

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-21031

2007 JUL 16 A 10:50 AM

Sharon J. Ringberg
REGISTER OF DEEDS

COUNTER 10 C.E. OUT
VERIFY 10 D.E. OUT
PROOF _____
FEES \$ 60.00
CHECK # 074682
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CAINCREST**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 25 day of JUNE, 2007, by CainCrest, LLC, a Nebraska limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property located in the County of Sarpy, Nebraska, and further described on Exhibit "A" attached hereto (hereinafter the "Property"); and

WHEREAS, Declarant desires to provide for preservation and enhancement of the property, values, amenities, and opportunities on a residential subdivision in the Property and for maintenance of the property and improvements thereon, and to this end desires to subject the Property to the covenants, restriction, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property, and each owner thereof;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

- 1.1 "Common Area" shall mean Russell Emmett Road (as hereinafter defined) and any other portion of the Property identified as common area by the Association.
- 1.2 "Declarant" shall mean and refer to CainCrest, LLC.
- 1.3 "Lot" shall mean or refer to any separately numbered plot of land shown upon any record plat of the Property.
- 1.4 "Owner" shall mean any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Lot.

RETURN TO:
KENDRA J. RINGENBERG
KOLEY JESSEN P.C., I.L.L.O.
1125 S 103 STREET, #800
OMAHA, NE 68124

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- 1.5 "Plat" shall mean that certain Plat and Dedication of CainCrest, recorded September 26, 2006 in Instrument No. 2006-33141 in the Deed Records of Sarpy County, Nebraska, as hereinafter amended.
- 1.6 "Property" shall mean and refer to that certain real property hereinbefore described.
- 1.7 "Russell Emmett Road" shall mean that certain roadway located on the Property, as depicted on the Plat.

**ARTICLE 2
ASSOCIATION**

- 2.1 Creation. Within one hundred eighty (180) days after the first conveyance in fee of at least three (3) of the Lots to an Owner other than Declarant, the Owners of the Property shall cause to be formed a homeowners association to be created under the laws of the State of Nebraska (the "Association"), which Association shall be comprised of the Owners of each Lot in the Property. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the restrictions set forth herein. Ownership of a Lot shall be the sole qualification for membership. The Owners shall engage professional legal services to assist in the formation of the Association and the creation of certain documents governing the Association, including but not limited to, the Bylaws and Rules and Regulations.

**ARTICLE 3
DEVELOPMENT AND USE RESTRICTIONS**

- 3.1 Construction/Development Restrictions.
 - a. New Construction. All residential dwellings and other buildings permitted on a Lot shall be initially new construction. No building or structure shall be moved from another location on to a Lot for any purpose whatsoever.
 - b. Uncompleted Structures. The construction of the residential dwelling on a Lot must commence within two (2) years after acquisition of the Lot from Declarant. All structures must be completed within two (2) years after the date of commencement of construction or the date of excavation for the basement or foundation. In the event of fire, windstorm or other damage, no building shall be permitted to remain in a damaged condition longer than three (3) months. No building shall be occupied until the exterior shall have been completed, and a certificate of occupancy permit or similar certificate is issued by the applicable authority.
 - c. Location. No residential dwelling shall be located nearer to the front Lot line than the greater of: (i) the setback line for the Property as indicated on the Plat or (ii) sixty (60) feet from the Lot line. In addition, residential dwelling shall not be located within thirty (30) feet of any side lot line or within sixty (60) feet of the rear lot line. Any residential dwelling erected on a Lot shall face the street or cul de sac, if applicable; provided, however, so long as the residential dwelling front is parallel to the street,

each Owner shall have a 30 degree variation to placement of its residential dwelling.

