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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant" and "Jeff McCaul".

WITNESSETH:

WHEREAS, Declarant and Jeff McCaul, whether one or more, are the owners of certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 1 through 11, inclusive, and Outlots A, B and C, The Colonies at Cedar Crest Replat 2, a subdivision in Douglas County, Nebraska;

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

NOW, THEREFORE, Declarant and Jeff McCaul hereby declare 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 The Colonies at Cedar Crest Townhomes and Villas Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

Record and Return to: James E. Lang, 11718 Nicholas Street, #101, Omaha, NE 68154

SECTION 2. "Board" shall mean and refer to the Board of Directors elected by a majority vote of the members of the Association, its successors and assigns.

SECTION 3. "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 purchaser's obligation under the contract.

SECTION 4. "Properties" shall mean and refer to:

Lots 1 through 11, inclusive, and Outlots A, B and C, The Colonies at Cedar Crest Replat 2, a subdivision in Douglas County, Nebraska;

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

SECTION 5. "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or a parcel or lot resulting from a Lot split or replatting.

SECTION 6. "Declarant" is McCaul Contracting, LLC, a Nebraska limited liability company.

SECTION 7. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant and its successors and assigns.

SECTION 8. "Improved Lot" shall mean and refer to any lot on the properties upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specification for the construction of said dwelling. All other lots, which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots".

SECTION 9. "Common Area" shall mean Outlots A, B and C, The Colonies at Cedar Crest Replat 2, a subdivision in Douglas County, Nebraska.

## 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 or 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 which is subject to assessment 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. Members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

SECTION 3. 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, including the Declarant. 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: The Class B Member shall be the Declarant, or its successors and assigns, who shall be entitled to two votes for each Lot owned by the Declarant, or its successors or assigns, in addition the votes to which the Declarant is entitled as a Class A Member. The Class B membership shall terminate, with the Declarant, or its successors and assigns, then entitled to one vote for each Lot owned by the Declarant, or its successors and assigns, as a Class A Member, 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) December 31, 2020.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and Jeff McCaul hereby covenant for each Lot and for each Owner of any 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;

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

as such 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 continuing lien upon the property against which each such assessment shall be made. Each such assessments, 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 assume by them.

SECTION 2. Purposes 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, for the maintenance, construction, reconstruction and repair of any common area, if any, and the roadway, utilities and improvements within the common area or public right of way within or abutting the Properties, and other matters as more fully set out in Article V herein.

SECTION 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall initially be determined by the Declarant.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased by not more than five percent (5%); except by a vote of at least 66% of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-

thirds (2/3) of each class of members who are voting or proxy at a meeting duly called for this purpose.

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

SECTION 4. Monthly Assessments. The Board of Directors shall have the authority to levy and assess from time to time against a Lot any monthly maintenance Assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance.

SECTION 5. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against an 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 or within the common area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

SECTION 6. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 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 the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

SECTION 7. Rate of Assessment. The monthly assessments shall be paid prorata by the Owners of all Lots based upon the total number of Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain 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 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 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 Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Lot shall be binding upon the Association as of the date of its issue by the Association.

SECTION 8. 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 these Declarations, is twelve percent (12%) 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.

SECTION 9. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

SECTION 10. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots the first day of each month following the conveyance of Lot to the original homeowner. Lots owned by Declarant shall not be subject to any assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

SECTION 11. Exterior Maintenance. The Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: snow removal, lawn service and other exterior improvements that the Board from time to time determines to be appropriate.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of the family, guests, or invitees of the Owner of

the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

## **ARTICLE V EXTERIOR & COMMON AREA MAINTENANCE**

The Association shall provide for the maintenance, repair, snow removal and reconstruction for the roadway, utility improvements, green areas and landscaping within the Common Area. The Association may also provide for the maintenance and repair of the yards, driveways, sidewalks and landscaping within the Properties.

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

- (a) Maintenance and repair of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed by the Declarant and Jeff McCaul or as agreed to be maintained by the Association within the Outlots and the Lots.
- (b) Maintenance, repair, snow removal and reconstruction for the private drive and sidewalks within Outlot "A".
- (c) Snow removal for the sidewalks and driveways located on the Lots.

SECTION 2. Special assessments may be assessed for the repair, construction/or reconstruction of the private drive within Outlot "A".

