums for the insurance required under the Article, the Villas Manager, at its option, may pay such charges and make a special assessment against the nonpaying Owner for any sums so expended. Such Special Assessment may be collected from the Owner in the same manner as provided in Article IX for the collection of other assessments.

ARTICLE X

VILLAS MANAGER: REPAIR AND RESTORATION OF VILLAS

10.1 General. Notwithstanding that the placing, carrying and maintaining in force of insurance against all loss, damage and destruction is provided for in this Declaration, the Villas Manager and the Owners shall have the affirmative obligation for repair and restoration as set forth in this Article.

10.2 Residence Units. Should any Duplex unit, any part of any Duplex unit, or any other Building, or part of a Building on a Villa Lot, including windows, be damaged or destroyed by fire or other casualty or by intentional mischief, the Owner of the Villa Lot upon which the same is situated shall, at his own cost and expense repair and restore the same or cause the same to be repaired and restored substantially in accordance with the original plans. All such repair and restoration work and the plans and specifications therefor shall be approved, done and performed in accordance with all applicable laws, ordinances, regulations and building codes of the City of Elkhorn, Douglas County, Nebraska, subject to the approval by the Villas Manager.

10.3 More than One Residential Unit. Should more than one Duplex unit or any parts thereof, including windows, be damaged or destroyed by fire or other casualty or by intentional mischief, the owners of each of the Villa Lots upon which such damage or destruction has occurred shall bear the cost of the same proportionately based upon the nature and extent of such damage as it affects the individual residence of each such Owner. In the event of a dispute between the responsible parties as to the apportionment of such costs, the Villas Manager shall fix and apportion

them to and between the responsible parties and the determination of the Villas Manager shall be conclusive and binding.

- 10.4 Timing and Completion. The repair and restoration work referred to in this Article shall be commenced within ninety (90) days after the happening of the destruction or damage, time being of the essence, and once commenced the same shall be pursued diligently to completion. If such repair and restoration work is not timely commenced, the Villas Manager may, by notice to the responsible party, elect to repair or restore the same or cause the same to be repaired or restored on behalf of and at the cost and expense of the responsible party or parties and in that event all insurance proceeds collected and any additional amount of costs and expenses in excess thereof shall be forthwith paid over to the Villas Manager to be used by or to reimburse it for such repair or restoration.
- 10.5 Approval of Plans. No work on any improved Villa Lot, provided for in this Article or otherwise, shall be commenced and no Structure shall be constructed, installed, painted or repainted on the exterior thereof or constructed, altered or repaired until complete plans and specifications for the work, including color schemes, shall have been submitted to and approved by the Villas Manager and by any governmental body having jurisdiction of such work.

ARTICLE XI ENFORCEMENT OF VIOLATIONS AND BREACHES

- 11.1 Rights of Villas Manager. The violation of any rule or regulation adopted by the Villas Manager or the breach of any covenant or provision herein shall, in addition to any other rights provided for in this Declaration, give the Villas Manager the right to:
- A. Enter on the Villa Lot on which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and neither the Villas Manager nor the officers, employees, or agents thereof shall thereby be deemed guilty in any manner of trespass; or
 - B. Enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any violation or breach; or
 - C. Pursue an action for possession of such Villa Lot in the manner provided by law.

11.2 Enforcement Procedures. Except in cases of emergency when damage to persons or property is threatened, the Villas Manager shall not take any such action unless:

- A. It has first given the Owner alleged to have violated any rule, or regulation adopted by the Villas Manager or to be in breach of any covenant or provision herein contained written notice and a reasonable time to respond in writing to the Villas Manager;
- B. The Villas Manager shall have determined such allegations to be true; and
- C. The Owner shall not have ceased and desisted from such violation or breach or shall not have taken such steps as shall be necessary to correct such violation or breach within a reasonable period of time as determined by the Villas Manager and communicated to the Owner.

