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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF WEST BAY SPRINGS,  
A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereunder set forth, is made by WEST BAY SPRINGS, L.L.C., a Nebraska limited liability company, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots One (1) through One Hundred Fifty-six (156), inclusive, in West Bay Springs, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of West Bay Springs, for the maintenance of the character and residential integrity of West Bay Springs, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of West Bay Springs.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part be subject to all and each of the following conditions and other terms:

**ARTICLE I.**

1. Each Lot shall be used exclusively for single-family residential purposes, except for Lots 35-58, inclusive, which may be used for attached or detached townhome purposes at Declarant's discretion, and except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park or for other non-profit use.

2. No residence, building, fence (other than fences constructed by the Declarant), wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or disc, solar heating or cooling, device, or other external improvement, above or below the ground (herein collectively referred to as "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor

shall any grading, excavation or tree removal for any Improvement be commenced, except for Improvements which have been approved by Declarant. as follows:

A. Prior to the commencement of construction or installation, an owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall, include a description of type, quality, color and use of materials proposed for the exterior of such Improvement and proposed elevations of the driveway and foundation. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address and facsimile number.

B. Declarant shall review such plans in relation to the type and exterior of Improvements constructed, or approved for construction on neighboring Lots and in surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a residential community with homes constructed of high quality materials, with harmonious exterior elevations and exterior colors of earth tone hues only. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines, in its sole and absolute discretion, that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

C. Written Notice of any approval of a proposed Improvement shall be mailed or sent by facsimile to the owner at the address specified or facsimile number by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or any right to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. All Improvements on the Lots shall, at a minimum, Comply with all set back and side yard requirements of the Zoning Code of the Municipal Code of the City of Omaha, Nebraska and, unless otherwise provided for herein, shall also comply with any set back or other requirements promulgated by the Declarant, including but not limited to the following: each Lot shall have 30' front yard set back, 5' side yard set back, 25' rear yard set back, and 15' street side yard set back. If the requirements of the City of Omaha permit a lesser street side yard set back,

then the City of Omaha requirements relating to street side yard set back shall control. With respect to all other set back requirements, the more restrictive requirements shall govern.

4. Subject to the specific requirements set forth in this Declaration, all foundations of all Lots shall be constructed of concrete, concrete blocks, brick or stone. Further, the foundations of any the following Lots in West Bay Springs shall comply with the specific requirements of minimum basement elevation as may be reflected in the surveyor's certificate for each Lot, issued by Declarant's engineer, E&A Consulting Group. Each of the Lots with specific requirements of minimum basement elevation shall have the designated minimum basement floor elevations above sea level. For those Lots, it is recommended that a soils engineer be consulted for footing design. All exposed front foundation walls and any exposed foundation walls of all main residential structures facing any street must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All corner lots with exposed foundation walls facing any side street in clay-fired brick or stone or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be covered with clay-fired brick, stone, siding or shall be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. Any fireplace chimney or enclosure of any fireplace flue which is located on the front side of a residence shall be constructed of, or finished with, clay-fired brick or stone or other material approved by Declarant. All fireplace chimneys facing any side street shall be faced with clay-fired brick or stone or other material approved by Declarant. All other fireplace chimneys, may be covered with wood or other material if approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with Heritage II style asphalt shingles **weathered wood in color**, or other brand weathered wood in color if such brand and color is approved by Declarant in writing prior to installation of the same, wood cedar shakes or wood shingles.

5. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No business activities of any kind whatsoever shall be conducted on any Lot including home occupations as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, the foregoing paragraph shall not apply to the business activities, sign and billboards or the construction and maintenance of buildings, including model homes, if any, by Declarant, its agents or assigns, during the construction and sale of the Lots.

6. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to, odors, dust, glare, sound, lighting, smoke vibration and radiation.

Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

7. No outside radio, television, ham broadcasting, earth station, satellite dish or other electronic antenna or aerial shall be erected or placed on any structure or on any Lot, except, with the prior written approval of Declarant, one (1) satellite dish of 18" or less in diameter or diagonal measurement which is screened from view of any street or sidewalk will be permitted per Lot. The foregoing notwithstanding, any earth station, satellite dish or other electronic antenna or aerial specifically exempted from restriction by statute, regulation, binding order of a court or governmental agency shall be maintained in accordance with the strictest interpretation or condition for such use as may be permitted by such order.

8. No tree houses, tool sheds, doll houses, windmills or similar structures shall be permitted on any Lot, unless specifically approved by Declarant in writing.

