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Carol "Cindy" Hol, Recorder
Dallas County IOWA

Prepared By: Jennifer L. Hodge, 1600 Hub Tower, 699 Walnut Street, Des Moines, IA 50309-3986 (515) 246-4559

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE TOWNHOMES OF WALNUT CREEK HILLS**

MTG.
REF. *RE BLA*

THIS DECLARATION, made on the date hereinafter set forth by Gratias Construction, Inc., an Iowa corporation.

RECITALS:

WHEREAS, Declarant is the owner of certain property, which is more particularly described as:

The Townhomes of Walnut Creek Hills, an Official Plat, now included in and forming a part of the City of Clive, Dallas County, Iowa

(the "Properties");

WHEREAS, Declarant desires to create upon the Properties a residential community with private ponds, open spaces and other common facilities for the benefit of the owners therein; and

WHEREAS, Declarant desires to provide for the ownership, preservation of values and amenities in the Properties and for the maintenance of the Association Responsibility Elements; and to this end, desires that the Properties, and any additions thereto made by the Declarant, be held, sold and conveyed subject 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 all of the Properties described above 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 real property 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.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to The Townhomes of Walnut Creek Hills Association, its successors and assigns, a nonprofit corporation organized pursuant to chapter 504 of the Code of Iowa, as amended. The Association may not be dissolved without the consent of the City of Clive.

Section 2. "Association Responsibility Elements" shall mean the following, wherever located on the Properties:

- (a) The exterior surface of the Buildings upon a Lot excluding windows, doors, patios and decks.
- (b) The structural portion of the Buildings upon a Lot.
- (c) The down spouts and foundations of the Buildings upon a Lot.
- (d) Any common walls between residential structures within a Lot.
- (e) The yard surrounding the residential structure within a Lot.
- (f) Driveways and sidewalks.
- (g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot.
- (h) The Common Area, including but not limited to private storm and sanitary sewers, private water services and storm water drainage and detention areas, and septics, if any, located thereon, and any ponds and private streets located thereon.
- (i) The Common Facilities, including but not limited to any entrance or turnabout landscaping or signage.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Lot or a part of more than one Lot and shall include any attached or detached garage building conveyed with the Lot.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned and maintained by the Association for the common use and enjoyment of the Owners and shall also include the Common Facilities as hereinafter defined. The Common Area to be owned by the Association is described as:

All of The Townhomes of Walnut Creek Hills, an Official Plat, now included in and forming a part of the City of Clive, Dallas County, Iowa, except the Lots One (1) through Fifty-one (51) thereof.

Section 6. "Common Facilities" shall mean and refer to all personal property, fixtures and improvements owned by the Association including those located on real property not owned by the Association such as on property conveyed to or owned by the City of Clive for which a license or easement was granted.

Section 7. "Declarant" shall mean and refer to Gratiast Construction, Inc., an Iowa corporation, its successors and assigns.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 9. "Living Unit" shall mean and refer to any portion of a Building situated upon a Lot and is designed and intended for use and occupancy as a residence by a single family or individual and, without limitation, shall include any garage located on a Lot.

Section 10. "Lot" shall mean and refer to the fifty-one (51) numbered Lots shown upon The Townhomes of Walnut Creek Hills, specifically excluding the Common Area. If the event that Declarant adds any additional real property to the Properties, then "Lot" shall also refer to the numbered Lots shown on any new recorded Plat of such property.

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed Co-Owners), 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 provisions or operation of law.

Section 13. "Private Street" shall mean any street owned by the Association within the Common Area.

Section 14. "Pond" shall mean any water detention pond located in the Common Area.

Section 15. "Properties" shall mean and refer to that certain real property described above, and any additions thereto made by the Declarant, but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City of Clive now or in the future.

