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MISC 2006103755



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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
9/8/2006 13:47:53.51



2006103755

**ASSIGNMENT OF DECLARANT RIGHTS UNDER  
ECR DECLARATION**

THIS ASSIGNMENT OF DECLARANT RIGHTS UNDER ECR DECLARATION ("Assignment") is made and entered into as of the 8<sup>th</sup> day of September, 2006, (the "Effective Date") by and between M.J.A., L.L.C., a Nebraska limited liability company ("MJA") and Ryan Companies US, Inc., a Minnesota corporation ("Ryan").

RECITALS

WHEREAS, MJA executed that certain ECR Declaration dated December 8, 2003, recorded December 19, 2003, as Document No. 2003245123, in the Register of Deeds, Douglas County, Nebraska ("Declaration") , which encumbered Lot 297 and Lots 301 through 309, inclusive, and Outlots B, C, D and E, Whispering Ridge; Lot 3, Whispering Ridge Replat No. 2; and Lots 1 and 2, Whispering Ridge Replat No. 3, to establish certain covenants, restrictions and easement rights; and

WHEREAS, MJA executed that certain First Amendment to ECR Declaration dated September 13, 2004, recorded September 17, 2004, as Document No. 2004123715, in the in the Register of Deeds, Douglas County, Nebraska ("First Amendment"); and

WHEREAS, the Declaration and First Amendment shall be collectively referred to herein as the "Declaration"; and

WHEREAS, pursuant Paragraph 1.3 of the Declaration, MJA, as the Declarant under said Declaration, may assign its rights and obligations under said Declaration to a third party; and

WHEREAS, MJA (a) is still the holder of all the Declarant rights and obligations established in the Declaration; (b) is still the record title owner of Outlot E, Whispering Ridge, as referenced in the Declaration ("Outlot"); and (c) has not assigned, encumbered or transferred its interest in the Outlot or any of its rights as the Declarant (as defined in the Declaration) or obligations under the Declaration as of the Effective Date; and

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BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP Ex  
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*return to 2645*

Union Title Company  
380 Normal Blvd. Suite 100  
Lincoln, NE 68506

2500

WHEREAS, MJA seeks to assign to Ryan, all of its right, title and interest in the Outlot and its rights and obligations as Declarant under the Declaration, including, but not limited to, all easement rights, responsibilities and obligations created in the Declaration.

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ryan and MJA agree as follows:

1. Assignment of Declarant Rights. MJA hereby assigns to Ryan all its rights, obligations and responsibilities as Declarant under the Declaration, including, but not limited to, all easement rights, and under separate document via a Deed, all of its interest in the Outlot.

2. Representation of MJA. MJA hereby represents and warrants to Ryan that (a) it has not assigned or encumbered any of its rights or responsibilities as the Declarant under the Declaration; (b) it has not designated any third party as a Declarant under the Declaration; (c) it has the authority to assign all rights and responsibilities under the terms and conditions set forth in the Declaration to Ryan; (d) there has been no written or verbal modification to the Declaration as of the Effective Date; and (e) shall convey to Ryan upon execution of this document, all of its interest in the Outlot.

3. Ryan's Assumption. Ryan hereby acknowledges the assignment of all of the Declarant rights, responsibilities and obligations under the Declaration and agrees to assume all rights, responsibility and obligations of the Declarant as created in said Declaration.

4. MJA Approval Rights. Notwithstanding the foregoing, so long as MJA owns Lots 302, 303 and 304, Whispering Ridge and Lot 2, Whispering Ridge Replat No. 3 (hereinafter "MJA Parcels"), MJA shall retain the right to approve, which approval shall not be unreasonably withheld, the following matters with respect to the Declaration:

- a. Any relocation of or limitation or change of access to Outlot E
- b. Any modifications or amendments to Section 4 of the Declaration

Regardless of any provision to the contrary in this paragraph 4, MJA may not unreasonably withhold its consent to any items to which Declarant seeks approval which is required by the City of Omaha or any other governmental entity unless the same is related to a condemnation of property of property rights owned by MJA as it relates to the MJA parcels.

5. Governing Law. This Assignment shall be construed in accordance with and governed by the laws of the State of Nebraska.

6. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Effective Date. This Assignment shall become effective on the date provided above as the Effective Date.

8. Incorporation of Recitals. All of the Recitals set forth in this Assignment so labeled are incorporated into and made a part of this Assignment.

9. Defined Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration.

*[Signatures will appear on the following pages]*

**SIGNATURE PAGE**

**FOR**

**ASSIGNMENT OF DECLARANT RIGHTS UNDER  
ECR DECLARATION**

**BETWEEN**

**M.J.A., L.L.C.**

**AND**

**RYAN COMPANIES US, INC.**

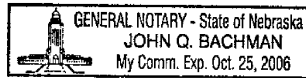
IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the dates of the acknowledgements set forth below to be effective as of the Effective Date.

M.J.A., L.L.C.  
a Nebraska limited liability company

By: *Gerald L. Torczon*  
Gerald L. Torczon  
Its: Manager

STATE OF NEBRASKA       §  
  §  
COUNTY OF DOUGLAS     §

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September, 2006, by Gerald L. Torczon, the Manager of M.J.A., L.L.C., a Nebraska limited liability company, on behalf of the company.



*John Q. Bachman*  
Notary Public

SIGNATURE PAGE

FOR

ASSIGNMENT OF DECLARANT RIGHTS UNDER  
ECR DECLARATION

BETWEEN

M.J.A., L.L.C.

AND

RYAN COMPANIES US, INC.

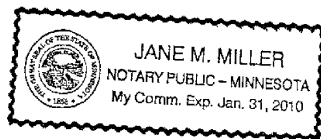
Ryan Companies US, Inc.  
a Minnesota corporation

By:

W.J. McHale  
Its: Executive Vice President

STATE OF MINNESOTA       §  
  §  
COUNTY OF HENNEPIN     §

The foregoing instrument was acknowledged before me this 6th day of September, 2006, by W.J. McHale, the Executive Vice President of Ryan Companies US, Inc., a Minnesota corporation, on behalf of the corporation.



Notary Public

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