9. No repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time, nor shall vehicles or similar chattels offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

10. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than two (2) consecutive days and no more than twenty (20) days combined within any calendar year. No motor vehicle may be parked or stored outside on any Lot except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers or other commercial vehicles shall be stored, parked, kept or maintained in any yards, driveways, or streets. However, this Section 9 does not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable ordinances of the City of Omaha, Nebraska.

11. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted to be stored outside of any dwelling unless, completely screened from view, except on a designated day each week for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothes line or other outside facilities for drying or airing clothes shall be permitted outside of any dwelling at any time. Produce or

vegetable gardens may only be maintained in rear yards in an area no larger than eight (8') feet by ten (10') feet.

12. No fence shall be allowed on any Lot abutting any part of any lake, pond or water feature within West Bay Springs, unless it complies with the requirement of this paragraph or prior written approval of Declarant is obtained. Only wrought iron or black plastic fencing designed to look like wrought iron, in a design designated by the Declarant, not less than fifty (50%) percent open and not more than four (4') feet in height shall be allowed on any Lot abutting any part of any lake, pond or water feature within West Bay Springs. With respect to all other Lots, unless other materials are specifically approved in writing by Declarant, fences on Lots not abutting any part of any lake, pond or water feature within West Bay Springs shall only be composed of wood, wrought iron, black plastic fencing designed to look like wrought iron or white plastic vinyl coated. No fences or walls in West Bay Springs shall exceed a height of six (6') feet. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No chain link fencing shall be allowed, unless installed by Declarant. Any fences, hedges or mass planted shrubs installed by or at the direction of the Declarant shall not be subject to the provisions of this paragraph.

13. No swimming pool may extend more than one foot above ground Level.

14. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

15. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof, provided however, this provision shall vary to comply with any requirements of the City of Omaha.

16. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

17. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog, provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. Dog houses shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence and hidden from view. Dog runs or kennels shall be permitted only with the written approval of the Declarant or its assigns; provided always that any permitted dog run or kennel shall be located immediately adjacent to the rear of the residence and

hidden from view. No animals, livestock, agricultural-type animals, fowl or poultry of any kind, including, pot-bellied pigs, shall be raised, bred or kept on any Lot, except that subject to the ordinances of the City of Omaha two (2) dogs, two (2) cats, or two (2) other small household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are not left outside of the residential structure unattended and not permitted to run loose outside the Lot of the Owner. No excessive barking of any dog, or other excessive noise of any kind from any animal, shall be permitted on any Lot. If three (3) complaints of excessive barking by any dog or other excessive noise of any kind from any animal is received by either the Declarant, local authorities and/or the Owner of said animal, a shock collar shall be utilized. The preceding sentence shall not be deemed a waiver of any kind, but shall instead provide an alternate remedy to comply with the prohibition against excessive barking and/or noise.

18. Prior to placement on any Lot, any exterior air conditioning condenser unit shall be first approved by the Declarant according to the requirements set forth in Article I, paragraph 2, and shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation shall be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees shall be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

19. No Residence shall be constructed on a Lot unless the entire Lot as originally platted is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat. This paragraph shall not prohibit administrative subdivisions for minor variations in lot lines so long as prior approval of the Declarant is obtained.

20. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding or shack or other similar structure shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside West Bay Springs to any Lot or modular home constructed on any Lot without the written approval of Declarant.

21. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

22. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations and designs as it may determine appropriate in its sole and absolute discretion.

23. The lakes, ponds and water features within the West Bay Springs subdivision shall be limited use: no jet-skis, waverunners, gas-powered boats or other similar vessels or chattels shall be allowed in, on, or near said lakes, ponds and water features. The lakes, ponds and water features within the West Bay Springs subdivision were not designed for swimming or other activities. Any person entering the lakes, ponds and/or water features does so at their own risk. All Owners of all Lots, their invitees, licensees, heirs, successors and assigns, shall be bound to comply with reasonable rules and regulations, and amendments thereto, promulgated by the West Bay Springs Homeowners Association.

24. No motorized boats or crafts or large sailing vessels of any kind whatsoever shall be stored or utilized in any way on, in, over or across any Lot in West Bay Springs. No paddle boat, sailing vessel, fishing vessel or equipment or other personal property shall be stored or maintained on any Lot in West Bay Springs, unless hidden from view.

## ARTICLE II HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused or will cause the incorporation of WEST BAY SPRINGS HOMEOWNERS ASSOCIATION, a Nebraska nonprofit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for West Bay Springs Common Facilities may be situated on property owned or leased by the Association, on public, property, on private property subject to an easement in favor of the Association or on property dedicated to a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the, use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of West Bay Springs; and the protection and maintenance of the residential character of West Bay Springs.

