

FILED FOR RECORD
POLK COUNTY, IOWA

INST # 050183
RECORDING FEE 6100
AUDITOR FEE _____

98 DEC -4 P 1:42.8

TIMOTHY J. BRIEN
RECORDER

Preparer **RETURN TO:**

Information David D. Nelson 666 Walnut St., Suite 2500 Des Moines, Iowa 50309 (515) 288-2500

**MASTER DECLARATION OF COVENANTS
FOR BROOK RUN VILLAGE**

THIS DECLARATION, made on the date hereinafter set forth by Brook Run, L.C., an Iowa limited liability company, with its principal office in Polk County, Iowa, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Properties") situated in Polk County, Iowa, which is described as:

Brook Run Village Plat 1, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

which Declarant intends to develop as a mixture of residential and commercial uses; and

WHEREAS, Declarant desires to create upon the Properties certain open spaces and other common areas for the benefit of the owners therein ; and

WHEREAS, Declarant desires to provide for the ownership and maintenance of certain amenities in the Properties and in Brook Run Village Plat 1, and to this end, desires to subject the Properties, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner thereof.

NOW THEREFORE, Declarant hereby declares that the Properties 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 the Properties and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Brook Run Village Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, as amended. The Association shall be the Master Association for the Properties.

Section 2. "Multi-Member Association" shall mean and refer to any association of Owners of Lots located in a specific and separately identified subdivision or plat of a part of the Properties.

Section 3. "City" shall mean and refer to the City of Des Moines, Iowa.

Section 4. "Declarant" shall mean and refer to Brook Run, L.C., its successors and assigns.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements and Restrictions to which the Properties are subject.

Section 6. "Lot" shall mean and refer to any and all lots contained in any plat or replats of the Properties or any portion thereof made and recorded in accordance with the statutes of the State of Iowa.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any part of the Properties, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 8. "Properties" shall mean and refer to that certain real property described above but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City of Des Moines now or in the future.

ARTICLE II
ASSOCIATION DUTIES

Section 1. Common Areas.

a. The Common Areas shall consist of the following-described portion of the Properties, together with any improvements thereon, subject to any and all utilities located thereon, easements and restrictions:

Outlot "L" in Brook Run Village Plat 1, an Official Plat,
now included in and forming a part of the City of Des
Moines, Polk County, Iowa

b. The Association shall be the owner of the Common Areas and shall be responsible for the management and control of the Common Areas and all improvements thereon, and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair in compliance with the terms and conditions of the Declaration, and shall pay all taxes and assessments levied against the Common Areas.

c. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association the fee title to all Common Areas free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority. The transfer of title to the Common Areas shall be accomplished on or before the recorded conveyance of any portion of the Properties by Declarant.

d. The Common Areas shall be used strictly in accordance with the provisions of the Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of the Association in the Common Areas and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article V the collection of delinquent assessments. If an Owner interferes with the Association's use and control of the Common Areas, the Association may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorney's fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

e. The ownership of the Common Areas shall not be changed and shall continue in perpetuity except by approval of 2/3 of the membership entitled to vote and the prior written approval of the City.

Section 2. Roundabouts and Cul-de-sacs.

a. The Association will be responsible for the repair, maintenance and replacement of any landscaping within the roundabout and cul-de-sac areas located in any street right-of-

ways. Such repair, maintenance and replacement of such landscaping shall be in accordance with the site plan approved by the City. All lawn areas located in said roundabout and cul-de-sac areas, and all shrubs and trees located therein, which are installed by Declarant, its successors and assigns, shall be maintained, mowed and trimmed on a regular basis.

b. The City, upon 30 days' written notice (except in case of emergency), shall have the right to require the Association to perform any and all of its maintenance, repair, reconstruction and replacement and management responsibilities with respect to the roundabout and cul-de-sac areas in accordance with this Declaration, and any conditions and covenants in connection with the platting of any portion of the Properties and its ordinances.

c. Officers, employees or contracted agents of the City shall have the right and authority to enter upon the roundabout and cul-de-sac areas for the administration of general public services and shall not be responsible for any damage caused to said area in carrying out said services.

d. The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or acts of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Association, its successors and assigns, with respect to its duties or obligations under this Section, or related to or growing out of, directly or indirectly, maintaining, repairing, construction, or reconstruction of the said roundabout and cul-de-sac areas.

e. Neither the Declarant, Owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City. Neither the issuance of, nor any inspections or certifications made relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain the roundabout and cul-de-sac areas and improvements located thereon. A certification that the roundabout and cul-de-sac areas have been inspected, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenants, warranty or guaranty of the safety or quality of said improvements by the City, or any elected officials, officers agents or employees thereof.

f. This Section concerning the roundabout and cul-de-sac areas shall not be amended without the prior written approval of the City.