ARTICLE II
PROPERTY RIGHTS IN COMMON AREA AND IN CONNECTION
WITH ASSOCIATION RESPONSIBILITY ELEMENTS

Section 1. **Obligations of the Association.** The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Association Responsibility Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management and shall pay all real property taxes assessed against the Common Area before the same shall become delinquent. The Association's obligations under this Section are for the exclusive benefit of the Owners and the City of Clive.

No person other than the Owner of a Lot and/or the Owner's invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot, except that the Association and its designates may enter upon and within a Lot and any Building located thereon at reasonable times for the following purposes:

- (a) Installation, repair, removal, replacement or inspection of an Association Responsibility Element.
- (b) Enforcement of any provisions of this Declaration or the Articles of Incorporation or the Bylaws of the Association.
- (c) Mowing and maintenance of grass and landscaped areas.
- (d) Snow removal as set forth in Article VI, Section 4 herein.

In the event that the need for maintenance or repair of any portion of the Common Area, the improvements thereon, or of any Association Responsibility Element is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance or repair shall be added to and become part of the assessment to which

the Owner is subject and a lien upon the Lot and Living Unit of such Owner and shall become due and payable upon demand.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which may be delegated to family members, lessees and guests of every Owner (subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association), which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from the Owner's Lot;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;
- (c) The right and obligation of the Association to maintain sewer, septic, and other underground utilities located within the Properties;
- (d) The right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;
- (e) The right of the Declarant to maintain within a sales office, any number of model Living Units, easements for construction of unsold Lots by Declarant and Declarant's invitees;
- (f) The right of Declarant but not the obligation to provide landscaping, signs, decorative structures and necessary appurtenant utilities in the Common Area.
- (g) The right of Declarant or its assignee, until the construction work on all Living Units within the Properties and appurtenant improvements incidental to said Living Units is completed, to enter upon the Common Area for the purpose of completing such work and performing under applicable guarantees.

- (h) The Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws, and those accompanying this Declaration; and
- (i) The right of the Association to mortgage any or all of the Common Area with the approval of a majority vote of the Members.

Section 3. **Title to Common Area.** The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time and as it is subsequently determined, fee title Ownership to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created by this Declaration, or granted to the City of Clive, Iowa, or to any public utilities. The transfer of title to the initial Common Area shall be accomplished on or before the recorded conveyance of the first Lot by Declarant. Common areas, if any, created by subsequent plats shall be conveyed immediately following the recording of such subsequent plat in the Dallas County Recorder's office.

Section 4. **Use of the Common Area and Ponds.** The Common Area shall be used strictly in accordance with the provisions of the Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Area 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 a lien upon the Lot and Living Unit 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 III for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 5. **Duration.** The Common Areas described in Article 1, Section 5, shall not be diminished and shall continue in perpetuity except by approval of the City of Clive and of all members of the Association subject to the provisions for dedication or transfer in Article II, Section 2(b) above and the right to mortgage in Article II, Section 2(h) above.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership of a Lot shall be the sole qualification for membership.

Section 2. **Classes of Membership.** The Association shall have two classes of voting membership.

A. **Class A.** Class A Members shall be all Owners, provided that the Declarant shall not become a Class A Member until the happening of one of the events set out in Section B below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one Class A vote be cast with respect to any Lot.

B. **Class B.** The Class B Member shall be the Declarant or its assigns so long as it is the owner of any Lots. The Class B Member shall be entitled to ten (10) votes for each Lot owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on July 1, 2015.

C. **Majority Vote.** Whenever this Declaration or the Articles or Bylaws of the Association require a majority vote of the Members for approval of any action, such majority vote shall be determined by counting the combined total Member votes, and not be requiring approval from a majority vote of each class of Members separately.

Section 3. **Board of Directors.** The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. 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 any period during which any assessment against the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. **Notice of Member's Meetings.** Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction fo the president or secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage thereon prepaid.

ARTICLE IV
COVENANT FOR 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 therefore, 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 special assessments as provided in this Article IV, Article VI, Article VII and Article VIII; such assessments to be established and collected as determined when due by the Board. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the Lot and improvements thereon and shall be a continuing lien upon the Lot and improvements thereon against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such person's successors in title unless expressly assumed by them.