- d. Grade. No excavation or change in grade or other work which materially alters the contours of any Lot on the Property and/or the natural drainage flow pattern on the Property from its natural or improved state existing on the date such excavation or other work commences shall be made or done without the prior approval of the Owners of each Lot.
- e. Height Limitation. No residential dwelling erected on any Lot shall be more than two (2) levels in height, above ground, provided that a residential dwelling more than two (2) stories in height may be erected on a Lot with the written consent of the Owners of each Lot.
- f. Minimum Size Requirements. All homes must meet minimum size requirements as follows: A one story residential dwelling shall contain between 1,800 and 2,000 square feet of living area. A one and one-half or a two story residential dwelling shall contain at least 2,400 square feet of living area, with at least 1,400 square feet on the first floor. All square footages are exclusive of porches and garages.
- g. Materials. All residential dwelling front exteriors must be brick or stone. All fireplace exteriors shall be brick or stone construction or facing. Basements shall be concrete, concrete block, brick or stone.
- h. Roofing Material. All roofing shall be fire retardant composition shingles of 30 year life, #1 wood shake or concrete tile shingles.
- i. Garages. Each residential dwelling shall have an attached private garage for not less than two (2) cars and not more than three (3) cars. The driveway on each Lot shall contain sufficient paved area for the off street parking of at least two (2) cars. All garages facing any street must be equipped with doors which shall be kept closed as much as practicable to preserve the appearance of the elevation of the fronting on the street.
- j. Detached Structure. No Lot shall contain more than one (1) detached structure, excluding the residential dwelling. Any detached structure must have a minimum of not less than 200 square feet and not more than 1,800 square feet of floor space. A detached structure is to be positioned such that no portion of the structure shall be in front of the plane of the front of the residential dwelling. The materials of a detached structure shall be consistent with the materials of the residential dwelling.
- k. Clean up. No unused building material, scrap, junk or rubbish shall be left exposed on a Lot except during the period of bona fide construction. Each Owner shall have an affirmative obligation to maintain its Lot and keep it free from debris.

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3.2 Use Restrictions.

- a. Use of Property. Each Lot is hereby restricted to single-family residential use only. No flat or apartment house, although intended for residential purposes, may be erected thereon. No mobile homes, manufactured home, pre-erected dwelling will be allowed to be constructed, moved or remain upon a Lot. No structure of a temporary character, trailer, tent or shack shall be used on any portion of any Lot at any time as a residential dwelling, either temporarily or permanently. No business, trade, professional or commercial buildings shall be constructed on a Lot.

Notwithstanding any other provision of this Article, it shall be expressly permissible for an Owner and its contractors and subcontractors to maintain, during the period of construction of any improvements upon any Lot, such facilities as may be reasonably required, convenient or incidental to the construction of such improvements.

- b. Zoning/Subdivision. No Lot may be improved, used or occupied for purposes other than as provided by applicable zoning laws and restrictions filed of record in relation thereof. No Lot shall be subdivided without the unanimous consent of the Owners.
- c. Animals Prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lots except that (i) dogs, cats or other household pets not to exceed two (2) in number and (ii) horses not to exceed two (2) in number, may be kept, provided that they are not kept, bred or maintained for any commercial purposes. In no event shall such animals be kept on any Lot if they unreasonably disturb the Owner or the residents of any other Lot. All animals shall be confined on the Owner's Lot, except when on a leash or when in direct and constant control of the Owner thereof or a member of the family. The construction, placement or erection on any Lot of any structure, kennel, stable, enclosure, cage, dog pen, dog run or other device used to confine animals shall be prohibited; provided, however, dog houses and horse stables of adequate size to house no more than two (2) horses are allowed in the backyard of a residential dwelling.
- d. Commercial Activity Prohibited. No commercial activity of any kind shall be conducted on any Lot, but nothing shall herein prohibit the carrying on of promotional activities by the Declarant for the sale of Lots.
- e. Automotive Repair Prohibited. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any Lot hereby restricted for more than one (1) period of twenty (20) consecutive days in a calendar year.
- f. Nuisances. No noxious or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood.