Section 3. Entrance Signs. The Association shall be responsible for, and perform all maintenance, repair, reconstruction and replacement of any and all landscaping improvements and permanent monument signs planted in or constructed on an Common Areas or other areas

established by permanent easements. The Association shall perform all reasonable and necessary maintenance, repair, reconstruction and replacement duties as are necessary and desirable to preserve the high quality of the Properties.

Section 4. Park Land. The Declarant will be conveying a portion of the Properties to the City for use as a public park. The Association shall be responsible for mowing the grass areas of said park until January 1, 2006.

Section 5. Insurance. The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance insuring the Association, with such limits of liabilities as the Association shall determine to be necessary, against all acts, omissions to act and negligence of the Association, its employees and agents. To the extent available, the Association's Board of Directors shall also provide fidelity bonds providing protection to the Association against loss by reason of acts of fraud or dishonesty on the part of the Association's Directors, managers, officers, employees or volunteers who are responsible for the handling of funds of the Association in an amount sufficient to provide no less protection than one hundred and ten percent (110%) times the estimated annual operation expenses and reserves of the Association.

Section 6. Dissolution. The Association shall not be dissolved, liquidated or its corporate existence terminated except upon the prior written approval of the City.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner shall be a member of the Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership. No Owner, whether one or more persons, shall have more than one membership per Lot.

Section 2. Voting Rights. There shall be appurtenant to each Lot one vote in the Association. When more than one person holds an interest in any such Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall the vote be split with respect to any such Lot. In the event that the Owners of any Lot fail to determine how to cast any vote, no vote shall be cast for said Lot.

NOTWITHSTANDING THE ABOVE, THE DECLARANT SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER OWNS ANY PORTION OF THE PROPERTIES OR UNTIL THE DECLARANT WAIVES THIS RIGHT TO BE SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER OF THE ASSOCIATION, IT SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS.

Section 3. Board of Directors. The members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a member for a period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for the entire Properties, hereby covenants, and each Owner of any portion of the Properties 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 to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Section 4 below. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property, except only tax liens on the Lot in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the purposes of the Association as set for in Article II, including but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

Section 3. Assessments for Owners in Multi-Member Association. Any assessments for any Lots which are a part of a Multi-Member Association shall be assessed to and collected by the appropriate Multi-Member Association, and shall be a lien against the Lot or Lots of each Owner who is a member of the Multi-Member Association. If such assessment is not paid by the Multi-Member Association within sixty (60) days after written notice to said association, the assessment shall be a personal obligation of the Multi-Member Association and the Owner of each Lot which is part of the Multi-Member Association on a per-Lot basis.

Section 4. Rate of Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment to an Owner shall be \$25.00 per Lot.

Section 5. Increase in Assessments.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the membership of the Association.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twenty-five percent (25%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors of the Association may fix annual assessments at an amount not in excess of the maximum, and the Board of Directors of the Association may modify the annual assessment upward or downward from time to time, but in no event upward beyond the maximum permitted by this Section. Written notice of any modification of the annual assessment shall be sent to every Owner subject thereto.

Section 6. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessment authorized above, the Association may levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under this Declaration, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Notice and Quorum for Action Authorized Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 and 6 shall be sent to all members not less than five (5) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of the 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 the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments; Due Dates: The general annual assessment provided for herein shall commence as to each respective Lot on the first day of the month following the conveyance by the Declarant of a Lot, including any Lot which is a part of a Multi-Member Association. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED HEREIN. The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such assessments at least thirty (30) days in

advance of each annual assessment period. Written notice of such assessments shall be sent to every Association Member and Owner Member subject thereto. The due dates shall be established by the Board of Directors of the Association, and annual assessments may be collected in equal monthly installments at the discretion of the Board of Directors.

The Association shall, upon demand, and for a reasonable charge, furnish a statement signed by an authorized representative of the Association setting forth whether the assessments owing by a member have been paid. A properly executed statement of the Association as to the status of assessments is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen (15%) per annum or at the highest rate allowed by Iowa Law, whichever is higher. The Association may bring an action at law against the member or Multi-Member Association personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No member or Multi-Member Association may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of said Owner's Lot.