Section 2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Association Responsibility Elements and for other purposes specifically provided herein.

Section 3. **Maximum Monthly Assessment.** Until January 1, 2006, the maximum monthly assessment for each Owner shall be Eighty-five Dollars (\$85.00) per Lot.

- (a) From and after January 1, 2006, the maximum monthly assessments due and payable during any calendar year may not be increased by the Board of Directors by an amount equal to more than ten percent of the monthly assessment due and payable during the immediately preceding calendar year unless an increase greater than ten percent is approved by a vote of a majority

of the Members present, either in person or by proxy, at an annual meeting or a special meeting called for such purpose.

- (b) The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.
- (c) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements or of any capital improvement which the Association is required to maintain.

Section 4. **Special Assessments for Capital Improvements and Operating Deficits.** In addition to the monthly assessments 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. Further, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at an annual meeting or a special meeting called for such purpose.

Section 5. **Notice and Quorum for Any Action Authorized Under Section 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than five (5) days or more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies 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 requirements, 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 6. **Uniform Rate of Assessment.** Subject to Section 7 below, both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on an monthly basis.

Section 7. **Date of Commencement of Monthly Assessments Due Dates.** The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner (other than Declarant) of a Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant which have not been conveyed or leased to a third party, all property which is dedicated to and accepted by a public authority, all Common Areas shall be exempt from the

assessments described in this Article IV and the assessments described in Article VI. The insurance assessment provided for in Article VII shall commence as to each Lot on the first day of the first month following the date of conveyance of said Lot to an Owner (other than Declarant). The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall be in default and shall bear interest from the due date at the rate of 12% per annum or at the highest rate allowed by Iowa Law, whichever is lower. The Association may bring an action at law against any Owner 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 attorneys fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot.

Section 9. **Subordination of Assessments Liens.** If any Lot 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 that assessment liens, if any, as shall have come due up to the expiration of the application 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.

ARTICLE V
DECLARANT'S RIGHTS

Notwithstanding anything herein to the contrary:

- Section 1.** Declarant reserves the right to use any portion of the Properties as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots 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 Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.
- Section 2.** Declarant reserves the right to add additional Lots and Common Area to the Properties at any time while the Declarant has an ownership interest in the Properties. Declarant further reserves the right to amend this Declaration at any time until January 1, 2015, to add real property, as later determined, to the Properties. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional real estate to the Association.
- Section 3.** Declarant reserves the right to convey or cause the Association to convey a portion of the Common Area if necessary due to encroachments thereon by any building.
- Section 4.** Declarant reserves the right and is hereby vested with the sole control over all Common Area landscaping, plantings and the like located in the Common Area as long as Declarant is a Class B Member. Declarant shall further have the right as long as it is a Class B Member to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.
- Section 5.** 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 to the Association. The Association shall be established prior to the recording of the final plat of The Townhomes of Walnut Creek Hills.

ARTICLE VI
MAINTENANCE

Section 1. **Maintenance by Owners.** The Owner of each Lot shall furnish and be responsible for, at the Owner's expense, all maintenance and repairs of the Owner's Lot and all structures, improvements and equipment located thereon, except for the Association Responsibility Elements, but including decorating and replacements within Owner's Living Unit, including the heating and air conditioning systems and any partitions and interior walls. The Owner shall be responsible for the maintenance, repair and replacement of all windows in Owner's Living Unit; the doors leading into the Living Unit; all decks and patios attached to or adjacent to Living Unit; all windows, doors and interior surfaces of any garage building located on Owner's Lot; and any and all other maintenance repair and replacements of the improvements on Owner's Lot unless otherwise provided herein.