3.3 Restrictive Covenants and Restrictions. The following restrictive covenants and restrictions shall apply to all Lots except Lot 1:

- a. Fencing. Barbed wire, permanent snow fence or other fence are prohibited. Decorative fences no more than 48 inches in height may be used provided the fence shall not be within ten (10) feet of any rear or side lot line or within one hundred (100) feet of the front Lot line and the materials of the fence shall be wood, fiberglass or plastic composite, wrought iron, brick or stone, or other material approved by each Owner or the Association once the Association has been formed. In no event shall chain linked fences be allowed in the front of a residential dwelling. All fences must be maintained in good repair at all times.
- b. Screening Required. All equipment, trash cans, wood piles and storage piles, shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Owners of Lots. All rubbish, trash or garbage shall be regularly removed from each Lot, and shall be kept in sanitary containers, which shall be screened from public view except for times and acts of actual pick up and removal.
- c. Trash. No trash burners, incinerators or like equipment shall be maintained on a Lot. No trash, refuse, grass clippings or ashes shall be dumped or placed upon any undeveloped portions of the Property.
- d. Exterior Equipment. Any exterior equipment, including but not limited to, air conditioner condensers, propane or LPG tanks, shall be located in the back yards or screened from public view if placed in a side yard.
- e. Antennas Prohibited. No exterior television or radio antennas of any sort (other than television satellite dishes) shall be placed, allowed or maintained on any portion of a Lot. Satellite dishes not greater than one meter in diameter shall be allowed provided (1) the satellite dish is located in the backyard only, (2) the height of the satellite dish does not exceed the height of the residential dwelling on the Lot and (3) the satellite dish is reasonably screened from public view.
- f. Advertising Prohibited. No advertising signs, "For Sale" signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or resident thereof. Notwithstanding the foregoing, an Owner shall have the right to place a sign of not more than two (2) square feet advertising the sale of the Lot.
- g. Exterior Lighting. Exterior lighting is to be of such design, location and intensity as to not be a disturbance or nuisance to the residents of surrounding Lots.
- h. Vegetation. Any produce or vegetable gardens shall be located to the rear of the residential dwellings and shall be reasonably screened from public view.

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- i. **Aboveground Pools Prohibited.** No above ground swimming pools shall be erected, installed, constructed and/or maintained by an Owner on any Lot, unless such pool is located in the backyard of a residential dwelling and is screened by adequate planting or fencing so as to conceal the pool from public view and from the view of neighboring Owners.
- j. **Parking of Vehicles Prohibited.** No business, professional, trade or commercial vehicles, campers, buses, boats, tractors, equipment, motorcycles, all terrain vehicles or similar vehicles shall be kept or stored on any part of a Lot (other than in an enclosed structure) for more than twenty-one (21) days in a calendar year. This restriction shall not apply to equipment necessary for construction of a residential dwelling during the period of construction.

3.4 **Maintenance.**

- a. **Lot Maintenance.** An Owner shall have an affirmative obligation to maintain its Lot and the exterior of all structures on its Lot in a sightly manner.
- b. **Common Area Maintenance.** Until such time as the Association is formed and takes over the maintenance of the Common Area, each Owner shall have an affirmative obligation to maintain the Common Area located on its Lot, including its portion of Russell Emmett Road, in good condition (which shall include snow and ice removal).
- c. **Building Maintenance.** No building or structure upon any Lot shall be permitted to fall into disrepair and each such building or structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- d. **Landscaping.** An Owner must keep the Lot free of weeds, unkept grass and brush and other unsightly growth. Ground cover shall be used to prevent erosion.
- e. **Sidewalks.** The Owner is responsible for the installation and maintenance of any sidewalk located on its Lot.

3.5 **Utilities.**

- a. **Underground Wiring.** All telephone, cable television, gas, electrical or other wires or transmission lines crossing or servicing a Lot shall be installed underground.
- b. **Water.** Each Lot is to have one (1) well for potable water for human consumption, and service to the residential dwelling, and all wells must be constructed in compliance with the State of Nebraska or Sarpy County requirements.
- c. **Septic System.** Each Owner shall be responsible for installation and maintenance of a sewage waste system or septic tank to service its Lot.

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The septic system shall comply with all local, state or federal statute and rules and regulations, including but not limited to, the requirements of Sarpy County and the State of Nebraska. All Owners shall perform all necessary servicing and pumping as may be necessary to keep such systems in good, serviceable and operational condition.