Section 10. Subordination of Assessments Liens. If any property subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except the assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

Section 11. Exempt Property. In addition to Declarant's property described in Section 8, above, the following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

- a. All property which is dedicated to and accepted by a public authority; and
- b. All Common Areas;

ARTICLE V
DECLARANTS RIGHTS

Section 1. Declarant reserves the right to use any of the Properties, to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such property prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Properties then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of the Properties that remains unsold.

Section 2. Declarant, its successors and assigns, reserve the right to add additional common areas by conveying the same to the Association from time to time. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional properties to the Association.

Section 3. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Area is conveyed thereto. The Association shall be established prior to the recording of the final plat of Brook Run Village Plat 1.

Section 4. Declarant shall have the right to assign all of its rights under this Declaration. The assignee or any such assignment shall be responsible for Declarant's duties and obligations under this Declaration.

Section 5. Easement for Signs. Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Properties, the right and easement to erect and maintain identification and "For Sale" sign or signs within the Properties, including any Common Areas, as Declarant deems reasonably necessary, provided the same are consistent with the ordinances of the City.

ARTICLE VI
RULES AND REGULATIONS

Section 1. The Board of Directors of the Association shall have the right to adopt rules and regulations governing the Common Areas, and such rules shall be observed and obeyed by the owners, their guests, lessees, assigns and licensees. Provided, no such rules or regulations adopted by the Board of Directors shall, in any way, modify, amend, repeal or alter the provisions of this Declaration requiring the approval of a vote of the membership of the Association or the City.

Section 2. No Waiver. Failure of the Association to enforce any covenant, condition or restrictions, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of this right to enforce the same thereafter.

Section 3. Fines and Liquidated Damages. In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines and/or liquidated damages to be imposed upon members, their families, tenants, invitees and guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.

ARTICLE VII
USE RESTRICTIONS

Section 1. No person, whether a member of the Association or not, shall be allowed to enter upon or swim in any lakes or other water impoundments forming a part of the Common Area. No docks, boats, floating devices of any type, or swimming platforms shall be permitted on such lakes or water impoundments.

Section 2. No Owner shall change any elevations or grades within the Common Areas or the easement areas for the maintenance of monument signs in favor of the Association.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the City, the

persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without providing any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed, unless otherwise provided herein, at anytime by an instrument recorded in the Office of the Recorder of Polk County, Iowa, certified by the President and Secretary of the Association that the same has been approved by not less than sixty-seven percent (67%) of the then outstanding votes; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Likewise, the covenants with and rights of the City herein shall not be amended without the prior approval of the City. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time without the approval of any other Owner or Owners for the purpose of clarification or correction of errors in the Declaration, provided such amendment shall not affect the substantive rights of any Owner. Further, Declarant may, at any time, amend this Declaration in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.

Section 3. Third Party Beneficiary. City is hereby declared to be a third party beneficiary of the provisions of this Declaration. As such, City has no duty or obligation to exercise its rights to enforce or perform any obligations reserved to it under the provisions of this Declaration. The rights of the City provided for in this Declaration shall be exercised by the City at its sole option and discretion. Whenever the approval of the City is required under this Declaration, the same shall not be unreasonably withheld or delayed.

Section 4. Binding Effect. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of all members of the Association, as well as the Association, and their heirs, successors and assigns and are intended to be perpetual in nature to the extent allowed by applicable law. To the extent that perpetual term is not allowed for this Declaration, the terms of this Declaration shall be deemed covenants running with the land and shall remain in full force and effect for a period of twenty-one (21) years after they have been filed in the Land Records of Polk County, Iowa, with the ability, prior to the expiration of such twenty-one (21) year period, for such Declaration to be extended for additional periods of twenty-one (21) years by the filing of a claim in accordance with Sections 614.24 and 614.25 of the Code of Iowa, 1997, as amended, or any successor statute. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions thereof, but the same shall remain in full force and effect.


IN WITNESS WHEREOF, Brook Run, L.C. has caused this Declaration to be executed this 23rd day of October, 1998.

BROOK RUN, L.C., Grantor

By: 
Gene W. Stanbrough, President

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 23rd day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gene W. Stanbrough, to me personally known, who being by me duly sworn, did say that he is the President of Brook Run, L.C., an Iowa limited liability company, executing the foregoing instrument; that the instrument was signed on behalf of Brook Run, L.C., by authority of its members; and that Gene W. Stanbrough as that officer acknowledged the execution of the instrument to be the voluntary act and deed of Brook Run, L.C., by it voluntarily executed.



Notary Public in and for the State of Iowa

My Commission expires 07-07-99