Section 2. **Maintenance Obligations of Association.** In addition to maintenance of the Common Area, and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements, including without limitation the Private Street. The Association shall hold the City of Clive harmless from and against any and all responsibility to maintain, repair, or replace any Association Responsibility Element. The Association shall provide all maintenance and upkeep of any Pond, Pond structure, fencing, handrails, and grating to the point of entrance of any private storm sewer pipe and shall keep the Pond stocked with fish. The Board of Directors of the Association shall have the authority to make and amend such rules and regulations as are appropriate for the use of the Pond by Members.

Section 3. **Responsibility for Willful or Negligent Acts.** In the event that the need for maintenance or repair to an Association Responsibility Element is caused through the willful or negligent act of the Owner or such Owner's invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

Section 4. **Snow Removal.** Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all sidewalks on Lots and from the driveways servicing each Lot, including any portions of the driveways within the Common Area serving the Lots and from the Private Street.

ARTICLE VII
INSURANCE

Section 1. Authority to Purchase; Notice.

- (a) In addition to the maintenance assessments and the special assessments, the Association may levy assessments for all insurance purchased by the Association. Except as otherwise provided in Section 5 of this Article VII, all insurance policies relating to the Association Responsibility Elements shall be purchased by the Association. The Association, the Board of Directors of the Association, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article VII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Association shall promptly furnish to each Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.
- (b) To the extent reasonably practical, each such policy shall provide that:
- (1) The insurer waives any right to claim by way of subrogation against the Association, the Board of Directors of the Association, and the Owners and their respective agents, employees, guests and, in the case of the Owners, the members of their households;
 - (2) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner (including Owner's invitees, agents and employees) or of any member, officer or employee of the Association without a prior demand in writing that the Association cure the defect and the Association shall not have so cured such defect within sixty days (60) after such demand;
 - (3) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty days' (60) prior written notice to the Association.
- (c) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner. The coverage provided to the declarant under the insurance policies obtained in compliance with this Article VII shall not be deemed to protect or to be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for (or waive any rights with respect to) warranty claims.

- (d) All policies of insurance shall be written by reputable companies licensed to do business in the State of Iowa. Physical damage policies shall be in form and substance and with carriers acceptable to a majority of the mortgagees.
- (e) The deductible, if any, on the insurance policy purchased by the Association shall be a common expense provided, however, that the Association may assess any deductible amount necessitated by the negligence, misuse or neglect of an Owner against such Owner.

Section 2. Physical Damage Insurance.

- (a) The Association shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage, debris removal and water damage endorsements, insuring the Association Responsibility Elements and covering the interests of the Association, the Board of Directors and all Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment provisions in favor of the insurance trustee contained in Section 6 of this Article VII), in an amount equal to one hundred percent of the then current replacement cost of the Association Responsibility Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Association with the assistance of the insurance company affording such coverage). The Association shall also obtain and maintain such coverage on all real and personal property owned by the Association.
- (b) Such policy shall also provide:
 - (1) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so;
 - (2) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or their agents when such act or neglect is not within the control of the insured, or the Owners collectively nor by any failure of the insured, or the Owners collectively, to comply with any warranty or condition with regard to any portion of the Association Responsibility Elements over which the insured, or the Owners collectively, have no control); (ii) "cost of demolition"; (iii) "contingent liability form operation of building laws or codes"; (iv) "increased cost of construction"; (v) Living Unit replacement cost; and (vi) "agreed amount" or elimination of co-insurance clause; and

- (3) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the physical damage policy purchased by the Association shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Association hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their mortgagees, unless otherwise required by law.
- (c) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any mortgagee requesting the same, at least thirty days prior to the expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Association shall obtain an appraisal from an insurance company, or such other source as the Association may determine, of the then current replacement cost of the improvements to the Association Responsibility Elements (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this section. All mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Association Responsibility Elements in excess of one percent of the then current replacement cost of the Association Responsibility Elements. The Mortgagee of a Living Unit shall be notified promptly of any event giving rise to a claim under such policy arising from such damage to such Living Unit.