**ARTICLE 4
EASEMENTS**

- 4.1 **Access Easement.** Declarant, as the Owner of the Property, hereby creates and grants to the Association and each Owner for its use and for the use of its invitees and permittees, in common with others entitled to use the same, a non-exclusive perpetual easement over the Russell Emmett Road for ingress to and egress from the Lots, the passage of vehicles, the passage and accommodation of pedestrians; and the doing of such other things as are authorized or required to be done on the Common Area under this Declaration. Such easement rights shall be subject to any other applicable provisions contained in this Agreement. Enjoyment of this easement shall commence on the date the Russell Emmett Road is substantially completed and shall run to each Owner and its invitees or permittees.
- 4.2 **Easements for Utility Facilities.** Declarant, as the Owner of the Property, hereby creates and grants to the Association and each Owner for its use and for the use of its invitees or permittees, a non-exclusive perpetual easement over those portions of the Property identified on the Plat as utility easement areas for the installation, use, operation, maintenance, repair, replacement, relocation and removal of certain utilities serving the Lots. In accordance with Section 5.5(a), any utility installed in the Common Area or in a Lot shall be underground if reasonably possible.

Except as otherwise provided herein, the Grantee of any easement for installation of utilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all utilities installed by the Grantee pursuant to the easement grant, as well as for all utilities installed by the Grantee on its own Lot. Any such installation, maintenance, repair, replacement, relocation and removal of utilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to Grantor as is practicable under the circumstances. In addition, all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Lot which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as the same were in prior to the commencement of any such work.

Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorneys fees), incurred in connection with Grantee's exercise of the utility easements

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under this Section, except to the extent occasioned by Grantor's negligent or wrongful act or omission to act.

**ARTICLE 5
MISCELLANEOUS**

- 5.1 Duration. All of the Lots shall be held, sold and conveyed subject to the restrictions set forth above, which restrictions shall run with the Lots and be binding upon the Lots and inure to the benefit of the Owners of the Lots and their successors and assigns, for a period of twenty-five (25) years after the date of this Declaration, after which time the term shall be automatically extended for successive periods of ten (10) years unless this Declaration is terminated in accordance with the terms hereof.
- 5.2 Termination and Amendment. This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or amended only with the written consent of all Owners. Notwithstanding the foregoing to the contrary, any amendment affecting lienholder priority must be approved by the holder of any and all first mortgages and deeds of trust affected thereby. No such termination, extension, modification or amendment shall be effective until the same has been reduced to writing, executed, acknowledged and recorded in the office of the Recorder of Sarpy County, Nebraska.
- 5.3 Default: Enforcement. Until such time as the Association is created, each Owner 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. After creation of the Association, the Association shall have the sole and exclusive 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 to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. The rights and remedies of enforcement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which an Owner or the Association might otherwise have by virtue of a default under this Declaration, and the exercise of any right or remedy by an Owner or the Association will not impair such party's standing to exercise any other right or remedy.
- 5.4 No Partnership. Nothing contained in this Declaration and no action by the Owner of any Lot or the Association will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among Declarant and any of the Owners of any of the Lots.
- 5.5 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances

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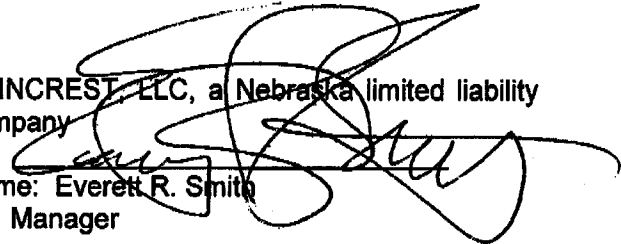
other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

- 5.6 Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.
- 5.7 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

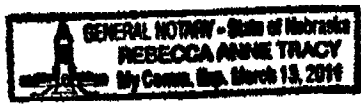
CAINCREST, LLC, a Nebraska limited liability company
By: 
Name: Everett R. Smith
Its: Manager

STATE OF NEBRASKA)
)SS.
COUNTY OF Douglas)

This instrument was acknowledged before me on June 25th, 2007 by Everett R. Smith as Manager of CainCrest, LLC.