2. Owners' Easements of Enjoyment and Delegation of Use. Every owner shall have a right and easement of enjoyment in and to the Common Facilities 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 Common Facility;
- b. the right of the Association to suspend the voting rights and right to use of the Common 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 Facilities 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 2/3rds of the Members has been recorded.

Any owner may delegate, in accordance with the rules and regulations of the Association, his right of enjoyment to the Common Facilities to the members of his/her family.

3. Membership and Voting. West Bay Springs is divided into 156 separate residential lots (referred to as the "Lots"). Subsequent phases, if any, of the West Bay Springs development shall be annexed hereto and shall be considered Lots as referred to in this Declaration. The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. With the exception of the Class B membership set forth below, the Owner of each Lot, whether one or more, shall have one vote on all matters properly before the Association. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

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 seven (7) 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 three-fourths of the total votes outstanding in the Class B membership, or
- b. on June 1, 2012 or sooner at Declarant's discretion.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon nonprofit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties

necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks, lakes, ponds, water features and other public property and improvements on parks or public property within or near West Bay Springs.

C. The fixing, levying, collecting, abatement and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members serving thereunder.

E. The exercise of all of the powers and privileges and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the general administration and management of the Association, and execution of such documents and doing and performance of their duties and responsibilities for the Association.

I. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

5. Mandatory Duties of Association. The Association shall operate, maintain and repair any fence, signs, landscaping, lakes, ponds and water features which have been installed in the

West Bay Springs subdivision on property owned by or controlled by easement in favor of the Association and on center islands dividing dedicated roads, all in generally good and neat condition, including but not limited to Outlots C, D, F and G, all in West Bay Springs.

6. Covenant for and Imposition of Dues and Assessments. The Declarant, for each Lot owned, hereby covenants, and each Owner of any 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 dues and assessments as provided for herein. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant or any of its designated builders.

8. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest, thereon, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest, thereon, costs and reasonable attorney's fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purpose of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 4 and 5 of this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. Five Hundred and no/100 Dollars (\$500.00) per Lot.

B. In each calendar year beginning on January 1, 2004, one hundred twenty five percent (125 %) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/ 100 Dollars (\$200. 00) per Lot.

12. Excess Dues and Assessments. With the approval of seventy-five percent of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

13. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Sections 6 and 7, above.

14. Certificate as to Dues and Assessments. The Association shall upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

15. Effect of Nonpayment of Assessments - Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of rate of sixteen percent (16%) per annum or the legal rate of interest, whichever is less, compounded annually. The Association may bring in action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall, be indemnified against the interest, costs and reasonable attorney's fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due together with interest, costs and attorney's fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

16. Subordination of the Lien to the Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessments lien.

17. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time

to time by the Declarant or Declarant's assignee by recordation with the Register of Deeds of Douglas County, Nebraska of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes, of this Article II, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

### ARTICLE III. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, US West Telephone Company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities District, Peoples Natural Gas, and Sanitary and Improvement District No. 485 of Douglas County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of an kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots, an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots, and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha and Peoples Natural Gas, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities, and to extend therein pipes for the transmission of gas and water on, through, under ad across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but some may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. A perpetual easement is further reserved in favor of the Declarant and the Association, their successors and assigns to enter on, over and upon the rear most twenty (20) foot wide strip of land abutting the boundary lines of any Lots abutting any lake, pond or water feature, standards and accessories located therein and thereon, in West Bay Springs for the purposing of accessing such lake, pond or water feature, standards and accessories located therein and thereon, to maintain, repair, reconstruct, renew such lake, pond or water feature, standards and accessories located therein and thereon.

4. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which US West Telephone Company files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date") then US West Telephone Company may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority.

Should such charge be implemented by US West Telephone Company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date, and (2) US West Telephone Company sends each owner of record a written statement or billing for Four Hundred Fifty and no/ 100 Dollars (\$450.00) for each unimproved Lot.

5. Other easements are provided for in the final plat of West Bay Springs filed or to be filed in the Register of Deeds of Douglas County, Nebraska.

#### ARTICLE IV. GENERAL PROVISIONS.

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce, by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant 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.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of this Declaration. Thereafter the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the owners of not less than seventy-five (75%) percent of said Lots, which termination or amendment shall thereupon become binding upon all

Lots. This Declaration may be amended by West Bay Springs, L.L.C., a Nebraska limited liability company, its successor or assigns, or any person, firm, corporation, partnership or entity designated in writing by West Bay Springs, L.L.C., a Nebraska limited liability company, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration. may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. West Bay Springs, L.L.C., a Nebraska limited liability company, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the rights of the Declarant shall automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association or individual to serve as Declarant, and the Association or such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any one or more provisions of this Declaration by judgment or court order shall in no way effect any of the other provisions hereof, which shall remain in full force and effect.