Section 3. **Liability Insurance.** The Association shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board of Directors may from time to time determine, insuring the Association, each director, and each Owner against any liability to the public or to the Owners (and their invitees, agents and employees) arising out of, or incident to the ownership or use of the Association Responsibility Elements. Such insurance shall be issued on a comprehensive liability basis and shall, to the extent reasonably practical, contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) deletion of the normal products exclusion with respect to events sponsored by the Association; and (iv) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a Unit Owner because of negligent acts of the Association or of another Owner. In no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one

occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained in such amounts as the Association Board directors shall determine.

Section 4. **Other Insurance.** The Association shall obtain and maintain:

- (a) adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall: (i) name the Association as an obligee; (ii) be written in an amount not less than one-half the total annual assessments for the year or the amount required by mortgagees, or one or more of the Federal Mortgage Agencies, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- (b) if required by any governmental or quasi-governmental agency, including, without limitation, one or more of the Federal Mortgage Agencies, flood insurance in accordance with the then applicable regulations of such agency;
- (c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);
- (d) broad form machinery and pressure vessel explosion insurance (if applicable) in an amount not less than five hundred thousand dollars per accident per location;
- (e) directors and officers liability insurance in an amount not less than one million dollars; and
- (f) such other insurance as the Board of Directors may determine.

Section 5. **Separate Insurance.** Each Owner shall have the right, at the Owner's own expense, to obtain insurance for such Owner's benefit covering the Lot and such Owner's personal property and personal liability as well as any improvements made to the Lot by such Owner (under coverage normally called "Improvements and Betterments Coverage"); provided, however that no Owner shall be entitled to exercise this right to acquire or maintain such insurance coverage so as to decrease the amount which the Association on behalf of all Owners may realize under any insurance policy maintained by the Association or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a unit Owner. No Owner shall obtain separate insurance policies on the lot and improvements thereto except as provided in this section.

Section 6. Insurance Trustee.

- (a) All physical damage insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, their mortgagees, and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors of the Association as "insurance trustee" to be applied pursuant to the terms of Article VII.
- (b) The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration, for the benefit of the insured and the insured's beneficiaries thereunder.

ARTICLE VIII
REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 4 of this Article VIII, in the event of damage to or destruction of all or any part of any Association Responsibility Element as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof (including any damaged Living Units and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein by the Declarant and replacements thereof installed by the Declarant but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Owners in the Living Units). Notwithstanding the foregoing, the Owner shall have the right to supervise the redecoration of the Living Unit.

Section 2. Procedure for Reconstruction and Repair.

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to any portion of an Association Responsibility Element, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged Living Units and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein by the Declarant and replacements thereof installed by the Declarant but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Owners in the Living Units) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee determines to be necessary.

- (b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a common expense and a special assessment therefor shall be levied.
- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the damaged Association Responsibility Element, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

Section 3. Disbursements of Construction Funds.

- (a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the insurance trustee from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:
- (1) If the estimated cost of reconstruction and repair is less than fifty thousand dollars (\$50,000), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.
 - (2) If the estimated cost of reconstruction and repair is fifty thousand dollars (\$50,000) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Iowa and employed by the insurance trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

- (b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided equally among all Owners.
- (c) Common Elements. When the damage is to both Common Area and Living Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Area which enclose and service the Living Units, then to the cost of repairing the other Common Area and thereafter to the cost of repairing the Living Units.
- (d) Certificate. The insurance trustee shall be entitled to rely upon a certificate executed by the president or vice president, and the secretary of the Association, certifying: (i) whether the damaged Association Responsibility Element is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee promptly after request.

Section 4. **When Reconstruction is Not Required.** If the Board of Directors elects not to repair insubstantial damage to an Association Responsibility Element, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Properties.

ARTICLE IX **EASEMENTS AND ENCROACHMENTS**

Section 1. **General Easements.** Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for the furnishing of utilities and services to other Lots, to the extent allowed by the City of Clive Building Code.

- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association.
- (d) Each Lot is burdened with an easement for common driveway usage with other designated Lots, if and only if a shared or common driveway is constructed serving more than one Lot.
- (e) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots and the Common Area.
- (f) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (g) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.
- (h) Each Lot is burdened with an easement through the Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Lot Owners to the front and rear of the other Owner's Lot.
- (i) Each Lot is burdened with any and all recorded easements including any easements reserved or dedicated on the recorded plat.

Section 2. **Easement for Pond Maintenance.** Declarant reserves unto the Association an easement over various Lots adjacent to any Ponds for a distance of twenty-five (25) feet parallel to the boundary line of that Pond. This easement shall be a non-exclusive easement for the sole benefit of the Association in performance of its maintenance obligation on the Pond. This easement shall not be for the benefit of the members or the public at large.

Section 3. **Drainage, Water Retention, Utility and Sewer Easements.** As may be noted on the recorded plat of the Properties or any future recorded plat of the Properties, there are reserved certain areas of the Lots and Common Area for Drainage, Water Retention, Public Utility and Sewer Easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer, cable television and other utility services, (including all lines, pipes, wires, cables, ducts, etc.), to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public

or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for an maintain appropriate drainage.

Section 4. **Additional Easement Rights.** Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, water retention, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of Common Area. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, water retention, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Dallas County, Iowa and any Owner of any Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 4 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 4 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the properties.

Section 5. **Easement for Emergency Purposes.** An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Area and any pedestrian walkways or sidewalks.

Section 6. **Easement for Signs.** Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

Section 7. **Encroachment.** If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of single-family residence appurtenant to a Lot (hereinafter in this Article IX referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the Owner of the Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Lot upon which the Encroaching Unit is located. The deed shall be by Quit Claim Deed free and clear of any mortgages and

encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the Owner of the Encroaching Unit.

Section 8. **Driveways and Access.** An easement is hereby reserved and granted to each Lot for driveway and access purposes over the Common Area wherein the private common driveways and the driveway serving such Lot is located. This easement shall extend from the Lot to the Private Street. Further, an easement is hereby reserved and granted for the use of all Lots served by one common driveway. To the extent that a driveway or portion of a driveway serving a Lot is located partially or wholly on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Lot Owner shall park or allow to be parked any vehicle or other obstruction within the driveway area, so as to prevent access to the other Lots or Lots which such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Common Area or another Lot or Lots. This latter easement is for the purpose of allowing pedestrian access from the Private Street to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Lot Owner which such sidewalk or pedestrian walkway serves.

ARTICLE X **PARKING RIGHTS**

Subject to the provisions of Article IX, Section 8, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and Owner's guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots. No bicycles, toys or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open alongside building walls or other locations of public view. No vehicles shall be parked so as to impede access from or to any Lot, the Private Street, or any public street. No vehicles shall be parked in the Private Street. All vehicles must be parked in a garage, driveway or designated parking space. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot, the Private Street, or any public street. The Association shall have the right to adopt rules and regulations concerning parking on the Private Street.

ARTICLE XI
PARTY WALLS

- Section 1.** **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- Section 2.** **Sharing of Repair and Maintenance.** The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- Section 3.** **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by the Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- Section 4.** **Right of Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to land and shall pass to such Owner's successors in title.

ARTICLE XII
ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, 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 by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval thereof as above provided. This Article shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Area.

ARTICLE XIII
SIGNS AND HOME OCCUPATIONS

Section 1. **Signs.** So long as Declarant is a member of the Association, no advertising signs of any kind including sale or "for sale" signs or rental or "for rent" signs (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. Nothing in this Article shall affect the rights of Declarant provided in Article IX, Section 6.