Rebecca Anne Tracy
(Signature of Notarial Officer)

Rebecca Anne Tracy
(Print Name of Notarial Officer)



200721031 J

EXHIBIT "A"

Property

Lots 1 through 10, CainCrest, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-34884

2007 NOV 20 A 11:19 AM

Sharon J. Dowling

REGISTER OF DEEDS

COUNTER LM C.E. LM
VERIFY LM D.E. LM
PROOF D
FEES \$ 25.00
CHECK # 1185
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF CAINCREST**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CAINCREST (the "Amendment") is made and entered into as of the 8 day of November, 2007, by CainCrest, LLC, a Nebraska limited liability company ("Declarant") and Brian J. Ault and Shellie K. Ault, husband and wife (collectively, "Ault").

WITNESSETH:

WHEREAS, Declarant has entered into and filed that certain Declaration of Covenants, Conditions and Restrictions and recorded July 16, 2007 as Instrument No. 2007-21031 in the Register of Deeds office of Sarpy County, Nebraska (the "Declaration") against the property described on Exhibit A attached hereto (the "Property");

WHEREAS, Declarant and Ault constitute all record Owners of the Property;

WHEREAS, Declarant and Ault desire to amend the Declaration as provided herein; and

NOW, THEREFORE, in consideration of the above premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. All terms contained herein with an initial capitalized letter that are not otherwise defined herein shall have the meaning ascribed to them in the Declaration.

2. Section 3.2(d) of the Declaration is deleted in its entirety and replaced with the following:

3.2 Use Restrictions.

(d). **Commercial Activity.** Except as provided in this Section 3.2, no commercial activity shall be conducted on any Lot. Inconsequential home office, studio arrangement, or storage of non-hazardous commercial property lawfully in the possession of an Owner shall be allowed on such Owner's respective Lot so long as such use (i) otherwise complies with this Declaration, (ii) complies with all applicable laws, ordinances, rules and regulations, including but not limited, laws or ordinances related to zoning, land use and environmental laws, (iii) does not change or increase the flow of traffic on the Property, and (iv) does not otherwise materially impact the use or enjoyment of the Property. Nothing shall herein prohibit the carrying on of promotional activities by the Declarant for the sale of Lots.

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3. Except as amended herein, no other terms and conditions of the Declaration have been modified, and said terms and conditions shall remain in full force and effect.

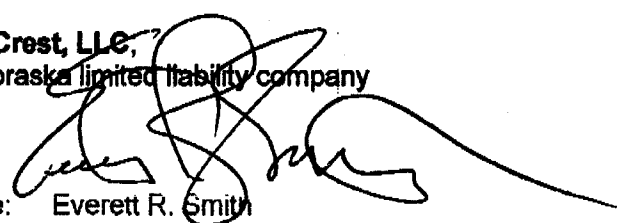
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Signature Page to Follow.]**

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

Owner of Lots 1 - 6, 8, 9 and 10

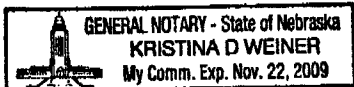
CainCrest, LLC,
a Nebraska limited liability company



Name: Everett R. Smith
Title: Manager

STATE OF NEBRASKA)
COUNTY OF Sarpy) ss.

The foregoing instrument was acknowledged before me this 20 day of November, 2007, by Everett R. Smith, as Manager of CainCrest, LLC.



Kristina D. Weiner
Notary Public

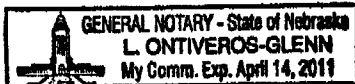
Owner of Lot 7

Brian J. Ault
Brian J. Ault

Shellie K. Ault
Shellie K. Ault

STATE OF NEBRASKA)
COUNTY OF Sarpy) ss.

The foregoing instrument was acknowledged before me this 9th day of November, 2007, by Brian J. Ault and Shellie K. Ault, husband and wife.



L. Ontiveros-Glenn
Notary Public

2007-34884 C

EXHIBIT A

Property

Lots 1 through 10, CainCrest, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

Rec Everett Smith
15510 S 63rd St
Papillion NE 68133

Ret
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Exhibit A

Kendra J. Ringenberg

Koley Jessen P.C.

One Pacific Place, Suite 800

1125 South 103rd Street

Omaha, NE 68124-1079

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