## **ARTICLE VI ARCHITECTURAL CONTROL**

No building, fence, wall, or other structure 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 trees, shrubs and plantings, by the Declarant. Failure of the Declarant to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications. The Declarant shall have the right to assign its plan approval authority described herein to any person or entity, including the Board of Directors of the Association.

**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) No structure shall be constructed on any Lot other than one single family structure, townhome or villa. Said structure shall conform to the following requirements:

One Story structure with attached garage	1,200 sq. ft.	On the main floor, exclusive of garage area
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- (b) All exterior block on the foundation facing the street of any structure shall be faced with brick, stone or another material approved by the Declarant pursuant to Article VI.
- (c) Each unit shall contain a two car garage and a sprinkler system.
- (d) All driveways shall be constructed of concrete, brick or asphaltic concrete.
- (e) A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling.
- (f) All yards shall be sodded as soon as reasonably possible after the construction of the dwelling is completed, however, such sodding shall be completed in all events within one year from the date the foundation of the residence on the lot was completed.
- (g) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Association, a satellite dish measuring 18 inches or less in diameter may be erected so long as such satellite dish is hidden from the view of the adjoining Properties.
- (h) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets. No such pet shall be kept, bred or maintained for commercial purposes. No animals,



livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than household pets, which shall be limited to one (1) per household and which a household pet shall not exceed twenty pounds (20) in weight. All pets shall be confined to the Lot by radio controlled fencing or leashed when outside the residential structure and patio area. All unpleasantries created by the household pet shall be the responsibility of the Owner, and he shall be obligated to clean up after the animal.

- (i) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.
- (j) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size. Nothing herein contained shall prevent the use of any Lot by the Declarant, its agents, and the Association as a sales and rental office, or as a model home or both, and while any Lot is so used, they shall have the right, for themselves, or their nominees, to place signs on the premises advertising such office or model home, or both.
- (k) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. No outbuilding shall be constructed on any Lot without the prior written consent of the Declarant, or its successors and assigns, pursuant to the plan approval procedure set forth in these Covenants. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.

## **ARTICLE VIII INSURANCE**

SECTION 1. The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

## **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 UTILITY METERS AND SERVICE LINES**

In order to facilitate the installation, operation, maintenance and repair of an underground watering system, such Lots as shall be designated from time to time by the Association shall have a dual metering system for water so as to permit the drawing of water for watering of the laws, shrubs, trees and other vegetation located upon the Lots. It is understood that the amount of water metered for the residential use on any such Lot shall be paid for by the Owner of each Lot receiving water.

## **ARTICLE XI GENERAL PROVISIONS**

SECTION 1. Enforcement. The Association, any Owner or the Declarant shall have the right to enforce, by any proceedings 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, any Owner or the Declarant and 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. These Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations. The Declarant shall have the right to amend these Declaration for any reason during the initial term of five (5) years from the date these Declarations are recorded.

SECTION 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these

Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

IN WITNESS WHEREOF, the undersigned, being the Declarant and Jeff McCaul herein, have executed these Declarations of Covenants, Conditions and Restrictions this 7 day of July, 2010.

McCAUL CONTRACTING, LLC, a  
Nebraska limited liability company, Declarant

By: [Signature]  
Jeffrey McCaul, Manager

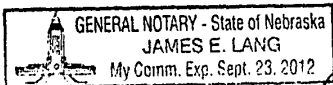
JEFF McCAUL:

Jeff McCaul d/b/a McCaul Contracting, Owner of  
Lots 1, 2 and 3, The Colonies at Cedar Crest Replat  
2

By: [Signature]  
Jeff McCaul

STATE OF NEBRASKA ) ss.  
COUNTY OF DOUGLAS )

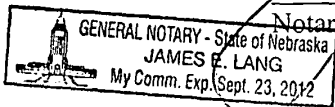
The foregoing instrument was acknowledged before me this 7 day of July, 2010, by Jeffrey McCaul, the manager of McCaul Contracting, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]  
Notary Public

STATE OF NEBRASKA ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 7 day of July, 2010, by Jeff McCaul d/b/a McCaul Contracting



[Signature]  
Notary Public

CONSENT

Pinnacle Bank who holds a Deed of Trust on certain of the Lots, hereby consents to these Covenants.

PINNACLE BANK

By: *W. D. Joub*  
Its *President*

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 7 day of July, 2010, by M. DOUGLAS ZOEB, the PRESIDENT of Pinnacle Bank.



*Kenneth T. Kovar*  
Notary Public

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