Section 2. **Home Occupations.** No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot, provided the same is permitted under the ordinances of Dallas County. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

ARTICLE XIV
USE RESTRICTIONS

Section 1. The ownership, use, occupation and enjoyment of each Lot and the Common Area shall be subject to the provisions of the Bylaws and Articles of Incorporation of the Association and this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that pets, specifically dogs and cats, may be kept, provided that they are not kept, bred or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping on any Lot, front Lot, or rear Lot of any pet. Any person owning or keeping a pet dog or cat shall be responsible for and shall at all times clean up waste or excrement from such pet(s) on the common areas. Failure to do so in a prompt or responsible manner shall

result in a fine or special assessment by the Association against such unit. No dog run or enclosed dog shelter shall be commenced, erected, altered or maintained upon any Lot until the plans and specifications showing the nature, kind, shape, height, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association. Any such dog run or enclosed dog shelter shall be screened with shrubbery, decorative fence or both.

Section 4. No noxious or offensive activities not involving the maintenance of Lots or Common Area shall be carried on upon any Lot; nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.

Section 5. The Owner of each Lot shall keep the same free of weeds and debris.

Section 6. All trash receptacles and garbage cans shall be stored in the garages on each Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of contract with a commercial waste collector.

Section 7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot or the Common Area at any time as a residence, either temporarily or permanently.

Section 8. No tower or antennae shall be placed upon any Lot or Living Unit that has a circumference that is greater than one meter in diameter.

Section 9. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 10. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Associations.

Section 11. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked in any driveway or street or anywhere else on the Properties. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle.

Section 12. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 13. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept on Owner's Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 14. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 15. Agents of or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 16. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. the Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 17. For any portion of the Properties developed as residential properties, the Association hereby reserves and shall retain the right to require installation of mailboxes and yard lights of a uniform design, location and construction.

Section 18. **No Waiver.** Failure of the Association or any Owner to enforce any covenant, condition or restriction of 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 the right to enforce the same thereafter.

ARTICLE XV
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 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 proving 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.** Declarant has the right to amend this Declaration for any purpose, including the addition of real property to the Properties, at any time until January 1, 2015, by the recordation of an instrument, recorded in the Office of the Recorder of Dallas County, Iowa, signed by Declarant. This Declaration may also be amended or changed at any time by the recordation of an instrument, recorded in the Office of the Recorder of Dallas County, Iowa, signed or approved in writing by a majority vote of the then Members; 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.

Section 3. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Dallas County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 4. **Notice to Mortgagees.** The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its Bylaws or any other applicable documents which default has not been cured within thirty (30) days.

Section 5. **Restriction on Rental.**

- (a) In order to protect the integrity of this development and to insure that those persons residing therein have similar proprietary interests in their Lots and

Living Units, no Lot and the Living Unit located thereon shall be leased or rented to any person not having an ownership interest therein, unless and until the unit has been occupied for a period of one year by the Owner or Owners thereof, except as provided in subparagraph (b) below. Thereafter, no Lot and Living Unit located thereon shall be leased or rented for a period of time of less than one year, and no lease or rental agreement to any such tenants or lessees shall be extended or renewed for a shorter period of time. The restrictions contained herein shall not apply to the Declarant or Living Units owned by it.

- (b) Lots and Living Units may be subleased to persons who are not Owners prior to the Owner or Owners having occupied it for a period of one year; provided however, that one or more of the Owners is living in the Unit during the time the Unit or Lot is subleased. No Unit shall be subleased at any one time to a number of persons that is greater than the number of bedrooms or garages of the Living Unit or Lot.

IN WITNESS WHEREOF, Gratiyas Construction, Inc. has caused this Declaration to be executed this 13th day of MAY, 2005.

GRATIYAS CONSTRUCTION, INC. (Declarant)

By: *Thomas J. Gratiyas*
Thomas J. Gratiyas, President

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 13th day of May, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Thomas J. Gratiyas, to me personally known, who, being by me duly sworn, did say that he is the President of said corporation executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Thomas J. Gratiyas, as such President, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.



Jennifer L Hodge
Notary Public - Iowa
Notarial Seal
Commission No. 718947
My Commission Exp. October 8, 2005

Jennifer L. Hodge
Notary Public in and for the State of Iowa