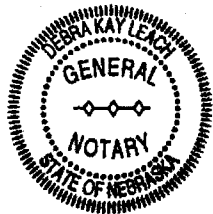
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed. this 28 day of August 2003.

West Bay Springs, L.L.C. a Nebraska limited liability company, "Declarant"  
By: Boyer Young Development Company, Administrative Member,

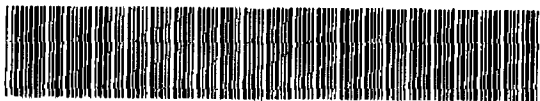
By: *Timothy W. Young*  
Timothy W. Young, President

STATE OF NEBRASKA    )  
                                  )  
                                  )    ss.  
COUNTY OF DOUGLAS    )

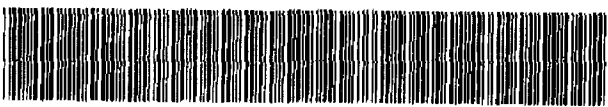
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August 2003, by Timothy W. Young, as President of Boyer Young Development Company, Administrative Member of West Bay Springs, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.



*Debra Kay Leach*  
Notary Public



MISC 2005079925



JUL 08 2005 15:18 P 2

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/8/2005 15:18:41.02



2005079925

**FIRST AMENDMENT TO PROTECTIVE COVENANTS**

THIS FIRST AMENDMENT TO PROTECTIVE COVENANTS is made the date hereinafter set forth by West Bay Springs, L.L.C., a Nebraska limited liability company.

**RECITALS**

A. On August 28, 2003, a document entitled Declaration of Covenants, Conditions, Restrictions and Easements of West Bay Springs (hereinafter the "Declaration") for Lots One (1) through One Hundred Fifty-Six (156), inclusive, in WEST BAY SPRINGS, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, was recorded by West Bay Springs, L.L.C. ("Declarant"), in the office of the Register of Deeds of Douglas County, Nebraska at Miscellaneous Document 2003163408. \*\*\*Lot 46 and Outlot A, all in West Bay Springs are now known as Lot 1 and Outlot A, West Bay Springs Replat One, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska and Lots 47 - 51, inclusive, and Lots 53 - 57, inclusive, all in West Bay Springs, are now known as Lots 1 - 10, inclusive, of West Bay Springs Replat Two, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

B. Article IV, Section 2 of the Declaration provides that for a period of ten (10) years following August 28, 2003, the Declarant shall have the right to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares that the Declaration recorded on August 28, 2003 at Miscellaneous Document 2003163408 in the office of the Register of Deeds of Douglas County, Nebraska should be and hereby are amended in the following manner:

I. by deleting therefrom Paragraph 13 of Article II and adding in its place and stead the following:

13. Rate of Assessment. Assessments and dues shall be fixed at a rate or rates as determined by the Board and the Board may establish different rates for different lots based on proximity to amenities within The West Bay Springs subdivision, in addition dues may be abated as to individual Lots, as provided in Sections 6 and 7, above.

II. by deleting therefrom Paragraph 5 of Article II and adding in its place and stead the following:

5. Mandatory Duties of Association. The Association shall operate, maintain and repair any fence, signs, landscaping, decorative street lighting, lakes, ponds and water features which have been installed in the West Bay Springs subdivision on property owned by or controlled by easement in favor of the Association and on center islands dividing dedicated roads, all in generally good and neat condition, including but not limited to Outlots C, D, F and G, all in West Bay Springs. The Association shall pay any and all costs of upgrading street lighting in the West Bay Springs subdivision from the street lighting that is normally and customarily provided by OPPD.

All other terms of said Declaration shall remain in full force and effect.

Dated this 30 day of June 2005.

FULLENKAMP, DOYLE & JOBEUN  
11440 WEST CENTER ROAD  
OMAHA, NEBRASKA 68144-4482

*Handwritten notes:*  
OC-41869- Replat 2.  
OC-41863.  
OC-41864 - Replat One  
Kmta 88.2  
BXP \_\_\_\_\_  
157 DEF \_\_\_\_\_  
33452



WEST BAY SPRINGS, L.L.C., a Nebraska limited liability company, "Declarant,"  
By: Boyer Young Development Company, Administrative Member,

By: *Timothy W. Young*  
Timothy W. Young, President

STATE OF NEBRASKA                    )  
                                                  )    ss.  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of June 2005, by Timothy W. Young, as President of Boyer Young Development Company, Administrative Member of West Bay Springs, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.

*Randi A. Zabawa*  
Notary Public

