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**AMENDMENTS TO DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF AVIAN FOREST, A SUBDIVISION IN  
SARPY COUNTY, NEBRASKA**

THIS AMENDMENT to the Declaration of Covenants, Conditions, Restrictions and Easements of Avian Forest, A Subdivision in Sarpy County, Nebraska, dated September 2, 1997 and recorded in the Sarpy County Register of Deeds office on September 3, 1997, is made by AVIAN DEVELOPMENT COMPANY, L.L.C., a Nebraska limited liability company, hereinafter referred to as the "DECLARANT."

ARTICLE I, paragraph 1, shall be amended to read as follows:

1. Lots 1 through 4 and 14 through 53 <sup>Avian Forest Replat 1</sup> shall be used exclusively for single-family residential purposes, and Lots 5 through 13 <sup>Avian Forest Replat 1</sup> shall be used exclusively for single-family ranch villas with a townhome regime association, 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 park, or for other non-profit use.

ARTICLE I, shall have an additional paragraph after paragraph 1, which shall read as follows:

1a. "Owner" of a Lot, as used herein, shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having an interest in any of such Lots merely as security for the

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performance of an obligation (such as contract seller, the Trustee or Beneficiary of a deed of trust, or a mortgagee). A purchase of a Lot under a land contract or similar instrument shall be deemed to be the Owner of the Lot for purposes of these Declarations.

**ARTICLE I, paragraph 18 shall be amended to read as follows:**

No residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by an Owner, as defined herein, except of 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.

**AN ARTICLE V shall be added and read as follows:**

**ARTICLE V.**  
**TOWNHOME ASSOCIATION**

1. The Association. Declarant has caused the incorporation of AVIAN FOREST TOWNHOME ASSOCIATION, a Nebraska not for profit corporation (referred to in this Article as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Avian Forest, 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 and the maintenance and repair of the improvements to the Lots as set forth herein. Common Facilities may include recreational facilities such as swimming pools, tennis courts, roads, paths, ways and green areas; signs and entrances for Avian Forest; and Outlot "A", Avian Forest. Common Facilities may be situated on property owned or leased by the Association, or on dedicated property or property subject to easements accepted by and benefiting the Association, or on public property, 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 Avian Forest; and the protection and maintenance of the residential character of Avian Forest.

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2. Membership and Voting. Avian Forest Townhome Association is divided into nine (9) separate lots consisting of Lots 5 through 13 (referred to as the "Lots"). The "Owner of each Lot shall be a Member of this Association, and by the filing of these Amended Covenants, said Owners shall not be mandatory Members of the Avian Forest Homeowners Association, as set forth in the original Declaration of Covenants, referenced herein under Article II. 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.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter property coming before the Members of the Association.

3. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be affected from time to time by the Declarant by recordation with the Register of Deeds of Sarpy County, Nebraska, of an Amendment of Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall become subject to this Declaration.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of the Avian Forest Homeowners Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit 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.

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(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near Avian Forest.

(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 or any improvement to a Lot against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(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 performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association in the performance of their duties and responsibilities for the Association.

(j) 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 maintain and repair the common facilities and shall be solely responsible to employ and hire companies to perform the following outdoor maintenance: (1) snow removal from Association walks and drives; (2) mowing of front, back and side of each lot; (3) removal of all grass, leaves and yard waste; and (4) all other exterior maintenance necessary to ensure uniformity and quality of the outdoor appearance of the townhome regime. Further, the Association may work and cooperate with the Avian Forest Homeowners Association, as deemed necessary and reasonable, to maintain the fence, signs and

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landscaping which have been installed in easement areas and center islands and that benefit this Association.

6. Imposition of Dues and Assessments. 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.

8. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' 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 attorneys' 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 purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3, 4 and 5 of this Article.

10. 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.

11. 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.

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12. 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 Section 7, above.

13. 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.

14. 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 sixteen percent (16%) 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.

15. 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.

16. 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 during the period such Lot is owned by the Declarant.

All other provisions of the Declarations as set forth in the document filed on September 3, 1997, shall remain the same and unchanged.

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IN WITNESS WHEREOF, the Declarant has caused this Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Avian Forest, A Subdivision in Sarpy County, Nebraska, to be executed this 15<sup>th</sup> day of April, 1998.

AVIAN DEVELOPMENT COMPANY, L.L.C., a  
Nebraska Limited Liability Company, Declarant

BY:

Joanne Sharples  
TITLE: Managing Member

STATE OF NEBRASKA    )  
  )ss  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of November, 2001 by Joanne Sharples, of Avian Development Company, L.L.C., a Nebraska limited liability company.

Michealene A Ruff  
Notary Public