11.3 Lien for Costs and Expenses. Any and all costs and expenses incurred by the Villas Manager in the exercise of its authority as granted in this Article XI, including but not limited to court costs, reasonable attorneys' fees, and costs of labor and materials, shall be paid by the Owner in violation and, until paid by such Owner, shall constitute a lien on the interest of such Owner in the Villa Lot, which lien may be perfected and foreclosed. Any such lien shall be junior and subordinated to the lien of a first mortgagee with respect to such Villa Lot.

11.4 Power to Terminate Rights. If after hearing and finding as aforesaid, the Owner fails to cease and desist from such violation or to take such corrective action as may be required, the Villas Manager shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the defaulting Owner to continue as a Owner and to continue to occupy, use, or control his Villa Lot, and thereupon an action in equity may be filed by the Villas Manager against the defaulting Owner for an order declaring the termination of the defaulting Owner's right to occupy, use, or control the Villa Lot owned by him on account of the violation of a rule or breach of covenant or provision as aforesaid and ordering that all the right, title, and interest of the Owner in the Villa Lot shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the court shall:

- A. Enjoin and restrain the defaulting Owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption that may be established,

B. Direct that the sale be subject to the rights of the Developer and all of the other terms and provisions set forth in the Option to Repurchase Agreement, and

C. Direct that any existing first mortgage be retired out of the proceeds of such judicial sale.

11.5 Application of Proceeds from Sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in the order. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner or any mortgagee.

11.6 Transfer of Title and Possession After Sale. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Villa Lot and to immediate possession of the Villa Lot sold and may apply to the court for an order of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the order shall so provide, that the purchaser shall take the interest in the Villa Lot sold subject to the these Restrictive and Protective Covenants, and shall sign an Option to Repurchase Agreement and an Included Services Contract.

11.7 Attorneys' Fees of Villas Manager. Any Owner in default hereunder or under the provisions of any rule or regulation adopted by the Villas Manager shall pay to the Villas Manager, as an agreed expense with respect to his Villa Lot, all attorneys' fees incurred by the Villas Manager in enforcing the provisions of the Bylaws, this Declaration, or the rules and regulations of the Villas Manager as to which the Owner is in default. Until such fees are paid by the Owner, the amount thereof shall constitute a lien on the interest of the Owner in the Villa Lot, which lien may be perfected and foreclosed. Any such lien shall be junior and subordinate to the lien of a first mortgagee with respect to such Villa Lot.

ARTICLE XII GENERAL PROVISIONS

12.1 Enforcement. Any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, or reservations now or hereafter imposed by the provisions of this Declaration. Failure 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.

- 12.2 Severability. Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.
- 12.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the land from the date this Declaration is recorded.
- 12.4 Amendment by Declarants. The Declarants reserve the right to revise and amend the Articles of this Declaration until the last of the Villa Lots in each of the lots as described as Lots 2 through 14 inclusive and lots 16 through 27 inclusive, ELK RIDGE REPLAT 1 a subdivision as surveyed and platted in Douglas County, Nebraska and Lots 1-2, ELK RIDGE REPLAT 3 a subdivision as surveyed and platted in Douglas County, Nebraska have been sold to Owners, including the right to add articles concerning additional but separate villas developments, provided, however, that no such amendment shall be valid or effective until a certified copy of the amendment adopted by the Declarants, has been recorded in the office of the Register of Deeds of Douglas County, Nebraska.

IN WITNESS WHEREOF, the undersigned have executed this instrument as their free and voluntary act on this 21 day of November 2006.

ELK RIDGE VILLAS, L.L.C.
a Nebraska limited liability company

By _____

Patrick G. Day, Manager

STATE OF NEBRASKA)
)ss
COUNTY OF DOUGLAS)

On this 21 day of November 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared PATRICK G. DAY, to me personally known, who, being by me duly sworn, did say that he is the Manager of ELK RIDGE VILLAS, L.L.C. a Nebraska limited liability company; that said instrument was signed on behalf of said company by authority of their respective Members; and that the said PATRICK G. DAY, as such Manager acknowledged the execution of said instrument to be the voluntary act and deed of said company, by them voluntarily executed.

Melinda Munk
Notary Public

